Fighting Corruption in Asia

Causes, Effects and Remedies

Editors
John Kidd
Frank-Jürgen Richter
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His other work concerns ‘the cultural revolution’, and the statistical relationships between the *Great Leap Forward* and the constitution of the establishment of the provincial revolutionary committees.

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He has been visiting professor at M.I.T., The Economic Development Institute of the World Bank, has often lectured in France, Pakistan, India and China.

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The OECD recently published *No Longer Business As Usual: Fighting Bribery and Corruption* under her management and she has written articles for specialised anti-corruption publications, the most

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Introduction

Let us take, just for the moment, take the viewpoint of one of us, John Kidd... as I grew up in rural England, I lived to play a mixture of cricket and rugby football. These seemed to me to be natural simple pastimes. In a summer evening, I was able to go to the village cricket field to sit and watch the players battling to win, bowler against batsman, with the latter surrounded by fielders all of whom were intent on intimidating that lone guy into making a mistake. Yet, after this period of palpable aggression all the guys congregated round sandwiches (often prepared by their wives) and drank a beer (sometimes provided, as a loss leader by the local pub landlord). There was a clear split between the activity of playing this skilful game and the social elements apparent in the casual after-match de-briefing and subsequent camaraderie. I had the same feeling as I played amateur rugby: a game with 15 players — not the professional one with only 13 players (who are all paid a high salary, with even higher bonuses). Again I enjoyed the rivalry and the intensity of a powerful game (even if covered in chilly winter mud), which was to be balanced against the friendly eating and
drinking after the game when all on-field animosity was forgotten. It was playing the game that counted, not the result.

At some point in my ‘growing up’, I met the beginnings of corruption in these simple games. The better amateur players were being offered ‘boot money’. That was understandable to me and to many players, as those good players were called to practice long hours each week, to travel to country games and even to national games far away from our home ground. The rules of the amateur game forbade any payment to these important players — yet national honor had to be upheld by the young men — hence the practice of placing ‘travel expenses’ in their street shoes in the locker room became commonplace. There was much furor at the breakdown of their amateur status.

Now of course I am greatly perturbed by the widespread corruption in all sport; no game seems to be free of its effects, not even in the Olympic games. In the latter, maybe even more than in national games, there has been a rampant demand for [and use of] performance-enhancing drugs since the honor of individual countries depends on winning ‘gold’. But change is afoot: Sir Paul Condon, one time head of Scotland Yard (the UK’s police headquarters), is developing a dossier upon global corruption in the game of cricket. In his preliminary report, he says that corruption has been rife in cricket since the 1970’s (Condon, 2001).

Soccer too has its problems — also caused by the lure of money — either directly to individuals or associated with the concentration of a major set of games at one location: such as the World Cup. A decade ago, the Cup generated about $100 million, but the events in Korea and in Japan in 2002 are expected to generate over $1 billion in television and marketing rights alone. It is big business, and as such attracts many villains. Business Week documents some of the Federation of International Football Associations’ (FIFA) problems, such as a missing $50 million transferred from the Brazilian TV group Globo, but not deposited in a designated bank account (Business Week, June 25th, 2001). The other author, Frank-Jürgen Richter, was raised in Germany — naturally he likes
soccer, and he too is concerned about the scandals and corruption in that game.

These are modern problems, and we will return to these times in due course. First we have to note that corruption has been with us from time immemorial. It is often said that prostitution is the world's oldest profession, and accounting came second. After all, someone has to manage the monies gleaned by nefarious means, and most likely, as the monies would have been obtained in ways outlawed by society there would also have been corrupt accountants, advisors or extortionists. We may see this effect even a thousand years ago when the Order of the Knights Templar was set up to protect the pilgrims on their passage to the Holy Land. These were warriors who should never retreat, who should be valiant and incorruptible. Yet deep in their own history is mystery — and if there is mystery then there are stories that develop: both correct and false.

The Order of the Knights Templar, despite its relatively short life span, was a major instrument of change in medieval Europe. Within fifty years of their foundation in 1150 AD, they had become a commercial force equal in power to many states; within a hundred years they had developed into the medieval pre-cursors of multi-national conglomerates with interests in every form of commercial activity of that time and were far richer than any kingdom in Europe. Using their own commercial insights as well as techniques which they adopted from their Muslim opponents in the east, they developed the concept of financial transfer by 'note of hand' into something like its modern equivalent: they developed also the bankers cheque and the pre-cursor of the credit card (round about 1200 AD). From their amassed wealth they lent to bishops to finance church building programmes; and to princes, kings and emperors to finance their state works, building programmes, wars and crusades. Within the twin embrace of financial security and safe travel, Europe began to transform itself. Safe and effective trade over longer distances led to the general accumulation of capital and the emergence of a newly prosperous merchant class, the urban bourgeoisie. The newfound wealth of the city merchants changed the balance of power still further in favour of the towns and cities and thus their inhabitants. The Order was not
merely the medieval pre-cursor of the modern multi-national conglomerate but was in many respects an early embryonic form of the European Union. However, success, wealth and power stimulated jealousy and resentment, especially from those who were heavily in debt to the order. We thus see the potential for corruption and strife arising between the ‘haves and have nots’ in mediaeval times (extracts from http://www.tylwythteg.com/templar.html — accessed July 3rd, 2001).

Readers might like to note a ‘sister’ book to this is focused on ‘Governance in Asia’ (Kidd & Richter, 2002). In that book, we address issues arising from co-joining different models of corporate and national cultures in asian countries wherein some nations are just becoming economically viable yet have been intimately [economically] invaded by the major international corporations over the last 20 to 40 years, perhaps longer. In that book, we illustrate how models of governance are dependant on the degree of corruption prevalent in the local society (as seen in this book) — in many ways these two books complement each other.

The Measurement of Corruption

We should now turn to the measurement of corruption — for without a base we cannot make appropriate comparisons. To put this into a context, Peter Lilley wrote earlier about money laundering in its various forms, noting that just one form — illicit drugs dealing — was estimated to have a turnover of $400 billion per annum; and this turnover was larger than the world’s combined oil and gas industry (Lilley, 2000: 3). He continued, saying that the whole of the laundering processes — which is needed to ‘make clean’ monies arising from drugs, prostitution, and corruption in general — reaches a staggering $1.5 trillion, and it is about 5% of the world’s Gross Domestic Product (GDP). It is the magnitude of this vice that makes it imperative to understand our base measurements and thus be able to state what we have done to ameliorate its effects.

Although this book, through the efforts of all its authors, reviews corruption in Asia we all understand that this is a global issue.
Hardly a week passes without national press in some country, or international journals such as Time, BusinessWeek, Fortune, the Economist [and all serious reportage] making some reference to corruption in Asia, or Europe or the Americas — and they refer to the very high profile trials therein involving senior ministers, or ex-ministers of State. We find these people are not above the law, be they the one-time US President, or the senior ministers of Germany, France or Italy; or in other states in Africa or South America. The public is beginning to realise that their judiciary are independent of the State and can enforce the law with the same ‘sharp teeth’ it uses on us, the public. “One law for all” is understood in Western countries. It is seen to be more or less working, since indictments and gaol sentences are being passed on senior figures that were once untouchable and apparently above the law. Happily local television in China is now depicting corruption in its society in general, though in many cases it also shows the weak and oppressed do not achieve the justice they deserve. Yet this is indeed progress, as transparency became the norm in the run-up to their WTO entry: thus ordinary people can be forewarned about the corrupt practices they knew took place, but could only refer to folk-tales.

Even so, ‘the public’ remains confused: take two items in the (UK) Financial Times [Friday, June 1st, 2001: 12]. One item by Gordon Cramb reported a ministerial meeting in The Hague wherein the delegates were hopeful about the setting up of a United Nations legal instrument to fight corruption. In part, this would concern itself with ‘off-shore’ international financial operations and thus secure the return of corruptly derived monies to their rightful countries. Yet, on the same page, an item by Edward Alden & Michael Peel reported that the Bush administration in the US is ‘reconsidering the vices and virtues of financial privacy’. They wish to relax the disclosure rule on cash deposits of $10,000 or more — which, if carried through, would severely weaken the ability of US banks to control money laundering. In turn, as we understand from Lilley (ibid), there would be rampant abuse of this newly uncontrolled banking system to promote the whole spectrum of illegal operations.
A few major groups have stood out against corruption: non-government organisations such as the OECD, Transparency International, and more recently — we see consultants amassing data from their global outposts: firms such as Pricewaterhouse-Coopers. We will review their efforts.

The OECD Mission against Corruption

We note the global pressure to have organisations conform to GAAP (Generally Acceptable Accounting Principles). This was driven first by United States accountants looking for easier-to-apply rules yielding greater transparency, which in turn, would promote clearer comparability across firms in different States in the United States, and later between firms located in different countries. Accounting regulators in many countries have agreed their national methods should incorporate GAAP. Even during the Summer of 1997 China publicly agreed to adhere to GAAP, as had the Japanese by that time: but the Chinese authorities said they would ‘do it their way’.

It is prudent to think about the meaning of... 'generally acceptable' as it may apply in Asian countries since it has been shown that accounting disclosure, at least historically, is strongly correlated with cultural measures (note later in this chapter), and that oriental cultures are biased towards secrecy and non-transparency (Gray & Vint, 1995; Salter & Niswander, 1995; Zarzeski, 1996). Thus one may now ask if different regularity practices and the more open financial markets in these regions will force firms to be more transparent (in a GAAP sense)? In fairness, we should note that opacity is not a unique East/West issue since the Channel Islands, Belgium, Spain and Switzerland all practice low levels of financial disclosure (Gray, 1996). And Austria has 'Sparbrücken' banks that are more secretive than one’s traditional view of a Swiss bank; notwithstanding the former country is a signatory of the OECD Article against Corruption (Lilley, 2000).

Research on the Oriental concept of probability and risk has shown that asian persons may be ‘fate-oriented’ and less willing to take a probabilistic view of the world (Phillips & Wright, 1977).
This might suggest that sophisticated accounting is not needed in Asia since "what will be — will be" and ultimately no subtle provisioning will hide poor performance. On the other hand the Asian collective spirit will carry an ailing firm so ameliorating any loss of face. In contrast, in the West, the rules and clarity of accounting might well report a technical failure, and the firm be forced to liquidate, not withstanding any mitigating circumstances. The lack of disclosure in Asian accounting and the degree to which management accounting is not undertaken in Asia are seen as quite deep research issues by Western academic accountants — even to the extent that some question if accounting practice might indeed change Asian culture! (Baydoun et al., 1997: 422).

The World Bank and the International Monetary Fund (IMF) are now ready to 'be whistle blowers' when they detect funding diversions, and other organisations now more publicly claim they resist bribery. The United States has had laws from 1977, which criminalized commercial payoffs to public servants abroad if offered by US national personnel; and others follow similar reasoning — the Royal Dutch/Shell Group in its April 1998 annual report said it fired 23 of its workers on ethical grounds and terminated contracts with 95 firms, also on ethical grounds (Walsh, 1998). It is now clear that Japan has been paralyzed for years through being unable to disentangle its opaque systems which are resting on bribery and extortion. Similarly in China, there is a strong history of guandao (official corruption) that, according to Walsh, is more pervasive than that in Japan. President Jaing Zemin declared war on this 'evil' once it became obvious that a $2.2 billion scandal had involved Chen Xitong (who was a former Party chief and Politburo member) and his deputy Wang Baosen (who killed himself). Altogether some 500,000 persons in China in recent years have been reprimanded or punished for taking kick-backs, but the use of extortion is still rife in China: Walsh (ibid). Indeed a cursory review of the English-language press reporting on China (and more widely on Asia) raises these issues frequently.

Thus we have to suppose the following recommendation of the OECD will prevail:
In 1994, the OECD Council adopted the ‘Recommendation on Bribery of Foreign Public Officials in International Business Transactions’, which calls on Member countries to act to combat illicit payments in international trade and investment. As part of that Recommendation, reference was made to the need “to take concrete and meaningful steps including examining tax legislation, regulations, and practices insofar as they may indirectly favour bribery”: C (94) 75. Following this, the OECD’s Committee on Fiscal Affairs undertook an in-depth review of tax measures that may influence the willingness to make or accept bribes. The Committee concluded that bribes paid to foreign public officials should no longer be deductible for tax purposes, which will require many Member countries to change their current practices [emphasis by John Kidd].

[The Recommendation was adopted by the Council of the OECD on 11 April 1996, and ratified by many of the OECD countries by 1997].

It is thus quite alarming, as we mentioned above, to find the Bush administration is now inclined to relax their banking rules that demanded a careful investigation of persons who wished to deposit more than $10,000 as cash. This base level ruling has evolved across the world to guard against the deposition of illicit payments, or ‘hot’ money, into an official banking environment where, once the money is deposited, the depositor has access to ‘clean’, or as one may say — ‘laundered’ — money.

Corruption Perception Index

Transparency International (TI), located in Berlin, was set up in the early 1990s to help combat corruption and it now has National Chapters in 77 countries. Its website [http://www.transparency.org] declares:

Transparency International is a non-governmental organisation dedicated to increasing government accountability and curbing both international and national corruption.

Our movement has multiple concerns:
Corruption and Its Measures

- humanitarian, as corruption undermines and distorts development and leads to increasing levels of human rights abuse;
- democratic, as corruption undermines democracies and in particular the achievements of many developing countries and countries in transition;
- ethical, as corruption undermines a society’s integrity; and practical, as corruption distorts the operations of markets and deprives ordinary people of the benefits which should flow from them.

We will highlight one of their indices relating to the perception of corruption that they first began publishing in 1995. One should note that they, and we, have to accept these measurements as ‘being in the eye of the beholder’ — hence their use of the word perception — since there are no absolute measures. The OECD recommendation (above) is indicative of the same problem — decrying the official acceptance of bribery as a tax-deductible item of expenditure which accountants in many countries around world had once thought quite acceptable.

Transparency International has more recently developed an Annual Global Corruption Report (GCR), which in 2001 is being funded by grants from the British, Dutch, German, and Norwegian governments. TI produces statements essentially saying they wish to keep corruption a prominent item on international policy agendas, and that the GCR will serve as a central element in TI’s advocacy work. Furthermore, and I quote from their web site again,

“The GCR will also contain a separate empirical section... TI will solicit contributions from leading scholars and institutions engaged in empirical research on corruption for this section... These contributions will enable this section of the GCR to reflect the “state of the art” in knowledge on corruption, as assessed from the perspective of various organisations - public sector, private sector, and academia”.

But what of their 2001 Corruption Perception Index (CPI)?

“This year’s index, published by the world’s leading non-governmental organisation fighting corruption, ranks 91 countries. Some of the richest countries in the world — Finland, Denmark, New Zealand, Iceland,
Singapore and Sweden — scored 9 or higher out of a clean score target of 10 in the new CPI, indicating their very low levels of perceived corruption. But 55 countries — many of which are among the world’s poorest — scored less than 5, suggesting high levels of perceived corruption in government and public administration. The countries with a score of 2 or less are Azerbaijan, Bolivia, Cameroon, Kenya, Indonesia, Uganda, Nigeria and Bangladesh”. Peter Eigen, the chair of TI, continues, “The new [CP] Index illustrates once more the vicious circle of poverty and corruption, where parents have to bribe underpaid teachers to secure an education for their children and under-resourced health services provide a breeding ground for corruption. The world’s poorest are the greatest victims of corruption. Vast amounts of public funds are being wasted and stolen by corrupt officials.”

We will not reproduce their index in its entirety, after all this book focuses on corruption in Asia, but we will rearrange the data to be related to issues that might be relevant to the Ministers in Singapore (as per Figures 1 and 3).

Some while ago a formula was derived (Kogut & Singh, 1988) which allowed one to create a simple comparison against a target — in fact they applied their formula to the data collected by Hofstede on cultural differences (Hofstede, 1980 & 1991). They showed how to combine the four original Hofstede measures into one index that would be suitable for ranking against a target profile — as we mentioned above, we will take the profile of Singaporeans as the target to compare with other countries. It is thus possible to plot the relative rankings with respect to cultural difference [from the zero base of Singapore] against cross-related national corruption figures. We do this in Figure 1. Note that the clustering ellipses are only to draw attention to three groups of data points — they are not derived from a mathematical algorithm.

It seems quite clear that Singaporeans would prefer to work with people from Hong Kong, as they are close to Singapore on the cultural difference scale, and not distant with respect to corruptibility. On the other hand, they may wish to work with those culturally close rather than with persons holding more different views and or ethics. Yet, as the two larger clusters indicate, most of
Corruption and Its Measures

Corruption Perception Difference

Cultural Difference

Sources: Hofstede [cultural data] and TI [corruption data]: Kogut & Singh calculations

Figure 1: Relationships between Culture and Corruption (relative to Singapore)
the asian countries (which we suggest might be culturally closer to the Singaporeans) are much more corrupt than the Singaporeans; but those countries which are similarly corrupt (little distant from Singapore on this measure) are rather far away when considering cultural differences.

Of course we may presume for the Singaporean government these data raise problems for their future international relationships. They have said they wish to have bi-lateral trade agreements with many countries rather than follow the World Trade Organisation suggestion of having multi-lateral agreements. But which countries should be their targets?

**Opacity Index**

Recently, PricewaterhouseCoopers (PWC) at the 2001 annual meeting of the World Economic Forum in Davos, Switzerland introduced a new index of corruption. In fact, it is a broad measure covering five sectors deemed to be important to businesses venturing across their national borders. The PWC Opacity model ‘CLEAR’ encompasses corruption, legal, economy, accounting and regularity opacity. In their ‘Opacity Index’ any increase above a nominal base in one or more of the measures raises the opacity of doing business “over there”, and thus raises the perceived difficulty of the venture. We illustrate their model in Figure 2, and note that greater detail may be obtained from their website [http://www.opacityindex.com/] where a full discussion is offered of how their data was elicited and compiled into a coherent index.

PricewaterhouseCoopers say in their ‘opacity’ web site: “Opacity and Transparency are the master terms in a truly important worldwide dialogue. This site is dedicated to presenting and hosting informed discussion of a new Opacity Index, which measures the opacity of a growing number of countries in all parts of the world”. They continue, “Opacity is said to add more than $160 billion to countries’ annual borrowing costs”.

It may seem clear that the Opacity Index (OI) is in many ways compatible with the CPI of Transparency International.
Corruption, with money flowing to the powerful

Opaque legal systems

Reduction in opacity will in effect be equivalent to a direct tax reduction

Opacity in the management of the economy

Lack of accounting transparency

Lack of clear, accurate formal statements of practices leads to OPACITY

Regulatory opacity

Generally an increase in one or more of these aspects reduces the willingness of investors to create Adding Value Systems

Leads to fuzzy aspects which defeats making sound management decisions

Source: Following the Opacity Model created by PricewaterhouseCoopers

Figure 2: The ‘Opacity Model’ of PricewaterhouseCoopers
Indeed, Figure 3 shows the relationship between the OI and the CPI does have a good [statistical] correlation ($R^2 = 0.62$) — but not all data from both sets can be correlated due to a lack of overlapping measures.

It is clear that Singapore (if we continue to focus on this country) scores relatively too low against the regression line — suggesting it is more transparent than might be expected. But on the other hand, we may see that China (absolutely much more corrupt than Singapore) is seen also to be more opaque than the regression line would lead one to expect. Entrepreneurs from Singapore might be a little shocked to find the reality (as expressed by this figure) is not as they might have hoped it to be as they attempt to create a joint venture (Chan & Tong, 2000: 79). These remarks will be amplified slightly below.

The Business of Asian Business

We have to understand *guanxi*, the Chinese word for ‘networking’ (Lou, 2000). We accept this concept pervades the whole of Asian business, as does the word itself having minor changes to spelling and pronunciation as one passes through different Asian countries. Yet its mode of use should not be taken for granted — especially when focusing on expatriates (Pyatt *et al.*, 2001).

In a study centred on the traditions of family business in Hong Kong and Thailand, these authors found that the firms they had studied had managed to disentangle cultural and relational components from the transactional and pragmatic (as noted in Donleavy, 1995). However they cautioned against exaggerating the scope and domain of these Chinese forms of organisational architectures. They further noted that the Chinese sojourners in the ‘outposts’ of Hong Kong and Thailand have no greater affinity with each other locally (as diaspora) than with their counterparts in Europe, America or other countries; or indeed as between the ‘British’ in the US or in Australia with those in the ‘homeland’. On the other hand, they concluded, the elite in the major entrepreneurial firms have strong linkages that go beyond kinship to
Corruption and Its Measures

Source: Data from PricewaterhouseCoopers and Transparency International.
Note: The CPI data is ranked against Singapore as a target.

Figure 3: Correlation between the Opacity Index and the Corruption Perception Index.
support their trade. Perhaps we may question if it is these forms of hidden links that may support corrupt practices as a way if tying-in senior managers into a wide web of intrigue?

John Child and others further caution us, ‘the outsiders’, in a report to the Hong Kong Chamber of Commerce. They warn us, ‘don’t get into any relationship that depends on guanxi — you don’t understand it’ (Child et al., 2000). In other words with respect to guanxi, given that in its promotion many banquets are given, as well as many gifts exchanged (together with other giving of favours) it is very difficult for an outsider to understand the complex net of personal relationships. Thus staying outside is quite a positive policy — but if outside, one will suffer the fate of the outsider — one is starved of insider information.

Finally, perhaps we have to accept the complex history that China has had. We note that the relatively recent Cultural Revolution left many without good education and which allowed a cadre to develop who were eventually seen to be corrupt and who condoned corrupt practice. We are reminded by Wu Wei-Ping of the film Farewell to My Concubine... in which two childhood friends were turned against each other (Wu, 2000). In the Cultural Revolution it was commonplace, and in that non-ideal world it was understandable that children turned against parents, spouse against spouse, and so on — simply to survive, to have a reward, or to be promoted. It is against this background we have to consider the wide spectrum of corruption, not just in China, but also across the whole of Asia.

The Structure of the Book

One of the strengths of this book is that it does not adhere to the sanctity of Western beliefs — of the firm, organization or institution — with respect to ‘corruption’. Rather, it reviews the tenets underpinning this activity that ought to lead to a lessening of corruption however promoted in all nations; it then goes on to review specifically how this may take place in Asia from the viewpoint of specialists in Asian matters.
Many management theorists spend a great deal of time refining their analyses of trade effects, for instance, on how Foreign Direct Investment (FDI) and other financial support is helping a country or commercial sector to grow and reach out to the global trade that is apparent in several economic sectors. There are also many multinational enterprises which are studied, in depth, in order to ascertain how they modify regional and national economies through their involvement in local or national processes in developing countries. These investigations become well cited Case Studies. However these analyses often miss the enormous cash flows predicated upon corrupt practices. We might say therefore that the analysis of the upperworld, in omitting the distortions arising from the underworld, yields a biased view of ‘best practice’ and/or exemplary performance.

This book illustrates the breadth of these distortions, notwithstanding the frequent avowals of national leaders that they are stamping out black (or gray) practices in their countries.

Part 1: An Introduction

Chapter 1 by John Kidd has noted that no country is free and blameless in this debate — developed countries’ organizations and their managers are not exempt, but they are in general less corrupt than their counterparts in developing nations. However, as the developed world is looking to Asia as a vast marketplace in the near-term future, it is pertinent to review the interaction of Occidental and Oriental business methods, and take cognizance of their ethics and their corruption management practices.

Very many governments have Charters and Ministries acting against corruption and many are signatories of the OECD charter against corruption. All have official statements to make on how they are combating corruption in their country… but observers say otherwise. Earlier, this very chapter by way of an introduction has noted that corruption is widespread and that there are several measures that may be employed to gain an appreciation of its magnitude before making an alliance contract in a target country.
Part 2: Combating Corruption, Money Laundering and Crime

In Chapter 2, Enery Quinonnes writes upon the development of the OECD studies on corruption that led to the convention against corruption. Herein she begins by informing us of the core of countries, only 30 or so, which have signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. To get to this position she outlines the growing awareness by institutions, ministries, firms and individuals of the cost of corruption and its disrupting effects. That these official activities have been enacted only through the 1990s seems to be an indictment of modern society — but it is through these measures we hope we can make global progress.

Peter Lilley in Chapter 3 illustrates the vast reach of the money laundering schemes globally and in particular in Asia, while elsewhere it is estimated by US law enforcement that West Africans and Southeast Asians using West African Couriers wash some $500,000 on a weekly basis (Lilley, 2000). He notes that in May 2001 the Malaysian Finance Minister, Daim Zainuddin commented that the washing of dirty money gives “wicked legitimacy to proceeds acquired through drug trafficking, extortion and arms smuggling”. Thus we need to counter the ease by which this process is conducted, since corruption raises the costs of contracts whilst further debasing the poorest in our societies. He also notes the corrupt environment in Indonesia is immediately apparent through its escalating money-laundering problem. Their general picture is saddeningly familiar, with one critical factor being that their national police lack sufficient resources, training or expertise to tackle the serious problems that they face.

In Chapter 4 Leslie Palmier notes... ‘the State, when weak, is perceived to be partial, so traditional loyalties are aroused, which further weaken the State’. It is customary to invoke ‘market pressures’ to explain western commercial behavior, while ‘peer group pressures’ are used to explain individual activity. Similarly, it would seem appropriate to include ‘traditional group pressures’ in
analyzing corruption in developing countries, in Asia as elsewhere. However, such pressures are perhaps best seen as permissive and supportive, not a determinant. More important is the presence of opportunities, which usually means the inducement of money. The more of it that passes through the hands of State officers in a weak State, the more will stick to their fingers. Thus when law and order break down and are not quickly restored, the State is perceived to be partial towards the lawbreakers. He also presents the case of Indonesia.

In Chapter 5 Anatoly Korchagin & Alex Ivanov offer us a view from Vladivostok in Eastern Russia — an important portal between Asia and Europe (though indeed far from Western Europe). They suggest that Russia (the government) itself is gradually becoming the fiction, because the people, out of their practical need to survive, go over to an illegal way of life. This threat is so real that now the “Russian mafia” (to put it exactly — organized crime) is described as a serious actor in the reshaping of the world’s economy and territories — in all countries, especially in the developing ones. Strictly speaking, there is nothing strange and unusual in this — it is simply the ripening of the harvest that had been planted during the process of breaking down Russia. But even here — in the Wild East, so to speak — they emphasis, as a conclusion, that it is possible to specify that the systemic character of corruption in a modern society should be opposed by a systemic counteraction — so with countermeasures in place we should see a gradual return to ‘normality’.

In Chapter 6 Hock-Beng Cheah notes, from a quotation in 1999 by the US Customs: that IPR theft hurts not only our national economy, but our world economy as well. This crime is already costing industry approximately 200 billion [US] dollars... a year in lost revenue and nearly 750,000 jobs... Our investigations have shown that organized criminal groups are heavily involved in trademark counterfeiting and copyright piracy. They often use the proceeds obtained from these illicit activities to finance other, more violent crimes.
Cheah goes on to state that TRIPs [the Agreement on Trade-Related Aspects of Intellectual Property Rights] is being used as a protectionist instrument allowing large corporations use intellectual property rights (IPR) to protect their markets, and to prevent competition. An excessively high level of intellectual property protection required by TRIPs has shifted the balance away from the public interest, towards the monopolistic privileges of IPR holders. This undermines the sustainable development objectives that underpin [the European Union's] development policies that are being generally promoted in Asia through the WTO.

He goes on to discuss theft of software IPR noting the available evidence suggests that overall in 2000 approximately one-quarter of the total global revenue losses occurred in Asia. He concludes, noting the progression from stage 1 to stage 2 of the IPR laws, that... even in the somewhat arcane and esoteric realm of IPR there are serious developments that have the potential to arouse grave concerns and resentments in Asia, in the USA and elsewhere.

In Chapter 7 François-Yves Damon concentrates on the legal aspects of corruption as noted in official reports of convictions for corrupt practice. He suggests that corruption is one of the biggest political and economic challenges that face China in the twenty-first century. Conservatively it is estimated to cost some 13–16% of China's GDP — thus corruption is a huge economic loss and is a social pollution. It contributes to problems such as environmental degradation, social and political instability, and the decreased credibility of government officials. According to surveys conducted in 1998 and 1999, the Chinese people viewed corruption as the number one factor contributing toward social instability. However, in 2000, fearful of the imminent pains of economic reform, the Chinese people named unemployment and the fear of being laid-off, ahead of corruption, as the primary sources of social instability (Hu, 2001). It is hoped that this grass-roots fear does not detract from the higher officials search and reaction against corruption since the latter evil may well enforce the ill-rest due to unemployment.
Part 3: National Comparisons throughout South and East Asia

Dominic Sculli in Chapter 8 leads us immediately to a consideration of 'culture'. He notes one should not be looking for a single point in the multi-dimensional cultural space, but rather trying to eliminate certain aspects and thus hope that a small enough space remains in which the core of Asian cultural values abides. However, we have to recognize that the Asian continent takes in a large part of Russia and even in a sense, the Middle East, including Israel. Also included in the region there is the large and diverse Indian subcontinent and many Islamic countries, stretching as far southeast as Indonesia and the southern Philippines. Therefore, in the context of this chapter, 'culture' essentially refers to the culture of China and to that of some of its neighbors, particular those with some historical influence from China, such as Japan and Korea.

Cross-cultural research into different management styles attempts to determine the effect of the level of industrialization and also the role that culture plays — the general finding is that the management style is a function of the level of industrialization, but is also tempered by cultural characteristics. The same question can be posed concerning corruption: to what extent is it dependent on the level of industrialization and to what extent is it dependent on culture? He concludes that certain characteristics of Asian culture may give the impression that it is more prone to corruption, yet the proposition that a firm link exists between culture and corruption seems untenable. However, corruption will become more organized and possibly more efficient when a clear authority [governance] is established or when the rule of law is more strongly enforced — which inevitably occurs as a nation state develops and become more sophisticated.

Chapter 9 by Gilbert Etienne illustrates a wide view. He has traveled extensively in Asia over a long period and thus has formed a distinct view upon the different reactions to corruption, country by country. In particular he focuses upon the economy of seepage and leakage that goes beyond corruption. He suggests the problem seems to have three tiers: misallocation (through weak administra-
tions and infrastructures for instance), general loss of revenue (due to fraud), and simple corruption (including malpractice).

Clay Wescott in Chapter 10 allows us to reflect on modern-day corruption in Asia through the anti-corruption campaigns being enacted in four countries in South East Asia — he examines the progress of the authorities in Cambodia, Laos, Thailand and Viet Nam as they set up effective institutions to fight corruption in the public sector. He makes comparisons by drawing on governance assessments recently carried out by the Asian Development Bank. Anti-corruption efforts in these four countries reveal both similarities and differences, making the sub-region interesting for comparative analysis of the causes and consequences of different approaches. Thus he makes recommendations both for improving ongoing efforts at the country level, and for joining forces at the regional level.

In Chapter 11 by Schramm & Taube we find a detailed study of guanxi. They examine the phenomenon of corruption in China using the instrument of 'the new institutional economics'. Their goal is not to illuminate the relationship between the parties involved in corruption using a principal-agent analysis. Instead, their analysis focuses on the institutional framework for corrupt transactions in China whose goal is to prevent opportunistic behavior of one of the involved parties. In this respect, they will examine especially the relationship between corruption and the guanxi networks; and, in addition, how they are affected by the (non-) existence of a functioning legal system.

Moving on we see in Chapter 12, by Moon & McLean, that Korea has had a positive stance against corruption from 1960 when General J H Park seized power. Since that time, especially in recent years, they have realized that their rapid growth in their economy has rested upon unsure foundations based on corrupt practices. Corruption, they emphasize, is a multifaceted phenomenon — it comprises many factors and components: socio-economic, cultural, politico-systematic, bureaucratic-administrative, psychological, and so on. This multifaceted aspect of corruption must be taken into account if anticorruption efforts are to succeed. They conclude that
it will require a gradual, evolutionary process of massive cultural change which must be widely supported by the populace and those in leadership. Without such a commitment, the negative consequences of corruption will continue to impede South Korea's economic, political, and moral development.

Chapter 13 by Chat-Uthai & Mclean presents details of the situation in Thailand. The 2000 Corruption Perception Index (see http://www.transparency.org) has given Thailand a trust status that has deteriorated from the 34th rank (of 41 countries) in 1995 to a tied-for 60th rank (of 90 countries) in 2000. The Thai views of corruption are reflected in neat phrases which are used to describe the act of consuming the public wealth: “hot tea fees,” “eating along the river tide,” “gifts of good will,” and the famous “white buffet” cabinet. This chapter explores how historically the Thai public has accommodated corruption, and it examines the range of corruption that now exists. It also provides recommendations for anticorruption activities.

Part 4: Ethical Futures

The chapters in the earlier sectors may have painted too gloomy a picture, so we will now review, briefly, what might be done to help corrupt nations. In passing it would be quite fair to point out how the less corrupt nations (generally the developed ones) might put in place better filters and practices — perhaps to lead by example? We would conclude that the western managers lead, not by shouting, “look how good we are” — but by employing a degree of modesty, which might be well appreciated by Asian managers.

Taek Kim in Chapter 14 describes the techniques and instrumental mechanisms for the control of corruption, casting light on corruption from many different viewpoints. Focusing on four countries in Asia — Hong Kong, Singapore, Malaysia and Korea — he considers the anti-corruption infrastructures and the corruption prevention systems of the first three countries in order to comment on the situation in Korea. To gather primary evidence, the author visited the Independent Commission Against Corruption (ICAC) in
Hong Kong and the Corrupt Practices Investigation Bureau (CPIB) in Singapore wherein their legislative instruments and their research data were the main focus.

Finally, Lionel Stapley in Chapter 15 says that his purpose is to explore in general terms the dynamics concerning the relationship between the ‘corrupter’ and the ‘corrupted’, and to help in the development of cutting edge practices that will reduce the chances of seduction into bribery. No matter which society we are referring to we can be sure that bribery is condemned because of its inherent inequity: yet, when a bribe is expected as part of a transaction it still presents us with a considerable moral dilemma. What, then, we might ask is right and ethical and just? By taking action to change the Asian culture to one where corrupt behavior is internalized as unacceptable, we can directly influence the corrupter. In addition, those in the West can develop strategies and practices to ensure that those from the West who are likely to be seduced into corruption are sufficiently aware of, and able to control and manage their emotions, so that they will not act in corrupt ways.

References


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Chapter 2
The OECD Convention and Asia

Enery Quinones

Introduction

After years of discussing the pros and cons of various approaches to fight corruption in business transactions, the world’s largest exporting countries agreed on, 21st November 1997, the draft text of a legally binding convention banning bribes to foreign public officials. With the participation of 30 OECD countries and 4 non-OECD countries, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (generally known as the “Convention”) laid the foundations for one of the first and most significant steps to combat international bribery. At present, all but one of the original 34 signatories have ratified the Convention, and 31 have national laws making it a crime to bribe a foreign public official in order to obtain or retain international business (see Table 1).

Many commentators welcomed the treaty as a landmark in international co-operation; others have been more critical, noting its rather limited scope. As a so-called “supply-side” agreement, the Convention is aimed at the person who offers, promises, or pays a bribe, rather than the person who solicits or accepts the bribe.
Table 1: Countries having ratified the convention

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of deposit of instrument of acceptance, approval or ratification</th>
<th>Date of examination by the working group</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Iceland</td>
<td>17 August 1998</td>
<td>October 1999</td>
</tr>
<tr>
<td>3. Germany</td>
<td>10 November 1998</td>
<td>April 1999</td>
</tr>
<tr>
<td>5. United States</td>
<td>8 December 1998</td>
<td>April 1999</td>
</tr>
<tr>
<td>13. Austria</td>
<td>20 May 1999</td>
<td>December 1999</td>
</tr>
<tr>
<td>15. Sweden</td>
<td>8 June 1999</td>
<td>October 1999</td>
</tr>
<tr>
<td>17. Slovak Republic</td>
<td>24 September 1999</td>
<td>February 2000</td>
</tr>
<tr>
<td>18. Australia</td>
<td>18 October 1999</td>
<td>December 1999</td>
</tr>
<tr>
<td>22. Turkey*</td>
<td>26 July 2000</td>
<td>–</td>
</tr>
<tr>
<td>24. Brazil*</td>
<td>24 August 2000</td>
<td>–</td>
</tr>
<tr>
<td>26. Poland</td>
<td>8 September 2000</td>
<td>February 2001</td>
</tr>
<tr>
<td>27. Portugal</td>
<td>23 November 2000</td>
<td>–</td>
</tr>
<tr>
<td>28. Italy</td>
<td>15 December 2000</td>
<td>April 2001</td>
</tr>
<tr>
<td>30. Argentina</td>
<td>8 February 2001</td>
<td>April 2001</td>
</tr>
<tr>
<td>32. Chile*</td>
<td>18 April 2001</td>
<td>–</td>
</tr>
<tr>
<td>34. Ireland</td>
<td>Not Yet Deposited</td>
<td>–</td>
</tr>
</tbody>
</table>

*As of 15 August 2001, these countries have not yet enacted implementing legislation.
The "demand side" of bribery while not covered by the Convention, is addressed by other OECD initiatives that are described later in this article. As it stands, the countries bound by this Convention together account for 70% of world trade and 90% of foreign direct investment, and the reach of the Convention extends beyond the borders of these countries to the bribery of officials of non-participating countries. Most significantly, its landmark status is due, in large measure, to the multilateral process created by the Convention to control and monitor compliance.

The Convention's rapid entry into force\(^1\) and ratification by its members belies the long and difficult international discussions preceding its adoption. A failed attempt in the United Nations in the 1970's to negotiate an agreement against illicit payments did not auger well for international co-operation efforts in this area. However, the United States decided to take unilateral action when bribery scandals involving major American companies and officials from foreign countries revealed the extent of corruption in international business dealings. The United States' Congress adopted the Foreign Corrupt Practices Act (1977) that prohibited US companies and individuals from bribing foreign officials as well as foreign political parties or party officials to obtain or retain business. The US business community complained that the Act placed American companies at a substantial competitive disadvantage vis-à-vis companies from other countries that had no such restrictions.

The OECD agreed to provide a forum where this debate among the US's major trading partners could take place and work began in 1989 with an inventory of country laws on corruption (Sacerdoti, 2000). Initially, many countries were reluctant to follow the US lead on the grounds that this might be perceived as unwarranted interference in the internal affairs of other countries. These, and other justifications for inaction, were swept away by the outcry caused by major corruption scandals in the early 1990s. Public awareness of corruption was also heightened by a growing body of economic

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\(^1\)The Convention entered into force on 15\(^{th}\) February 1999.
information revealing the consequences of corruption (Mauro, 1997), the causes of corruption (Cartier-Bresson, 1995), as well as the impact particularly on poor and underdeveloped nations (Eigen, 1994). OECD countries began to accept responsibility for their part of the corruption, which even if taking place abroad, had negative impact on their own trading opportunities. It was clearly the time to abandon old double standards and find ways of co-operating on multilateral actions to clean up international business transactions.

Reassessing the real cost of corruption has not been limited to developed countries. The Asian financial crisis that began in July 1997 forced a rude awakening in many Asian-countries where complacency towards corruption had been sustained by strong economic growth and high levels of investment (Sullivan, 1999). The crisis revealed not only the structural weaknesses of some of these economies, but also the contributing role played by corruption, especially cronyism, in the crisis. This led several Asian countries to adopt anti-corruption reforms, including measures promoting accountability and transparency (Quah, 1999). Only two Asia countries take part in the Convention but several such as Singapore and Hong Kong have been signaled out as models for anti-corruption efforts in the region.

Hopefully, the impact of the OECD anti-bribery instruments, the Convention and also the two related Recommendations\(^2\), will reduce the flow of corrupt payments worldwide by ending large corruption payments which occur in all countries (Pieth, 2000). The OECD action has, and should continue to catalyze anti-corruption efforts in other regions and organizations. The Organization of American States, the Council of Europe, the European Union, the United Nations, etc. are active and important players in the fight and their members are part of an ever-growing number of countries that are striving to come to grips with all types of corruption. While nothing can substitute for well-developed and

implemented national programmes, joining forces through international or regional mechanisms such as that under consideration by the Asia-Pacific anti-corruption initiative described in Part 4 of this article, can be an effective way to support national reform and engage all segments of society.

**OECD Anti-Corruption Efforts**

The OECD has long held center stage in the battle against international bribery and corruption. Using its comparative advantage of building consensus on major issues, such as international corruption, through common interests and shared objectives, it helped forge one of the first international instruments to fight supply side bribery. The Convention represents the result of an ambitious undertaking that began with the development by the OECD of various instruments — the Recommendations of 1994, 1996 and 1997 — which culminated with the entry into force of the Convention in 1999.

While the Convention focuses on the supply side of bribery, the demand side of the transaction is not neglected. It is recognized that well-functioning institutions and systems that promote ethical conduct in the public sector are needed to ensure integrity and fight corruption on the part of public officials. The OECD Public Management Committee has identified the institutions, systems, tools, and conditions that governments use to promote ethics in the public sector — which are the necessary elements and functions of a sound ethics infrastructure. There is also a checklist and a set of principles to provide guidance for public managers on how to review their ethics management systems. The 1998 Recommendation on Improving Ethical Conduct in the Public Service builds on these ethics management principles (see www.oecd.org/puma/governance/ethics). Codes of conduct, across the board for all of the public sector, or by agency, can play a vital role in making clear the standards of behavior that are expected.
The Anti-bribery Instruments

The overall purpose of these instruments is to prevent bribery in international business transactions by requiring countries to establish the criminal offence of 'bribing a foreign public official', and to have in place adequate sanctions and reliable means for detecting and enforcing the offence. They also include non-criminal rules for prevention, overall transparency and co-operation between countries. In addition, countries that join the Convention are also required to deny the tax deductibility of such bribes.

This section looks at the main provisions of this treaty against bribery in international business transactions, as well as the accompanying non-binding recommendations.

The Convention

The Convention is the principal tool for fighting bribery of foreign public officials. It requires that each party establish the criminal offence of bribery of foreign public officials. It further requires countries to establish the liability of enterprises ("legal persons") for the offence so that companies, and not just individuals, can be held accountable for bribery. The additional provisions in the Convention chiefly reinforce these requirements by provisions — to ensure its effective application and enforcement. The Convention is flexible in that parties may adapt the requirements according to their individual legal systems as long as the end result is the same (principle of functional equivalence). The offence of bribing a foreign public official must be established in the following manner:

- It must apply to all persons, including enterprises and other legal entities.
- It must apply to the offering, promising or giving of a bribe. It is an offence regardless if the offering, etc. is done through an intermediary and regardless if the advantage is for a foreign public official or a third party.
• It must apply regardless of the form that the bribe takes. Thus the offering of an advantage that is tangible or intangible as well as pecuniary or non-pecuniary must be prohibited.

• It must prohibit bribery for the purpose of obtaining or retaining "business or other improper advantage in the conduct of international business". This is not limited to the procurement of contracts, but also includes the obtaining of regulatory permits and preferential treatment in relation to taxation, customs and judicial and legislative proceedings. It is irrelevant that the person concerned was the best-qualified bidder or could properly have been awarded the business. And it is an offence irrespective of the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment.

• A "foreign public official" must include any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization. This definition is part of the Convention and countries therefore need not look to the law of the country where the bribery took place to determine whether the person is a "public official" or not.

Each Party must also satisfy the following requirements under the Convention:

• Each party must establish effective, proportionate and dissuasive criminal penalties for the foreign bribery offence. Where a Party's legal system does not apply criminal responsibility to enterprises, they shall be subject to effective, proportionate and dissuasive non-criminal penalties for the offence.

• Each party must establish its jurisdiction over the foreign bribery offence when the offence is committed in whole or in part in its territory. Where a Party has jurisdiction to prosecute its nationals for offences committed abroad, it shall establish such
jurisdiction over the foreign bribery offence according to the same principles.

- Where a party has established a money laundering offence in relation to the bribe and/or proceeds of domestic bribery, it shall do so on the same terms for foreign bribery.
- Each party is required to prohibit certain accounting and auditing practices that facilitate the concealment of foreign bribery.
- Each party is required to provide prompt and effective legal assistance to other Parties seeking assistance in the investigation and prosecution of foreign bribery offences. In addition, the bribery of a foreign public official shall be deemed to be an extraditable offence under the laws of the Parties and the extradition treaties between them.

The Recommendations

Reinforcing the Convention, the recommendations aim at increasing transparency and accountability and eliminating tax deductions for bribe payments. The 1997 Recommendation requires that countries introduce sound internal company controls, including standards of conduct and controls applicable down to the operational level. In the area of public procurement, companies responsible for bribing foreign public officials should be suspended from public contract bids. Countries undertake to include anti-corruption provisions in bilateral aid-funded procurement and to work closely with development partners to combat corruption in all development co-operation efforts.

Until recently, many countries accepted the bribery of foreign public officials as a “normal” cost of doing business. Companies doing business with foreign countries claimed that bribe payments were necessary in order to be favorably considered for the awarding of contract — and so previously, by allowing tax deductions for such bribes, several governments were perceived as condoning this practice.
Since agreeing to the 1996 Recommendation on the Tax Deductibility of Bribes, almost all OECD countries now disallow such tax deductibility thus sending a strong signal that bribery is no longer an acceptable business practice. Besides serving as a deterrent, non-tax deductibility is a politically visible symbol of the common international commitment to combat bribery.

The Private Sector in Support of Anti-Corruption Efforts

Reducing the supply of bribes requires more than criminalizing the act of bribing a foreign public official. Businesses themselves must play a role and address the practice internally by changing the corporate culture that enables it to continue. To provide businesses with guidance in this regard, the OECD has revised the 1976 guidelines for multinational enterprises to include a new chapter on measures that enterprises should take to prevent the furnishing as well as the solicitation of bribes. In addition, the OECD principles of corporate governance that aim, in part, to improve disclosure and transparency in financial as well as other matters, can create an environment that discourages bribery.

The OECD Guidelines for Multinational Enterprises

The OECD’s guidelines for multinational enterprises include rules for combating bribery that address the supply and demand sides of the bribery transaction (www.oecd.org/daf/investment/guidelines). They focus on the bribery of public officials and the employees of business partners, as well as preventing the channeling of payments through the use of subcontracts, purchase orders and consulting agreements to public officials, employees of business partners, relatives and business associates.

In addition, the guidelines address the issue of remuneration of agents. Further provisions require enterprises to adopt management control systems, including financial and tax and auditing practices, for discouraging bribery and corrupt practices, and
requires them to promote public and employees' awareness of their programmes and policies in this regard. The guidelines also intend to prevent illegal contributions by companies to candidates for public office, political parties and other political organizations. Enterprises are urged to disclose political contributions.

Some companies have established their own anti-corruption strategies, including the adoption of codes of ethical conduct that include provisions concerning bribery and extortion. These codes express the companies' serious commitment to comply with international obligations to combat corruption and are intended to modify the corporate culture and attitudes of its employees to reduce the risk of corrupt behavior. They are often accompanied by management systems for monitoring and reviewing compliance. Their success in changing behavior depends, to a great extent, on support by top company management.

The OECD Principles for Corporate Governance

The five chapters of the corporate governance principles addressing shareholders' rights, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency and the responsibilities of the board, comprise basic core principles that should be part of any good corporate governance system (www.oecd.org/daf/governance/principles). An economy characterized by high standards of disclosure and one in which members of corporate management are accountable to their boards and the boards are accountable to their shareholders — including minority shareholders — will be one where financial fraud and other forms of financial crime will be less likely to flourish.

The Principles are primarily intended to assist governments as they pursue their own efforts to evaluate and refine their national legal, institutional and regulatory frameworks. The OECD and the World Bank are now engaged in a co-operative worldwide effort, together with regional development banks and bilateral donor countries, as well as private sector participants, to encourage
corporate governance reforms, using the principles as a starting point and common language for policy-dialogue. Regional corporate governance roundtables have been established in Asia, Latin America, Russia and Eurasia with the co-operation of regional partners. These Roundtables have become natural reference points in their respective regions and “white papers” identifying policy objectives and reform priorities are being drafted in Asia, Latin America and Russia. This entirely voluntary process of implementation is helped by the high international standing of the principles and the considerable incentives provided by the market for international capital. The inclusion of the principles of corporate governance in the World Bank’s and the International Monetary Fund (IMF) assessment and surveillance of financial sectors is expected to give further impetus to reform efforts.

**Enforcement through Monitoring**

By agreeing to adopt national laws making it a crime to bribe foreign public officials, the signatories of the Convention took a decisive step towards injecting, for the first time in international business transactions, a sense of morality and fairness. But signing the Convention and even making it part of national law, will not do much to change ingrained patterns of corrupt behavior unless there is a credible way to monitor whether governments are abiding by their obligations. Fortunately, the Convention contains an enforcement mechanism that makes it one of the most effective tools to combat international bribery and corruption. Thus, a country that joins the Convention and adopts implementing legislation will be subject to a rigorous review of its efforts to enforce the Convention. It is the responsibility of the OECD working group on bribery in international business transactions (the “Working Group on Bribery”), to determine, in a first phase, whether the implementing legislation meets the standards set by the Convention (Phase 1). As part of a later phase (Phase 2), it will assess how well the country in question is applying the Convention in practice.
Findings

Each year, the OECD reports to the ministers of member countries on the status of implementation of the Convention. So far, the working group on bribery has reviewed the implementing legislation of twenty-nine countries\(^3\). In its latest report, the working group found that most countries have done a satisfactory job of implementing the requirements of the Convention (see www.oecd.org/daf/nocorruption). Since Phase 1 aims to ensure that countries have correctly transcribed elements of the offence into national law, in certain cases Ministers have asked countries to take remedial action whenever significant deficiencies have been found.

Because the Convention works within a country's existing legal system, differences in the way countries have implemented the Convention are to be expected. Nevertheless, the Working Group's role is to ensure that there are not major discrepancies that would undermine the equal application of the Convention by all parties. It is particularly important that in their national laws, countries do not create loopholes inadvertently or introduce provisions that might lead to inconsistent application. For this reason, whenever problems are identified, the Working Group on Bribery may recommend that countries consider changes in legislation to conform more fully to the requirements of the Convention.

Phase 2 will go even further to determine how countries are applying the Convention in practice. To do so, the Working Group will look carefully at such issues as impediments to successful investigation, and the prosecution of foreign bribery cases and the adequacy of statutes of limitations. It will also determine whether political considerations have improperly influenced decisions to prosecute. Phase 2 will examine more closely how countries are implementing the non-criminal aspects of the Convention and the

\(^3\)Twenty-one countries were reviewed between April 1999 and May 2000, and an additional seven countries were reviewed May 2000 and May 2001. The individual country reports are available on the OECD web site. An additional country, New Zealand, was reviewed in June 2001 but this report is not yet available on the website.
Recommendations, particularly those relating to accounting and auditing requirements to prevent bribery payments.

The Convention was by no means the end of road for OECD anti-corruption efforts. Phase 1 and 2 may call for a re-evaluation of the existing instruments to ensure that there are no loopholes or gaps. Countries are also committed to examining other areas that relate to corruption in international business such as bribery to foreign political parties and bribery by foreign subsidiaries, to assess the extent of the problem and identify the most effective way to address them.

**Does Peer Pressure Work?**

The Convention does not contain a dispute settlement mechanism nor does it foresee sanctions for parties that do not live up to their obligations. Thus one may query whether the “soft” approach of pressure by peers is sufficient to guarantee good behavior. So far we see the process is proving successful, if somewhat slow due to local parliamentary procedures that must be respected. Quite a few countries, including Japan and the United Kingdom have announced changes in their national laws largely as a result of the recommendations made by the OECD in reviewing their current legislation. The Working Group on Bribery is set to have another look at these and other recent measures taken by countries in response to their phase 1 reviews.

The criticism of peers is made even more forceful by public scrutiny. Making country reports available to the public, including publication on the OECD’s website, increases public pressure to effectuate changes. Civil society has taken a very active interest in the results of these evaluations and that plays a key role in maintaining public vigilance over government commitments in this area.

**Globalizing the Fight against Corruption**

Since its entry into force, the Convention has attracted increasing attention from countries that are not members of the OECD. The
Convention is open to non-members and four non-OECD countries presently take part: Argentina, Brazil, Bulgaria, and Chile. Many other countries have demonstrated an interest in associating themselves with the OECD fight against corruption. While recognizing that they have particular responsibility as major trading countries, OECD Members are aware that it is essential in an increasingly interdependent world, that all countries share responsibility for combating bribery. OECD governments therefore are keen to discuss ways to improve the effectiveness of the agreed international standards with all interested parties.

A country that expresses a specific desire to join the Convention must first become a member of the working group on bribery. To do so, it must apply formally to the organization. In deciding whether to invite an applicant to join, other members of the Convention may well want to assess how the country interested in joining measures up against an objective set of criteria. These criteria include whether the applicant is a "major player" and whether the association will bring "mutual benefit". In applying these criteria, certain essential economic, institutional and legal factors will be examined, including a country's participation in sensitive sectors such as aviation or defense, and its existing legal framework to combat domestic corruption. A positive evaluation of a country's request may result in participation as an observer for an initial period of time or as a full participant.

Not all countries engaged in the fight against corruption will join the Convention and the Working Group. They may decide that other regional initiatives are also compatible with their aims or they may well wish to improve links and co-operation without formal participation. This opens wide opportunities for additional regional events and the other sorts of dialogue and communication that the OECD organizes. The following section will briefly describe the regional dialogue with the countries of Asia-Pacific that is

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4Slovenia has been invited to accede to the Convention but as of 15 August 2001 has not yet deposited an instrument of accession with the OECD Secretary-General.
leading to concrete anti-corruption action being taken in many Asian countries.

**The Asia-Pacific Anti-Corruption Initiative**

In many countries of the Asia-Pacific region, corruption exists at all levels of dealings, between public officials and business people, as well as ordinary citizens. In Asia as elsewhere, the consequences of corruption on economic development are particularly pernicious. Three years ago, the Asian Development Bank (ADB) and the OECD launched the regional forum on combating corruption in Asia and Pacific economies. The idea of the Forum emerged from a meeting in Manila in September 1999 on *Combating Corruption in Asian and Pacific Economies* that was sponsored by the OECD and the ADB. The meeting revealed a strong consensus to fight corruption on several fronts and clearly showed that anti-corruption efforts in the Asia-Pacific region must engage all sectors of society.

The forum identified some ways in which the different sectors could contribute to the fight against corruption:

**Public sector.** Government measures to counter corruption must be accompanied by law enforcement mechanisms, with a special role for the judiciary. Witness protection programmes are also required to encourage reports of wrong-doing. Transparency can be enhanced through the establishment of competitive public procurement procedures and encouragement of adoption of relevant international rules. Simplification of government procedures can help improve the conditions for international investment.

**Private sector and Trade Unions.** Effective measures by business and trade associations can take many forms. These can be aimed at making company employees aware of corruption and educating them against it through, for example, the development of codes of conduct and mechanisms to enforce the codes. In addition, it is effective to advocate of more dialogue with public officials
to propose and implement reforms, including public sector reform, such as more transparent procurement rules.

*Civil Society.* The involvement of civil society and the media is a critical component in all anti-corruption strategies and can be particularly influential in implementing civic education programmes aimed at fostering an anti-corruption culture. These bodies help to relay policies by assuming greater responsibility for monitoring good governance and integrity in business and government operations. Regional and national networks for civil society as well as increased co-operation with international organizations can also help prevent the misuse of domestic resources.

This meeting established the ADB/OECD Initiative for Asia-Pacific whose objective is to support national and regional anti-corruption efforts. In a later follow-up meeting in the Republic of Korea, in December 2000, it was agreed to develop a regional anti-corruption plan that would contain legally non-binding principles and standards for strengthening national and regional efforts to combat corruption.

Presently, experts from nine Asian countries (Indonesia, Japan, Korea, Malaysia, Pakistan, People’s Republic of China, the Philippines, Singapore, and Thailand) together with international organizations and others are drafting an action plan for Asia-Pacific. The plan would politically commit interested governments of the region to undertake actions to combat bribery and money laundering and promote public sector integrity based on relevant international instruments and good practices, including the OECD anti-corruption instruments. Countries adopting the action plan would also agree to have their anti-corruption efforts regularly reviewed by their peers. At the same time, the international donor community would pledge to strengthen country-capacities through technical co-operation.

The draft action plan is now being circulated among ADB regional member countries for their consideration of the possible endorsement at the next annual conference of the ADB-OECD anti-corruption
Are Anti-Corruption Efforts Working?

Judging from the plethora of international agreements, conferences, symposia, initiatives, scholarly articles, and the like, the rhetoric against corruption has certainly reached fever pitch. In the midst of this flurry of activity, one hardly dares to raise the question whether the fight against corruption is actually being won.

Certain type of information would suggest the contrary. The press continues to uncover almost daily allegations of corruption as well as instances of companies constituting illegal slush funds to pay bribes to foreign officials. Transparency International has published for the first time a bribe payers perception index in which some OECD countries, signatories to the Convention, are listed. In its Corruption Perception Index of 2001, despite the advances made by some Asian countries, still quite a few are represented in the bottom half of the index.

While this serves a vital purpose of keeping attention focused on the need to fight corruption, there is no conclusive evidence proving that the international initiatives of the last few years, combined with a growing number of countries implementing comprehensive anti-corruption strategies, are not having the desired effect of reducing the incidences of corrupt or illicit behavior. Perceptions change in the wake of legal and institutional changes, which may not be immediately apparent, and which take time to deliver "hard" results.

This author believes that more time is necessary before final judgment. No one would dispute the fact that there has been a sea-change over the past fifteen years in governments' and international organizations' willingness to admit to the pervasiveness of corruption and to confront it head-on. Fortunately, no one subscribes to the discredited theory that corruption brings some economic benefits, notably by way of cutting down bureaucratic decision-making. The economic evidence of the staggering cost of corruption and its
impact on development has mostly demolished complacent attitudes towards corruption.

But if heightened public awareness and increasing in-tolerance of corruption are more evident today than a decade ago, when will evidence emerge that the anti-corruption initiatives are beginning to bite? For national and international efforts such as those of the OECD Convention to bear fruit, certain essential elements are needed:

_The first element is strong political leadership._ Collectively, through international or regional programmes, and individually, countries must provide political leadership demonstrating their commitment and ability to affect change.

_A second element is effective enforcement that includes a consistent and fair application of sanctions against wrongdoers._ Countries must allocate sufficient resources to investigate and prosecute cases of alleged corruption.

_Openness to public scrutiny is the third element._ By allowing public oversight and participation that includes the monitoring of countries' performance vis-à-vis their commitments or obligations, governments can help build the confidence and trust in their citizenry that will begin to change perceptions.

The foundations of anti-corruption strategies are mostly in place — although on a national and often regional level more can be done to develop, implement, and enforce these strategies.

Especially important for Asian countries where public/private partnerships are weak or lacking, governments need to work closely with the private sector to fully engage them as stakeholders in anti-corruption programmes. Company codes of conduct and compliance schemes, as well as improved corporate governance, can go a long way in shaping, or re-shaping, attitudes about acceptable business conduct. Civil society also has a key role to play in encouraging and supporting reforms and in harnessing community support for change. Until these measures have been allowed some time to take effect, it may be premature and
perhaps, to some extent, counter-productive to begin to decry the failure of anti-corruption efforts.

**References**


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Chapter 3

The Asian Money Laundering Explosion

Peter Lilley

"Gold is tested by fire, man by gold"
— Ancient Chinese proverb

"True Gold fears not the test of fire"
— Traditional Chinese saying

What Is Money Laundering?

Whilst it is universally accepted and used incessantly, the phrase “money laundering” has no single — or accepted — definition. Many perceptions still endure in the collective psyche of what money laundering is: ranging from the suspicious character turning up at a bank counter with a suitcase overflowing with used notes, to the dictum that money laundering is solely drugs related predominantly, if not exclusively, focused on the nefarious activities of South American gangs. Certainly this latter version of “reality” has been promoted by the US government and reinforced by various Hollywood blockbusters. It is only recently becoming clear (or at least clearer) that money laundering is a robust, corrosive, all consuming and dynamic activity that has a series of processes which have far reaching financial, economic and social consequences and effects. At their zenith these effects engulf financial institutions, capital markets, currencies, interest rates, national economies and ultimately national, regional and international security.
Drug money, although still an important part of the funds that need to be washed, is merely one facet of a wide range of criminal activities that generate the money to be laundered. Such money is effectively useless unless the original source of it can be disguised, or preferably obliterated. Thus the money laundering dynamic lies at the corrupt heart of many of the world’s social and economic problems. The list of crimes generating the dirty money includes — but is definitely not limited to — political corruption, illegal arms sales, terrorism, human trafficking, fraud, blackmail/extortion and customs and VAT fraud. Added to this list — or at least according to the pre-Bush US administration — is tax avoidance. But the new Bush Administration seem to be looking to allow more open ‘avoidance’ systems to be enacted in the US. In May 2001, the Malaysian finance minister, Daim Zainuddin commented that the washing of dirty money gives “wicked legitimacy to proceeds acquired through drug trafficking, extortion and arms smuggling”.

Not only is money laundering difficult to define but also the amounts involved are impossible to estimate. The United Nations Human Development Report of 1999 stated that global criminal activity generates $1.5 trillion each year; other estimates have concluded that money laundering accounts for between 2 and 5 per cent of GDP — giving a global total of up to $3 trillion per annum. Whilst such estimates have been dismissed in some quarters as alarmist, inaccurate or incorrect (or all three), it is actually highly likely that such staggering totals are an under estimate, rather than the widely assumed opposite.

One minor yet recent example was offered by The Wall Street Journal Europe, 18 July 2001 which reported that the Central Bank of Kazakhstan confirmed that a “grey money” amnesty brought in $480 million. The month long “no questions asked” amnesty which ended in the middle of July 2001 drew in money from over 3,000 people — but only 11.4% of the cash was repatriated from foreign bank accounts. Views on the purpose of the amnesty were mixed: some commentators saw it as an antidote to previous chaotic tax regimes, whilst others saw it as a method of legitimizing massive
amounts of money obtained through bribery and corruption by officials.

Money laundering is simultaneously both a staged process (placement, layering, integration) and a cyclical dynamic — with the end result that the profits from crime can be washed only to be reinvested in further criminal activities, which can be the same as those which originally generated the funds or new ventures. One obvious by-product of this dynamic flow is that the conditions and effects of the original environment(s) that facilitated the criminal events and resultant profits are maintained, reinforced and reinvigorated.

The explosion in money laundering that has been ignited in the last few years has been fueled by some key factors, such as:

- The globalization of markets, financial flows and information — most prevalent in the single global market of the Internet. Virtual money laundering is now a reality with money being transferred across the globe in nano seconds

- Just as there is no global definition of money laundering, there exists no consistent or coherent anti-money laundering regulation or legislation (in fact in some Asian countries, there is simply no regulation or legislation whatsoever). Added to this important problem is lack of co-operation between individual countries: co-operation is increasingly needed to tackle pan-global washing of funds

- A global unregulated market puts at its pinnacle the need for profit — sometimes at any cost. Criminal organizations and the funds that they generate can, and do, yield great influence in their relationships with the legitimate businesses that are driven by the need for turnover and profit. Simultaneously such unfair competition can drive legitimate concerns out of business, and at its extreme can threaten the economies of whole countries.

- Running as a parallel stream to these factors is the rapid, and ever increasing, pace of technological-driven change. Criminals operate at the cutting edge of technology; sadly regulators and law enforcers do not
The global impetus to fight money laundering comes from the basic premise that dirty money is the lifeblood of all criminal activity: if it can be identified and seized then crime will be stifled, and ultimately halted. Well, at least that's the theory...

**The Increased Relevance of Asia in the Global Money Laundering Dynamic**

The increased realization of the importance of Asia in both global geopolitical and geoeconomic terms has meant that money laundering has become a key issue in the region. That is not to say that money laundering in the area is a new event — quite clearly it is not — rather that it is now being discussed and (to varying extents) addressed. However because of the rapid pace of globalisation — as typified by the spread and reach of the Internet — discussion of money laundering purely in Asia is, in many ways, an artificial distinction. Moreover it is also important to distinguish between domestic money laundering (which is essentially money generated by crime and laundered in the banking system of the same country) and transnational money laundering (where the original criminal activity and the laundering are separated by one — if not numerous — national borders).

It is not only because of these factors that generalizations relating to this problem in Asia are difficult. As a recent paper by the Malaysian central bank, quoted by Agence France-Presse on 21 May 2001, observed

"Since money laundering is an international problem, a collective international and regional response is necessary in the fight against it — with globalization it has become an issue of global dimensions"

Notwithstanding such caveats, estimates have placed the amount of money laundered annually in Asia at around 200 billion US dollars, or at least one fifth of the global total. Japan, for example, investigated at least seven billion dollars worth of suspicious transactions in fiscal 2000 — a rate of between 100 and 200 each week.
Interestingly though, The Financial Action Task Force (FATF) seem to have somewhat overlooked problems in Asia when that organization named countries that are uncooperative in dealing with money laundering. The two FATF “blacklists” issued in June 2000 and 2001 have included three Asian countries: Indonesia and Myanmar (included in the 2001 list for the first time) and the Philippines (which is on both lists, and in the June 2001 list, is one of the top three targets for action, together with Nauru and Russia) (FATF, 2000a, 2000b, 2001a, 2001b).

There are some factors which are unique to Asia (or parts of it) that facilitate money laundering. These include:

- An economy still based on cash transactions, which in turn leads to a willingness to conduct large transactions by cash (This creates special difficulties for a “western”-based money laundering regulation system, which has as a fundamental tenet the highlighting of large cash transfers as being suspicious transactions)
- Numerous underground banking and remittance systems (such as “hawala” and “hundi”) which operate as traditional cash and trust based processes. In India, Pakistan and Dubai, the Hawala system creates significant money laundering problems. And of course one of the problems is that it is very difficult to distinguish between legitimate transactions and those involving money laundering. Because such systems are not designed to deal with “official transactions” they provide complete confidentiality and no paper trail. They are essentially based on trust, and involve no physical transfer of funds: rather a hawala broker in one country essentially arranges for his client for a broker in another country to make a payment to the intended beneficiary. Increasingly the funds to be “transferred” are paid in gold to the brokers, who have later to rationalize their own ‘interbanking’ levels and fund flows. The ‘transfers’ are between the brokers so will consist of both legitimate transactions and money laundering.
- The region contains various major narcotic production areas, the two principle being the Golden Crescent of Afghanistan, Iran
and Pakistan) and the Golden Triangle of Thailand, Burma and Laos. Whilst the obstacles of money laundering and corruption are present in each of these countries the most corrosive effects can be seen in Myanmar. The Government has arranged a series of cease-fire agreements with rebel groups for decades; however such agreements have simply meant that drug cartels have been able more easily to traffic their opium, heroin and morphine. Such production (which has increased since 1989) effectively means that the economy of Myanmar is propped up by dirty money which is being laundered there.

- Across Asia there are serious problems with product counterfeiting — computer software and music CDs are the most usually reported illegal products; however there are many more — China is a substantial producer of counterfeit cigarettes, for example. Such widespread illegal manufacturing activities are almost exclusively the domain of organized crime groups, most of whom are both highly efficient and very influential. Their activities create substantial volumes of funds that need to be washed and these give them the ability to corrupt weak officials and politicians, and to infiltrate their ranks.

- In 2001, the US Department of State commented that in Asia “weak governments with poorly developed and financed law enforcement infrastructures provide fertile environments in which drug trafficking organizations have flourished” (US Department of State, Bureau for International Narcotics and Law Enforcement Affairs, 2001).

And as if to show both the diversities of the region and the flexibility and agility of money launderers, the washing cycle is encouraged and achieved by countries that either

(i) have highly developed banking systems (thus compliant professional advisors), or
(ii) in those countries with underdeveloped banking and legal systems.
In the former, laundering can be hidden, and in the latter there is little risk of detection.

Global money laundering has been substantially aided by the Internet explosion. In this respect Asia has a further handicap: the region lags behind in the related areas of computer security, the prevention of cyber crime, and its investigation and prosecution. Criminals optimize the benefits of cutting edge technology, and thus Asia's lack of relevant laws and resources to tackle the problem may well prove to be the biggest security threat in the region. Each day millions in Asia log onto the Internet, in Japan alone there are 60 million mobile phone users, and China's population now have more mobiles than are owned in the United States.

Interpol has highlighted that hacking is already a considerable problem: in South Korea incidents (or we should say reported incidents) against state and business organizations rocketed by 400% in 2000 (as reported by the Australian Broadcasting Corporation on 27 February 2001). The overflow of such activity in Asia has already been felt the world over, thanks to the "I love you" virus which originated in the Philippines but caused worldwide computer disruption and damages estimated in the region of 18 billion dollars. Whilst many now realize the real threats posed in Asia by the criminal usage of technology, relevant laws are still few. It has been argued that Asian firms lag behind the United States by 18 months to three years in security developments. Evidence already available supports that view that organized crime groups in Asia show no such resistance to technology, and are already maximizing its use (Lilley, 2000).

**Money Laundering Typologies in Asia**

The money laundering typologies utilized (or at least those that have been identified) in Asia are virtually identical to those utilized across the world. The only key differentiating factor is that the actual composition of methods may vary from other regions. Particularly prevalent are:
• Cross border smuggling of cash and/or money orders and bank drafts
• The use of telegraphic transfers
• The utilization of bearer instruments (including bank drafts, stock certificates, insurance certificates, bonds)
• The purchase of items of value to launder funds (such items include the usual favorites of luxury goods, gold, cars, and real estate)
• The opening of accounts at financial institutions in false names
• False invoicing

Transparency International, in their annual Corruption Perception index, which in turn is a telling evaluation of those countries with severe money laundering problems highlights the wide disparities present in Asia. In the 2001 index (Transparency International, 2001), covering ninety-one countries, Singapore was ranked the fourth least corrupt country in the world, with Hong Kong the fourteenth. Other Asian countries fared less well: Taiwan (27), Malaysia (36), South Korea (42), China (57), Thailand (61), Philippines (65), India (71), Vietnam (75), Pakistan (79), Indonesia (88) and Bangladesh (91). Such findings are reflected in various other surveys that uniformly place Singapore and Hong Kong as the least corrupt jurisdictions, and Indonesia regularly is being named as the most corrupt nation, which raises serious causes for concern. Such surveys — whilst interesting to read and quote — also have a discernible effect on the international perception of countries. For instance, it may influence the international credit rating agencies’ evaluations of such countries and their financial institutions.

Money laundering is migratory — thus countries perceived as being corrupt actually attract further sums to be laundered, and attract also the criminals behind this money. It is only a small step onwards for the launderers to influence financial, political and economic institutions in the relevant country and this in turn affects national or regional security issues. In such a situation, money laundering feeds corruption as proceeds of crime are paid to bank
officials, politicians, businessmen, law enforcement and government personnel in return for the acquiescence or, even better, active cooperation. The migratory effect would then continue with foreign criminals being attracted. Ultimately such a pervasive environment of crime, money laundering and corruption will have social effects in that citizens will lose trust in the country’s banking system and political structures. Foreign corporations (and thus their investment) will avoid such countries, and international bodies will advise against investment and dealings with these countries. Of course what I have just described is a theoretical chain of events. Regrettably though reality is not so dissimilar — both Indonesia and The Philippines seem to exhibit many of these traits.

The corrupt environment in Indonesia is immediately apparent in escalating money-laundering problems: it is estimated by US law enforcement West Africans and Southeast Asians using West African Couriers wash some $500,000 on a weekly basis (Lilley, 2000). The general picture in Indonesia is saddeningly familiar, with a critical factor being that the Indonesian National Police lack sufficient resources, training or expertise to tackle the serious problems that they face.

Organized Crime Groups in Asia

It is almost impossible to catalogue the many and various organized crime groups that exist in Asia. The region has groups that specialize in every area of criminal activity encompassing highly profitable drug cartels, armed terrorist groups, and financial fraud specialists.

In Myanmar, as noted above, the Government has negotiated ceasefires with United Wa State Army (UWSA), the Myanmar Democratic National Alliance Army (MNDAA), the Mongko Defence Army (MDA), the Shan United Revolutionary Army (SURA), the Kachin Defence Army (KDA) and the Eastern Shan State Army. It has been persuasively argued that many of these groups, who are now officially tolerated, are nothing more than armed terrorists who generate funds through narcotics.
In Japan, the influence of the Yakuza on the country's business and banking sectors were severely underestimated until their activities emerged as a key facilitator and cause of Japan's financial turmoil. Estimates as to the membership of the Yakuza hover around the 100,000 mark, with an annual turnover of up to US$90 million per annum (Lilley, 2000). Such estimates make the Yakuza by far and away Japan's biggest business. They have cornered the market in Japan for property and loan fraud, together with prostitution, debt collection and extortion rackets. The downturn in the domestic economy has meant that the Yakuza has spread out from their traditional family/national base and taken up investments and business opportunities in Hawaii, Australia, the Philippines and other areas of South East Asia.

The intricate network of Chinese criminals, which are commonly referred to as Chinese Triads now operate in every major center of the world having a sizable Chinese population. From their origins in the seventeenth century it is now estimated that there are up to 100,000 current members organized in six main gangs that are rivals at local levels, but which co-operate globally. The Triads are heavily involved in gambling, illegal prostitution, human trafficking, extortion, fraud, loan sharking, counterfeiting, drug trafficking and money laundering.

Apart from, and in addition to, the vast range of domestic organized crime groups Asia is a particularly appealing location for foreign crime groups to extend their business activities to. Already Russian gangs and Nigerian/West African groups are heavily active in the region. Further, it should not be forgotten that there is increasing reliable intelligence that confirms that many individual criminal gangs are now co-operating with similar gangs from different countries to their mutual benefit (Lilley, 2000).

Offshore Financial Centres in Asia — A Growing Threat

Palau has a land area of 458 square meters, a population of about 18,000 — and unless you have an interest in advanced geography is
impossible to find on a map. The island in fact used to be called Belau, and is in the Pacific Ocean east of the Philippines. Such a jurisdiction gives a frightening indication as to where money laundering in Asia and other geographically close locations may go next. Palau appears to be setting itself up as an offshore financial center, or tax haven. Courtesy of the Internet you can buy a Palau offshore banking license — well, you do not (strictly speaking) have to apply for a banking license, merely register a normal company and say somewhere in the objectives that your company is going to act as a bank. Governments in many minor jurisdictions are setting up similar offshore financial centers and thus stimulate (if not totally maintain) the local economy. Already across the world, locations that you have probably never heard of have escaped from poverty and debt by providing a panoramic variety of financial services and corporate vehicles. International pressure has to a large degree forced traditional and established offshore centers to substantially clean up their acts — thus gray opportunities exist for new entrants, willing to attract new customers. Already it has been reported that the Nepalese government is planning to establish an offshore center in Katmandu — I suspect that others in Asia will follow. The key criteria to watch out for are:

- Corporate structures that can be created or bought quickly, easily and cost effectively
- A financial center that maintains absolute secrecy and confidentiality
- The absence of any tax burden
- A non-existence of any treaties to exchange tax information with any other countries
- Excellent communication links
- No exchange controls
- Predominant use of a major world currency, preferably dollars
- The ability to disguise the ownership of corporate vehicles through the use of nominee directors and bearer shares
• The absence of normally accepted reporting requirements for companies such as annual financial returns
• The absence of normal accepted company supervision

Of course to a certain extent Asia already has some key offshore centers, such as Hong Kong — and various lesser-known ones, such as Labuan (Malaysia). Hong Kong provides offshore banking licenses, trust and management companies and has at least 500,000 International Business Companies. However Hong Kong is perceived as having tight anti-money laundering controls and crucially has criminalized money laundering beyond drugs. Brunei, Macau, The Philippines, Singapore and Thailand also offer varying levels of offshore financial services and products.

A Country by Country Evaluation of Money Laundering Problems in Asia

Afghanistan

The US Government position is that Afghanistan is a major drug producing and/or transit country that has not been certified as trying to combat the problem. Even though the country is one of the largest producers of opium, because the banking system has effectively been destroyed by political upheaval it is not used by domestic (or international) money launderers. The major problem in the country (as far as the thesis of this book is concerned) is that it is estimated to be the world’s second largest producer of opium poppy; major regions are Helmand, Kandahor, Uruzgan and Nangarhar provinces. There are no international organized crime problems as such, but as the opium poppy is the country's main cash crop it obviously provides a substantial source of revenue and thus influence. As there is no “official” government, an official position is difficult to gauge, although it is now suspected that the Taliban are involved in narcotics trafficking. Like some other Asian countries, profits from drugs have made substantial in
roads into the legitimate economy through construction and commercial projects.

**Armenia**

Armed organized crime has a heavy presence; the gray economy is massive; public corruption is widespread. The situation is made worse by high unemployment, low salaries and a large underground economy. However as Armenia is not a major international financial center, the problems are predominantly domestic ones.

**Azerbaijan**

Strong organized crime presence, weak legal system and endemic corruption are present in Azerbaijan. The country does not have any anti-money laundering legislation but the problems are mostly domestic and specifically related to tax evasion.

**Burma (Myanmar)**

The Country is the world's second largest producer of Opium. Money laundering problems are exacerbated by a cash-based economy, and whilst anti money-laundering legislation exists it is not enforced. Details are sketchy but because of the major drug producing levels it must be suspected that domestic money laundering is substantial. Commentary suggests that Casinos on the country's borders are used for money laundering, as these establishments are entry points to the international financial system. The government actively encourages drug groups to invest their profits in legitimate enterprises, and it is rumored that the Government itself is involved in drug trafficking. There is no problem with international organized crime as such, but domestic groups obviously present as part of the drug production and distribution culture.
The Burmese government cease-fire agreements with drug groups in various areas (particularly the Shan State) have in effect legitimized the production of narcotics and the resultant money laundering — in fact the government have encouraged such groups to launder funds through investments in hotels and construction enterprises (Lilley, 2000). Thus the laundering of drugs cash is a significant factor in the Burmese economy — appearing in major infrastructure projects, banks, airlines, real estate. In fact some drugs money has been used to supplement government funding of development projects. This environment is further worsened by rumors that government and/or army officials are heavily involved in drug production, or are corruptible to allow others to engage in such businesses without constraint.

Cambodia

Cambodia’s law enforcement bodies are chronically under resourced and lack even basic relevant training. The long history of internal disputes mean that the country has endemic corruption problems, which are further exacerbated by low levels of pay for civil servants, a weak judicial system, and a perception that justice can be “bought”. However such corruption and money laundering are merely two difficulties in a country that is poor, fragile and developing. One of the most difficult issues is that this state of affairs makes the country particularly vulnerable to organized crime groups, especially bearing in mind the country’s position as a transit country for heroin from the Golden Triangle.

China

China has a complete range of organized crime groups and escalating crime rates together with increasing domestic drug problems. Official corruption is widespread in the country, but greater effort is being focused on the money laundering, one reason being that the government views such activities as one way of simultaneously tackling corruption (Lilley, 2000).
Hong Kong

Hong Kong is an obvious target for money launderers, particularly the washing of proceeds from the sale of illegal drugs. A variety of factors contribute towards the importance of Hong Kong as a money laundering target:

- The strength and high level of infiltration of Chinese organized crime groups
- A low tax system
- Acting for China as its offshore banking center
- Sophisticated financial environment and infrastructure
- The absence of any currency and exchange controls
- The presence of various offshore company structures that can be used by non-residents.

Money laundering in Hong Kong extends to all serious crime. All banking and financial institutions must take customer identifications, and report suspicious transactions to a central unit. However because of the size and complexity of Hong Kong’s financial world there still remain problems — exhibited by:

- The relatively low level of suspicious reports — the vast majority of which come from banks, with very few coming from insurers or professional advisors like solicitors and accountants
- The opening of accounts with forged documents
- The operation of cash cleansing through bureaux de change and money remitters

India

Money laundering is a growing problem in India but is mainly confined to domestic activities that are far from being only drugs related: fraud, corruption and smuggling being obvious additional ones. The laundering dynamic is exacerbated and facilitated by the hawala alternative remittance systems. The legal position in India in relation to money laundering is also confused.
**Indonesia**

Indonesia lacks comprehensive anti-money laundering legislation. These are needed urgently because the country's economy is particularly vulnerable to money laundering. The reasons for this are:

- The geographical location of Indonesia
- Strict banking secrecy
- High levels of corruption
- Various banking scandals including fraudulent schemes

Although most money laundering in Indonesia has related to domestic narcotics trafficking and the proceeds of corruption, urgent action is required.

**Japan**

Japan has significant domestic problems with the Yakuza who are alleged to have in excess of 100,000 members. They were key factors in the collapse of various major Japanese Banks due to the somewhat irregular loan arrangements that were set up with them. First hand evidence from my own research confirms that until fairly recently Japanese banks accepted all kinds of funds without questioning their provenance. Because Japan is a major financial center, any weaknesses in the country's banking systems means that the proceeds of domestic crime have an easy entry point into the world's banking system — particularly that of the United States.

**Kazakhstan**

The country is on the transit route of drugs from Afghanistan and Pakistan together with being an opium producer itself. Wide-spread and endemic corruption doesn't help matters, neither does the country's fairly advanced financial services environment. The country
has, however, criminalized money laundering in relation to drugs and other serious crimes. Unfortunately the enforcement of the relevant laws is weak.

**Laos**

Laos is the third largest producer of opium in the world, although much of it is consumed domestically. The country has no anti-money laundering legislation, even though it is a regional financial center. Because Laos has strict laws on the exporting of currency it is suspected that laundering out of the country is achieved through alternative remittance systems.

**Mongolia**

Whilst details are sketchy there is some intelligence that suggests Russian organized crime groups are making use of the country’s banking system.

**Nepal**

Nepal has no anti-money laundering legislation. It has, however, problems with drugs, currency smuggling, and the trafficking of human beings. High levels of corruption are suspected, and commented on by internal governmental reports (Lilley, 2000). The Government also has plans to establish an offshore financial center in Katmandu.

**Pakistan**

The country is a major distribution and refining center for opium (mainly in the Khyber region, and northwest frontier province). With it’s formal economy in tatters, various political scandals that contain allegations of money laundering by various former
leaders, a costly nuclear programme, and a military government that has placed the cleaning-out of corruption at the top of its agenda. Pakistan has more than enough domestic problems to contend with.

The Philippines

No effective legislation, much political uncertainty and public corruption, and existing as a transshipment route of opium and other drugs from China, Organized crime groups from China, Taiwan and Hong Kong are all active here. There is strict banking secrecy. What more does one need? The country has no basic anti-money laundering regulations or legislation. The US treasury has already issued an advisory note recommending enhanced scrutiny for transactions involving the Philippines. Recent local media coverage has described Manila as “Asia’s Money Laundering Capital”, drawing attention to anonymous safe boxes, tight bank secrecy laws, and the irony that being awarded such a dubious provenance actually attracts a substantial inflow of funds.

Singapore

Singapore is simultaneously a major financial center with many shops trading in high value goods and a country that has a strong anti-drug culture. Additionally there exists a persistent underground banking system, which when allied to the various shops selling high value goods provide a strong conduit for the washing of Asian heroin dealer’s cash. To make this situation worse there are no controls on currency being brought in or taken out of Singapore. The anti-money laundering laws apply to banks, insurance companies, and bureaux de change and money remittance companies, but are currently only drugs related. The regulations mean that suspicious transactions must be reported and customers engaged in significant currency transactions should be identified.
Taiwan

The country has more than 60,000 heroin addicts and is a transshipment point for Chinese heroin, thus creating a substantial money laundering risk. The presence of sophisticated organized crime groups and persistent corruption makes the situation worse. It is estimated that at least half of the funds laundered through Taiwan are then transferred abroad.

Thailand

The country is trying to combat its money laundering problem. But, because of its cash based economy and geographical position, Thailand is particularly prone to money launderers, particularly funds generated by illegal drugs in South East Asia.

Vietnam

There exists little evidence to suggest that money laundering is a serious problem in Vietnam, but the country has a substantial gray economy that makes the identification of dirty money difficult. Vietnam, because of its geographical position, is a transshipment country for drugs from the Golden Triangle together with being an attractive target for overseas crime groups.

Some Solutions to the Asian Money Laundering Explosion

“The art of war lies in thwarting the enemy’s plans, in breaking up his alliances, and then, only then, in attacking his army”: Sun Tzu circa 5BC (Sun Tzu, 1995)

It is not at all difficult to suggest solutions to the money laundering problems encountered in Asia. What is difficult is to implement such solutions. This is particularly so when severely affected Asian countries cannot hope to successfully tackle the washing of criminal funds in isolation, but only as part of a co-
operative robust set of actions to deal with the underlying and interlinked causes (and effects) of organized crime, drug production and corruption. The worldwide initiatives against money laundering provide the framework, ground rules and benchmarks for a national anti money laundering regime. The key documents are:

- The United Nations convention against illegal traffic in narcotic drugs and psychotropic substances, issued in 1988 and known as the 'Vienna Convention' (United Nations, 1998)
- The prevention of criminal use of the banking system for the purpose of money laundering, issued by the Basle committee on banking supervision in 1988 (Basle committee on banking regulations and supervisory practices, 1988)

One of the many positive joys of the Internet is that you can download each of the above documents at the click of a mouse, thus I do not intend to repeat secondhand all of the information that each of the above contain. That being said, it is important to highlight the key elements where they may provide a way forward for countries in Asia.

The Vienna Convention provides extensive advice and guidance for countries in the control of illegal drugs. Specifically in relation to money laundering the United Nations urges member states to implement the following:

- To establish a comprehensive legislative framework to criminalize money laundering related to serious crimes; and to prevent, detect, investigate and prosecute money laundering by:
  - identifying, seizing and confiscating the proceeds of crime.
  - including money laundering in mutual legal assistance agreements to ensure assistance in international investigations, court cases and judicial proceedings
the establishment of an effective financial and regulatory regime to deny access to national and international financial systems by criminals and their illicit funds through:

- Customer identification and verification requirements
- Financial record keeping
- Mandatory reporting of suspicious activities
- Removal of banking secrecy impediments to anti-money laundering efforts

The implementation of enforcement measures to provide for:

- Effective detection, investigation, prosecution and conviction of criminals engaged in money laundering activity
- Extradition procedures
- Information sharing mechanisms

The prevention of criminal use of the banking system for the purpose of money laundering, issued by the Basle Committee on banking supervision in 1988 set out best practice guidelines to “encourage vigilance against criminal use of the payments system”. Key recommendations are:

- To implement customer identification (the “Know Your Customer” principle)
- Banks should run their business to high ethical standards, and not be associated with any transactions they suspect are associated with money laundering
- Banks should co-operate with law enforcement agencies
- Banks should retain key records and train staff

It should also go without saying that such principles should not only be applied to banks, but other corporate entities that can be utilized for money laundering, such as bureaux de change, moneychangers, securities traders and so on.

The FATF’s forty recommendations are now very much the cornerstone of national anti-money laundering programs, and are
a benchmark against which such programs are measured. The key issues of the recommendations are:

- Each country should ratify and implement fully the Vienna Convention
- Multilateral co-operation, mutual legal assistance and extradition treaties are stressed
- The importance of Know Your Customer procedures and the statement that “Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names”
- Necessary records should be maintained for five years so that relevant transactions can be reconstructed
- Policies, procedures, controls, ongoing staff training and compliance testing are all recommended
- The final set of recommendations promotes international cooperation through the exchanging of intelligence, and bilateral and multilateral agreements facilitated by common legal concepts. The tools to achieve this include financial institutions which are to produce records, identifying, freezing, seizing and confiscating criminal proceeds, together with extradition and prosecution agreements.

Of particular relevance to Asia is the advice given to compliant nations that they should be particularly wary of business relationships and transactions that involve countries that do not apply the recommendations. In other words unless Asia as a whole and/or specific nations do not clean up their act then it is almost certain that sanctions will be forthcoming.

To enact anti-money laundering legislation, politicians must be convinced of the necessity of such a step. But willpower in itself is not enough: financial and manpower resources are both a prerequisite for a successful regime. Even if these are available relevant laws will only work if they are:

- Simple to understand and implement
- Efficient and effective
Asian Money Laundering Explosion

- Able to co-exist and supplement existing laws and procedures
- Have a strong deterrent element
- Are comprehensive.

Money laundering is the lifeblood of crime, to cut off this supply should prevent criminals from retaining the proceeds of their activities by:

- Restraining or seizing property pending investigation and prosecution
- Confiscating property upon conviction
- Restraining and confiscating property where launderers have fled the country.

Crime can only succeed if the dirty money generated by such activity can be washed, and thus legitimized. If such cleaning can occur then the original (and subsequent) criminal activities expand and flourish. Money laundering is the key tool to enable this dirty dealing. Much activity, legislation, regulation and enforcement has taken place in the West to tackle the money laundering problem: but it still exists and shows no sign of abating. If the individual countries of Asia (both independently and collectively) do not begin to robustly and uniformly tackle the problem they run the very real risk that they will become ostracized and marginalized from the global economy, with devastating financial (not to mention social) results.

Postscript

This chapter was written in August 2001, and thus predates the terrorist atrocities of 11 September 2001. In many ways those events provide the most dramatic example of the social and political effects of money laundering. The Al Quada network could never have mounted such attacks without extensive laundering of their funds through the world’s banking networks and systems, whilst the actual amounts needed to mount the September 11 attacks were relatively
small, the key underlying volume of funds to support global terrorist activities are enormous. Much of this money is both generated in Asia and placed into the global banking system there. Thus the immediate need for unified worldwide enforcement action against money laundering has never been greater. Neither has the critical requirement for individual governments in the Asian continent to put their houses in order been more vital. Similarly the likelihood of severe enforcement action against non-compliant countries is now not just a probability but a certainty.

References and Further Reading

There are (as far as am aware) very few — if any — books that solely focus on money laundering problems in Asia. This is probably just as it should be, bearing in mind the global nature of the problem. In writing this chapter I have made use of the following reports and books as background material:

Basle Committee on Banking Regulations and Supervisory Practices (1988), Prevention of criminal use of the banking system for the purpose of money laundering, Basle.


Additionally many if not all of the documents and guidelines referred to can be found in full on the internet, links to all relevant sites are listed at my firm's website, www.proximalconsulting.com.
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Introduction

As generally used, corruption is a term applied to the illegitimate use of office by a public officer for his personal advantage. Most often, this means his enrichment or that of his family or close associates, but it would be difficult to deny the term to one who used his office to better himself in, say, a political party. The phrase "public officer" covers both officials and ministers, that is to say all who draw an income from public funds. Similar activities by those not so employed have different names.

The activities principally covered by this definition are bribery, extortion, and conspiracies to defraud public funds. The last are, in financial terms, perhaps the most important. A recent example is the Bank Bali Scandal of 1998 in Indonesia. A Pricewaterhouse-Cooper report showed that Bank Bali used a firm owned by a senior official in the government's party, Golkar, to collect interbank loans for a commission of US$80 million, despite a government ruling that such commissions were not payable. The funds were to be used to help the then president Habibie win a renewal of his term of office (see http://www.thejakartapost.com).
Similarly, it is not unknown for purchasing officers of Indonesian
deptments to collude with their departmental heads to set up a
dummy company with which they place contracts. Bribery is often
part of fraud. A departmental buying officer may arrange for a
large bribe to be paid to him by a supplier; the latter simply adding
it to the invoice, which the buying officer then authorizes for
payment. Plans for building projects are drawn up with the full co-
operation of the contractor, and the ‘commission’ to be paid to the
official concerned (usually 12.5 per cent of the 20 per cent profit),
is agreed in advance. The proposals are so designed that no inspector
would be aware of anything amiss. This form of fraud is referred to
as “planned corruption” (Hamzah, 1984).

Extortion is the exacting of payments in cash or in kind from
those over whom the officer has authority. This is sometimes the
abuse of a traditional custom of gift giving, which becomes extortion
when the balance of power changes in favor of the officer. The
corruption of the 18th century English East India Company included
this practice. When the company assumed the government of Bengal,
its officers found the custom prevalent, and they quickly took
advantage of the situation.

‘The extent of present-taking... however justified by the practice
of the country, undoubtedly whetted the appetites of [Company]
merchants; demand followed demand and donation donation...it
was the Bengal peasantry and merchants who were being squeezed...
(Spear, 1975).

Similarly, in the Java of the 18th century, ruled by the Dutch
East India Company,

‘Officials used the tremendous power that their position in the Com-
pany gave them to extort money from the few Europeans who were
settled in Java and from the many natives.’ (Day, 1904)

Two centuries later, extortion also accounted for the greater part
of the emoluments of Soviet Union public officers (Simis, 1982).

It would be wrong, however, to convey the impression that
extortion was unknown until these two trading companies acquired
Corruption in Context

Corruption in Context

territorial control. It is also embedded in local historical tradition. One may take as an example the small 19th century sultanate of Aceh (pr. Acheh) in the north of the island of Sumatra, which later became part of the Netherlands Indies. While it was still independent, an eminent Islamic scholar of the day conducted a field study. He reported of the subordinate chiefs concerned with the administration of justice that:

It is only... in the direst necessity that their mediation is sought, for these chiefs hold it before them as their principal aim to get as much hard cash as possible for themselves, and take but little pains with cases, however weighty, from which there is not much profit to be won (Hurgronje, 1906).

The spirit of these subordinate chiefs lives on in the Indonesian administration, where those who join its higher levels do so because their positions will “contribute” to their private wealth (Hadisumarto, 1974). As a more mundane example one may cite the situation where there is a severe shortage of telephones and telecommunication officials exact a bribe of several multiples of the official price. At the petty level, but of frequent occurrence, is the extortion of bribes by police from vehicle drivers. In some countries where imports of alcoholic beverages are forbidden, customs officers will permit them if presented with a bottle of such drinks. In sum, varieties of extortion are limited only by the imagination of the officer and the opportunities available.

Characteristics

Fraudulent corruption has often been treated as a crime like any other, whereas it is quite distinct, even from extortion. To begin with, it is secret; there is no evidence of anything amiss, no safe burgled, no corpse. Then, uniquely, there are no obvious victims; it is a conspiracy between two or more people against an abstraction, the state. This perhaps makes it more acceptable to its perpetrators (though it does not, of course, lessen the offence). Also, detection is difficult because conspirators in fraud have no interest in denouncing one another, all being very satisfied parties. Lastly, and
often overlooked, as an enterprise such corruption gives an extremely high return on money and time expended, requiring very little, if any, capital, with only slight risk. Its attractions should therefore not be underestimated.

Corruption of any kind is encouraged by the fact that it is difficult to punish. Public officers have often so arranged matters that sanctions are far lighter than in the private sector. There, extortion, bribery, and fraud, when discovered are likely to result in immediate dismissal. The same activities in public services often merely require investigation. This could last several years, in the course of which the accused officer may well take early retirement, with pension, as the better part of velour, so bringing proceedings to a close, and the officer leaving with character untarnished.

The extent to which public officers protect one another could not be better illustrated than by a recent account in an Indonesian newspaper (JP, 15 September 2001). Allegations of bribery had attended the election of the governor of North Maluku, and the Indonesian government set up a team of senior officials to investigate. Their chairman reported that there had indeed been bribery of two members of the provincial legislative council, but ‘...the prevailing regulations... stipulate that allegations of money politics can only affect the election result if more than one councilor has reported vote-buying to the provincial legislative council [but in this] case ...only one councilor had received a bribe, while another had only been promised a bribe...’

Comment is Superfluous

However, corruption is stimulated perhaps less by laxity of sanctions than by opportunities available. As an Indonesian proverb has it: ‘Opportunities make men steal’ (Hamzah, 1984). It has been shown elsewhere that corruption among Indian officials is greatest in departments having financial dealings with the public (especially Finance) (Palmier, 1985a). In the Indonesian Dewan Perwakilan

1Throughout this article, masculine terms include the feminine.
Rakyat or parliament, its members openly recognize this distinction. As one of them revealed:

Those considered "wet" commissions ... were commissions ... which dealt with supervisory tasks over banking and state enterprises. "Wet" commissions refer to those where bribery is a common practice, whereas in "dry" commissions it is not. (JP, 21 Sep 2001)

Apparently the bribery by the government departments is often being supervised.

All this may provide a corrective to the frequently quoted phrase from a letter by the British historian Lord Acton: 'Power tends to corrupt and absolute power corrupts absolutely'. The Indian officials mentioned did not differ greatly in rank; it was the availability of opportunities that distinguished them. It would be much closer to the mark to say that 'opportunities induce corruption, and the widest opportunities corrupt absolutely'. Support for this contention may also be drawn from the history of the East India Company mentioned above. One of the major measures it took successfully to curb corruption was slowly but surely to remove officials from all contact with commerce (Palmier, 1985b).

It is therefore hardly surprising that corruption should flourish in developing countries. The model of development chosen, and sometimes for good reason, places officials in positions of authority over agricultural, industrial, and commercial activity, and in frequent and close contact with those so engaged, and thus with great opportunities for corruption. Unfortunately, it is rare for such officials to be paid generous salaries. These conditions (very similar to those existing in both Dutch and English East India Companies) provide a fertile soil for corruption.

Strangely enough, official approaches to corruption rarely take opportunities into consideration. The unspoken assumption seems to be that, irrespective of the strength of temptation, officials should be honest. If they are not, the fault lies exclusively at their

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Proper consideration of this assertion requires taking into account the one by which it is followed: 'Great men are always bad men'.
doors, not with the situation in which they are placed. This is of course wildly unrealistic, and goes a long way to explain the general and manifest failure to curb corruption. There is no suggestion here that public officers are less honest than other people, and therefore fall immediately into temptation. The point rather is that if opportunities are abundant and sanctions weak, it must be expected that public officers will be corrupt. This is very much the case in Indonesia; in the more rigorous situation of public officials in India, the available evidence indicates that even complaints (leave alone proof) of corruption are directed at only a minority of public officers, even in those departments presenting lucrative opportunities (Palmier, 1985c).

Social Pressures

In seeking to account for corruption, it seems useful to identify the social pressures bearing on public officers. Some indication may be obtained by establishing the precise nature of the offence. As it was put during the trial of a policeman in the British Central Criminal High Court, corruption alienates loyalty (Palmier, 1983). So perhaps corruption should be seen as a sign that the officer’s loyalty lies elsewhere than with the public service. For we may safely assume that generally ties of loyalty link people; and if it is not to their employers, one has to enquire where it lies.

In developing countries, loyalty is often limited to traditional groups, which may be variously defined, for instance by kinship or territory. Two scholars of West Africa in the mid-1950s point to the fact that whereas corruption pervaded the local authorities, the tribal associations, often spending as much money, were doing so honestly. There was no doubt where loyalty lay. Nor was the reason far to seek. The local authorities were ‘government-sponsored and

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3Many ordinary Indonesians divide their history into ‘the Dutch period’, ‘the Republican period’, ‘the New Order period’, and so forth3. One does not get the impression of identification with any of these ‘periods’; they are visitations over which there is no control.
copied from a foreign model...’ (Wraith RE & Simpkins A, 1963a). One has to ask whether at least some public officers in developing countries do not have a similar view of the governments they serve and the international organizations with which they deal. There is an echo of this in a speech in Tokyo by the Indonesian President, Megawati Sukarnoputri. Referring to the wholesale theft of foreign loans by public officers, she asserted ‘Although the money had gone, the Indonesian people were lulled with the word ‘aid’, so they felt it not was necessary to repay it.’ (Kompas, 28 September 2001)

A generation before she spoke, an Indonesian author identified the moral vacuum which underlay such attitudes:

... the moral norms of their own culture were certainly something that they greatly respected. That they may not take anything which it was not their right to possess, that they may not cheat, was a moral level which they considered holy, eternal, God-given. But when they entered a new environment and situation where their own culture no longer had authority, then the moral norms which usually they greatly respected, became subject to challenge. The new moral norms they were not yet able to absorb into their consciousness, the old moral norms were shaky. (Soedarso, 1969a).

One obstacle to understanding the situation is the obfuscation that pervades approaches to the study of developing countries, whether in Asia or elsewhere. It is well known that European colonies usually included several disparate peoples, often inimical to one another, and that both the inception and persistence of European rule may often be traced to these animosities4. For whatever reasons, it seems widely assumed that this situation changed with the achievement of independence. This is reflected in the language used. Both official and independent publications refer to developing countries as ‘nations’, whereas the reality is perhaps that for most, if not for

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4Not so much ‘divide and rule’, perhaps, as ‘restrain and rule’. A contemporary western example is the situation in Northern Ireland.
all, there is certainly a state, but not yet a nation; the holding of state power is precisely the most dangerous point of contention between the various population groups, as sometimes appears in very sanguinary fashion\(^5\).

**Indonesia**

To illustrate the above, we may take the case of Indonesia, particularly as it is often called one of the most corrupt countries. It is distinguished from many other former colonies in that the former ruler, the Netherlands, not only made no attempt to unify the peoples it governed, it was a cardinal principle of policy that the various cultures should be maintained unchanged as far as possible. Consequently, they were denied the modernization that might have created a unified elite. What little education was vouchsafed certainly resulted in the development of a nationalist movement, but this was in fact a coalition of westernized leaders of ethnic groups, with the leading role being held by the largest, the Javanese. In the 1930s, the colonial government summarily placed several nationalist leaders in 'internal exile' on a remote island in the archipelago. Even under these conditions the various ethnic groups did not coalesce, but remained distinct (Mrazek, 1994).

Opposition to the colonial power held the nationalists together; independence dissolved the bond. In a backhanded acknowledgement of the strength of ethnic ties, the new Indonesian government decided to sweep them under the carpet and end the Dutch colonial practice of identifying ethnicity when taking a census. The first democratic elections, held in 1954, gave rise to some 27 parties with very similar programmes, (Kepartaian di Indonesia, 1951) distinguished more by the fact that they represented different ethnic groups. The elections also gave rise to a great deal of corruption, which was perfectly understandable. Indonesia at the time did not

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\(^5\) The Concise Oxford Dictionary refers to a nation as “a large number of people of mainly common descent, language, history, etc.” Few developing countries meet this criterion.
have a large indigenous middle class, the essential requirement in countries where democracy has flourished, so that the only source of funds with which to fight an election was the government. Thereafter, through the country's many vicissitudes, there has been a constant growth of allegations (sometimes well supported) of fraudulent corruption.

At this point it is necessary to mention the peculiar situation that applied in Indonesian law. In general parlance the meaning of, and attitude to, corruption are very similar to those the world over. Sharp distinctions are made between bribes and corruption. The former, when exacted by officials on very low salaries, is considered forgivable, and the bribe readily given. This is not the case with fraudulent corruption, which is universally condemned. However, the laws relating to the offence, and which remained in force until the end of the 'New Order' in 1998, stipulated that for an action to be considered corrupt it must damage the finances or economy of the state. (Bribes, however, do not have this requirement) (Undang-undang ...1971). It must be obvious that this condition is very difficult to meet, and helps to explain why successive recent attorneys-general have found it hard to respond to vociferous public demands that former president Suharto be charged with corruption. His main offence appears to be not that he enriched himself, but that he provided his children with substantial monopolies (such as motorways). It might not be easy to show that this had damaged public finances or economy, particularly since until his deposition Suharto was known as the 'father of development'. One must also bear in mind that but for this condition a large number of officers in the armed services would be charged with corruption.

Though fraudulent corruption is deplored, loyalty to one's group, however defined, may require its acceptance. Very revealing in this context are attitudes to the Indonesian Chinese. (They will be referred to here as Sino-Indonesians, since many of their families have been in the country for decades if not centuries). There is no doubt of their enterprise and generally greater prosperity than other indigenous ethnic groups in the country. This creates envy
and fear. Typical of the general attitude was the answer given me some time ago by a long-standing acquaintance (a Javanese and former official) whom I had not seen for some twenty years. To the remark that corruption seemed to have grown by leaps and bounds over that period, the answer came, after a pause: 'How else can we keep up with the Chinese?'

In the same fashion, any ethnic group will be able to find a comparator with which to condone corruption. In any case the riches so acquired command respect. As the previously quoted Indonesian author tells us:

[The corrupt rich] do not feel themselves condemned, and their social circles, too, neither censure nor ostracise them...On the contrary, their wealth has given rise to a feeling of social deference and respect. (Soedarso, 1969b)

In other words, the social sanctions required to buttress anti-corruption regulations and laws (Wade, 1989) are absent.

As among several pre-industrial peoples elsewhere, mutual help among those who define themselves as of common origin, whether through kinship or place, is of long standing. Under Dutch rule, when very few of their Indies subjects qualified for higher education, it was not uncommon for whole villages to pay for the cost of sending their gifted members to study in the Netherlands. Similar attitudes are to be found in present day India, where caste members club together to build university halls of residence for their young. Also revealing is the experience of an international body's social research center based in that country in the 1950s. A prominent local academic was recruited as director. He forthwith recruited virtually all the staff, from messenger to senior research officer, from his own population group in a distant part of the country. This would not have been discovered but for the fact that the center's accountant, from a different population group, was appointed by, and reported directly to, the international body.

The social mores that obtain do not consider such behavior corrupt. In Indonesia,
...[many officials] always feel that they are justified in setting aside the principles that regulate and govern modern administration [i.e., probity] for reasons of family, for reasons of common welfare between colleagues and dependants. (Soedarso, 1969c)

It would be naïve to think that there is no expectation of this help being repaid. On the contrary, the assumption is that, say, the young person helped through university will in due course, having achieved the position of prominence expected, use his or her influence and resources in favor of the traditional group members. This is in any case due from those favored by fortune. For Indians, an eminent novelist has brilliantly described the agonies of mind suffered by a young official, English-educated at his rich father's expense, when the latter, incriminated in an official document which has reached his son’s desk, as a matter of course expects him to surrender it (Jhabvala, 1987).

In Indonesia, individuals in more fortunate circumstances are expected to distribute as widely as possible opportunities for work or office or other favors they are in a position to bestow...[and] the donor or even potential donor creates rights to call upon the recipients for whatever type of help, support or loyalty he may in turn need and that they are or will be in a position to provide (Willner, 1970).

Lest it be thought this is a peculiarly Indonesian or, more generally, Asian relationship, the situation in West Africa appears to have been remarkably similar.

‘Any man rising to a place of importance in politics will be surrounded by relatives and friends looking confidently to him for patronage; the tradition of centuries leaves them in no doubt that he will provide for them, and that if jobs do not exist they will be created.’ (Wraith RE & Simpkins A, 1963(b))

In these circumstances allegiance is to a person, not to an abstraction such as ‘the service’ or ‘the country’. In Indonesia, this was much reinforced by the fact that until the 1980s it was heads of departments who appointed their own staff. In an attempt to improve
matters, a system of selection for the bureaucracy by examination was introduced. But success indicates only that the examinee has reached the necessary standard, it does not give automatic right to an appointment. This will depend upon a vacancy becoming available, which of course leaves plenty of room for nepotism.

Further support for traditional loyalties has been provided by a well-meaning rule that posts should preferably be filled by a qualified person from the local province, for example by Javanese in their homelands, by West Sumatrans in West Sumatra, and so forth. In the early years of the republic, when the Javanese were the most educated, they filled most senior posts throughout the country, and thus provided a strong framework. Considerable advances in education have taken place over the last half-century, so that in several instances Javanese have been ousted by members of local groups. It would be surprising if their traditional loyalties were not thereby reinforced.

Furthermore, Indonesian circumstances frequently compel the individual to appeal for help to the traditional group. When law and order break down and are not quickly restored, the state is perceived to be partial towards the lawbreakers. This of course arouses traditional loyalties if only for self-protection, even among public employees. In other words, a classic vicious circle is set up. The state, when weak, is perceived to be partial, so traditional loyalties are aroused, and further weaken it.

Enough has been said, perhaps, to emphasize the importance of including traditional group loyalties in the analysis of corruption. It is customary to invoke “market pressures” to explain western commercial behavior, while “peer group pressures” are used to explain individual activity. Similarly, it would seem appropriate to include “traditional group pressures” in analyzing corruption in developing countries, in Asia as elsewhere.

Nevertheless, it must be emphasized that such pressures are perhaps best seen as permissive and supportive, not determinant. More important is the presence of opportunities, which usually means money. The more of it that is controlled by public officers, the more will stick to their fingers.
Reform

The enquiry presented above into the factors making for corruption does not imply condoning. It remains the case that the eventual goal must be to distance public officers from activities that lend themselves to extortion, bribery or fraud. This process is already under way in some developing countries, as they expand their market economies, and discard the permits and licenses that were an invitation to extort bribes. Private businesses so created may well become a pressure group for probity, insisting that their taxes be not misappropriated. By the same token, the more the state budget is drawn from internal rather than external sources, the greater the pressure to curb corruption.

As an example of what may be done one may refer to a measure taken by the Indonesian government in the 1980s. The ports, particularly that of the capital, Jakarta, had became notorious for the extortion exercised by customs officers. No solution was found until the government entered into a contract with an international firm to examine — for customs purposes — at the ports of lading, containers destined for Indonesia, which then entered the country without examination.

However, one should also be aware of the political difficulties in the way of removing public officers from control over the economy. The case of Indonesia shows the problem in acute form. To remove controls, in Indonesian eyes, is to move to a totally privatized economy. As they see it, this would have one major consequence: the commanding heights would be held by the sino-indonesians who are, after more than a half-century of independence, still more adept at doing business than most other Indonesians, and who would exclude them. If the only way to prevent this is to retain government control of the economy with the accompanying corruption, then so be it, they argue.

There can also be grounds, of a general welfare nature, for retaining control over economic activity. As an officer of India's Vigilance system put it to me, when we were discussing corruption in import licensing:
"We could indeed get rid of it at a stroke simply by putting licences up for auction. What would be the consequence? One of the two largest Indian enterprises would make a successful, if expensive, bid for the entire quota and use its monopoly power to recover the cost by putting up the price of goods imported. This would place them beyond the reach of the poor. We prefer to maintain the system of import licences and to try to control the concomitant corruption."

In any case, removing corruption opportunities is a necessary, but not sufficient, measure. The unscrupulous will always find opportunities not evident to anybody else. Elsewhere (Palmier, 2000) it has been suggested that probity is a function not only of removing such opportunities, but also of the selection of public officers, their character formation, and their morale. The object is the cultivation among at least the most senior ranks of a sense of honor, so that the notion of corruption is repugnant, and the corrupt when found incur social ostracism. To consider morale first, public officers in developing countries are paid poorly compared to others with comparable training, and an important step in the development of high morale is the payment of adequate, even generous, salaries. However, these encourage honesty only after corruption opportunities have been removed, otherwise matters remain much as they were. There seems no particular reason why the corrupt should become honest merely because they are given more pay; this can always be rationalized as insufficient.

The difficulties in the way of reform should not be underestimated. Poor salaries are due, among other reasons, to the superfluity of public officers. It may well be true that fewer better paid would be at least as productive as the large numbers now employed. The difficulty, however, is that before industry and commerce are well developed, governments often see public employment as a means of absorbing the educated, and so removing possible disaffection, while winking at corruption. One answer may be not to attempt to clean up the entire government service, but to concentrate only on the senior ranks of decision makers, removing

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them from opportunities while substantially increasing their salaries and so, one would hope, raising their morale and resistance to corruption.

At least as important, if not more so, is the character of public officers. What seem required in many developing countries, in Asia as elsewhere, are formative institutions that encourage greater loyalty to the government service, at the expense of traditional groups. The English East India Company mentioned above, having removed opportunities for corruption and much improved the salaries of its officials, then established a college to inculcate values of probity and loyalty. The final result was the Indian Civil Service, which became renowned for its honesty.

The object of such institutions is to instill loyalty to the government service and its values and traditions. This is not a matter of developing loyalty where there is none, but of weakening traditional ties in favor of the nation and the public service. In several of the great powers this is achieved by residential educational institutions inculcating their charges with loyalties away from the traditional primary group, the family, and towards created institutions such as sports teams and the institution itself, as a preparation for the giving of loyalty to the individual's future employers. Taking Indonesia again as a not untypical Asian developing country, one finds that the formative residential institutions, which exist, are of a religious, and therefore divisive nature, such as Muslim 'pesantren' and Catholic and Protestant schools. The universities are not residential, and none may claim a truly national intake; all have a predominance of local students. In brief, the strength of traditional loyalties meets no resistance from inculcated allegiance to the nation as a whole.

The Indonesian armed forces, it is true, do meet some of the requirements for probity. Selection to their Academy is on a national basis (except that sino-indonesians are not recruited), limited to those who do best in the most difficult subjects at high school. There is no sign of promotion being influenced by ethnic origin, and little doubt of the officers' loyalty to their units and to the armed forces in general, rather than to their traditional groups.
Equally, their morale is quite high, and their salaries adequate. Unfortunately, “under the ‘New Order’ [1966–1998] the official, semi-official and private business activities of military personnel expanded rapidly at all levels…” (Crouch, 1975) while “the army leadership… adopted the view that it was perfectly natural for officers to exploit their official positions for personal gain” (Crouch, 1988). In other words, corruption was licensed. In consequence “serving members of the armed forces …devote considerable energy and time to income-supplementing schemes, often to the detriment of their professional duties” (Lowry, 1996), as is perhaps evident from their operational performance. The improbity of former general Suharto has not helped, and in the odium that surrounds the forces for their excesses during his “New Order” regime, they are in no position to provide national leadership.

What seems required, in Indonesia as also in several other developing countries, is the establishment and development of civilian formative institutions to prepare a truly national elite with high morale and a code of honor that spurns illicit financial gains. This is of course not a task of a few years, but of generations. But there seems no other way to cure a country of the disease of corruption.

References


Corruption in Context


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Chapter 5

Is the 21st Century 'the Age of Asia-Pacific Region'? Hopes and Expectations as Viewed from East Russia

Anatoly Korchagin and Alex Ivanov

Introduction

Many scholars and practitioners, politicians and economists, lawyers, journalists and other experts, observers, investigators of social processes in the world have thought of the 21st century as the coming age of Asia, or to put it more precisely — of the Asia-Pacific region. It was not a coincidence that the 12th international congress on criminology, on the eve of the coming 21st century (Seoul, 24–29 August, 1998), was organized under this symbolic name and for the first time was held in Asia (The 12th international congress on criminology). What should we expect now, after the 21st century has become reality? A brief look at some trends in countries, which, in our opinion, have had a leading role in the Oriental region — China, Japan, southern Korea, and Russia — will help our evaluations.

It is regrettable that Russia in terms of its economic development has steady been left behind by other countries. This can bring catastrophic consequences as we may easily lose a part of the country, for instance Siberia and the Far east. Certainly by now, in the Russian far east, the businesses either do not belong to Russians, or they
have been even oriented on China (and they account for some 30% of region's GDP).

In economic terms we can single out three models of development of modern market systems:

1. "the neoliberal model" is considered to be the only one that is able to ensure the growth of GDP;
2. "neostatism", presupposes an active impact of the state on economic processes (as experienced by Japan, or South Korea); and
3. "neocorporativism". This model has been used in the countries of northern Europe and it is known for its high level of state costs.

Apparently the strategic aim in Russia was defined by the present president to remove oligarchy from the power that was formed by the time of the ex-president Yeltsin. The activity of the president V. Putin has been to a great extent defined by that real political force in which he seeks his support: state apparatus, and the enforcement bodies (structures). The system of bureaucratic capitalism has one gross feature: it is economically not effective. The supporters of the state's impact have by now had high chances to lead the country, but democracy and the support of the European democratic way of development are more preferred (Naumov O, 2000). Even so, we find that the most complicated counteractions against free enterprise are criminal organizations, and the corruption of state officials.

The Definition of Corruption

Russian and western scientists were going in different ways in defining corruption. The former generally used a definition that is a generalization of all the known ways of corruptive actions, connecting this to the definitions of 'an official and mercenary profit' — it stresses the criminological aspect of studying this problem. The latter group inclined towards aspects of political sciences and so expanded the notion of corruption 'to the deviant behavior of political elite'. The results of comparing the foreign and Russian
approaches in the determination of the essence and definition of corruption are of certain interest. Here we can single out similar and distinguishing features.

The similarities are:

- the special socially privileged position of empowered subjects as the main participants of corruptive relations;
- the illegality of their actions;
- at the base level of the illegality of corrupt officials there are personal and group interests and corporative interests, connected to seeking for their ownership of the good.

The distinguishing features are:

- an approach to the defining of the subject structure of corrupt officials (if for the Russian investigators such are "the persons empowered to perform state functions and persons equated with them", against the western concepts of such persons who are the representatives of political elite);
- the definition of the 'good', which the corrupted officials are seeking to own (the representatives of Russian approach define it as property or non-property goods, the foreign persons define these as State resources).

The Russian and western approaches to investigating the problem of corruption should be united as they are preconditioned by the social and legal nature of this phenomenon. In modern sociology and political sciences corruption usually is considered to be the deviant behavior of socially privileged groups, and so we can thus begin to explain a great number of its forms. The starting point of investigating of the deviant behavior of corrupt officials should be the correspondence (or not) of their activity to the social norms and evaluation systems in the society and the state (Volzhenkin B, 1999).

The following features characterize the legal nature of corruption:

- specificity of public status and the legal status of corrupt officials;
- the perversion of the content of legal relations;
• the illegal activity of participants of corrupt legal relations connected with using the resources of the society and the state;
• high latency and great number of forms of display of corruption.

Corruption as legal phenomenon is an abuse of public power and the over-use of one’s status by an empowered person. This is displayed in the illegal use of the resources of society and/or the state for personal, group, or corporate interests (Luneev V, 1999; Garayev & Selikhov, 2001). The full application of the laws countering corruption, which criminalize illegally obtained money, would help to the “clean the hands” of public officials. These laws have been applied in the USA, Japan, Italy, Great Britain and other countries, where the leading principle is: “authority is the basis of the power”. In Russia however, power is considered to be the basis of authority.

The Main Organized Crimes in the Far East of Russia

Criminal Organizations

Perhaps there is no exaggeration in saying that the process of surviving, into which the folks of the previous USSR and Russia have been thrown, has created a very perverse situation. On one hand, the thrusting by all mass media of a shameless seduction (corruption) of folks has resulted in a bifurcation because the main propagation can be reduced to a scheme: all for myself, nothing for the society (state)- it is rough individualism. On the other hand, because of the pressure of antinational governmental programs, the survival of an individual, apparently, has become impossible. And so, in spite of the expectations of the organizers of the breakdown of, a more or less, legally governed country, there still came a unification: but already at a criminal level, as a result of banal reason — it is easier to survive together! Thus, in the searching of an antinational government to separate the people, it (the government) itself is gradually becoming the fiction, because the people, out of their practical need to survive, go over to an illegal way of life. Now
a more and more powerful "state within the state" is being created. This, in a short while, thanks to the shortsighted vain steps of the world government, will throw down from the stage the presently unnecessary antinational government. This threat is so real that now about the "Russian mafia" (to put it exactly — organized crime) is described as a serious competitor in the re-shaping of world's economy and territories — in all countries, especially in the developing ones. Strictly speaking, there is nothing strange and unusual in it. It is simply the ripening harvest of what had been planted during the process of breaking down Russia. A mighty state comes out of the shadow to the light, directed by the beast's laws, where its own laws act: and so this young predator becomes dangerous for the old beasts. On the far east of Russia, as everywhere, organized crime is developed in all directions. The displays clearly show the spreading of the criminal monopoly in the as-yet shadow state. At the same time, similar to processes in other countries, the greatest players take over those firms that are nearest to the profit sources. And if there is profit that means that there is a further connection to the economic administration. For the far eastern region the most typical sectors of organized crime are:

- natural raw materials (timber, metals, oil products; reserves of fish and other sea products) and
- financial machinations,
- construction business,
- trafficking in everything — beginning from natural resources and motorcars and ending with human beings!

There are no reliable statistics available — but according to the evaluations of the Ministry for Home Affairs (MVD) organized crime controls 40–50% of the country's economic sectors. Other evaluations only increase this figure. They suppose that the criminal syndicates control over 50 percent of Russian banks. The lawlessness can take worse forms, which lead into the vicious circle of impoverishment and greediness. This is more characteristic of the farthest and consequently more badly governed regions of the
country, for instance Primorye. The so-called 'thief in law’ “Jam” (Vassin Evgeny Petrovich) is considered to be the shadow governor of the far east: he practically single-handedly controls over Far Eastern “obshchak”. According to the analytical center of MVD of Russia he is one of the ten of most authoritative 'thieves in law' in Russia. Annually, in the exclusive economic zones of Russian Far East, about four millions of tons of bio-resources are shoveled out of the sea, yet the legal export of sea products consists only of one million tons. The illegal gap — is more than two million tons, but in the Russian market, only about ten percent of the product remains. Annual losses for the country reach to about two millions of US dollars. The stealing from inside of the fleet, especially main fishing one, gained huge amounts for the perpetrators.

By the beginning of 1998 there were 1135 commercial companies registered in the region, which also had 2629 fishing ships. By the end of that year their number was reduced by 530 units, and that process has been “successfully” continued (Reznik B, 1997; 1998). However, the illegal timber business — as a kind of criminal trade — appeared in Primorye after 1992, and since that time has reached an impressive magnitude. The total volume of illegally procured timber across the region for one year comprised, according to some evaluations, about 1.5 millions of cubic meters. One of Chinese firms in the town of Nakhodka, having sold timber to Japan during 1998, gained US$5.5 millions of net profit, but their tax liability in Russia was... 10 rubles 47 kopecks! (Veterkova & Rudenko, 1999).

The main displays of organized crime are as follows:

Availability of such criminal societies the base of creation for which is not a common criminal activity but the common interests of its corporation, enlargement and so on prepared for it the most favorable conditions.

Availability of leaders from a criminal environment and other persons practicing widely organized criminal activity (“thieves in law”, “authorities”, “warders”, “petitioners” etc.).

Crimes, committed in coordination with each other (exchange of killers etc.).
Striving to widen the use of institutions of state and civil society (funds etc.) in criminal aims. Organized crime of Russia and its activity have acquired a more distinctive transnational nature (Criminality..., 2001).

Forcing the criminality out of business, hindering it coming to power, using severe measures by state organs ("cleaning-up" in Novorossiysk, Yekaterinburg, Krasnoyarsk region) show us that such a policy is possible. However, the opposition of the official society to the criminal society should be accomplished not only through a narrow legal nature, but also by economic and spiritual means.

The characteristic feature of fighting organized crime under such conditions demands a realization of the following measures in a system:

- Liquidation of organized criminal structures as such;
- Prevention, revelation and isolation of organized criminal activity;
- Revelation, cutting off the movement and confiscation [on the basis of law] all criminal funds, and not letting them be legalized;
- Restoration of social relations damaged by the organized crime;
- Education of people, particularly the growing up generation, in the spirit of an uncompromising attitude to antisocial evil.

There must be an assurance that:

a) we might be guaranteed a complex of measures for the fight against criminality;

b) we are intolerant of being carried away in some periods by the totality of measures of crime prevention; and in others by a reliance only on law enforcement, primarily by punitive measures (Dolgova, 2001).

**Corruption of Officials**

The total number of the state apparatus consists of 333,232 "units" (including 24,904 "units" of central apparatus). For these "units" the budget gave 39,727 millions rubles. This may seem a large sum of money — but it has been known since the time of Peter I that
officialdom (red tape) in Russia is ineradicable. In modern times the supreme power has undertaken many different reforms, reorganizations and staff reductions — thus the above sums are not enough. Acting against the State, it is estimated by officers of law enforcement bodies [who are engaged in fighting corruption], businessmen have to pay for the services of officials from 20 to 50% of their profit. Helpfully some foreign secret services have filed many volumes of dossiers for the Russian corruptive officials. In the draft law “About the fight with corruption” the legislator should have defined the kinds of crimes that belong to corruption, while in the new criminal procedure code of Russian federation, crimes of officials and bribery should be ascribed to the investigation competence of federal security service. A comparison of a moralistic and functional approach is evidence that corruption could not be explained only by a moral degradation of some authority’s representatives. It (corruption) is an indicator of a correlation between group interests, and that it is a connection between formal and informal elements of the system of social government. They single out one more approach in the definition of causes of corruption — structural-functional. The main idea is that corruption as a deviant social behavior, and it is an unavoidable attribute of a developing society to which a weak mechanism of social control relates. Even in the USA one can observe the process of a state regulation of private undertaking in order to protect the interests of the society. In the USA and Japan there is the whole series, not only of general laws that regulate business on the whole, but a number of special laws on which basis the development of business in these countries was predicated.

The comparison of criminal legislation related to the organized crime of Russia, European countries, and USA, make evident a certain trend to rapprochement of such legislation. Law making traditions mainly cause the difference. In the USA it is the law about controlling the organized crime of the 1970s. The main goal of “Status RICO” is to try to stop the penetration of organized crime into legal business. As a development of that law we see, in 1971, the adoption of the law about controlled substances
(the latter has provided a section of legislation against the perma-
nently active criminal enterprise).

In Russia there has been an open question over several years
about legislative ‘fixing of amnesty’ of funds “escaping” from the
country — it has been discussed at the level of experts consulta-
tions. The question is pressing, if we are to believe that in country regions
there are no more free funds that Moscow could divert as
investments into the home economic. For instance, the parliament
of Kazakhstan went further along this route, and on 14th of June
2001 adopted the law “About amnesty of citizens in connection
with their money legalization”. This allowed a ‘breathing space’ of
only 20 days for dubious funds transfer. Another way was chosen by
the Ukrainian National Bank, which had prohibited the operations
of the accounts of commercial banks situated in some off-shore
countries: it had one-sidedly terminated contracts about the
establishment of correspondent relationships. This however is not
unique to Russia, we note in passing the scandal around Bank of
New York that had announced the problem of changing the bank
legislation in the USA. There were suggestions made to guarantee
the deposit confidentiality only for American citizens, and the alien
depositor-liars should be made criminally responsible and the
immediately arrested. A large share of Russian funds passes through
the Primorye region using so-called “one-day-firms”. More and more
popular to transfer funds away become barter transactions. Many
businessmen like this method because it allows the factual data of
the whole operation, and of all transactions, to be hidden with
apparent legality. However, it should be pointed out that the pretty
fashionable idea in Russia about amnesty about “escaped” funds
would work only under one condition. That is, if the businessmen,
in spite of their reputation, must have a guarantee that after
returning the money it will not be impounded, and the businessmen
themselves will not be imprisoned.

The State Duma of the Russian federation has tried many times
to adopt the law countering the laundering of criminal profits.
We recognize that beyond Russia the main sources of “dirty” money
are considered to be murder, narcobusiness and prostitution. Within
Russia try to put into this “dirty money” category tax, customs and foreign exchange crimes. We must hope that invoking the help of the West against accepting “Russian criminal money” will help stem its flow from the country. The experts and the Russian population itself among the main causes that undermine the authority of the country in the world name the economic weakness of Russia 80% and 67% and corruption and criminality, which have seized Russia (correspondingly 67.1% and 59.9%). The results of analysis of existing law enforcement practice bring us no comforting conclusions. We think that the measures taken for countering the economic crimes do not answer the reality of the present day when the crimes in the sphere of economic activity seriously threaten the foundations of the state.

Presently the West is concerned about three possible directions of criminal development: First, the organized crime abroad. Transnational groups appear to be a factor of instability and threat to the stable order. Second, organized crime often is so powerful that it is able to afford to establish its own “state within the state”. No less a disturbance is its “cooperation” with foreign criminal societies in the field, where Russian criminals now have their competitive priorities. Japanese gangsters groups, for instance, used the help of Russian hackers to break into computer databases of their law enforcement bodies. And Russian professional killers are in great demand. Third, and maybe the worst, threat is hidden in the merging of the apparatus of corruption with influential criminal groups. It is clear that the interests of organized criminality have global character and obviously are not drawn towards isolationism. But the growing concern is related to the fact that the activity of Russian and foreign organized criminal groups are aimed to plunder the natural resources of Russia. The transference of funds through the border etc. would hardly be possible without the help (obvious and hidden) of the State structures both of Russia itself and of neighbor countries.

The social and cultural nature of corruption creates a paradox when, the daily practice of the corruption within Russia (in contradiction, let us say, to murder) begins to be interpreted not so
much as a wrongdoing, but rather as a norm of behavior. In accordance with this the society manifesting in words its resolution to get rid of such dangerous evil in reality sabotages the fight against it, both on a legislative level and on the level of law implementation. Besides, the situation is aggravated by the fact that, as in China where the high-ranking officials of state and party apparatus are immune and "above the law", so it is in Russia that high-ranking officials have the possibility to avoid criminal punishment (Folsom et al., 1992).

The true foundation of power lies in the spiritual respect and trust of people toward the government and of government toward the people. Each side should recognize, by its own sense of justice, the sense of justice of the other side, and so merge with it to create a sense of unity. The exit from the "criminal trap" may be found in a perceptive complex decision relating the bi-united task of effectiveness and humanity in the fight against the continuously growing destructive human behavior. This rests in expanding and deepening social and legal control based on the laws adopted in a democratic way (Luneev, 2001).

It seems that the fate of the "Dry Act" in the USA is in store for Russian anticorruption measures, as is the amnesty of illegally obtained profits (Sacks, 2001). Apparently the uncertainty in the consciousness brings us to the fact that in one of the versions of the draft law "About fight with corruption" there are two peculiarities. First, the definition of corruptive behavior has been transformed from official abuse to bribery; second, the definition of bribery was changed to bribe giving. We can note here the principle mistake by the developers of the draft. Changing corruption to bribery contradicts the logic of Russian criminal legislation, where the central role in the fight with criminal displays of corruption centers in article 285 of Criminal Law of Russian Federation. It includes the common generic definition of abuse of official power, and at the same time serves as a reserve for the cases when special articles do not provide for the official wrongdoing. The latest version of the draft law "The bases of anticorruption policy" tries to eliminate this imperfection. In the explanatory note to the draft of this federal
law it has been stated that corruption consists not only of actions connected with bribery (the giving and taking of bribes) by state officials, state and municipal officers, but does also consist of other abuses of persons having a public status connected with illegal obtaining (appropriation) by such persons of property, services or privileges contrary to the interests of their service (Mishin, 2000; Project, 2001).

A Short Overview of the Situation in the Far East Countries beyond Russia

How do the countries of the far east try to solve the problem of corruption? Which trends are real processes in those countries, and what should we expect from them in the current “Age of the Pacific region”?

The countries — China, Japan, South Korea — have recently been characterized by some stability in their comparatively low rate of “common” criminality: about 4–5 times lower than the related data of western countries (Korchagin & Ivanov, 1999). About one and a half centuries ago, beginning from the sixties of the 19th century after the western powers had contributed to final termination of self-isolation of the Far East countries, some of the politicians of those countries analyzed why they had to “lose out” to the western powers. They came to a peculiar conclusion that the power of western states and their scientific and industrial progress could have strongly depended on the ideology of those states. Having attempted to accept some western European legislation and the basics of Christian culture the far east countries, really, began to demonstrate unusual changes in their social and economic development. Maybe their main achievement was the gain of democratic freedom, which became the basis for the potential development of people. But the excessive enthusiasm over the outer manifestations began gradually to bring a loss of inner values. After that, many of politicians began to connect the decay of morality, and growth of the level of crime in their countries, with the influence of the same aspects in western civilization, noting their negative features (Ivanov, 1999).
Moreover the moralization of law is fraught with negative consequences. On the one hand the dissemination of moral evaluation for the law contradicts the principle of autonomy of these norm-regulative formations. On the other hand the law cannot be excluded from the influence of moral evaluation. Here we could presume that the state power and the private lives of citizens are closely interconnected. The extent of state-law regulation of private life depends on the certainty of its influence: the outer (functional) aspects are regulated by the law, the inner (ontological) by other social norms (Baranov, 2000).

Here we have also to take into account some negative factors of globalization, which is sometimes performed by inappropriate methods. Unjust distribution of goods from globalization generates social tension and threatens conflicts on regional, national and international levels. The West having less than 15% of Earth’s population controls over 70% of world’s production output, trade, and consumption. The social stratification according to numerous criminological investigations supports crime-generation. Among other problems of globalization we could also cite potential regional or even global instability because of mutual dependence of national economics at a global level, as well as fear, that the control over the economies of separate countries can pass from sovereign governments to other hands, including here are the more powerful states, multinational or global corporations and international organizations. Due to this fact some scholars see in globalization an attempt to undermine the national sovereignty (Korchagin & Ivanov, 1999; Ivanov, 1999).

The globalization of criminality, and the appearance of Russian criminal groups on the “markets” of Asian Pacific region has become a severe reality for the Russian law enforcement bodies. Today in the territories of the far east there are 149 major criminal groups, and 40 of them are “international” ones. The influence of their activity upon our region is quite traditional. The poaching, fishing, and smuggling of currency related to the consumption of sea products have already brought to our notice, in so far as their prices in Russia have been dictated by the aliens. Meanwhile, there were only 17 criminal cases initiated successfully involving ships
captains — of Russian, Japanese and Chinese ships that “traded” in Russian waters. As a result only eight men were sentenced, which is certainly comparable to a drop in the ocean. “In order to make our efforts more effective Russia has to finalize intergovernmental agreements with China and Japan”, pointed out the general prosecutor, deputy K. Chaika.

Not less alarming is another trend, which has been fashioned over a long period — it is the transformation of Russian Far East to be an international transit corridor for narcotics. Even now we are unable to make a powerful enough barrier against the flow of efedron, which comes to Russia from China (Novak, 2001).

The process of globalization provokes the establishment of some *symbiosis of economical, organized and transnational crime*, which is more dangerous than all currently existing forms of organized crime even if taken together, because it inherits a destructive capacity from the existing kinds of organized crime but now in a concentrated form. We already have observed how the organized criminal associations actively pass from violence to methods of economic activity and how they learn how to master transnational relations. If the process of that merging continues in the same direction then the whole mankind runs risk awakening under a new invisible power controlled by a small group of criminals.

Taking into account that retaining a huge population of their countries in obedience has for the governments a specific difficulty, the latter very often come to conclusion that the way out of their “corruption dead-end” and “vicious circle” of crime lies in returning to their national traditions, cultivating the positive relationships in their society. In Japan, for example, in order to fight the corruption of the officials, the government tries to develop new ethics codes on the basis of the moral principles of the former nobility. This has been derived from the well-known code of Honor of Samurais “The way of the bushido” (Kolodkin, 1996). In China, the development of the educational and cultural levels of Chinese population, plus the demonstrative factor (becoming acquainted through cinema, radio, TV, tourism etc. with the way of life in other countries) have caused explosive changes in the growing-up needs in providing for
modern conditions of material and cultural life. This growth of needs in China is not linear but an outcome the growth of population (Naumov I, 1997). That is why, in addition to the norms of criminal code of China, which regulate bribery, the government tries to popularize old Confucian traditions. With that purpose, an encyclopedia on Confucianism in five volumes was newly republished (Korchagin & Ivanov, 1999).

Such an approach is typical of the countries that were under the influence of confucianism. The scholars and many practitioners across the whole world have warned that it is very difficult to make somebody respect the law if it does not contain moral-ethical implementation (Di Pietro, 1999). That is why, for instance, Antonio di Pietro affirms that we have to take into account the fact that though proposals directed to the successful opposition to corruption which come from the temporal culture, nevertheless they almost fully coincide with the canons of catholic religion. These are not groundless, as he recalls, “If we want to escape the threat of destruction of the law state (Rechtsstaat), we are bound to admit, that exactly ethics and morals have the main role as indispensable conditions for a normal functioning of the society. Without a wide dissemination of moral and ethical standards taken and shared by all, one can never expect either that people suddenly begin to respect the law, or that in a country there will appear a feeling of legality” (Ibid).

Thus both East and West, in their main approaches to fight corruption, understand the situation analogously and on the whole, in its essence, propose one approach — the dissemination of moral and ethical standards shared by all.

**Comparisons of Fights against Corruption —**
**as a Way of Perfecting of Russian Legislation**

Actually, this work is review of the existing variety of mechanisms that influence the control of organized criminality and corruption. The importance of comparative research for Russia lies in the fact that our country has been for a long time a multi-
confessional, -national, -racial state. Therefore the experience of Russia in its development of the legislation, taken against the experience of foreign countries, can play an invaluable role for the world’s community as well, in their preparation of such acts of international law, which in more complete measure could correspond to the essential needs of the majority of the states.

Life shows that the struggle against corruption is not achieved only by the application of the rules of criminal law. Moreover, as it seems to us, neither can the struggle be won by the means of any other branch of the law. In effect, if we consider the phenomenon of corruption in the broad sense of the word, it is not simply a crime or wrongdoing — it is the condition of the corrupted soul that has got used to living in a sin.

Each country has its own culture, the folks have their own worldview, way of thinking, and they differentially understand such concepts as “crime” and “corruption”. For example, in some countries the corruption is almost completely a synonym of bribery, in others it is understood more widely — such as the degradation of the state authority, and even of society itself.

The comparative research can be carried out, as it is known, in three various phases:

1) it is possible to compare the legislation of the various countries;
2) then we can study the legislation of one country through its historical development; and
3) then it is possible to compare the norms of law regulating necessary relations in different branches of the law.

The concrete norms of law (those of criminal-law, administrative-law, civil-law, etc.) are kinds of tactical measures of influence on displays of corruption in a society. However, in all of this one can assume it is as an attempt to influence the consequences, which have arisen as a result of actions already of the formed person. It seems to us, that such a “narrow approach” to the problem of corruption reveals a hopelessness of the struggle against it, by virtue of the nature of human essence. As a matter of fact, all modern researches of the struggle against corruption and official service offences are
reduced to development of the moral and ethical codes for the officials. It is none other than an attempt to reform the persons who are already "deep-rooted" in their worldview and evaluation orientations. It is difficulty to bend an adult tree, as it, more often, does not bend but breaks. We have to bend a young tree. In other words, our aim must relate to their development "from the time of the cradle" to become persons who have anti-crime as a normal way of thinking.

It was noted above, that both East and West in their main approaches to the struggle against corruption similarly understand the situation and, in general, as a matter of fact, offer one approach — the distribution of the moral and ethical standards to be shared by all. However, the adoption of the codes of official behavior, in itself, "from above" can appear an ineffectual step. These ethics should "have taken root" much earlier in the officials. Hence, it is important, not to rely so much on the availability of the code or collection of rules or norms of behavior, which such code include, but upon the existence of the person ready to adequately apprehend these norms and to adequately react to them.

Therefore, as shown in the experience of Russia and of other countries, with respect to the laws about corruption, perhaps an appropriate program of education and preparation of the younger generation, that is — of appropriate staff — is necessary. For it is known, that from what the youth is — depends the future of the world. And just in this very case, the punishment of corrupted persons will look fairer, rather than it is now, when the state makes responsible the person, who is not brought up by it in the appropriate spirit. Besides, the younger person, who has been brought up in the spirit of uncompromising attitude to any sort of offences, even if having committed under some life circumstances a certain offence, will have internal conflict. This will in effect be a pledge of correction of the person, since the person realizes the antisocial nature of his action.

As a conclusion it is possible, probably to specify, that the systemic character of corruption in a modern society should be opposed by a systemic counteraction. In order to form the anti-corruption
mentality in a system, a regular (system) control of the external flow of the information is necessary which directly and indirectly influences the formation of corruptive person, in which (person) the latter's personal passions and ambitions prevail over the public interests. As it is always desirable to study not one's own but another's mistakes, comparative researches can, undoubtedly, serve to perfect the legislation of Russia in its various branches of the law that struggle against displays of corruption.

What Should We Expect from the 21st Age?

Observing the Trends

—in both Russia and in the neighbor countries we can foresee that a further weakening of state and legal control is highly likely. Under visible increases currently of the number of registered criminal organizations these increases predict more latent crime.

To illustrate the process, we think, it would be enough to compare data concerning Russia and China, as in these countries the observable process is more obvious.

The number of active criminal organizations, for example (according to the official data of MVD of Russia) for the period 1990 to 1998 has increased almost in 16 times (from 785 up to 12.5 thousand); the number of the participants of these organizations has grown 5 times (from 15 thousand in 1991 up to 75 thousand members) (Vanyushkin, 1999). The Chinese officials point out the sharp growth in recent years — both of the number of organized criminal groups, and of the number of their members. However, contrary to Japan, they have not observed yet much obvious consolidation of gangs in criminal syndicates, though this process is gradually occurring. According to Chinese statistical data, during 1983–1986, when through the whole country serious measures on the eradication of criminality were undertaken; they revealed 197,000 criminal grouping with a total membership of 876000. Up to 1994 the growth was 306 percent in the number of criminal groups, and
403 percent of their members. The groups themselves have undergone changes as well. Roughly speaking 1986 saw the beginning of a high growth in tightly connected and highly organized forms of underground movements (He Bingsong, 1996).

In opinion of the experts, the Russian law-enforcement bodies attempted but only registered less than one quarter of real criminality, obtaining less than 50 percent of guilty sentences from the registered actions, and they brought to the court only one in ten of actual criminals (Luneev, 2000).

The Actual Transformation of Russia

— to a “raw materials appendage” of foreign countries on the background of the general breakdown of national economy, will promote the further export from the Russian territory of natural resources, sea products, metal etc. This will give economic criminality greater prominence, in comparison with other kinds of criminality. And it will occur on a background of weakening revelation of crimes and the incompleteness of their qualification.

The Transnationalization of Criminality

— as a process, criminality will be strengthened as a consequence of the above two reasons. It will find expression in the increase of number of crimes made by foreign citizens, especially from China and Korea. This change process can be observed already. Chinese citizens actively participate in illegal export of natural and biological resources, especially of timber, metal, seafoods, and wild plants.

The aliens will be more active in import and transit of drugs. During recent years, and it has been pointed out by many experts, the narcobusiness on the far east has become stronger and has strongly fixed its positions. Now, in selling of heroin together with derivatives of hemp, are not engaged at the individual “businessmen” level, but via the organized criminal groupings (Volynsteva, 2001).
Russia entered the third millennium with approximately [only] three millions of the registered drug addicts. In truth, there are many more. But until now in Russia there is no clear policy on the struggle with drug addiction. It seems, that under such conditions control only by measures of law-enforcement and upon the medical character, the ways of distribution of drugs can hardly be blocked. This has been realized all over the world for a long time.

The Americans, having announced the struggle with drug addiction to be a national program, invest in counter measures from US$8 to 15 billions annually. Although in the Philippines and in China (and elsewhere in Asia) there are the severest measures not only for collecting and storage, and for the use of narcotics, nevertheless drug abuse is increasing.

But in Russia all national counter-measures programs are reduced only to conversations about necessity of serious changes in the criminal law, criminal procedural and administrative legislation. It is not enough.

Criminal groups for example, of the Far East will continue strengthening cooperation with local criminal organizations and maintain their “pressure” in foreign territories, especially in Southern Korea, China, and the western coast of USA etc. From our viewpoint this is the Pacific Rim.

The Process of Corruption

— of bodies of authority and management, law-enforcement bodies will get its due rewards. Under conditions of the deformation of power, the continuation of a serious crisis situation in the economy, and in the absence of an integral system of measures of struggle against corruption (as well as in the absence of a comprehensive specialized law) we can hardly expect any radical change in the counteraction to this most dangerous phenomenon.

Corruption, as an obligatory component of the organized criminality, is mostly observed in the economic sphere. As more and more economic disputes are settled with attention of law-enforcement bodies and their use of legal methods, it is no wonder
that the corruption is enhanced in those institution using methods, inherent only in them. One of such method is bankruptcy, which in its present condition, as the chairman of arbitration court of Khabarovsk Territory Serov N. frankly has admitted on a hearing in the Regional Duma, becomes a regrettable means of redistribution of property and the elimination of the competitors (Ivanov, 1999).

However corruption prospers not only in judicial sphere. As the deputy of the State Duma Boris Reznik has declared, every third corruption crime in Russia is connected with the illegal circulation of drugs. Even people with diplomatic passports are engaged in this business. In Khabarovsk a case recently took place, when over forty kilograms of industrial heroin were withdrawn from the citizens of DPRK. Further, quite often even employees of law-enforcement bodies participate themselves in transportation of drugs. There are cases, when the revealed drugs were not destroyed but distributed through law-enforcement bodies.

Criminality in the Juvenile Population

there will be further growth of criminality in the juvenile population and, perhaps — a sharp one — will take place. Nowadays all over the Russia (as well as in the Asian Pacific countries) we observe the destruction of the institute of family. Its disintegration, degradation, weakening of family relations, irresponsibility of the parents, their cruelty and violence etc. are all observable.

It seems that it is a purposeful state policy of these countries which actively promotes the fact that whole armies of embittered and hardened teenagers have grown up to become the robbers and violators. In their turn, the ‘thieves in the law’ pay attention “to their work with the youth” since in these cadre lie many young leaders of the criminal underworld. As a result of a perverse change of public consciousness predicated on the strong influence of mass media, we find the population more and more rarely perceives corruptive actions as crimes (28).
Conclusion

In summing up we can make a general conclusion: the criminal situation and that of corruption in Russia will continue to worsen. Particularly as at the present time we observe the process of transformation of Russian far east to be one of new world’s centers of activity for transnational organized crime. In these regions and groups we will observe a rise in narcobusiness, in the trafficking of people, and of economic crime that are almost impossible to commit without corruption.

The economic potential of the far east makes the region one of the most attractive in Russia to be the “home” for local and for foreign organized crime. It is precisely here that one can obtain a massive profit through the criminal organizations that have interregional and international criminal relations.

References


Luneev V (1999) The tolerance of the authorities toward corruptive officials is brought to absurd. *Chistye ruki*, 2: 26–33;


Chapter 6

Monopoly Rights and Wrongs: Two Forms of Intellectual Property Rights Violations in Asia

Hock-Beng Cheah

IPR theft hurts not only our national economy, but our world economy as well. This crime is already costing industry approximately 200 billion [US] dollars ... a year in lost revenue and nearly 750,000 jobs .... Our investigations have shown that organized criminal groups are heavily involved in trademark counterfeiting and copyright piracy. They often use the proceeds obtained from these illicit activities to finance other, more violent crimes.¹

Contrary to the so-called free trade and trade liberalization principles of the WTO, TRIPs [the Agreement on Trade-Related Aspects of Intellectual Property Rights] is being used as a protectionist instrument to promote corporate monopolies over technologies, seeds and genes. Through TRIPs, large corporations use intellectual property rights to protect their markets, and to prevent competition. Excessively high levels of intellectual property protection required by TRIPs have shifted the balance away from the public interest, towards the monopolistic privileges of IPR holders. This undermines the sustainable development objectives that underpin [the European Union's] development policies, including poverty eradication, conserving biodiversity, protecting the environment and the realization of economic, social and cultural rights.²

Introduction

Intellectual property rights (IPRs) are monopoly rights created by legislative authority, with the intent to reward the owners of those rights with private benefits, for inventions and innovations that contribute to public benefit. The tensions between the private benefits accrued from the monopoly thus created, and the public benefit intended by legislation, form the basis for the significant controversy over intellectual property rights violations (IPRVs).

Are IPRVs a serious problem? If so, why, and for whom? These questions will be examined in relation to (a) the evidence on the extent of IPRVs in Asian countries; (b) the recent changes in the international IPR regime; and (c) the responses to the international extensions of the IPR regime.

The monopoly rights conferred on intellectual property take the principal forms of copyrights, patents and trademarks. Copyright is provided automatically to the authors of original works such as books, music, movies, paintings and computer programs. Copyright was not aimed to protect the ideas associated with these works, only their form or expression manifested in tangibles such as publications, sheet music, and video recordings. The associated benefits include the exclusive right to reproduce the work, to create an adaptation or derivative work, and to engage in public performance. These benefits may extend for a period 70 years beyond the life of the author.

Patents are scientific and legal documents that provide full disclosure of the technology associated with an invention. They are granted to the 'first to invent' (in the USA) or 'first to file' (in the rest of the world) basis, subject to the tests of novelty, non-obvious-

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3In the USA, the legal foundation for IPR rests with Article 1, Section 8, Clause 8 of the US Constitution, which vests Congress with the power "[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

4Other forms of intellectual property include trade secrets, geographical indications, industrial designs, integrated circuit design layouts, and plant breeder rights.

ness and utility. They provide patent owners the exclusive right to exploit the invention, for 20 years.\(^6\)

Trademarks can endure indefinitely, subject to recurrent registration. They offer protection against infringement of distinguishing features such as brand names, corporate logos, and geographic indications. This protection helps to establish a clear identity for an organization and its products to its customers and among the public at large. This offers some assurance of product origin and quality, and protection against confusion, counterfeiting and other deceptive practices.

Considerable resources have been devoted to promote general acceptance of modern IPR regimes in the international trading community, and to establish the necessary national infrastructures for IPR protection as prescribed by TRIPs. Developed country governments and regulatory agencies argued that local innovation in developing countries would be encouraged as locals retained more of the benefits of their own innovation, and that foreign investors would also be more willing to transfer technology with improved IPR protection under local laws. Thus, it was argued that higher levels of IPR protection and reductions in IPRVs would significantly benefit developing economies.

However, there have also been significant criticisms and resistance against these developments. These demonstrate that, contrary to conventional thinking, the problem of IPRVs is actually a double-edged one. On one hand, there are private losses incurred by the owners of IPRs, from reduced or forfeited financial and other benefits. On the other hand, there are social costs that result from the imposed restrictions on the flow of benefits to the public. While the former has received greater prominence, leading to substantial additions to domestic and international countermeasures, considerations and assessments of the latter have been neglected. This has raised serious questions over equity, sovereignty and the overall impact on the development process.

Violations of IPR are a global phenomenon, in the present as well as through the previous century. However, in recent decades there has been an increasingly vigorous push by American commercial interests, with the growing support of the US government, to take action against IPRVs that infringe the rights claimed by American IP owners. These efforts have led to strong American pressures for all countries to commit themselves to a uniform set of rules, or face US retribution for non-cooperation or non-compliance with these demands. In pursuit of these aims, the American firms and business associations, together with the US administration, have instituted monitoring and surveillance mechanisms to uncover and clamp down on IPRVs that impinge on American commercial interests and technological capabilities.

From these efforts, the available evidence reported by American sources indicates that IPRVs of software are occurring at high levels in Asia (see Table 1). The reported levels of software piracy in 2000 are highest in Vietnam (97%), China (94%), Indonesia (89%) and Pakistan (83%). However, in 2000 the reported costs of losses of retail software revenue are highest in Japan ($1,666.3 million), China ($1124.4 million) and Korea ($302 million). The total costs for 13 Asian countries are reported to be $3,939.5 million. This compares with the reported costs of $11,750.4 million for the world. This suggests that, in 2000, approximately one-quarter

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Table 1: Reported piracy rates and software revenue losses in selected Asian countries, 1994–2000

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Table 1 (cont’d) Retail software revenue lost to piracy (US$ million)

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<td>61.8</td>
<td>44.2</td>
</tr>
<tr>
<td>Taiwan</td>
<td>112.0</td>
<td>165.5</td>
<td>117.0</td>
<td>136.9</td>
<td>141.3</td>
<td>122.9</td>
<td>154.8</td>
</tr>
<tr>
<td>Thailand</td>
<td>67.8</td>
<td>99.1</td>
<td>137.1</td>
<td>94.4</td>
<td>48.6</td>
<td>82.2</td>
<td>53.1</td>
</tr>
<tr>
<td>Vietnam</td>
<td>3.9</td>
<td>35.1</td>
<td>15.2</td>
<td>10.1</td>
<td>10.3</td>
<td>13.1</td>
<td>34.9</td>
</tr>
<tr>
<td><strong>Total for above</strong></td>
<td>2,885.7</td>
<td>3,637.0</td>
<td>3,532.5</td>
<td>3,734.5</td>
<td>2,724.1</td>
<td>2,601.4</td>
<td>3,930.5</td>
</tr>
<tr>
<td><strong>Total World</strong></td>
<td>12,346.5</td>
<td>13,332.6</td>
<td>11,306.3</td>
<td>11,440.1</td>
<td>10,976.5</td>
<td>12,163.2</td>
<td>11,750.4</td>
</tr>
</tbody>
</table>

* Special Administrative Region of China.
of the total revenue losses attributed to piracy of software occurred in Asia.\textsuperscript{7}

Moreover, software piracy is not restricted within individual countries, as there is a significant and increasing regional and global trade in pirated products. News reports indicate the existence of distribution networks of counterfeit products with links between Asia and California (Evangelista, 1998; Blumenthal, 1999; Ku, 1999; Mosquera, 1999). Asian countries have been criticized for the extensive piracy of foreign books, films, and music. Trademark violations in consumer goods such as watches, clothes, clothing accessories, electrical goods, and other counterfeit products are also a significant concern.\textsuperscript{8} US Customs seizures relating to IPRVs associated with Asian countries indicate that China and Taiwan are the principal offenders (Table 2).

Such developments have attracted the attention of the Office of the United States Trade Representative (USTR). The USTR provides various reports on the state of trade and intellectual property relations between the US and other countries, which provide the basis for corresponding policies and actions by US authorities.\textsuperscript{9}

\textsuperscript{7}Caution is warranted in assessing these and other estimates of IPRVs drawn from industry and related sources, as these estimates are generally based on the assumption that in the absence of the illegal copies, legitimate products would be purchased at the full retail price (see Scott, 2001). Indeed, Ho (1995) suggested that, as a form of 'marketing strategy', manufacturers may tolerate the piracy of software to enable the market to become familiar with the product; followed by a subsequent crackdown on IPRVs after a significant market demand for the product has built up.\textsuperscript{8}Maskus (1997, pp. 13–14) noted that "A curious aspect of the debate over IPRs is that while economists devote nearly all their attention to issues of innovation, technology diffusion, and growth, the international policy arena has been largely driven by questions of trademark and copyright pirating. The latter area generates the most visible damages to firms operating in Asia and is the most proximate source of political pressure on trade negotiators."

\textsuperscript{9}These include the USTR National Trade Estimate Reports on Foreign Trade Barriers, and the USTR Special 301 Reports. These reports focus on the state of the IPR regimes among the countries that have economic and trade relations with the USA and, in particular, the manner in which American interests may be adversely affected. These reports do not focus specifically on the manner and the extent to which IPR owners in other countries may be affected by the state of American compliance with the relevant IPR requirements.
### Table 2: US Customs IPR seizures, FY1998–2000

<table>
<thead>
<tr>
<th>Country of origin</th>
<th>Domestic (US$)</th>
<th>% of total value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY1998</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>$28,951,681</td>
<td>38%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>$8,616,523</td>
<td>11%</td>
</tr>
<tr>
<td>Hong Kong*</td>
<td>$6,679,329</td>
<td>9%</td>
</tr>
<tr>
<td>India</td>
<td>$3,943,525</td>
<td>5%</td>
</tr>
<tr>
<td>Korea</td>
<td>$2,966,895</td>
<td>4%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>$1,324,353</td>
<td>2%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>$1,247,140</td>
<td>2%</td>
</tr>
<tr>
<td>All other countries</td>
<td>$22,167,059</td>
<td>29%</td>
</tr>
<tr>
<td>Total</td>
<td>$75,896,505</td>
<td>100%</td>
</tr>
<tr>
<td><strong>FY1999</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taiwan</td>
<td>$42,237,070</td>
<td>43%</td>
</tr>
<tr>
<td>China</td>
<td>$16,030,463</td>
<td>16%</td>
</tr>
<tr>
<td>Korea</td>
<td>$3,517,935</td>
<td>4%</td>
</tr>
<tr>
<td>Hong Kong*</td>
<td>$2,538,155</td>
<td>3%</td>
</tr>
<tr>
<td>Singapore</td>
<td>$1,732,074</td>
<td>2%</td>
</tr>
<tr>
<td>India</td>
<td>$1,042,150</td>
<td>1%</td>
</tr>
<tr>
<td>All other countries</td>
<td>$31,403,747</td>
<td>31%</td>
</tr>
<tr>
<td>Total</td>
<td>$98,501,594</td>
<td>100%</td>
</tr>
<tr>
<td><strong>FY2000</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>$15,101,474</td>
<td>33%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>$6,173,483</td>
<td>14%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>$3,948,187</td>
<td>9%</td>
</tr>
<tr>
<td>Hong Kong*</td>
<td>$3,594,608</td>
<td>8%</td>
</tr>
<tr>
<td>Singapore</td>
<td>$2,983,366</td>
<td>7%</td>
</tr>
<tr>
<td>Korea</td>
<td>$2,082,058</td>
<td>5%</td>
</tr>
<tr>
<td>All other countries</td>
<td>$11,444,350</td>
<td>24%</td>
</tr>
<tr>
<td>Total</td>
<td>$45,327,526</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: US Customs Statistics.

*Special Administrative Region of China.

The most directly relevant document in this regard is the annual USTR Special 301 report that focuses specifically on the standing and treatment of intellectual property among America’s trading partners. In the most recent report, China is cited on the US government’s
Table 3: Asian countries under Special 301\textsuperscript{10} scrutiny by the Office of the US Trade Representative (1994–2001)

<table>
<thead>
<tr>
<th>Year</th>
<th>Watch list\textsuperscript{11}</th>
<th>Priority watch list\textsuperscript{12}</th>
<th>Section 306 monitoring\textsuperscript{13}</th>
<th>Priority foreign country\textsuperscript{14}</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Indonesia, Pakistan, Philippines, Taiwan, Thailand</td>
<td>India, Japan, Korea</td>
<td>China</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>Indonesia, Pakistan, Philippines, Thailand</td>
<td>India, Japan, Korea</td>
<td>China</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>Pakistan, Philippines, Singapore, Thailand</td>
<td>India, Indonesia, Japan, Korea</td>
<td>China</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{10}The USTR has the task of identifying those countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access for persons that rely on intellectual property protection, pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreement Act of 1994, under Special 301 provisions.

\textsuperscript{11}The watch list is used as a means of monitoring progress in implementing commitments with regard to the protection of intellectual property rights and for providing comparable market access for U.S. intellectual property products.

\textsuperscript{12}Placement of a trading partner on the priority watch list indicates that particular problems exist in that country with respect to IPR protection or enforcement or market access for persons relying on intellectual property. Countries placed on the priority watch list are the focus of increased bilateral attention concerning the problem areas.

\textsuperscript{13}Monitoring under Section 306 of the Trade Act of 1974, as amended, means that USTR will be in a position to move directly to trade sanctions if there is slippage in enforcement of IPR agreements.

\textsuperscript{14}Priority foreign countries are those countries that: (1) have the most onerous and egregious acts, policies and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and, (2) are not engaged in good faith negotiations or making significant progress in negotiations to address these problems. If a trading partner is identified as a priority foreign country, the USTR must decide within 30 days whether to initiate an investigation of those acts, policies and practices that were the basis for identifying the country as a priority foreign country.
Table 3 (cont’d)

<table>
<thead>
<tr>
<th>Year</th>
<th>Watch list</th>
<th>Priority watch list</th>
<th>Section 306 Priority monitoring</th>
<th>Priority foreign country</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>Hong Kong, Japan, Korea, Pakistan, Philippines, Singapore, Thailand, Vietnam</td>
<td>India, Indonesia</td>
<td>China</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>Hong Kong, Japan, Korea, Pakistan, Philippines, Singapore, Thailand, Vietnam</td>
<td>India, Indonesia, Macao</td>
<td>China</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>Japan, Korea, Pakistan, Philippines, Singapore, Taiwan, Thailand, Vietnam</td>
<td>India, Indonesia, Macao</td>
<td>China</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>Indonesia, Macau, Pakistan, Philippines, Singapore, Taiwan, Thailand, Vietnam</td>
<td>India, Korea, Malaysia</td>
<td>China</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Macau, Pakistan, Thailand, Vietnam</td>
<td>India, Indonesia, Korea, Malaysia, Philippines, Taiwan</td>
<td>China</td>
<td></td>
</tr>
</tbody>
</table>

Source: USTR National Trade Estimate Reports on Foreign Trade Barriers and Special 301 Reports.

Section 306 Monitoring list, while six other Asian countries (India, Indonesia, Korea, Malaysia, the Philippines and Taiwan) are on the priority watch list, and four countries (Macau, Pakistan, Thailand and Vietnam) are on the watch list (see Table 3 and Appendix A).

As a consequence of the continuing scrutiny and the growing economic, political and diplomatic pressures, almost all Asian countries, from Japan\(^{15}\) to Pakistan, have accommodated American pressures to amend, strengthen or upgrade their IPR regimes. Starting from a very diverse range of IPR regimes associated with very different historical experiences and cultural traditions (see Ang, 1995), the

\(^{15}\)For US concerns about Japan’s patent system, see Girouard (1996).
flurry of reforms in Asia have led to the emergence of IPR regimes that are becoming more similar.

This development is being encouraged by a variety of efforts to modernize IPR regimes across Asia. The United States has actively promoted training programs to improve IP systems in Asia. The Asia Pacific Economic Cooperation (APEC) forum IPR Experts Group was formed, inter alia, to promote better IPR information, protection and administration. Advice on IPRs has also been promoted through the EC-ASEAN patents and trademarks program. The Asia-Pacific Industrial Property Centre, funded indirectly by the Japanese Patent Office, provides training courses for delegates from APEC countries. The World Trade Organization (WTO) conducts trade policy reviews and also provides relevant advice.

However, while modern IPR systems are being introduced into Asia through these and other efforts, these new systems are constrained by other influential factors in the situation. For instance, the significant levels of IPRVs in several Asian countries are linked partly to the problems in those countries of corruption, which ranges from significant to endemic (see ADB, 2000; Aditjondro, 1998; Haq, 1999; Gill, 1998; Friedman, 2000; Wingfield-Hayes, 2000). This problem is one of the principal factors underlying the serious enforcement difficulties, even where significant improvements in IPRP have been legislated. These, and other related issues, can be illustrated more clearly by examining the changing IPR regime in China.

Violation of Intellectual Property Rights: The Experience in China

Following Ukraine, China was the second most worrying country for the USTR in 2001. China was the sole country listed for Section 306 monitoring in the most recent USTR Special 301 report. The USTR’s concerns were described as follows:

... despite intense enforcement campaigns and senior level attention to the problem, trademark counterfeiting remains widespread, with
large-scale production of fake products running the gamut from pharmaceuticals to shampoo to batteries. Unauthorized production and sale of copyrighted products remain widespread. A new and disturbing phenomenon is the increased production of pirated optical media products by licensed plants that had previously only manufactured legitimate products. In addition, piracy of U.S. books continues unabated. The effectiveness of enforcement action varies from region to region, and is hobbled by lack of transparency and poor coordination among responsible police and government agencies. Criminal actions are rarely filed, the legal thresholds for prosecutions are too high, and administrative penalties are too low to deter further piracy (USTR, 2001, p. 15).

However, significant differences in historical and cultural contexts have contributed to this situation. As one study noted, "much of the advances in the use of information technology in the Asian societies occurred when there were no guidelines, no codes of ethics and certainly no codes of accepted behavior [for IPRs]. The idea that monetary values can be placed on intangible items is new to many Chinese people, and the thought of having to pay for expressions of ideas is certainly very difficult for them to comprehend" (Ho, 1995).

In practical terms, one major cause of the problem of IPRVS stemmed from the high prices of proprietary products, which included a significant premium over prices in the original markets. Furthermore, Ho (1995) pointed out that the demand for pirated products did not originate only from locals. Many Western visitors to Hong Kong also took advantage of the availability of these materials.

16Fisher (1997) noted that "software piracy in China has triggered a much sterner reaction from the United States than has widespread human-rights violations."

17For instance, it was found that "legitimate copies of the same software are retailing in America at prices around 20% cheaper than what it would cost to purchase them in Hong Kong. Thus the people of Hong Kong are paying a premium in order to obtain legitimate copies of software because the software manufacturers have decided, for various reasons to sell their products significantly more expensive than they would in America. The rationale for such policies are unclear, but what is certain is that the effect of selling legitimate software at inflated prices coupled with the low prices of pirated copies does not conform to the best environment for combating piracy" (Ho, 1995).
to make purchases from retail outlets. These materials also find substantial export markets in many other countries. In this regard, Table 4 provides an indication of the range of commodities, as well as their relative weights, among the seizures by US Customs of pirated material related to China in fiscal year 2000.

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Domestic value (US$)</th>
<th>% of total domestic value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toys / electronic games / stickers</td>
<td>4,444,012</td>
<td>29</td>
</tr>
<tr>
<td>Watches / parts</td>
<td>2,114,226</td>
<td>14</td>
</tr>
<tr>
<td>Consumer electronics</td>
<td>1,922,390</td>
<td>13</td>
</tr>
<tr>
<td>Footwear</td>
<td>1,009,208</td>
<td>7</td>
</tr>
<tr>
<td>Wearing apparel</td>
<td>790,620</td>
<td>5</td>
</tr>
<tr>
<td>Sunglasses / bags</td>
<td>747,056</td>
<td>5</td>
</tr>
<tr>
<td>Handbags / wallets / backpacks</td>
<td>723,040</td>
<td>5</td>
</tr>
<tr>
<td>Computer / parts</td>
<td>460,463</td>
<td>3</td>
</tr>
<tr>
<td>Lights / lamps</td>
<td>441,962</td>
<td>3</td>
</tr>
<tr>
<td>Sporting goods</td>
<td>384,198</td>
<td>3</td>
</tr>
<tr>
<td>All other commodities</td>
<td>2,064,299</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>15,101,474</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: US Customs statistics.

In response, American business and government organizations have brought significant pressures to bear on the Chinese and Hong Kong authorities to curb the extensive IPR malpractices. Copyright laws in Hong Kong, introduced over a period from 1972–1990, emulated the United Kingdom’s copyright act 1956, and the Copyright (Computer Software) Amendment Act 1985 (Ho, 1995). On 1 April 2001, Hong Kong’s copyright ordinance was amended to introduce more stringent provisions against software piracy. However, following significant public concerns that the amendments had hampered the dissemination of information in enterprises as well as teaching activities in schools, in June 2001 the legislative council
passed the Copyright (Suspension of Amendments) Ordinance 2001.\textsuperscript{18} As a result, the criminal provisions in the recently amended copyright ordinance will continue to apply, with a slightly narrowed scope, to computer software, movies, television dramas and music recordings. For copyright works other than these four categories, the criminal provisions will revert to the position before the amendments took effect.

In China, IPR protection laws commenced in 1982 with the introduction of the trademarks law. This was followed by the copyright law that came into effect on 1 June 1991. China became a party to the Berne Convention and the Universal Copyright Convention in October 1992. Also in 1992, the ministry of engineering and electronics industries of China formulated the measures on computer software copyright registration, in accordance with the computer software regulations. In addition, the State Council promulgated the regulations on the implementation of international copyright treaties (the “copyright treaty regulations”), which came into effect on 30 September 1992. Later in 1994, the Decision of the Standing Committee of the National People’s Congress concerning Punishment of the Crime of Copyright Infringement was issued. By the end of 1999, Chinese courts at various levels had heard and settled a total of 30,091 cases involving intellectual property. Among them, 3,411 were copyright cases.

Ho (1995) had noted that the laws for the prevention of software piracy in China and Hong Kong were “adequate”, however, there were significant lapses in their enforcement. These were attributed to several causes, including the significant differences, in historical backgrounds and cultural traditions between China and the West, the process of decentralization of administrative control that accompanied the economic liberalization process in China, the absence of legal protection for IPRs in the past, and unfamiliarity with the recently introduced IPRP legislation and their associated legal process.

\textsuperscript{18}This is an interim measure that will lapse on 31 July 2002, to permit more permanent amendments to be formulated and implemented.
Ho (1995) also noted the problem of corruption in Hong Kong and its connection to IPRVs. Mu (2000, 227–232) indicated that corruption had been reduced significantly in Hong Kong in recent decades, and this is supported by other surveys. However, these surveys, as well as other reports indicate that corruption is more serious in mainland China (Johnston & Hao, 1995; Nimerius, 1997; Gong, 1997; Seattle Times, 2000), where the problem of IPRVs also occurs on a larger scale. In this regard, however, the problem of corruption has been fueled and compounded by the process of economic liberalization in China. In a situation where ‘to become rich is glorious,’ it has become more difficult to distinguish between what is ‘public’ and what is ‘private’, and between ‘corrupt’ and ‘reformed’ behavior (Johnson & Hao, 1995, pp. 90–91). Specifically, it has been contended that the economic reforms in China have resulted in “a system that is doubly plagued by problems attributable both to the plan and to the market. These problems reflect a system that has failed to remove all the sources of corruption inherent in the socialist planned economy while opening new opportunities for malfeasance with the addition of a partial market” (Oi, 1991, p. 145. See also Cheah, 2000).

In this context of a proliferation of a wide range of corrupt practices, it is by no means clear in the public mind that IPRVs, specifically, are particularly reprehensible. Indeed, to the extent that IPRVs occur widely, at the same time as they are made a punishable offense, a situation could emerge, where there is a serious disjunction between private behavior and official standards of morality. This situation may undermine respect for the law, rather than alter private behavior (see Steinberg, 1997; Palmer, 2001).

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19 Transparency International provides annual reports of the ‘Corruption Perception Index’. These indicate that Hong Kong ranked 15th out of 90 countries surveyed in 2000, and 14th out of 91 countries surveyed in 2001. China fared much worst in these reports; it ranked 63rd in 2000, and 57th in 2001.

20 See Guo (1998), and USTR National Trade Estimate Reports on Foreign Trade Barriers and Special 301 Reports relating to China.
The Rights and Wrongs of Intellectual Property and TRIPs

The theoretical and commercial arguments in favor of IPRs have dominated the scene, and they constitute the basis for conventional approaches to the establishment and promotion of modern IPR regimes (see Menell, 2000; Gordon & Bone, 2000; Park, 2001). Conventional support for the creation and protection of IPRs is based on the arguments that creativity and innovation provide significant benefits (utility) to society, promote scientific and artistic advances, and foster progress. The individuals responsible for these acts of creativity and innovation should be appropriately rewarded for their efforts through grants of IPRs, which provide the opportunity for the IPR owners to appropriate exclusively the resulting private gains for a period of time. These rewards would increase the motivation for them and others to engage in further creative and innovative efforts. In the absence of IPR grants the potential gains would be diffused among imitators and others, and incentives would not exist for further creative and innovative efforts to be undertaken, with consequent adverse effects for social welfare.21

However, these arguments have been vigorously challenged.22 Menell (2000, p.163) offered the following conceptual and methodological criticisms:

Intellectual property is rarely justified on one theory... . Economic theorists have produced multiple plausible models for which empirical distillation will remain elusive and unlikely to be of much general predictive value due to the heterogeneity of inventive activity, the diversity of research environments, the complexity of

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21 According to Jorde and Teece (1993, p. 594), “Innovation has well-known free-rider exposure and public good characteristics. Know-how leakage and other spillovers impair incentives to innovate by redistributing benefits to others, particularly competitors and users. To maintain adequate incentives to invest in innovative activity, without providing government subsidies, free-riding must be curtailed. This is how economists justify patents, copyrights, trade secrets and other aspects of intellectual property law which restrict competition.”

technological diffusion, the richness and changing nature of real world institutions and the obvious measurement problems in conducting empirical research of this type. The comparative advantages of various configurations of intellectual property rights, antitrust standards, government subsidies, regulation and other encouragements for innovation are difficult to assess. The operation of these various alternatives turn on key assumptions... for which empirical evidence is limited in general and with regard to heterogeneous contexts in which these issues arise... recent work has shown that the holy grail of a perfectly calibrated incentive system is unattainable.\textsuperscript{23}

As a consequence, it is not surprising when Patry (1997, p. 4) contended that the law has failed to achieve its objective.\textsuperscript{24} Evidence from industry lends further support to these criticisms. In the

\textsuperscript{23}This criticism has been supported by Scott (2001), who pointed out that, "To date, the beauty of the copyright monopoly ... is that it has no real basis justifying its existence. Rather, the proponents of copyright make deft use, as the circumstances require, of a variety of different justifications, from innovation, to giving just rewards to the author, to promoting culture (among others). As a result of this nebulosity copyright has effectively been detached from means of evaluating and testing its usefulness with the consequence that it is difficult, if not impossible to verify the effectiveness of copyright and similar monopolies in providing the benefits they claim to provide. Further, should it be possible to contradict one of the bases of copyright, copyright proponents are able to adopt an alternative justification, given that simultaneously contradicting all justifications will be a herculean task.... Effectively, to date, copyright proponents have said to legislatures something along the lines of, 'protecting us as an industry is good for society as a whole, but we can't give you any evidence which supports us on this and, in fact, there's actually no way to even measure the benefit that such protection brings to society, so you're just going to have to trust us.'"

\textsuperscript{24}Specifically, he argued that "United States copyright law has failed [in] its essential purpose — to benefit authors — and is being shaped largely by powerful distributors and their lobbyists with the dual goals of extending a monopoly (in order to extract high prices from the public) while simultaneously depriving authors of as much money as possible (though they push authors forward, puppet-like, as the intended beneficiaries). In creating this system Congress has exceeded its authority under the Constitution, and unless checked by the courts it is likely to transmogrify copyright from a vehicle for the promotion of learning into a form of business protectionism divorced from the creation of new works" (Patry, 1997, p. 4).
pharmaceutical industry, for instance, it has been alleged that, “the real debate is about the duration and scope of patent protection... twenty years is an excessively long period over which to entrench monopoly rights, especially in a sector already characterized by high profit margins. Moreover, the patent system itself is subject to serious misuse. Companies have developed a high level of expertise in prolonging the life of patents through minor modifications that may not amount to genuine scientific invention. And while the cost of developing new medicines is high, in many cases part of this is covered by public funds and tax breaks” (Oxfam, 2001a, p. 7. See also Oxfam, 2001b).

In relation to the software, semiconductor and computer industries, research has indicated that, “Intellectual property appears to be one of those areas where results that seem secure in the context of a static model are overturned in a dynamic model. Imitation invariably inhibits innovation in a static world; in a dynamic world, imitators can provide benefit to both the original innovator and to society as a whole. Patents preserve innovation incentives in a static world; in a dynamic world, firms may have plenty of incentive to innovate without patents and patents may constrict complementary innovation” (Bessen & Maskin, 2000, p. 20).

Nevertheless, the conventional arguments for IPRs have been extended from the domestic to the international arena. The most significant recent international IPR developments occurred during the Uruguay Round of world trade negotiations, which concluded in 1994 with an agreement to establish the World Trade Organization (WTO), and successfully incorporated IPRs as a trade issue based on the agreement on trade-related aspects of intellectual property rights (TRIPs). Under this agreement, developed countries had to comply with the TRIPs Agreement by 1996, developing nations had to complete implementation by 1 January 2000, and least-developed countries are permitted until 2005 to implement the agreement. Creating and implementing national intellectual property regimes

25For new business models based on such insights, see Ghosh (1998) and Young (1999).
would involve substantial administrative changes and costs, especially for developing countries.

The TRIPs agreement requires WTO member nations to establish formal judicial channels to protect intellectual property rights, including copyrights, patents, trademarks, trade secrets, geographical indications, industrial designs, integrated circuit design layouts, and plant variety, and to enforce effective deterrent penalties against violations.

The changes were intended to promote global harmonization of IPRs (and to curb IPRVs) based on specified minimum standards. The minimum standards were derived from legislation in industrialized countries. WTO member nations have to comply with these standards, where necessary, by modifying their national legislation. Enforcement of a country's compliance with TRIPs is ensured through the WTO dispute procedure, which places the burden of proof on the defendants. Countries that do not meet their obligations can be subjected to trade sanctions. By such means, the TRIPs Agreement has effectively transferred responsibility to public authorities to protect the private interests of foreign nationals and corporations.

The agreement also fully integrates biotechnology and pharmaceuticals into the IPR regime, whereas previously approximately 50 developing countries and several developed countries either excluded medicines from being patented, or provided patents only for production processes rather than products. The new regime creates a harmonized global system under which inventors are granted patents that provide exclusive marketing rights for a minimum of 20 years.

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26 A World Bank lead economist for trade policy pointed out that "The TRIPs standards are sometimes described as 'minimum' standards, but they are minimum only in the sense that each member must provide at least the specified levels of protection and coverage. For perhaps every member, even the industrial countries, they represent an extension of intellectual property rights in favour of intellectual property providers over users" (Finger, 2000, p. 430, emphasis added). More ominously, Finger (2000, pp. 430–431) noted that, "The mandate that the industrial countries have delivered through TRIPs is 'Do it my way!' A developing country that opted to develop its own alternative would add to the cost of implementation the cost of developing that alternative plus the cost of defending it — in WTO's political and legal processes."
for 'new and inventive' products. Developing countries that did not have product patents must do so by 2005. However, all countries must offer 'market exclusivity' (patent protection) to drugs for which patents were filed after 1995. Moreover, Article 27.3(b) of the TRIPs Agreement requires signatories to "provide for the protection of plant varieties, either by patents or by an effective sui generis system, or by any combination thereof." This has led to the extension of an international IPR regime into the domain of living organisms.

The TRIPs agreement was motivated by demand from the developed industrialized countries for better protection of the intellectual property rights of their exports and investments. However, there have been strong criticisms directed against TRIPs. One criticism concerns the substantial costs, estimated at US$150 million for each of the least developed countries to invest in creating the capability to implement TRIPs at the expense of higher priority development needs, such as basic education. In the face of such higher priority needs, Finger (2000, p. 436) argued explicitly that spending to implement TRIPs "would not make economic sense."

Furthermore, even if the intention of producing a harmonization of IPR regimes around the globe were to create equity through establishing a form of 'level playing field' for all countries, the reality is very different. A weak state can be compelled to comply, while a strong state can opt out of compliance if it chooses to do so, and there is limited, if any, means for others to enforce compliance.27

More fundamentally, while the principal justification for establishing the WTO and TRIPs was to promote global free trade, Okediji (1999, p. 134) has argued that "the very grant of intellectual property is a form of protectionism and, as such, is inherently contradictory

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27As Byers (2000) pointed out, "The WTO enforcement system is also highly favourable to the US. Once the judicial process has run its course, the resulting decision is enforced by 'countermeasures' — the suspension of tariff reductions that the winning country would otherwise have been legally required to provide to the loser under WTO rules. These punitive measures can be taken against any of the losing country's exports, even if they have no connection with the dispute.... The WTO's reliance on such retaliation means that non-compliance will only be punished effectively in cases where the winning party is at least as powerful as the loser, and no other member of the WTO, not even the EU, is as powerful as the US."
with the free-trade ideal.\textsuperscript{28} Furthermore, "current WTO rules, as a result of corporate lobbying, sacrifice public health for private profit. It also [creates] the extraordinary anomaly whereby the WTO, an organization charged with developing rules for 'free trade', is providing a legal framework for the development of corporate monopolies (Oxfam, 2001a, p. 2).\textsuperscript{29}

These concerns may be illustrated by considering examples in the field of pharmaceuticals. As a result of the changes in the IPR regime, Oxfam (2001a, p. 3) estimated average price increases for medicine in the range of 200–300 per cent for many low-income countries, and higher for some key medicines. These new rules also threaten to make basic medicine even less affordable to the poor.\textsuperscript{30} In this regard, "Various polite formulations and legalistic arguments can be used to explain what is happening in the name of IP protection. But

\textsuperscript{28}Indeed, "the weaknesses of the free trade model are negatively reinforced by weaknesses in the intellectual property model, with potentially adverse consequences for consumers worldwide, but particularly in developing countries" (Okediji, 1999, p. 134). Okediji contended that "Even if the protection of intellectual property in each individual country were to produce welfare benefits within that country, the enhancement of global welfare would require not only uniformity in the rules of protection, but also that each country shares similarities in history, culture, political organization, and legal institutions so that each could potentially benefit in comparable ways from an integrated international system" (Okediji, 1999, p. 122).

\textsuperscript{29}Oxfam also noted that, "The WTO's agreement on trade related intellectual property rights (TRIPs) is a dream come true for trade lawyers, and a nightmare for the general public. Its complexity and possible differences in interpretation mean that its implications for human development and poverty reduction are difficult to decipher. Another problem is that TRIPs is arguably the most heavily politicised area of WTO negotiations. Implementation will be governed as much by power politics and corporate lobbying as by legal texts" (Oxfam, 2001a, p. 18). See also the reported observations of Joseph Stiglitz, a former World Bank chief economist, and a recent recipient of the Nobel Prize for Economics (Palast, 2001).

\textsuperscript{30}Furthermore, "WTO rules provide limited public-health safeguards, especially in the case of national health emergencies. These are hedged in by onerous conditions and, in practice, efforts to apply these measures have been fiercely contested by pharmaceutical companies, often with the backing of northern governments" (Oxfam, 2001a, p. 4).
the truth is that corporate self-interest is being placed before people's lives" (Oxfam, 2001a, p. 6).

The difficulties cited above demonstrate that, contrary to conventional thinking, the problem of IPRVs is actually a double-edged one. On one hand, there are private losses incurred by the owners of IPRs, from reduced or forfeited financial and other benefits. On the other hand, there are social costs that result from the imposed restrictions on the flow of benefits to the public. While the former has received greater prominence, leading to substantial additions to domestic and international countermeasures, considerations and assessments of the latter have been neglected. This has raised serious questions over equity, sovereignty and the overall impact on the development process (Aoki, 1998a).

In Whose Interest? Developed Country Dominance and Developing Country Vulnerabilities

The developed countries have a strong vested interest in securing their dominance globally by promoting the adoption of an IPR regime in which they now have substantial entrenched advantages. This may be observed more clearly by examining the efforts of the USA in this realm. US officials have sought fervently to convince developing country governments that IPR protection would be mutually beneficial. It was argued specifically that,

Protecting innovation is critical to the future growth of developed and developing countries alike. There is a direct correlation between a country's protection of intellectual property — patents, copyrights, and trademarks — and its economic growth and development... . Without protection of trade secrets, without patent or trademark safeguards, countries in every stage of development will fall short of their potential. In case after case, effective protection of intellectual

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31The most prominent recent event in this regard is the US department of justice antitrust lawsuit against Microsoft Corp. The investigations commenced on May 30 1990, the lawsuit was filed in May 1998, and the proceedings have undergone a continuing lengthy legal process. See Dawson (2001) and "US v. Microsoft timeline" at http://www.washingtonpost.com/wp-dyn/business/specials/microsofttrial/timeline/
property has been a launching pad for domestic and foreign investment, technology transfer, economic growth, and high paying jobs.... nations that fail to protect intellectual property will be left behind (Eizenstat, 1999).\textsuperscript{32}

However, such pronouncements ignore America’s own historical experience with IPRs. Post (1998) revealed that from its outset US copyright law discriminated against foreigners. Introduced in 1790, the US Copyright Act was applied only to citizens and residents of the USA, and the law did not respect the copyrights of foreigners.\textsuperscript{33} One century later, in 1891, the International Copyright Act was passed, and the US then agreed to provide equal treatment under the copyright law, but only to foreigners whose countries provided reciprocal copyright protection to American authors. Post noted that, “Even then, it must be admitted, recognition of foreigners' rights was extended rather grudgingly, and in a manner that denied foreigners much effective protection for their works within United States borders.” This protection was weakened significantly by the insertion of a ‘manufacturing clause’.\textsuperscript{34} This imposition was only

\textsuperscript{32}Stuart E. Eizenstat was US Department of State, Under Secretary for Economic, Business and Agricultural Affairs. See similar arguments by Larson (2001). Other American officials proclaimed, “We know of many instances where U.S. companies keep their latest invention off the market in developing countries because they do not want to have them unfairly copied. They make available instead older, off patent technology, for which intellectual property protection is no longer available. So the message to developing countries is this: Provide strong intellectual property protection, and the most recent technology will come your way” (Papovich and Burcky, 1998, p. 14).

\textsuperscript{33}Aoki (1998a, p. 25) noted that during the nineteenth century, the United States had the reputation of being the “Barbary Coast” of intellectual property. Lessig (2000a) observed that “Our scorn for China notwithstanding, we were, for the first 100 years of our history, a pirate nation.” No hint of this background is offered to present-day developing countries by US advocates of TRIPs.

\textsuperscript{34}This clause required that any printed book or periodical in the English language had to be printed from type set within the limits of the United States, or from plates made within the limits of the United States, from type set therein, or by a lithographic or photoengraving process wholly performed within the limits of the United States, in order for the work to receive copyright protection at all. Furthermore, the printing of the text and the binding of such books had to be performed within the United States” (Post, 1998).
lifted in 1976 with a revision of the copyright act. Indeed, effective protection for foreigners "would not truly become a part of US copyright law until 1989, with United States accession to the Berne convention on literary and artistic property (and its requirement that all signatory nations provide the same treatment to foreigners as it provides to its own nationals)" (Post, 1998. See also Patry, 1997; and Scott, 2001).

Thus, for the most part of its existence as a sovereign nation, the USA did not accord equal treatment to other countries, equivalent to the 'minimum standards' that it has sought to impose, since 1994 under the WTO TRIPs agreement, on other countries, including much less developed countries. This may be related to the evolution of US interests in IPRs, in step with its evolution from a developing economy to a global superpower. As Post (1998) explained,

America's copyright policy was part of a larger strategy, designed (largely) by America's first Treasury Secretary, Alexander Hamilton, to promote the development of infant industries within the United States. Providing copyright protection for American authors only, it was felt, worked to the advantage of the growing American publishing industry; American publishers could, because of this provision, publish American versions of foreign (especially British) works at relatively low cost (since they were not obligated to pay royalties to the [foreign] authors when they did so). Much of the early history of international copyright throughout the West is consistent with this simple principle, as discrimination against foreigners was the rule, rather than the exception, in international copyright relations until the middle part of the nineteenth century.... As countries move up the developmental ladder — from importer to exporter of intellectual creations — the ratio of benefits to costs of recognizing the intellectual property rights of foreigners shifts. Exporting nations are happy, in effect, to offer the following deal to others: we will provide copyright protection for the works of your authors if you provide the reciprocal protection for our authors under your copyright law — for we have more to gain from the protection that our authors can receive outside our borders than we have to lose by offering protection to foreigners.
Learning from this experience, it is arguable that the USA in particular, and the developed countries in general, should permit the developing countries to postpone adoption of an equivalent IPR regime until they reach a similar level of development to that reached by the USA in 1976 or 1989. This may help to redress the situation where, in 1995, the advanced economies comprised less than 20 per cent of the world’s population, but they accounted for almost 60 per cent of the world’s gross domestic product, more than 80 per cent of the world’s scientific publications, and more than 90 per cent of the patents filed in the European Union and in the USA (Figure 1).\(^{35}\) However, the reality is that, in this situation, the more developed countries have a strong interest in broadening the acceptance of and adherence to the IPR regime that now buttresses their scientific, technological and informational dominance in the world, in the rest of the world. This would institutionalize globally a regime in which the developed countries already have a significant headstart and incumbent advantages over the less developed countries (see Table 4).

Indeed, substantial public resources, support and protection are provided to promote R&D directly and indirectly in developed economies at universities, government research laboratories, and through large defense budgets with substantial spin-offs and a wide range of benefits for commercial interests in those countries that acquire the IPRs from the results of those investments, subsidies and protection. On one hand, in the face of the strong protection of the IPRs of those goods flowing from the developed countries, less developed countries are invited to engage in ‘free trade’. On

\(^{35}\)Sachs (1999) pointedly observed that, “The role of the developing world in one sense is much greater than the chart indicates. Many of the scientific and technological breakthroughs are made by poor-country scientists working in rich-country laboratories. Indian and Chinese engineers account for a significant proportion of Silicon Valley’s workforce, for example. The basic point, then, holds even more strongly: global science is directed by the rich countries and for the rich-country markets, even to the extent of mobilising much of the scientific potential of the poorer countries.”
the other hand, acceptance of TRIPs would prevent developing countries, from claiming infant industry protection to support competing products. Through such means, the dominance of advanced countries is likely to be enhanced even further by the recent expansion of the scope of IPR regime, its more systematic global diffusion, and the more rigorous enforcement measures that are being promoted. This impact may be illustrated by examining recent developments in the fields of biotechnology, and information communication technology (ICT).

Through the extension of patent protection, pharmaceutical, agricultural and biotechnology firms are aggressively claiming IPRs to human, animal and plant genomes, useful cell lines and
Table 4: Index of patent rights, 1960–1995

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Note: Regional rank in Asian countries is based on 10 selected countries in 1995. Regional rank in high-income non-Asian countries is based on 13 selected countries in 1995.

*Special Administrative Region of China.

agriculturally important crop plants and livestock. This represents a qualitatively new form of the private appropriation of resources, and provides control over life forms. More significantly, ownership rights are gained not just over individual specimens, but also of whole species (King & Stabinsky, 1999). IPRs provide the means to control access, supply and prices. It also provides the means for the expropriation of property rights that were previously in the public domain, including acts of 'biopiracy' (Shiva, 1997; Assisi Foundation et al., 1998).

The application of genetic modification techniques to plants and food crops, and the granting of patents for these modifications, permits corporations to increase their control over food production. For instance, Monsanto has used a combination of a legal contract and patent protection to make sure that farmers pay royalties on its genetically engineered varieties, every single cropping season. Farmers lose the right to save seeds from a current crop for planting in

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36 In the USA, this process commenced with the granting of patent protection for a genetically engineered bacterium by the US supreme court in the case of Chakrabarty vs. US patent and trademark office. “The decision was very close (five to four) and was narrowly constructed with respect to genetically modified microorganisms. But it opened the flood gates, and soon Harvard medical school scientists applied for, and were granted, a patent on a genetically modified mouse. Since then, US, British and European patent offices have issued thousands of patents on genes, plants, animals and even human cell lines” (King & Stabinsky, 1999).

37 According to Wolfson (2001), “Documents uncovered in United Kingdom show that over half a million patents on genes or gene sequences have been granted or are pending. These include 161,195 patents on human genes or gene fragments, covering virtually every tissue in the body, ranging from lung tissue to light-sensitive pigment in the eye. Other patents include 152 patents on rice, patents covering 72 HIV genes, 1,331 patents on mice, 501 patents on chickens, and 11 patents on spiders. The race to patent is motivated by financial gain, because patent owners can charge royalties and fees to anyone using the genes, whether for medical research or for growing patented crops.”

38 For strong criticisms within the USA against the pharmaceutical industry, see Goozner (2000) and Baker (2001).
subsequent season. Monsanto prosecuted farmers who saved their genetically engineered seed. Furthermore, to reduce the difficulties and costs of policing such infringements, 'terminator' seeds have been developed to create genetically modified crops whose seed can be eaten, but cannot be propagated (Broydo, 1998; Ho, et al., 2001; RAFI 2001).³⁹

In addition, biotechnology also allows corporations such as Monsanto to gain exclusive rights over the pesticides, fertilizers, and other chemicals involved in the production of the patented crops. The result is the creation of a composite 'package', though bundling of a patented crop together with its associated pesticides, fertilizers and other chemicals, to which farmers may become tied by means of design, contract and patent, combined with the threat of potential lawsuits in the event of any deliberate or even accidental infringement.⁴⁰

For humans, patents on gene diagnostic tests can impinge adversely on medical treatment. Specifically, Merz (1999) reported that the monopolisation of medical testing services has the following effects: it may reduce patient access to testing; lead to inequitable extensions of patent terms on tests and related discoveries; grant to patent owners the ability to dictate the standard of care for testing and to interfere with the practice of medicine; create conflicts of interest; and threatens to restrict research activities.

In this regard, although patents have been justified as inducements to invest in promising technologies, they can also be used to impede science and have a restrictive impact on research and innovation (Heller and Eisenberg, 1998). Furthermore, Cook-Deegan (1998) pointed out that once a product is patented, that patent extends to any use, even those that have not been disclosed. The severity of the problem depends entirely on the discretion of patent owners. Moreover, the terms of licensing property and intellectual

³⁹For a range of other criticisms against Monsanto, see Bensen, et al., (1997), Arax and Brokaw (1997), Papadimitriou (2001),
⁴⁰Such measures "allow these corporations to amass huge amounts of money. Biotechnology is about making money for the biotech industry" (Wolfson, 1997).
property are at least as important as what gets patented. As the US patent and trademark office does not determine the license contents of patents, only what gets patented, many important decisions are well beyond the reach of both the patent office and the courts rendering decisions about patent litigation. In order to get access to a valuable database or unpatented cell line, for example, scientists may sign agreements that concede rights to future discoveries.\(^\text{41}\)

Similarly, in the field of ICT, the scope of IPR protection has been broadened significantly (Reiling, 1997). This can be illustrated most clearly by examining the changes that have been promoted in the USA. These changes have been characterized as ‘the copyright grab’ based on a ‘maximalist agenda’ by IPR owners to capture more legal control than ever before over the products that they produce or distribute (Samuelson, 1996a). These legal measures complement and support other physical and technical control mechanisms to restrict access to and the use of digital information over which IPR owners assert claims.

\(^{41}\)Cook-Deegan (1998) noted that “Norms governing licensing vary tremendously among companies and academic research institutions, and appear to be changing toward more aggressive enforcement of property and intellectual property rights, imposing more constraints on future discoveries based on licensing agreements. Many scientists labor under the myth that their research activities are in a category exempt from patent infringement allegations. Some are beginning to learn otherwise, as they get letters asking them to sign up for licenses on transgenic animals or research methods lest they risk being sued for patent infringement.” He also warned that, “Terms in licensing agreements can seem deceptively innocent, constraining only future ‘commercial’ uses of research results. Those terms, however, matter precisely when the research is likely to have direct benefit in the form of products and services, that is, have some prospect of improving health or other practical use, which usually entails some commercial activity. The only discoveries that encounter the ‘reach-through’ provisions may be the ones that are actually useful. If those making individual decisions about licensing agreements are oblivious to their systemic consequences, medical researchers are apt to find themselves fighting an escalating battle, locked into a complex multi-player prisoner’s dilemma.”
The measures include attempts to prevent the physical availability of equipment that can provide access or the ability to reproduce and distribute digital information. For instance, when digital audio tape (DAT) emerged, efforts were successful to ensure that the public was only provided access to DAT players, but not to high-quality DAT recording devices. More recently, with the emergence of digital video disc (DVD) technology, similar measures to curb the public's ability to record and duplicate material were introduced, together with the differentiation of pre-recorded DVD material into one of 6 regions in the world. This serves intentionally to segment the global market for that material, to the benefit of the IPR owners.

Technical measures to prevent or limit independent recordings, duplication, and distribution of digital material include measures such as encryption, the recent secure digital music initiative (SDMI), and efforts to introduce copy protection for removable media (CPRM), which will control copying, moving, and deletion of digital media on a host device, such as a personal computer (Boyle, 2000a, pp. 11-12). However, technical restraints can be breached. This possibility led to the introduction of new and extended legal measures to deter efforts to breach these and other technical measures for IPR protection.

Samuelson (1996a) warned that the new legal measures would seriously restrict the use, duplication, and distribution of digital material. Furthermore, these measures would have the capability to remove fair use provisions and first sale rights, leading to

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42 In the pre-digital age, a similar situation emerged with Guttenberg's invention of the printing press in 1450. Then, the problem was addressed by the creation of copyright regimes in Europe and the licensing of printers and publishers. More recently, Universal City Studios and Disney sued Sony for the introduction of Betamax video tape recorders (VTRs) that enabled the public to record and copy video material that they would otherwise not have the capability to do easily. Sony won that legal dispute in 1984, and VTR recordings and duplication became pervasive.
pay-per-use practices. These measures could also force Internet service providers to take responsibility for policing IPRVs by their subscribers; and make it illegal for anyone to circumvent the encryption and other technical protection measures implemented by the IPR owners (Siegel, 1999; Samuelson, 2001). With the introduction of the Digital Millennium Copyright Act (DMCA) in the USA in 1998 much of the predicted outcome has become a reality (McCullagh, 2000; King, 2001).

Other legal measures that have also extended the reach of IPR owners flow from the issue, since 1998, of patents for 'business methods' by the US Patent and Trademark Office since 1998, that offer IPR protection not only to products, but also to the specific means of selling or distributing them, such as the patent issued to Amazon for its 'one click' ordering system (Grusd, 1999). Another related development is the introduction of contracts through 'shrink-wrap licenses', and 'click-wrap licenses'. Such practices convert the act of opening a package, or clicking "I agree" to initiate the downloading of material from the internet, into an assent to a contact with an IPR owner, on terms and conditions often unclear to the recipient, and determined solely by the IPR owner, on a take-it-or-leave-it basis (see Nimmer, et al., 1999; McManis, 1999).

Other significant developments include the extension of IPRs to databases, e-books, online journals and the extension of the term of

43Patry (1997, pp. 4-5) pointed out that, "In this decade, the 'copyright industries' have sought (usually successfully) to block the public's access to works of authorship disseminated by new technologies, until legislation is enacted permitting them to control the terms and conditions of the access. Beginning with the audio home recording act of 1992, followed by the digital performance in sound recordings act of 1994, and more recently in the 'information superhighway' proposals and efforts to encode digital video discs with mandatory copy-blocking schemes, copyright legislation is in danger of becoming little more than a codified set of industry-drafted technical requirements prohibiting all access except as approved by the corporate rights holder."

44In December 1999, a highly publicised lawsuit was brought by RIAA against Napster, a music file-sharing website, based on the MP3 file format (Blackowicz, 2001).
IPR protection: Historically, there was no copyright protection for databases. However, new laws have extended IPR protection for databases in USA and Europe. Similar developments have also led to very grave concerns in the publishing field for a number of print as well as online journals (see Samuelson, 1996b; Sutherland, 1999; Harper, 2001; Corry, 2001). Finally, in the USA, the term of copyright has been extended 11 times in the last 40 years, most recently by the Sonny Bono Copyright Term Extension Act of 1998. These changes demonstrate the increasing reliance on newer forms of IP protection, exemplified by efforts to promote increasingly restrictive IPR legislation to support the introduction of more sophisticated

45In the USA, the collections of information antipiracy act, that was passed in 1998 and provided IPR protection to databases, shifts the constitutional balance in three ways: “First, the Constitution requires originality for protection, whereas the act would extend property rights to compilations that lack it. Second, the Constitution grants protection for only limited times. The act attempts to meet this requirement by limiting protection to 15 years after the investment of resources that qualifies a portion of a collection for protection. However, because the act protects a discrete portion of a database from the date of investment in that portion, continuously updated databases will be mixtures of protected and unprotected data. Thus the act gives effectively ‘rolling’ and perpetual protection to a collection, which is directly against the Constitution’s principle of a limited period. If so, compilations lacking originality would arguably have stronger legal shields than patents or works of creative authorship. Finally, the act would shift the goal of copyright law from the promotion of science and creative authorship to the protection of investment” (Gardner and Rosenbaum, 1998, p.787).

46Originally, copyright in the USA lasted for 14 years. In 1998, individual-owned copyrights were extended by 20 years, from life plus 50 years to life plus 70 years. Corporate-owned copyrights were extended by 20 years to 95 years, as were all copyrights for works produced before 1978 (Walker, 2000). See also Lavigne (1996) and Lutzker (1999). Furthermore, as Lessig (2000a) pointed out, “Since 1790, a lot has changed. Copyright is no longer restricted to ‘maps, charts and books.’ It reaches anything ‘fixed in a tangible medium of expression’. It no longer regulates only publishers; it reaches anyone who makes a ‘copy’. Nor is copyright limited to copying: A derivate use of the original work can also be subject to the original copyright. And finally, no longer is the initial term relatively short…. Copyright has thus morphed from a short, relatively insignificant regulation of publishers, to a restriction that is effectively perpetual, and that regulates everyone with access to a computer or Xerox… machine.” See also Lessig (2000b).

The plan is fairly easy to work out. After claiming new, larger and longer intellectual property rights, the next step is to engage in much more fine-grained regulation of how that intellectual property can be used. Owners of content will rely on shrink-wrap contracts and technological restraints to strip users of the standard rights offered by intellectual property systems: the right of fair use, first sale and so forth. Software, music, e-texts, and movies will be licensed rather than sold to users. As a result, some of the privileges people take for granted with a book — the ability to lend it, resell it, criticize it, parody it and so on — will be explicitly waived by contract. Technological encryption and water-marking schemes will be used to tie digital objects to particular people and computers, so that there are physical as well as legal restraints on the use of those objects. These schemes will prevent (or at least hamper) not only black market "piracy" of intellectual property, but also “gray market” resale, non-market gift, or loan transactions and competitive attempts at decompilation and reverse engineering.

Despite, these and other growing concerns, institutional measures to support IPR regimes are being expanded rapidly and fortified more vigorously in official circles, rather than being restrained or moderated. Indeed, Aoki (1998b, p. 271) noted that

The pattern in expanding intellectual property protection that has emerged has been to ‘whipsaw’ domestic and international protections against each other. The US will first sign onto a multilateral

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47These may range from encryption to mu-chips (tiny, flexible microchips, recently invented by Hitachi, that can be embedded in material such as clothing labels, and used for anti-counterfeiting and tracking purposes).

48It has been noted that, “The balance that copyright law has achieved between the interests of copyright owners and the interests of the public has [previously] evolved slowly and has been only periodically adjusted. Today, however, the pace and the magnitude of change threaten to skew this balance to the point of collapse. Some of these changes — licenses, access controls, certain provisions in the digital millennium copyright act (DMCA) — have the potential to drastically undermine the public right to access information, to comment on events, and even to share information with others” (Harper, 2001).
treaty like the GATT, which provides for ‘minimum standards’ of intellectual property protection. Next, there are moves to similarly ratchet up domestic levels of protections, which in turn exerts pressure on other treaty nations to likewise increase protections. The end result is that minimum standards of protection become driven by a maximalist agenda.’

As a consequence of this and other developments, there has been a significant shift in the ownership of and interest in IPRs, contrary to the original aims of American IPR laws (Patry, 1997; Travis, 2000). Even the mainstream news magazine, The Economist (2001a) noted that, “Growing numbers of economists are unearthing evidence that America’s patent regime is out of step with precisely those values it was designed to promote.” Some observers no longer perceive the situation in terms of right or wrong, or costs versus benefits, but in terms of politics and political economy.49

Continuing or even accelerating appropriation of IPRs by the more developed countries, such as the USA, leads to the spectre of a situation in which even more knowledge, information, technology and other resources will be directed towards further enhancements of the incomes, living standards, preoccupations and desires of the population in the wealthy countries, at the expense of the poorer countries. While it is possible that the recent changes in the international IPR regime will bring some benefits to the population of the world’s poorer countries, there is a greater likelihood that the new IPR regime will help to perpetuate and even accelerate the growing disparity of benefits between the rich and the poor countries of the world. Furthermore, in a market economy, those who have little or no ‘effective demand’ will not attract the resources to satisfy their needs, no matter how urgent or life-threatening their situation may be.50

49For instance, Kahin (2001) noted that “The patent system has expanded with little public scrutiny pushed by the natural self-interest of those who labor within it.... its stewards have engineered the removal of its traditional limits to spread it seamlessly across the entire economy without analysis and without public debate.”

50Oxfam (2001a, p. 7) noted that only ten per cent of global R&D is directed towards illnesses that account for 90 per cent of the worldwide disease burden. See also Bulard (2000).
In contrast, those who possess substantial effective demand, will attract even more resources and attention to their desires, no matter how excessive or wasteful those may be.

**Backlash: Voice and Exit Strategies in Response to Extensions of the IPR Regime**

The situations examined above suggest that there are at least two forms of IPRVs. Type 1 form of IPRV, or IPRV(1), results from the exploitation of IPRs by the users of IP, without proper attribution and compensation to the owners of the associated IPRs. Type 2 form of IPRV, or IPRV(2), results from the exploitation of IPRs by the owners of IPRs against the actual and potential users of those IPRs, by withholding access to or authority for the use of the associated IP through the quantum of charges levied, the constraints imposed, and various other means by which benefits are denied. From this perspective, the prevalence of IPRV(1) in Asia and elsewhere may also represent, directly or indirectly, a response to the practice of IPRV(2).

In this regard, following Hirschman (1970), we may identify at least three principal kinds of responses to IPRV(2): (a) Loyalty: obeisance and submission by governments and the population of the developing countries, (b) Voice: growing protests by people who are disgruntled over the massive power and reach of multi-national firms, the perceived adverse impacts on economies, societies and the environment, and the process of globalization associated with the imposition of 'harmonized minimum standards' of IPRs through the WTO and TRIPs, and (c) Exit: disregard for the new IPR regime, resulting in (increased) IPRV(1). The consequences that flow from loyalty are described by the conventional portrayal of the benefits of having an IPR regime. These proclaimed benefits are offset by the problems described above. These problems contribute to voice and exit responses to the recent significant extensions of IPRs around the world.

The application of voice in response to domestic and global extensions of the IPR regime may be observed in the myriad criticisms
that have surfaced around the world. For example, in Asia, protests have arisen against the introduction of genetically engineered crops, and the expropriation of property rights to Asian food crops such as basmati rice and jasmine rice through patents granted to American companies such as RiceTec and others, and other acts of biopiracy. The AIDS crisis has been another source of criticism against the international IPR regime. “People Before Patents” has become a standard rallying cry against the enforcement of IPRs on essential medicines. In this context, there has been rising opprobrium towards pharmaceutical companies that tried to prevent the importation, production and use of generic drugs for the treatment of HIV/AIDS in Thailand, Brazil and South Africa. On a wider front, prominent protests and demonstrations have also occurred at the WTO ministerial meeting at Seattle on December 1999, and subsequently at other events and locations.

Oxfam and other researchers have also drawn attention to the problem of ‘bio-piracy’, that is, the appropriation through patents of genetic material, and uncompensated use of other organic materials

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51 See Assisi foundation, et al., 1998; Indigenous peoples, 1999; SANFEC, 1999; GRAIN, 2001a and 2001b; PANAP, 2001. Aoki (1998a, p. 49) observed that, “The sad irony is that the intellectual property-rich nations of the developed world have pushed for swift enactment of TRIPs in order to avoid what they claim are disastrous and ruinous levels of piracy of their intellectual properties, whether computer programs, videos, music CDs, movies, or technology, by countries of the developing and least developed nations. However, the ideological content of these piracy claims becomes evident when considering that the fears seem to mask the amount of piracy occurring in the opposite direction — invaluable biological and cultural resources flowing out of the countries of the south as “raw materials” into the developed nations of the north where they are magically transformed in the laboratories of pharmaceutical and agricultural corporations into protected intellectual properties whose value is underwritten by provisions of multilateral agreements such as TRIPs.”

52 In April 2001, following strong public pressure, foreign pharmaceutical companies agreed to reduce prices for patented AIDS medication sold in South Africa.

53 In this context, it has been argued that, “The use of the WTO to advance the interests of powerful companies will also further erode the credibility of global institutions at a time when effective multi-lateralism is desperately needed to address problems of poverty and inequality, and to underpin shared prosperity” (Oxfam, 2001a, pp. 4–5).
found in the developing countries. When losses claimed by pharmaceutical companies due to IPRVs in pharmaceuticals and agricultural chemicals are compared to developing countries losses on non-payment of royalties on traditional-seed varieties and products derived from medicinal plants, it has been argued that the former owes significant genetic debts to the latter. Oxfam (2001c, p. 6) noted that “if just a two per cent royalty were charged on genetic resources developed by local innovators in the south, it is estimated that the north would owe more than US$5 billion in unpaid royalties for medicinal plants.” In this regard, Darrell Posey, a researcher into the use of traditional resources by indigenous communities, warned that

Local communities are being undermined and their valuable knowledge, that has protected local biodiversity, is being lost as a result. Consequently, enhancement of local communities’ rights and their control over land and resources is necessary. Existing intellectual property rights instruments do not do this. On the contrary, they facilitate and accelerate the destruction of local cultures. New intellectual property rights systems must be developed that recognize indigenous and local peoples’ value systems. These value systems are usually collective and are based on trusteeship and stewardship, not ownership. Thus “property rights”, per se, are inappropriate since things are not owned, but held for past and future generations. New mechanisms are necessary and these must be based on human rights and not economic interest (IDRC, 1997).

In a similar vein, Jeffrey Sachs, director of the Centre for International Development at Harvard University, noted that,

In a world in which science is a rich-country prerogative while the poor continue to die, the niceties of intellectual property rights are likely to prove less compelling than social realities.... The world needs

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54 Claims to IP are concentrated among very few countries. Industrialised countries account for over 97 per cent of patents world-wide — and around half of royalty payments for patents are directed towards the USA.... It is estimated that around one-quarter of the compounds used in the manufacture of patented drugs are derived from plants in developing countries, many of which have been used for medicinal purposes for generations. Yet the royalty payments associated with these compounds accrue to Northern corporations” (Oxfam, 2001a).
to reconsider the question of property rights before patent rights allow rich-country multinationals in effect to own the genetic codes of the very foodstuffs on which the world depends, and even the human genome itself.... The United States prevailed upon the world to toughen patent codes and cut down on intellectual piracy. But now transnational corporations and rich-country institutions are patenting everything from the human genome to rainforest biodiversity. The poor will be ripped off unless some sense and equity are introduced into this runaway process.

Moreover, the system of intellectual property rights must balance the need to provide incentives for innovation against the need of poor countries to get the results of innovation. The current struggle over AIDS medicines in South Africa is but an early warning shot in a much larger struggle over access to the fruits of human knowledge. The issue of setting global rules for the uses and development of new technologies — especially the controversial biotechnologies — will again require global co-operation, not the strong-arming of the few rich countries (Sachs, 1999). 55

55Another trenchant critique is offered by Aoki (1998a, pp.47-48), who argued that, “The freedom that transnational corporations are claiming through intellectual property rights protection in the GATT agreement on trade related intellectual property rights is the freedom that European colonizers have claimed since 1492. Columbus set a precedent when he treated the license to conquer non-European peoples as a natural right of European men. The land titles issued by the pope through European kings and queens were the first patents.... Eurocentric notions of property and piracy are the bases on which the IPR laws of the GATT and [WTO] have been framed. When Europeans first colonized the non-European world, they felt it was their duty to ‘discover and conquer,’ to ‘subdue, occupy, and possess,’ ... everything, every society, every culture. The colonies have now been extended to the interior spaces, the "genetic codes" of life-forms from microbes and plants to animals, including humans.... The assumption of empty lands, terra nullius, is now being expanded to ‘empty life,’ seeds and medicinal plants ... [and this] same logic is being used to appropriate biodiversity from the original owners and innovators by defining their seeds, medicinal plants, and medical knowledge as nature, as nonscience, and treating tools of genetic engineering as the yardstick of ‘improvement.’ ... At the heart of the GATT treaty and its patent laws is the treatment of biopiracy as a natural right of Western corporations, necessary for the ‘development’ of Third World communities".
Monopoly Rights and Wrongs

Strong critiques of the orthodox perspective of IPRs are also stemming from various quarters within the developed countries, and from the very heartlands of free enterprise America, proclaiming that the benefits being captured by the new IPR laws are too extensive, too exclusive, too prolonged, and unjustified (see Patry, 1997; Aoki, 1998b). Growing domestic criticisms of the manner of the evolution of the IPR system within the US in particular, have resulted in various forms of exit strategies. These can be illustrated by examining developments in the field of information communication technology (ICT).

There has been a growing movement promoting the development and use of open source software, exemplified by Linux and others, in preference to proprietary software, such as Windows 2000. The open source movement is a group of volunteer programmers who develop computer operating systems, programming languages, and other software. They work together in teams that communicate via the Internet. Their goal is to develop useful software that is available for free and that users can change at will. To enable users to change and improve the software, they also distribute its source code (see Young, 1999; van Wegberg & Berends, 2000; Weber, 2000; Tuomi, 2001). Potter (2000) contended that economically, open source is a more efficient way to allocate the benefits of copyright to society. The shift from proprietary to open source software is facilitated significantly by a shift from copyright to a form of license known as copyleft (Gomulkiewicz, 1999; Newmarch, 2000).  

Another significant development has been the growth of peer-to-peer file exchanges. The legal actions brought against Napster

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56Copyleft license software, or open source software, has different restrictions compared to copyright license software, or proprietary software. The key open source restrictions are: 1) the software must be redistributed freely; 2) the distribution must include the source code; 3) derived works are allowed; and 4) the author's source code must retain its integrity. Thus the license restrictions on open source software are intended to ensure that it remains free (Potter, 2000). One example of this is the GNU General Public License.
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and MP3.com have not stopped the widespread sharing of music files via the Internet. On the contrary, new channels have emerged to replace those that have been handcuffed. As one report noted, "even as the record companies clamp down on Napster and MP3.com in the courts, former Napster users are drifting to other file-swapping services: Aimster, Audiogalaxy, KaZaa or Gnutella and its offspring, such as BearShare and LimeWire. The number of users logged on daily to Gnutella has quadrupled since March. The fastest-growing Napster clone is Audiogalaxy, which is picking up over 1m users a week." (The Economist, 2001b. See also Lewis, 2001, and von Lohmann, 2001). On the horizon, there is a prospect of even greater proliferation of peer-to-peer exchanges (see Gibbs, 2000).

In the realm of publishing, there has been a significant and growing protest by academics and academic institutions against the skyrocketing prices combined with more onerous online access conditions being levied by some major publishers, such as Reed Elsevier and others. These have led to initiatives such as the Scholarly Publishing and Academic Resources Coalition (SPARC), and the Public Library of Science (Rambler, 1999; Buckholtz, 2001, Vaknin, 2001a).57

Perhaps the most worrying prospect for the old order is associated with the emerging tendencies in a digital economy leading towards the provision of goods and services 'anywhere', 'anytime', of 'any kind', with 'no matter', at 'no charge', and widespread capabilities to 'do-it-yourself' (Cheah & Cheah, 2002). For example, "The threat and promise of networked digital technology is that every individual with access to a computer will be able to perform the 21st century equivalent of printing, re-printing, publishing and vending. If the vast majority of them do not comply with the copyright law, then the copyright law is in danger of becoming irrelevant" (Litman, 1997).58

57See the open letter signed by thousands of academics in support of freer access to scientific and medical literature at http://www.publiclibraryofscience.org/
58Barlow (1994) remarked on the fact that, "so many are trying to uphold by force what can no longer be upheld by popular consent.... The laws regarding unlicensed
Such developments will clash directly with opposing efforts to extend and enforce IPRs. Indeed, efforts to extend and entrench IPRs further, in the face of technological change that make it easier to share material widely at little or no personal cost, may lead to an even wider private flouting of official rules relating to IPR protection. As noted above, in relation to the IPR situation in China, it is by no means clear to many individuals (even in the developed countries) that acts of IPRV(1) are particularly reprehensible. To the extent that IPRV(1) occurs more widely, at the same time as they are made a punishable offense, a situation could emerge similar to the 'war on drugs', where there is a serious disjunction between private behavior and official standards of morality, and where there is little prospect of a quick and conclusive resolution of the differences (see Wisotsky, 1992; Carney, et al., 2000). This situation may lead to (further) undermining of respect for the law, rather than to the alteration of private behavior. Indeed,

Far from enhancing or securing the position of copyright holders, these moves by the legislatures may have only further soured an already cynical consumer population. What the MP3.com and Napster phenomena have proven is that the average consumer regards the legislative monopoly that is copyright largely with contempt .... they want to be provided with a fair rate for an “all you can eat” service rather than to be presented with differential pricing for separate reproduction of commercial software are clear and stern ... and rarely observed. Software piracy laws are so practically unenforceable and breaking them has become so socially acceptable that only a thin minority appears compelled, either by fear or conscience, to obey them." Similarly, Scott (2001) offered the observation that "By emphasising a rhetoric of rights copyright holders are not serving their best interests in the long term.... Property survives and prospers as a regulatory system because those who do not respect property are a miniscule minority. If everyone — or even only 10% of the population — woke up tomorrow morning and decided to disregard those rights, there is nothing anyone could do to stop them. No amount of enforcement action would be to any avail and, in the (not so) long term, all of society's participants would suffer."
options with premium rates being tacked on top. The moves by legislatures around the world have not made the acts of infringers any more illegal, although they have created a situation where the same facts may give rise to multiple infringements greatly extending the protection provided to the information industry. Rather, they have mainly served to compound the cynicism that consumers already hold for the copyright law (Scott, 2001).

To the extent that a ‘culture of disobedience’ proliferates in the developed countries, it would reinforce the resistance among individuals in developing Asian countries to alter current practices and personal behavior in relation to respect for IPRs, despite official efforts to promote and to enforce new IPR legislation. Indeed, around the world, this may evolve into another example where it is increasingly perceived that ‘the law is an ass’. The consequent spread of covert acts of subversion and obvert acts of rebellion against various forms of IPRs may ultimately undermine the interests of those organizations that choose to enforce their proclaimed property rights, as well as undermine the legitimacy of the legal systems and the authorities associated with them.

It is significant that, in reaction to the strong dominance of branded goods and services, linked to heavily protected trademarks, expensive marketing strategies, extensive media advertising, and their associated public relations spin and hype, there has emerged recently a ‘No Logo’ counter-movement that champions non-branded products (Klein, 1999). This movement, with affinities to pro-environment and anti-globalisation groups, is a part of a growing community that sees big corporations as exploitative and big government as colluding in that process. Contrary to conventional claims that the IPR system encourages effort and rewards innovation, a growing number of people are forming the view that it is in fact a conservative, regressive and increasingly inequitable system being promoted by big business, supported by big government, to make big profits on a global scale. These concerns are emerging with other growing concerns about the
negative effects of climate change, free trade, and globalization.

According to Okediji (1999, pp. 137-138),

Paradoxically, globalization has created crosscurrents between the traditional subjects of trade negotiations (tariffs and quotas) and a host of intensely contested social concerns such as environmental safety, child labor, health issues, and human rights. These issues have increasingly become intertwined with multilateral trade talks, and as such, have become a part of domestic political agendas of specific countries, including the United States. These developments suggest that the regulation of free trade under the classic liberal model will be subject to greater pressure as globalization makes isolated responses to specific concerns increasingly difficult; selecting one problem for government intervention will directly implicate others. The interconnectedness of these issues is certain to generate conflict.

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59See, among others, Simms (2001), IPCC (2001) and Sayle (2001). Sachs (1999) observed that, “The situation of much of the tropical world is, in fact, deteriorating, not only because of increased population but also because of long-term trends in climate. As the rich countries fill the atmosphere with increasing concentrations of carbon, it looks ever more likely that the poor tropical countries will bear much of the resulting burden.” Indeed, Sachs further argued that, “The United States feels aggrieved that poor countries are not signing the convention on climatic change. The truth is that these poor tropical countries should be calling for outright compensation from America and other rich countries for the climatic damages that are being imposed on them.”


61See Smith and Smythe (2001). An important establishment representative, Guy Verhofstadt, the Prime Minister of Belgium and President of the European Union, has recently proclaimed the need for ‘ethical globalisation’, and conceded that “in this respect [the anti-globalisation protesters] are absolutely right. Even when we are driven by the very best intentions, it is only natural for us to be more concerned with the interests of a multinational oil company or of the European sugar beet farmers than with the fate of the Ogoni people in the Niger Delta or the meagre incomes of the workers on sugar cane plantations in Costa Rica” (Verhofstadt, 2001. See also Saul, 2000; Sen, 2000; Weaver, 2000).
In this context, the US Administration has been a focus of the growing opprobrium. Indeed, US global power and domination enabled it to pursue unilateralist domestic and global policies based on its self-defined interests. The corollary was a disregard for the different interests of others, especially those in the developing world. Johnson (2000) has provided a prescient analysis of the 'blowback', or perverse consequences, flowing from such disregard. Similarly, it may be argued that efforts by corporate interests in the USA and other developed countries to impose IPRs on weaker countries and populations, in ways that could lead to significant levels of deprivation or harm, is also likely to cause a range of perverse effects in the future.

Among other things, it refused to pay its dues to the United Nations since the early 1990s because it disagreed with some decisions made at the UN; and it refused to support the establishment of an international criminal court because it refused to countenance that any of its nationals could be subject to a higher authority. In March 2001, President George W. Bush rejected US ratification of the UN framework convention on climate change embodied in the Kyoto Protocol because it was perceived to be against US corporate and national interests. He argued that, "I will not accept a plan that will harm our economy and hurt American workers ... first things first are the people who live in America; that's my priority" (Sayle, 2001).

See Smith (1999). However, following the terrible attacks on the World Trade Center on 11 September 2001, America sought global support, as President George W. Bush called for a 'crusade' to be launched in a 'war against terrorism'. On 24 September 2001, the US house of representatives voted to pay part of the financial arrears to the United Nations, "so that the Bush administration could remove an irritant in its relations with other U.N. member states as it seeks to build an international coalition to combat terrorism." http://www.unausa.org/policy/NewsActionAlerts/info/dc092501.asp.

"Blowback" is shorthand for saying that a nation reaps what it sows, even if it does not fully know or understand what it has sown" (Johnson, 2000, p.223). For example, "On the economic front, the arrogance, contempt, and triumphalism with which the United States handled the East Asian financial crisis guarantees blowback for decades to come. Capitals like Jakarta and Seoul smolder with the sort of resentment that the Germans had in the 1920s, when inflation and the policies of Britain and France destabilized the Weimar regime" (Johnson, 2000, p. 221). See also, Gowan (1999), Hitchens (2001), Tabb (2001), Burek (2001), Ford (2001), and Hoffmann (2001).
Conclusion

Violations of intellectual property rights are undoubtedly a very serious problem in at least two respects. On the one hand, there are the substantial revenues and benefits forgone by owners of IPRs. These may range from individual songwriters, authors and inventors, to multinational enterprises in the entertainment, publishing, pharmaceutical, information technology, and a host of other industries, that may have invested substantially in R&D and other related activities to create IPRs. These are problems resulting from IPRV(1). Against this type of violations, the owners of IPRs have recourse to a variety of countermeasures. These include legal remedies, including significant recent extensions of the legal framework through the TRIPs and the DMCA, as well as a variety of technical devices and entrepreneurial strategies.

However, a second set of major problems arises from IPRV(2), when overall public (global) welfare is unduly limited or damaged by the monopolistic constraints of IPRs. In this respect, it has been contended that "Industrialized countries and their powerful corporations have secured imbalanced WTO agreements and a disproportionate share of the benefits of trade, at the expense of developing countries and people living in poverty" (Oxfam, 2001c, p. 3). When the majority may be too impoverished to pay the prevailing price for accessing privately held IPRs; or too inadequately informed and too ill-prepared to challenge the appropriation of IPRs by agents who capture for private benefit resources that could, in the form of common property rights (or common pool resources), benefit a substantially greater number of people, overall public welfare is adversely impacted. Specifically, it has been noted that,

Countries at the margins experienced the social and economic costs associated with intellectual property rights, but none of the perceived systemic benefits — in particular, the stimulation of local inventiveness. The international system did not model the public welfare provisions that were an integral part of the utilitarian platter on which intellectual property protection was served to developing countries. Ultimately, it became clear that national economic prosperity could
not be predicated solely or even largely on the acquisition of technology through the promise of intellectual property rights (Okediji, 1999, p. 150).

In this context, the violations are perpetrated by those who deprive vulnerable people of affordable medical treatment (such as drugs for HIV/AIDS treatment); those who seek to appropriate resources (for instance, through patents on genetic material from plants and other matter) that were previously in the public domain; and those who seek to impose the imperatives of late twentieth century forms of private ownership on people who have very different ownership practices, with very damaging consequences to the latter. From this perspective, IPRV(1) may represent a 'revolt of the poor', as well as other groups opposed to IPR extensions (Vaknin, 2001b). Furthermore, as Barlow (2000) noted, "No law can be successfully imposed on a huge population that does not morally support it and possesses easy means for its invisible evasion." These reactions against monopolistic practices represented by IPRV(2) stem not only from the populations in developing countries, but also from within the heartlands of Capitalism, where the world's most powerful corporations locate their headquarters. The outcome of the battles over these monopoly rights and wrongs will have major consequences.

Thus, even in the somewhat arcane and esoteric realm of IPR, there are serious developments that have the potential to

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65 Specially, it has been argued that "what Microsoft fails to understand is that the problem lies with its pricing policy — not with the pirates. When faced with a global marketplace, a company can adopt one of two policies: either to adjust the price of its products to a world average of purchasing power — or to use discretionary pricing.... Lower prices will be more than compensated for by a much higher sales volume. There is no other way to explain the pirate industries: evidently at the right price a lot of people are willing to buy these products. High prices are an implicit trade-off favouring small, elite, select, rich world clientele. This raises a moral issue: are the children of Macedonia less worthy of education and access to the latest in human knowledge and creation?" (Vaknin, 2001b).

66 See also, "A declaration of the independence of cyberspace," offered by John Barlow on 8 February 1996, at http://www.eff.org/Misc/Publications/John_Perry_Barlow/barlow_0296.declaration
arouse grave concerns and resentments in Asia, in the USA and elsewhere. Ultimately, the consequences of IPRV(1) are the consequences of theft, and they may amount in total to very large sums of money. But the consequences of IPRV(2) may pose serious threats to public health (from lack of affordable medicine and health treatment), food security and livelihood (from lack of access to affordable seed stock), local ownership of local resources (from biopiracy), access to information, opportunities for choice, and important human values. These costs are immeasurable, and may have much broader and deeper ramifications and consequences in Asia and beyond.

Appendix A

Asian countries under Special 301 scrutiny in 2001 by the Office of the US Trade Representative and the reasons cited for USTR concerns

Section 306 Monitoring

China

Widespread trademark counterfeiting and large-scale production of fake products.
Widespread unauthorized production and sale of copyrighted products.
Increased production of pirated optical media products by licensed plants.
Unabated piracy of US books.
Varied effectiveness of enforcement efforts between regions.
Lack of transparency and poor coordination among responsible police and government agencies
Criminal actions are rarely filed, legal threshold for prosecutions are too high, and administrative penalties are too low to deter further piracy.
Priority Watch List

India

Patent system and protection of exclusive test data are not compliant with TRIPs obligations. Patent protection is difficult to obtain because of a large backlog of applications, severe shortage of patent examiners, and over-generous opposition procedures that often delay patent issuance until the patent has expired. Pending legislation to rectify these TRIPs deficiencies may fall short. Poor enforcement of copyright legislation allows rampant piracy of motion pictures, music, software, books, videos, video games, and VCDs.

Indonesia

Has not yet passed TRIPs-consistent copyright, trademark and patent laws. Piracy levels for copyright and trademark goods are among the highest in the world, and are a growing problem. Alarming expansion of optical media production capacity signals that Indonesia is becoming a refuge for audio and video pirates from other countries in the region. Judicial system remains ineffective for enforcing IPRs.

Korea

Widespread piracy of US trade and educational books. Weaknesses remain in IP legislation, particularly in relation to copyrights. Recent amendments fail to provide explicit protection for temporary copies, and it is unclear whether there is legal protection against the unfair commercial use of confidential test data.
Newly introduced IPR protection and enforcement measures have not yet demonstrated their effectiveness. Questions about whether the enforcement measures are transparent, non-discriminatory and will be sustained.

Malaysia

The government has only just begun to take steps to enforce new IPR protection laws. While numerous raids and inspections have been conducted over the past two years, virtually no criminal prosecutions have yet been completed.

The Philippines

Copyright protection is weak, and the country has become a destination for pirate producers forced out from other Asian countries. Production lines for CDs and other optical media have doubled during the past year, and the country has the potential to become a center of pirate optical media production in Asia. Cable piracy is widespread, and new and recent films are retransmitted without authorization. Piracy of US textbooks remains rampant. No provision for civil ex parte searches. Enforcement resources are inadequate, customs efforts are sporadic, and the judicial process is slow and virtually ineffective.

Taiwan

Contended to be one of the largest producers of pirated optical media products in the world. Declined to enact strong optical media licensing legislation, and it has failed to shut down known pirate operations.
Current patent law provides a 20-year term of protection from the date of application only to patents applied for after 23 January 1994.
Copyright law needs strengthening in areas including protection for temporary copies.
Significant trademark counterfeiting, particularly of auto spare parts.
Without adequate legislation and sustained enforcement, it remains a haven for pirates.

**Watch List**

**Macau**

Failure to convict and sentence manufacturers of infringing IP products.
Weak penalty imposed after conviction for the offense.

**Pakistan**

Sharp growth in optical media piracy, and production capacity.
Pirated goods flood the domestic market, and are exported throughout the region.
Book piracy occurs at high levels.
Courts refuse to issue ex parte search orders, and thus hamper enforcement efforts.
Delays in court proceedings and weak penalties reduce the effectiveness of IPR protection measures.

**Thailand**

Copyright piracy levels continue to be high, with increases in the illicit use of business software and the rate of optical media piracy.
Remaining TRIPs related legislation not yet passed by parliament.
Vietnam

Very high piracy rates continue for all forms of IP, in particular copyright. Effective implementation and enforcement of new laws is needed to reduce pervasive piracy.

*Special Administrative Region of China.

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Introduction

Corruption looms as one of the biggest political and economic challenges that face China in the twenty-first century. Conservatively estimated at 13–16% of China's GDP, corruption is a huge economic loss and is social pollution. It contributes to problems such as environmental degradation, social and political instability, and the decreased credibility of government officials. According to surveys conducted in 1998 and 1999, the Chinese people viewed corruption as the number one factor contributing toward social instability. In 2000, fearful of the imminent pains of economic reform, Chinese people named only unemployment and the fear of being laid off ahead of corruption as the primary source of social instability (Hu, 2001).

From 1980 onwards the people's republic of China began its second transition. The first transition was in 1949, which was a violent break from the so-called Old China to a new one, the 'egalitarian communism', controlled by Mao. Two years later the Three anti Campaign was launched directly aimed at corruption. By the time of the second transition people were exhausted after so many years of dictatorship, exhausted too by the breaking from the first transition
and the move to a market economy. This process, and its completion, is the PRC’s aim for admission to the WTO.

But, as James Kynge wrote, in the Financial Times, November 13th 2000:

"WTO: Overseas investors are excited about the prospect of China opening up, but, consultants say, private enterprises can come with their own shortcomings, such as corruption”.

Therefore, the fight against corruption becomes self-evident as a common feature of the two transitions.

But are the foes the same for the two fights? The three anti campaign of 1951–52, dealing with the ‘three evils’, launched the first struggle: corruption, waste and bureaucracy.

Apparently, many cadres viewed corruption and waste as natural and acceptable. They reportedly said: “Corruption and degeneration are minor things and have no bearing on the cause of revolution; it does not matter if one squeezes (graft) as long as it is not discovered; waste is unavoidable, and so forth” (Teiwes, 1993).

The fight against corruption was not taken seriously as the revolution’s target, which was to overthrow the shadow of the Old China — this was seen as the real corrupter. It was enough to wipe out every component of the old feudal class, the bourgeoisie, capitalism, the bad cadres, and so create the virtuous new “true” communist era, eradicating corruption forever. Thus we may say the first fight was between communism and the bourgeoisie, but the second fight was purely internal, between good and bad cadres. But how should one manage this new fight if corruption comes from the links between bad cadres and the nouveau riche? The second fight against corruption is not so black and white, since capitalism and the bourgeoisie are no more the single foe, no more an evil component to eradicate.

The first fight was an ideological one, the second is more practical, although it retains moral features even in the reports of cases, police investigations and trial reports, in reviews such as Renmin Jingcha (People’s Police), the Shanghai public security bureau monthly
review, *Jingtan* (Inquiries), the Anhui province public security bureau monthly review and *Fazhi yu Xinwen* (Laws and News), or the ministry of justice monthly review. These reviews have been recently established, as there were no such items during the Maoist era: newspapers likewise did not report on crime, as, Socialism was not supposed to produce it (Kinkley, 2000). In police and Justice monthly reviews and reports on corruption cases, we still find the old politico-moralist reportage, as in the recent famous case, that of Chen Kejie, former vice-chairman of national people's congress standing committee¹ who was sentenced to death and executed September 2000, for accepting bribes worth 31 million Renminbi. Chen had betrayed the confidence of the masses the report said, shifting from the cadre's duty to serve the people, to his self-interests². There is more focus on psychological features, and even sociological approach for other criminal reports in the police reviews. Take thefts and murder-ones for example. In these cases, one can still see some features of the Maoist era, such as class background, and so on, which is reflecting the poor against the rich drama, as opposed to the mentioning of armed gangs, which are the second Chinese evil just behind corruption:

"Mafia-style gangs, who have plotted many of the armed robberies and kidnappings, are running wild in some of China’s provinces... The Public Security Bureau of Central China’s Hubei Province has made a decision that its men will be allowed to shoot dead armed gangs who are robbing banks".³

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²Weihe shouhui ru tan nang qu wo le (Why is corruption so easy?), *Jingtan* (Inquiries), September 2000, p. 34–35.

The second fight against corruption is even easier to understand for us than the first, having at our disposal two keys of such an investigation — the process of creating laws, and their statistics. However, the problem when writing about corruption is that, apart from police and legal reports, we only have statistics to work from, and little in the way of objective analysis. Let us take the example of a current Chinese social feature, female infanticide — how might we measure its full extent? The 1992 Law on the Protection of Juveniles forbids infanticide, but we see reported:

"The use of ultrasound tests to determine gender also results in decisions to terminate pregnancies of female foetuses. In July, the Liaoshen Evening News reported that in a township of Liaoyang County, the male to female sex ratio was 306/100 for second children born between 1992 and 1999. Part of the statistical gap may be attributable to female infanticide, sex-selective termination of pregnancies, and the abandoning or neglect of girls", (Damon, 2000).

Suspicions about female infanticide in China are confirmed by the relevant statistics. According to the China Statistical Yearbook 2000\(^4\), the 1999 population is 1,259 billion, with 641 million males (50.98\%) and 617 million females (49.02\%) — this is almost the opposite of the developed countries’ ratio that shows a ration of about 52\% female to 48\% male as the norm. The national Chinese ratio of male to female births in 1994 was 117 to 100 while the worldwide statistical norm was 106 to 100. Then, for surviving children in 1999, the percentage changes from 50.55\% male to 49.45\% female for Shanghai (103/100 ratio), to 54.57\% male to 45.43\% female in Hainan Island (121/100 ratio). This lack of girls boosts another corrupt practice — the Chinese trade in kidnapped women.

In these cases of female infanticide, in computing the number of living males and females, a certain number of children have probably not been included, however, one can get better confirmed references upon this subject than when searching for corruption. So, how are we to achieve a reliable account of corruption?

\(^4\)p. 95
Corrupt people have to be identified, first, by falling under suspicion, second, by being submitted to enquiries, and, only if there is sufficient evidence, by prosecution. The data for corruption comes from the reports on prosecution. If corruption [in mainland China] is truly efficient, their statistics can only give a partial picture of the reality. Yet we may surmise that the new legal code gives some indication of the importance that the Chinese government confers on fighting corruption.

**Sources of Data**

Information on corruption in mainland China today has to be obtained from:

2. trial cases reports from Chinese legal reviews, such as *Fazhi yu Xinwen* (Law and News).
3. from Chinese newspapers — but these can report on corruption only with government and Party approval, for example, *Renmin Ribao* (People’s Daily), the official daily newspaper of the People’s communist Party does not publish any reports on corruption.\(^5\) We can get further information from the English language ‘Peking China Daily’.
4. there are other sources such as inquiries, nongovernmental, international and governmental publications — for example, the US department of state report on ‘Human rights practice in China’.
5. there are the overseas newspapers, but these only refer to especially ‘interesting’ judicial cases.

*Using all sources we find that corruption, in all forms, has soared in Mainland China over the last twenty years. Corruption has increased along with crime in general.*

\(^5\) Overseas edition.
Table 1: First criminal trial cases brought to the courts

<table>
<thead>
<tr>
<th>Year</th>
<th>83</th>
<th>84</th>
<th>85</th>
<th>86</th>
<th>87</th>
<th>88</th>
<th>89</th>
<th>90</th>
<th>91</th>
<th>92</th>
<th>93</th>
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<th>99</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1027</td>
<td>1038</td>
<td>1058</td>
<td>1075</td>
<td>1093</td>
<td>1110</td>
<td>1127</td>
<td>1143</td>
<td>1158</td>
<td>1171</td>
<td>1185</td>
<td>1198</td>
<td>1211</td>
<td>1223</td>
<td>1236</td>
<td>1248</td>
<td>1259</td>
</tr>
<tr>
<td>2</td>
<td>1.01</td>
<td>1.07</td>
<td>1.92</td>
<td>1.60</td>
<td>1.67</td>
<td>1.55</td>
<td>1.53</td>
<td>1.41</td>
<td>1.31</td>
<td>1.12</td>
<td>1.19</td>
<td>1.09</td>
<td>1.08</td>
<td>0.99</td>
<td>1.06</td>
<td>0.97</td>
<td>0.88</td>
</tr>
<tr>
<td>3</td>
<td>0.542</td>
<td>0.431</td>
<td>0.246</td>
<td>0.299</td>
<td>0.289</td>
<td>0.313</td>
<td>0.392</td>
<td>0.459</td>
<td>0.427</td>
<td>0.422</td>
<td>0.403</td>
<td>0.482</td>
<td>0.495</td>
<td>0.618</td>
<td>0.436</td>
<td>0.482</td>
<td>0.540</td>
</tr>
<tr>
<td>4</td>
<td>121.2</td>
<td>-20.5</td>
<td>-43</td>
<td>21.5</td>
<td>-3.4</td>
<td>8.3</td>
<td>25.2</td>
<td>17</td>
<td>-7</td>
<td>-1.2</td>
<td>-4.5</td>
<td>19.6</td>
<td>2.6</td>
<td>24.8</td>
<td>-29.5</td>
<td>10.5</td>
<td>12</td>
</tr>
<tr>
<td>5</td>
<td>52</td>
<td>41</td>
<td>23</td>
<td>27</td>
<td>26</td>
<td>28</td>
<td>34</td>
<td>40</td>
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<td>40</td>
<td>40</td>
<td>50</td>
<td>35</td>
<td>38</td>
<td>42</td>
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Key -

<table>
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<tr>
<th>Line</th>
<th>Subject</th>
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<tr>
<td>1</td>
<td>population by millions</td>
</tr>
<tr>
<td>2</td>
<td>population annual growth rate</td>
</tr>
<tr>
<td>3</td>
<td>first trial criminal cases by courts by millions</td>
</tr>
<tr>
<td>4</td>
<td>first trial criminal cases annual growth rate</td>
</tr>
<tr>
<td>5</td>
<td>first trial criminal cases rate by 100,000</td>
</tr>
</tbody>
</table>

Source: *China Statistical Yearbook 2000*; p. 95 (for line 1 data); p. 758 (for line 3 data)
Early data is missing, though collection began again in 1979 with the reopening of the Statistic Bureau and the Ministry of Justice, both of which had been shut down in 1959.

It is evident that the number of criminal trial cases has soared since 1980, the year of the first recorded hold up in the history of the People’s Republic (remember, the People’ Republic became an entity only in October 1949). The three peak years of criminal cases were in 1983, 1996, and 1999: however, the reasons for these increases are not so obvious. The lack of statistics before 1978 prevents any comparison with the Maoist period, and Courts have only handled cases since their re-establishment (note: from 1954 to 1979, each Procuratorial organ came directly under the leadership of the Communist Party at the same level). In 1957 the Security Administration Punishment Act\textsuperscript{6} was edited: creating SAPA, which was a shadow criminal law, giving the power of justice to public security organs for the control and the use of custody, investigation, and punishment, from fines to periods of re-education through labor, within some 34 minor cases considered harmful to public security. The Standing Committee of the National People’s Congress passed a revised version of SAPA in September 1986, so the trial case statistics are incomplete (Tanner, 1985). We can only note the soaring trend.

Table 2: Homicides and assaults cases registered in public security organs

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>748,176</td>
<td>+22%</td>
<td>1,613,629</td>
<td>1,986,068</td>
<td>2,249,319</td>
<td>+13%</td>
</tr>
<tr>
<td>Homicides</td>
<td>9,234</td>
<td>+6.4%</td>
<td>26,070</td>
<td>27,670</td>
<td>27,426</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Assaults</td>
<td></td>
<td>+17%</td>
<td>69,071</td>
<td>80,862</td>
<td>97,772</td>
<td>+13%</td>
</tr>
<tr>
<td>Homicides rate for 100,000 inhabitants</td>
<td>0.9</td>
<td>2.10</td>
<td>2.21</td>
<td>2.17</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Is it the same for homicides and assault cases, which are not SAPA cases?

In the three years (1997–1999) what is most noticeable is the homicide rate per 100,000 inhabitants is more than twice the European Countries rates, equaling the British statistic of the 1860’s — which was even greater than their notorious time of Jack the Ripper in the 1880’s.

1983 was said to be the worst year in China, being the year of the "decision regarding striking hard blows against criminal activities" issued by the central committee. The main targets of that campaign were assaults, homicides, rapes, traffickers in women and children, etc. But no economic offences were cited. Yet, with 9,234 homicides cases and a 0.9 rate, was the previous year of 1982 such a bad one, compared for instance with the 27,426 cases and a 2.17 rate in 1999? From 1982 to 1999 homicides increased by 197%.

Although we can enumerate homicides nationally, the distribution of corruption cases by provinces shows differences allowing us to establish two categories:

1. Its extent among the whole population, is distinguishable by the number of cases per million of inhabitants.
2. Its ‘efficiency’ is enumerated by the amount of misappropriated funds.

According to column 8 of Table 3, five of the poorer provinces are among the least corrupted according to the rate of cases per million of inhabitants. The five most corrupt provinces are Guangdong, Shanghai, Hubei, Peking and Hainan. Guangdong, with Shanghai and Peking among the five richest provinces of China ranked by GDP per inhabitant.

The most corrupt province, far ahead of the others, is Guangdong: 19,330 cases against 268 per million of inhabitant. This is without any doubt linked firstly, to the proximity of Hong Kong and the Special Economic Zone of Shenzhen, and the inevitable high level of smuggling across these boundaries. Secondly, it is linked with the relaxed control exerted by provincial authorities, which is made easier by the distance from the central government in
Table 3: Corruption by certain provinces

<table>
<thead>
<tr>
<th>Province</th>
<th>1 GDP (millions)</th>
<th>2 Misappropriated funds (millions RMB)</th>
<th>3 Rate of MF to GDP</th>
<th>4 Cases</th>
<th>5 Official Rate of Cases</th>
<th>6 Population (millions)</th>
<th>7 Cases per million inhabitants</th>
<th>8 Cases per million inhabitants</th>
<th>9 GDP/ inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ningxia</td>
<td>24,000</td>
<td>20</td>
<td>0.08</td>
<td>66</td>
<td>N</td>
<td>5</td>
<td>13</td>
<td>4,800</td>
<td></td>
</tr>
<tr>
<td>Guangxi</td>
<td>195,000</td>
<td>20</td>
<td>0.10</td>
<td>1,299</td>
<td>442</td>
<td>47</td>
<td>27</td>
<td>4,148</td>
<td></td>
</tr>
<tr>
<td>Gansu</td>
<td>93,000</td>
<td>36</td>
<td>0.03</td>
<td>871</td>
<td>143</td>
<td>25</td>
<td>34</td>
<td>3,720</td>
<td></td>
</tr>
<tr>
<td>Hebei</td>
<td>456,000</td>
<td>N</td>
<td>N</td>
<td>2,380</td>
<td>167</td>
<td>66</td>
<td>36</td>
<td>6,909</td>
<td></td>
</tr>
<tr>
<td>Jiangxi</td>
<td>196,000</td>
<td>143</td>
<td>0.07</td>
<td>1,671</td>
<td>266</td>
<td>43</td>
<td>38</td>
<td>4,558</td>
<td></td>
</tr>
<tr>
<td>Yunnan</td>
<td>185,000</td>
<td>170</td>
<td>0.09</td>
<td>1,763</td>
<td>232</td>
<td>42</td>
<td>41</td>
<td>4,404</td>
<td></td>
</tr>
<tr>
<td>Hunan</td>
<td>332,000</td>
<td>409</td>
<td>0.12</td>
<td>2,818</td>
<td>617</td>
<td>65</td>
<td>43</td>
<td>5,107</td>
<td></td>
</tr>
<tr>
<td>Anhui</td>
<td>290,000</td>
<td>120</td>
<td>0.04</td>
<td>2,666</td>
<td>261</td>
<td>62</td>
<td>43</td>
<td>4,677</td>
<td></td>
</tr>
<tr>
<td>Zhejiang</td>
<td>536,000</td>
<td>460</td>
<td>0.08</td>
<td>1,960</td>
<td>391</td>
<td>44</td>
<td>44</td>
<td>12,181</td>
<td></td>
</tr>
</tbody>
</table>

Note — ranked according to number of cases for 1 million of inhabitants — see col. 8

Peking; and further, because it was the first province to get involved in business. The Shenzhen SEZ (Special Economic Zone) was established in 1980, others followed.

If one links GDP by inhabitant with amount of bribe (billions of RMB) received in any province, and not with rate of cases, the most corrupted are, by order of amount, without any doubt, Fujian holds a new ‘record’ for fiscal 2000 with the Yinhua-Xiamen case. This is the biggest single corruption and smuggling scandal in the history of the People’s Republic\(^8\) — 23 billion RMB worth of goods were smuggled to China by one petitioner in the early 1990s\(^9\).

Generally we see that the wealth of the province indicates the likelihood of the corruption level.

Table 4: Bribery across provinces

<table>
<thead>
<tr>
<th>Province</th>
<th>Amount of bribe (Millions RMB)</th>
<th>GDP/Inhabitant (Country rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Liangsu</td>
<td>580</td>
</tr>
<tr>
<td>2</td>
<td>Zhejiang</td>
<td>536</td>
</tr>
<tr>
<td>3</td>
<td>Guangdong</td>
<td>440</td>
</tr>
<tr>
<td>4</td>
<td>Shandong</td>
<td>430</td>
</tr>
<tr>
<td>5</td>
<td>Sichuan</td>
<td>436</td>
</tr>
<tr>
<td>6</td>
<td>Shanghai</td>
<td>310</td>
</tr>
<tr>
<td>7</td>
<td>Peking</td>
<td>290</td>
</tr>
<tr>
<td>8</td>
<td>Liaoning</td>
<td>290</td>
</tr>
<tr>
<td>9</td>
<td>Fujian</td>
<td>127</td>
</tr>
</tbody>
</table>

\(^8\)Susan V. Lawrence: «A city ruled by crime: A first set of trials reveal how rampant graft virtually ran the east coast city of Xiamen for years. The scandal highlights Beijing’s vulnerability and threatens the fabric of the state», *Far Eastern Economic Review*, November 20, 2000. Up to 600 government officials are reported to have been linked to the scandal, including the families of some of the China’s most senior leaders, *China Daily*, November 8, 2000.

Criminal Law and Criminal Procedure Law

The first comprehensive statutes and regulations on criminal law and criminal procedure law (xingshi susongfa) of the People's Republic of China were adopted by the second session of the fifth National People's Congress, July 1st 1979, and became effective on January 1st 1980. Yet the translation of the two laws only appeared in the American journal of criminal law and criminology, in the Spring of 1982. Later still, the foreign language press in Beijing published the two laws in Chinese with their English translation, and an English-Chinese and Chinese-English Glossary in 1984.

The criminal Law (Zhonghua Renmin Gongheguo xingfa) has two parts: firstly, General Provisions (zongze) with 89 articles (1 to 89) in 4 chapters covering guiding ideology, crimes, punishments, application. Secondly, there are Special Provisions (fenze) with 103 articles (90 to 192) in 8 chapters (see detail in Table 5).

"Article 155: State personnel who takes advantage of their office to engage in corruption involving articles of public property are to be sentenced to not more than five years of fixed-term imprisonment or criminal detention; if the amount involved is huge and the circumstances are serious, the sentence is to be no less than five years of fixed-term imprisonment or death..."

---

Table 5: Details of the 8 special provisions of the criminal law articles

<table>
<thead>
<tr>
<th>I</th>
<th>Crimes of counterrevolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Crimes of endangering public security</td>
</tr>
<tr>
<td>III</td>
<td>Crimes of undermining the socialist economic orders</td>
</tr>
<tr>
<td>IV</td>
<td>Crimes of infringing upon the rights of the person and the democratic rights of citizens</td>
</tr>
<tr>
<td>V</td>
<td>Crime of property violation</td>
</tr>
<tr>
<td>VI</td>
<td>Crimes of disrupting the order of social administration</td>
</tr>
<tr>
<td>VII</td>
<td>Crimes of disrupting marriage and the family</td>
</tr>
<tr>
<td>VIII</td>
<td>Crimes of dereliction of duty</td>
</tr>
</tbody>
</table>

Note: The crime of corruption and its punishment is covered by article 155, Chapter V, and article 185 (acceptance of bribes) in Chapter VIII.
A decision of the 19th Session of the Standing Committee of the Fifth National People's Congress on June 10th 1981, made it impossible to appeal to the Supreme People's Court for cases in which the death penalty had been given for murder, robbery, rape, causing explosions or arson.

With death sentences imposed on offenders convicted of counterrevolution and corruption, the Supreme Court still has to approve these, in accordance with the stipulations of the Criminal Procedure Law.

The revised regulations of the two laws were issued, on January 15th 1997, for the Criminal procedure law, and on December 25th 1997, for Special Provisions of the Criminal law. They were published in the 1998 Procuratorial Yearbook of China: Criminal Procedure Law pp. 327–366, Criminal Law pp. 401–41210.

The revised Special Provisions part of the Criminal law counts 10 chapters and 414 articles, at this time they became four times the volume of the 1979 statutes (containing, in detail — Table 5).

<table>
<thead>
<tr>
<th>Table 6: Revised Special Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>I Crimes of endangering state security</td>
</tr>
<tr>
<td>II Crimes of endangering public security</td>
</tr>
<tr>
<td>III Crime of disrupting the socialist economy market order</td>
</tr>
<tr>
<td>IV Crimes of Infringing upon the rights of the person and the democratic rights of citizens</td>
</tr>
<tr>
<td>V Crime of encroaching on property</td>
</tr>
<tr>
<td>VI Crimes of disrupting the order of social administration</td>
</tr>
<tr>
<td>VII Crime of endangering the interests of national defense</td>
</tr>
<tr>
<td>VIII Crime of graft and bribery</td>
</tr>
<tr>
<td>IX Crimes of dereliction of duty</td>
</tr>
<tr>
<td>X Crime of violation of duty by military personnel</td>
</tr>
</tbody>
</table>

Note: A new chapter — Chapter VIII on Corruption — emphasizes this aspect as one of capital importance. In detail we see it covers many aspects: Table 7.

10English Version of Criminal Law is available in Charles D Paglee, Chinalaw Web, http://www.qis.net/chinalaw/prclaw60.htm

11The chapter 3 of the 1979 criminal law account was on socialist economic order, with one word more, this order become of a market one.
Table 7: Detail of chapter VIII (of revised special provisions)

<table>
<thead>
<tr>
<th>Articles</th>
<th>Corruption</th>
</tr>
</thead>
<tbody>
<tr>
<td>382</td>
<td>Crime of corruption: definition for state personnel</td>
</tr>
<tr>
<td>383</td>
<td>Punishments</td>
</tr>
<tr>
<td>384</td>
<td>Punishments crime of misappropriation of public funds: definition</td>
</tr>
<tr>
<td>385</td>
<td>Crime of accept bribes: definition</td>
</tr>
<tr>
<td>386</td>
<td>Punishments as article 383</td>
</tr>
<tr>
<td>387</td>
<td>Crime of accept bribe as a unit</td>
</tr>
<tr>
<td>388</td>
<td>Punishments as article 383</td>
</tr>
<tr>
<td>389</td>
<td>Crime of offer a bribe: definition</td>
</tr>
<tr>
<td>390</td>
<td>Punishments: 5 years to life imprisonment</td>
</tr>
<tr>
<td>391</td>
<td>Crime of offer a bribe to a unit</td>
</tr>
<tr>
<td>392</td>
<td>Crime of introduce to corruption</td>
</tr>
<tr>
<td>393</td>
<td>Crime of offer a bribe as a unit</td>
</tr>
<tr>
<td>394</td>
<td>Punishments as article 383</td>
</tr>
<tr>
<td>395/1</td>
<td>Crime of own unknown source of huge sum property: definition</td>
</tr>
<tr>
<td>395/2</td>
<td>Crime of hide foreign origin deposit: definition</td>
</tr>
<tr>
<td>396/1</td>
<td>Crime of private appropriation of national assets 3 to 7 years and fine</td>
</tr>
<tr>
<td>396/2</td>
<td>Violation of state stipulations by judicial and administrative organs: 3 to 7 years and fine</td>
</tr>
</tbody>
</table>

Article 382 states the definition:

"State personnel who take advantage of their office to misappropriate, steal, swindle or use illegal means to acquire state properties constitute the crime of graft.

Those who are entrusted by state organs, state companies, state enterprises, state undertakings and mass organizations to administer and operate state properties but take advantage of their office to misappropriate, steal, swindle or use other illegal means to acquire state properties also constitute the crime of graft".

\[12\] Translated from Zuigao renmin jianchayuan guanyu shiyong xingfa fenze guiding de fanzui de zuiming de yijian (Issues of the supreme people's procuratorate on the concrete application of crime provided in Specific Provisions of rhe criminal law amendment), Procuratorial Yearbook of China 1998, pp. 401-412.
According to the 1997 supreme people's procuracy yearbook, there were 116,961 corruption cases recorded: 77,365 were reported to the police — of these 53,533 were investigated and finally only 47,589 were brought to trial. Among these trial cases 8,266 were against civil servants and members of the party and government. According to the China's Statistical Yearbooks of 1999 and 2000 the trial figures for 1998 relate to 46,219 cases of corruption, and in 1999 there were 44,383 cases.

The cases related to corruption under direct investigation by Procurator's offices are listed in Table 8, opposite the articles of the chapter VIII, with smuggling as an additional component: Special provisions chapter III Crimes of undermining the order of socialist market economy — Section 2 Crimes of smuggling.

<table>
<thead>
<tr>
<th>Types of Cases</th>
<th>1998</th>
<th>1999</th>
<th>1999/1998 (%) change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smuggling</td>
<td>2,301</td>
<td>1,205</td>
<td>48.0</td>
</tr>
<tr>
<td>Corruption (administration)</td>
<td>46,219</td>
<td>44,383</td>
<td>3.6</td>
</tr>
<tr>
<td>Bribery</td>
<td>23,046</td>
<td>20,299</td>
<td>11.8</td>
</tr>
<tr>
<td>Misappropriation of public funds</td>
<td>14,977</td>
<td>15,895</td>
<td>+13.5</td>
</tr>
<tr>
<td>Collective illegal possession of public funds</td>
<td>476</td>
<td>747</td>
<td>+56.9</td>
</tr>
<tr>
<td>Unstated sources of large properties</td>
<td>262</td>
<td>294</td>
<td>+12.2</td>
</tr>
</tbody>
</table>

Article 383 refers to the scale of punishments within the amount of graft (RMB):

- For more than 100,000 RMB/petitioner: no less than 10 years to life imprisonment
- From less than 100,000 but more than 50,000: no less than 5 years
- From less than 50,000 but more than 5,000: no less than 1 year

The death sentence is often prowling in Chinese law-courts\textsuperscript{14}: for cases greater than 100,000 RMB, there is a 383 additional sub-article:

"In especially serious cases, those offenders are to be sentenced to death, and, in addition have their properties confiscated".

The notion of serious is not specified; it is, at least, related only to the amount of graft.

With respect to Article 383 there is an additional sub-article for 5,000 to 100,000 RMB — this also emphasizes:

"In any serious cases, these offenders are to sentenced to life imprisonment, and, in addition, have their properties confiscated".

In the huge smuggling-linked Yinhua-Xiamen case, 91 government officials were involved, and a further 167 linked cases have been accepted by local courts, which involve 273 defendants. So far this has resulted in 213 defendants of 119 cases being found guilty

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yu Ding\textsuperscript{15}</td>
<td>Head of Public Security</td>
<td>2.3 millions RMB in bribes from Hong Kong businessman running illegal casinos in Liuzhou</td>
</tr>
<tr>
<td></td>
<td>Bureau of Liuzhou City, Guangxi</td>
<td></td>
</tr>
<tr>
<td>Jin Jianpei\textsuperscript{16}</td>
<td>General Manager, Hubei Province set up Yi F. Trading Company in Hong Kong</td>
<td>Misappropriation of HK$ 188 million between 1996 and 1998, for gambling in Macau and stock speculation in Hong Kong</td>
</tr>
</tbody>
</table>

\textsuperscript{14}Amnesty International Report 2001: <<At least 1511 death sentences had been passed, and at last 1000 executions carried in 2000. These were believed to be only a fraction of the true figures, as death penalty statistics remained a state secret in China.>>.


\textsuperscript{16}SCMP 2001, May 29.
Table 9 (cont’d)

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zheng Daofang</td>
<td>Deputy Director Sichuan Province Communications Department</td>
<td>1 million HK$ in bribes while holding senior responsible for positions for highway building between 1994 and April 2000</td>
</tr>
<tr>
<td>Gao Yulin</td>
<td>Deputy Head of Tianjin Educational Hygiene Department. Head of Tianjin, Examinations Department</td>
<td>Leader of five sentenced for misappropriation of examination fees for 400,000 RMB from 1986 to 1995 (others didn’t get death sentence, one was sentenced to death with two years suspension of execution)</td>
</tr>
</tbody>
</table>

Note: Death Penalty — Section 5 of the Chapter III (Punishments) of the Amended Criminal Law

and sentenced\(^\text{19}\). Of these, 14 have been sentenced to death, among them, Chen Yanxin, the former general manager of the Fujian Petroleum Company. Jean-Pierre Cabestan, director of the Hong Kong based French center for contemporary China says:

“The whole system is really in disarray. Chinese officials have two careers; there is the official one, in which they are part of an efficient and clean bureaucracy. That’s the image China would like to convey. Then you scratch the surface and see what people are doing behind closed doors. It is frightening — for the whole system”\(^\text{20}\).

\(^{17}\)SCMP 2000, November 17.


Xiamen is one of the China's wealthiest port cities, and, as we noted above, corruption is not evenly distributed among Chinese provinces.

In a Dubious Battle

The fight against corruption has to deal with various forms of corruption, a rampant rural one, and that with an urban style.

The Rural Battle-Field

The landlords had been wiped out and their property confiscated by the 1950s land reform. Their lands were redistributed among peasants, and the power of landlords was replaced by the power of the party. A new 'procedural' network was settled, whose main unit was the county, just as for the land reform campaign. There are 2109 counties in China, and now power is in the hands of county party chiefs; and, at a lower level, village bosses, who have legitimacy and now some power. Yet at last, true power lies within their position as party secretaries and/or of their label as model worker, activist, son of a hero of the revolution, and so on. Almost nothing can be done in Chinese counties without their agreement, and nothing at all may be undertaken against their interest. In any case, with respect of corruption for example, they are very hard to track down because of the power of their network at the county level, and beyond. This power includes often the county-level judicial structure. In year 2000, Procuratorial organs checked all the 2100 cadres at county level right across China — we are waiting for the outcome of this check. In rural China where the only direct elections are at village level, votes can be bought:

"In January, the Legal Daily reported prosecutors had detained Jiang Jianzhong, the deputy chief of Ji County in Shanxi province, for paying


500 RMB to 40 members of the county People’s Congress to vote for him. Only one person reported the bribe to the authorities, as the other 39 considered it normal behavior... Jiang, who is in police custody, claims he did nothing wrong, and that giving such presents was normal and that he was the victim of a political struggle. Professor Cai Dingjian, from the China University of Politics and Law said: the 500 RMB paid in Ji county was more than enough to secure a vote. In other places, candidates gave a packet of cigarettes, a shirt, a tea set, or a foldable umbrella for a vote. This is due to the poverty of the representatives and their lack of democratic awareness”. 23

An example of such a local power is Wang Baojing in the Wu Fang case:

Wu Fang, female, born 1958 in Beitun near Fenghuo, Shaanxi, married Wang Maoxing in 1981. Maoxing is related to Wang Baojing, a 1957 model worker and party chief village boss. Maoxing was said to be a layabout and a wife beater, thus Wu Fang asked for a divorce and Maoxing refused. In 1987 Wu Fang ran away to Hancheng, 250 kilometers away. Fearing this action of Wu Fang would tarnish the reputation of the model village, and endanger the flow of subsidies and loans from the state, Wang Baoxing sent 2 policemen and her husband’s elder brother to bring her back. They promised to make her go back to the village and said they would let her visit her parents. Instead, they locked her up and refused to allow the divorce. Wang Baoxing’s son, Wang Nongye, gained entrance to the cell by night then went out, switching off the light in the room. Three women rushed in together with her husband — he, or one of the three women, stripped her and threw sulfuric acid on her face and breasts. She was temporary blinded. Most people in the crowd outside felt sympathy for her fate, but nobody dared to go in because there were officials involved.

Although sent to hospital, her parents had to sell their belongings and the entire proceeds of that summer’s harvest to pay for continued treatment for her. Yet her husband was arrested and executed, and his brother jailed for providing the acid, but they

were just scapegoats, the real culprit being Wang Nongye. Further involved are Nongye's father, and the model worker and the village boss Wang Maoxing acting as party chief of a model village.

Wu Fang had almost given up hope of getting justice when a Beijing journalist from China Youth Daily contacted her in 1996. The journalist wrote an article casting doubt on Baojing's records as a model worker dating back to the 1950s, during which time, he claims, the figures for Fenghuo's grain production were vastly exaggerated. Soon after the article appeared, China Youth Daily found itself subject of a libel suit, brought by three defendants: Wang Baojing, Wang Nongye, and the village of Fenghuo. The newspaper retained several top lawyers from Beijing, including Wang Weiguo, the law professor who also advises President Jiang on legal reform.

But in Shaanxi court, the plaintiffs demanded US$600,000 damages because they claimed that, since the article appeared the apple trees no longer bore fruit, and the chickens had stopped laying eggs. The judge didn't dismiss these lines of reasoning, and finally found against China Youth Daily and ordered it to pay 11,000 RMB in damages to the plaintiffs.

Wu Fang has remarried despite her outward appearance, but she still needs surgery on her corneas, and her eyesight has never fully recovered from the acid. Following in his father's footsteps, Nongye was declared a model worker in 1992, and is also an influential party member in the province. Professor Wang Weiguo is still fighting the appeal. \(^{24}\)

**The Urban Battle-Field**

Urban-style corruption, is linked to the business of the new market-oriented Chinese economy, which is broadly the product of the privatization process resulting from the dismantling of state enterprises. This urban-style corruption is no more a matter just of illiterate or semi-illiterate poor countrymen, or older cadres whose

\(^{24}\)Summary of *Time*, October 9, 2000 article.
rise is linked to their political background, but, rather of the younger graduates and postgraduate cadres, the fleuron of the new economy. Such is the Teng Guorong case, head of the Jiangxi Province financial department, who was sentenced to 7 years imprisonment, on December 30th 1999 by Nanchang intermediate People's Court, for accepting bribes to the value of 120,000 RMB. The article went on to say: compared to one million, ten of millions of Renminbi is a big corruption case, just as 120,000 RMB is a tiny one (a small sorcerer). But, small or big, the spirit is the same; sorcerers are swimming in the same swamp.

Born in 1945, Teng Guorong graduated from central financial school and became deputy-manager of Jiangxi province financial department in 1984, and head of department in 1995. The year 1993 was one of dismantling of numerous state enterprises, to make private companies, which, looking for sites to hire, had to seek advice from financial departments. One, which got a successful outcome, thanks to Teng, gave him a 7800 RMB cooler as an acknowledgement. This was the first offer of a bribe made to him, but he did turn it down. However, he did not make a report, such form of an offer being common.

In 1992, Jiangxi financial school was setting up ‘Huaxing’ a real estate company; but, as they were short of assets, the company director asked Teng for help. He put them in touch with the head of Jiangxi province financial department, who transferred an illegal cash deposit to the company’s director account; Teng’s mediation was acknowledged by a 10,000 RMB bribe in 1994.

In 1995, an enterprise requiring new premises was looking for a piece of land to buy in Yichun, a Jiangxi Province Township. The price seemed to have been agreed with the township authorities, but, at the last moment, Yichun financial bureau asked for more funds. Teng was in charge of Yichun bureau some while before, and had known the buyer there, so Teng was called on to help. Having settled a new price agreement through influence,

Teng got 18,000 RMB from the buyer in 1996; later the township's greed compelled a buyer to call for Teng's help again, which got him 10,000 RMB more. In 1997 for his final success his driver, to whom he had refused to give a share of the money, betrayed Teng, probably.

This is far from the huge Cheng Kejie or Yinhua-Xiamen cases, but the Teng case may be held as a model case of corruption by one of the new urban-educated high-ranked cadres.

The sentence of 16 years in prison meted out to Chen Xitong in 1998 squares more with the higher-ranking, older cadres, whose rise is linked with their political background. One of the main factors in that case was Chen's mistress, who worked as a manager in an upmarket hotel in Central Beijing. Sex is one of the main ways used to corrupt, as in the Chen Kejie case, whose mistress Li Ping, was sentenced to life imprisonment. In almost 10% of the 23,000 bribery cases brought against officials in the final eight months of 2000 we see:

"Extra marital affairs have become so rampant among corrupt officials convicted on the mainland that Chinese legal experts are debating whether it should be made illegal to bribe someone with sex."

We remarked before that investigations by the police might be hard to make if corruption is truly efficient, as in the Jiang Yanping and the Yinhua-Xiamen cases.

Chen Rongjie, a retired 84-year-old delegate to the Hunan Province National People's Congress, set himself up as a one-man ombudsman against corruption, almost as it were, a Chinese private-eye. At the end of 1988, he received a report from workers at a department store managed by Jiang Yanping, 42, female, accusing her of huge corruption. Chen conducted an investigation that confirmed the

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26 Former mayor of Beijing, member of political bureau of CPC Central Committee, Secretary of CPC Beijing municipal committee, deputy to 6th through 8th NPC, Who's Who in China Current Leaders, Foreign Language Press, Beijing, 1994, p. 65.
27 South China Morning Post, April 18, 2001.
workers’ story: he then sent a report to the Hunan Daily, but the report was never published. After another report from the workers, the report from Mr. Chen was sent to the local office of the prosecutor, which also did nothing. In contrast, Jiang fired the workers; and subsequently three attempts have been made to kill Mr. Chen, who sustained injuries in the course of these attacks. In 1988, having got more evidence, Mr. Chen made another report to the Supreme People’s Procuratorate. Jiang was at last arrested on August 1999. She was accused under Penal Law article 395/1, of having unknown sources relating to 10 million RMB assets as cash, bonds, bank savings, shares, apartments and jewelry.

Born in a poor rural Hunan county, Jiang moved to Changsha in 1982 where she took a job as a clerk in a department store. She became the mistress of its deputy director, who two years later made her the manager. She becomes a Communist Party secretary, studied at the Central party school in Peking, where she was considered as a model party member. The prosecution said she had obtained these positions through a mixture of bribery and sex. During her 20 months in a detention center before the trial, Jiang became the mistress of the deputy director of that center, and paid him tens of thousands of RMB. In return, he provided her with a telephone and other means to prepare her defense. 29

Another example concerns the Xiamen Yinhua case.

When the anti-corruption inspection team used Xiamen’s Wanshou guesthouse as a base, the head of the team forbade all the members to leave the guesthouse to prevent them from giving in to the ceaseless attempts at corruption outside. The team is reported to have discovered its phones were being tapped. Investigations allegedly revealed that those doing the tapping were members of the local state-security bureau with links to Xiamen’s Vice-Mayor Lan Pu. The deputy police chief even warned the — ‘godfather’ — Lai Chanxing, that police planned to arrest him and urged him to flee. 30

“Our market economy has developed considerably but the reform of our political system lags seriously behind. There is concentration of power, with a high concentration in the hands of leaders... The benefits power brings to an individual make some people mad to obtain it”. 

**Conclusion**

Corruption in mainland China today is not an outcome of the process of reform, such as simple loss of ethics for example, but rather a consequence of the change from a non-monetary system in Mao’s time, to a monetary one in the post Mao era.

The Maoist period was indeed a hard one: there was no free movement of labor or foreign travel. Normal trading patterns, dictated by market-based supply and demand, did not exist as the cash flow of all companies was strictly controlled by the state. Corruption for purely financial gain was limited by the lack of opportunity to make use of money. Chinese society was strictly policed, and any large bank deposit aroused suspicion and denunciation, nor was there any way to transfer money abroad.

Access to scarce goods was reserved for the nomenklatura, so the only way to obtain these goods was to rise in the state/party hierarchy, or to have influential connections within it. The right behavior was to follow the state/party’s way, whatever it might be; as not to do so could be a matter of life or death. The worst examples probably arose through the false reports made during the so-called 1958–1960 years “Great Leap Forward” (in reality the Great Leap Famine). Herein the provincial and local authorities forecast record grain harvests, resulting in further high government requirements to be demanded from the countryside (Yang, 1996). In fact, production was actually dropping, which later caused the starvation of millions of peasants. This is not true corruption but

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rather a blindness to the facts, midway between the preservation of some guanxi connections and a zeal leading to the denial of reality.

The so-called Reform Age, begun in 1978, was a shift from an ideological framework to one dominated by economics: it moved away from the denial of reality in seeking material advantages. During the former Maoist period, it was obligatory to respect the personality cult surrounding the leader. In the reform-market period, there were no more cults, individual thinking was no longer forbidden, nor the ability to voice it. Even making money was allowed and encouraged. In this context, day-to-day business has fuelled the use of connections (guanxi). While corruption may be classified on one hand as ordinary human behavior — in China it just a lot more widespread than elsewhere — on the other hand, corruption in any form is reprehensible.

We are left with dilemma — is bribery an alternative to a lack of connections? Or, are connections only one step before offering bribes? Or, is bribery more useful than connections?

The use of connections is a way to get anything, generally from the social or bureaucratic strata above, depending on the strength of the network connections of the contracting parties, petitioner and solicited. The solicited is chosen because he has the right guanxi. If the petitioner has the right connections also, they both can do business, since the petitioner will be able to repay his debt later. But what if the petitioner does not possess the right connections? He won't be able to reciprocate, and so he has to bribe; there is a credit account in the first case, and cash down payment in the second. If the petitioner is asking for a lot, he may have to supplement the future use of his own connections with a bribe.

The use of connections is difficult, if not impossible to trace in China, as in any country. Let us agree here that the use of influence is a traditional Chinese way to promote something or somebody: indeed this would be the case if one were to take a strong Confucian stance. Herein one would know one's place in the official hierarchy, father to son, etc. During the Maoist era, connections — given they were untraceable — were in common use, but corruption wasn't because of the lack of money or goods to bribe with, and
Corruption in Mainland China Today

because it was too easily traceable through denunciation. We accept here a little leeway in our argument, since the use of guanxi for non-monetary gain can incline close to bribery.

The transition from the nonmonetary Maoist era to the system of today has been rough. It is characterized by a quite sudden flow of goods and money, and a simultaneous relaxation of social control. A growing minority now has found ways to get access to goods and money, while their recent but dramatic rise in GDP has been the largest in the world (on a percentage base) in a country which is still the most overpopulated, and which until a short time ago was one of the poorest.

As China became wealthier, accounted for by money and goods (and sex opportunities); the volume of money circulation increased; connections were for sale, and bribing took the place of influence so opening the way to soaring corruption. Fewer and fewer officials agreed to be repaid in kind, more and more asked for cash, rather than goods or services. China has moved from a regime with a scarcity of goods as in the Maoist era, to one plenty of goods (if in the right area, with the right connections). The price of influence is soaring; it is simply a matter of inflation.

Bribery is an imbalance between money and power (sex and power is another description). The more money people have, the more they can bribe power holders; and for corrupters all power is for sale, it is only a matter of price. Those people who have no power for sale, or no resources to bribe power holders are excluded. Among power holders, the notion of public service is only just surfacing, which makes easier [for the moment] the continuation of informal networks and links with organized crime. Smugglers can take advantage of the reluctance of local people to pay taxes by supplying cheaper goods as in the Fujian Xiamen-Yuanhua case. This makes smugglers popular (folk heroes even), and corruption is bearable.

The ratio of civil servants (including justice and the police) to the total population in China is low. In the June 5th edition of the Renmin Ribao (People's Daily) a front-page report indicated a total of 41,130 million cadres, including 7 million in organizations, 20,640
million in institutions and 13,390 million in enterprises. The 20,640 million institutional cadres supporting 1,259,090,000 inhabitants overall yields only a 1.6% ratio. In contrast, there are 3 million French civil servants, giving a 5% ratio. The judicial system accounts for 220,000 (a 1.06% ratio to the population). Considering educational qualifications 48.5% of all cadres hold less than a General Certificate of Education, though this ‘relative failure’ includes 39% of Judicial cadres. There are 3 million Chinese students for a 1,26 billion population, only a 0.23% ratio. In contrast, there are about 2 million French students of its population of 60 million, a 3.33% ratio — some 14.4 times more than China. We must ask if the gap between developed countries and China ever be filled?

Because of such poor conditions, the average Chinese does not feel he or she has a stake in their society: they become indifferent and therefore lack respect for the law, which makes the battle against corruption so vague. And it is from this lack of civic participation, probably more than some old habit that we find a quaint ‘normality’ — “only one person reported the bribe to the authorities, as the other 39 considered it normal behavior” as quoted above. This makes it very difficult to create a real democracy. It is imperfect, but only the way forward we think is to introduce systems of checks and balances to able to restrain, or, at least, to limit corruption. Otherwise, honest people in China will be like Bonturo:

A quella terra, che n’è ben fornita:
ogn’uom v’è barattier, fuor che Bonturo;
del no, per li denar, vi si fa ita.\(^{34}\)

\(^{33}\)CSY, p. 23.


*That land hath store of such. Alle men are there,*
*Except Bonturo, barterers: of ‘no’*
*For lucre there an ‘ay’ is quickly made.*

Translated by The Rev. Francis Cary (Ed). Cassell Tetter and Galtin.
References


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Introduction

Cross-cultural research into different management styles attempts to determine the effect of the level of industrialization, and also the role that culture plays. The general finding is that the management style is a function of the level of industrialization, but is also tempered by cultural characteristics. The same question can be posed concerning corruption: to what extent is it dependent on the level of industrialization and to what extent is it dependent on culture? This chapter argues that as the level of industrialization and political control alters, so will the nature of corruption, progressing from disorganized to organized. The chapter also attempts to answer the question of whether Asian culture is more prone to corruption than Western culture. While certain characteristics of Asian culture may give the impression that it is more prone to corruption, the proposition that a firm link exists between culture and corruption seems untenable.

Asian Culture

On the question of what comprises Asian or Oriental culture, the very size and diversity of the Asian continent makes any attempt at
an answer virtually impossible. The Asian continent takes in a large part of Russia and, in a sense, the middle east, including Israel. There is also the large and diverse Indian subcontinent and the many Islamic areas, stretching as far east as Indonesia and the southern Philippines. In the context of this chapter, culture essentially refers to the culture of China and to that of some of its neighbors, particular those with some historical influence from China, such as Japan, Korea, etc. In trying to describe the essence of Chinese culture, one should not be looking for a single point in the multi-dimensional cultural space. The approach should be one of trying to eliminate certain regions of the space and hoping that a small enough space remains in which the core of Asian cultural values abides.

Understanding and describing Asian culture has occupied the minds of many writers. Oscar Wilde (1948) in his essay "The rise of historical criticism" suggests "the protective spirit, which is characteristic of that people (i.e. the Chinese), proved as fatal to their literature as to their commerce." So here we have the first of many adjectives used to describe Asian culture — protective. In the same essay Oscar Wilde also suggests that the Chinese culture contains: "a soberness of judgement" and "a freedom from invention." This view is also somewhat supported by the writing of the ancient Chinese philosophers such as Laotse and Chuangtse, who seem to advocate the necessity of being in harmony, and argue a middle ground position of non-interference. A good translation into English of the work of these two philosophers was done by Lin Yutang (1955). However, Oscar Wilde’s suggestion that individualism and free commerce are connected may not be totally appropriate in a modern industrial society. The large and powerful corporations that have evolved in the last half of the 20th century now control a large part of the supply chain and the role of the individual entrepreneur has possibly been very much diminished.

Salvador de Madariage (1963) in an essay on the unity and diversity of Europe puts forward the view that individualism in Asia is just beginning to count. This is also supported by the often-cited work of Hofstede (1991), that concluded that individualism in Chinese societies (Hong Kong, Singapore, Taiwan) is significantly
lower than in the Western societies (USA, Australia and Great Britain). This theme has also been taken up by many authors and researchers with the general conclusion that Asian culture places far more emphasis on the group than on the individual. So pairs of words are now frequently used to describe East-West cultural differences, such as “group, individual”. Other related pairs of words can also be established using the previous two-word pair as seeds. Individuals are argumentative and impulsive, so we get the pair “harmonious, argumentative”. This last pair is also supported by the ancient Chinese philosophers who advocated a need to be in harmony with nature. These adjective pairs can go on and on, even leading to a the most basic pair of “farmer, hunter”.

Using pairs of words to measure cultural differences and managerial traits seems to have been first used by Ghiselli (1971) and co-workers. The pairs are not direct antonyms, but are adjectives that are equally desirable or undesirable. Ghiselli’s approach was to ask respondents to make a choice from a pair that best describes him or her, or that least describes them when the pair consists of undesirable adjectives. This equally desirable or undesirable choice is meant to stop respondents from giving what they consider to be the right or appropriate answer. Ghiselli (1971) presents 64 pairs of such words, examples include: Capable or Discrete, Logical or Adaptable, Unambitious or Reckless, and Nervous or Intolerant.

Evans and Sculli (1981) applied this in a cross-cultural context in Hong Kong, and many of the responses were in line with cultural expectations. Analysis of individual word-pair scores showed that there are certain word pairs that appear to evoke different responses in the USA and Asia. For example, Chinese managers are said to be more concerned with “face” than their American counterparts. “Face” is an oriental concept, whereby any offence or personal slight is to be avoided at all cost, by both parties in any transaction (Ho, 1976).

In addition, many Orientals are thought to willingly accept the authority of others. Echoing this, Hong Kong subjects felt that being “fussy” at least described them reasonably well, as against “submissive”. Furthermore, the Hong Kong Chinese, perhaps
because of their unique history, have developed a reputation for pragmatism, and in accord with this they describe themselves as: "capable" rather than "discreet"; "practical" rather than "industrious"; "realistic" rather than "tactful". A practical, capable, and realistic man would be a fitting description of a pragmatist.

Taking the group culture concept as the basic dimension, other popular views of Asian culture follow. A group will need to arrive at consensus decisions, suggesting that Asians are better at this type of decision making. A group also must be sensitive to the views of others in order to maintain stability, leading to the concept of "face" and the need not offend the opposition. The proper functioning of a group requires a certain degree of regimentation and loyalty: the Japanese are often described as a regimented society with a high degree of loyalty.

Individualism is usually associated with creativeness, and quite often Asians are described, especially by Westerners, as lacking creativity. The flow of commercial culture and technology from the West into Asia tends to lend a certain degree of support to this view. The Japanese manufactured products in the late 1960's and the early 1970's were often described as merely imitative. The Japanese were able to improve the manufacturing processes and reduce production costs of products developed and patented in the West. However, the view that Asians are not creative can be challenged: ancient China was responsible for many inventions, paper money and gunpowder being two that are frequently mentioned. Shoji Okumura (1985) cites a number of Japanese inventions, and suggests that there is a general misunderstanding about technological inventions, and that the Japanese are no less able to think creatively than their Western counterparts.

**Culture and Corruption**

Taking the question of corruption and culture further, is it possible to conclude whether the two are related, a priori? Words such as group, harmony, face, regimentation, and loyalty are freely used by Westerns to describe Asians. It seems that an analysis, using the
accepted meaning of these words can be attempted, to determine if, for example, a person who is striving to achieve harmony is more likely or less likely to be corrupt than a person who is not. Is a person who is very concerned with the concept of “face” more likely or less likely to be corrupt? It seems that one would need to conclude that a person concerned with harmony and saving “face” would be less likely to be corrupt than a person who is not. The “farmer, hunter” pair distinguishes between a farmer who has little freedom to act and must act in harmony with the seasons, and the hunter who needs prowess to trick his pray. Which of the two is more likely to be corrupt? If the victim of the hunter was able to have a say in the matter, he or she would undoubtedly describe the hunter as immoral and corrupt.

The word “loyal”, which is often applied to Chinese culture, is more interesting. Here too we can ask the question as to whether a person who describes him or herself as loyal is more likely to be corrupt than a person who prefers to be described otherwise. Lack of loyalty or discretion by some members often exposes the corrupt organization to the authorities — by the actions of the ‘whistle blowers’ of today’s society. Even the police will freely admit that penetration into these organizations is virtually impossible when both loyalty and unity are firm. It is, therefore, well accepted that loyalty is an essential trait that members of organizations engaged in corruption must posses. However, this does not necessarily mean that a person generally described as loyal is more likely to be corrupt by nature, though he or she is more likely to be recruited into organizations that are engaged in corrupt practices.

There are a number of culture related practices that may be condemned, especially by unrelenting Westerners, as being corrupt. In Japan there is a well-established tradition of giving gifts, especially at New Year and on other festive occasions. The Japanese are often at pains to point out that this tradition and practice need not necessarily be, nor should it be, interpreted as corrupt. It has long been a Chinese tradition also to give money, called lucky money, in specially designed small paper packets. This too is done on festive occasions and during the Lunar New Year celebrations. Hong Kong’s
independent commission against Corruption has now published some general rules concerning the size of such gifts, and civil servants and other government-funded organizations have largely stopped or severely curtailed this practice. Whether this tradition of giving gifts and lucky money makes donors and receivers more likely to become corrupt is also doubtful. But such practices are gradually diminishing, not because they may encourage other and more severe forms of corruption, but because in a modern and sanitized society they give an undesirable impression, even if it is only (sic!) to Westerners.

In the conduct of business transactions, the Chinese follow a set of unwritten rules often denoted by the term “Guanxi”. The term has no direct translation into English, but can be loosely defined as a code of conduct that tends to establish and nurture trust in personal relationships; the term is discussed and interpreted well by Luo (1995, 2000), and by Wong and Chan (1999). Guanxi is a measure of the extent and strength of personal relationships; and a person with good Guanxi should be able to deal quickly and effectively with government bureaucracies and achieve results that are normally difficult for ordinary mortals to achieve. Proponents and admirers of guanxi point to its effectiveness and smoothness in facilitating business transactions, and criticize the heavy reliance on the legalistic process in the West, especially in the USA. However, contracts and written agreements must provide an avenue for recourse to the law when business relations turn sour. While a business runs smoothly, guanxi is fine, but when the business tide turns and there is a need to pick up the pieces, the situation can become clumsy and even dangerous. Many joint ventures in China have collapsed in recent years, putting the foreign partners in a very difficult position. In an industrialized economy operating under the rule of law, such partners will have the protection of the law of limited liability, but in China they may be forced by criminal elements to pay compensation to the local partners, and may even be tried and convicted by the local courts. This suggests that guanxi, though fine in its objectives, cannot be a substitute for the rule of law. A tight guanxi relationship can also affect the pluralism in relationships, leading to a tightly controlled group with possibly only
one supplier at each stage of the process if in a supply chain. Some of the large Japanese manufactures are still practicing very tight control over suppliers of components and insisting that suppliers must not supply similar components to other companies. On the question of corruption and guanxi, while one cannot quarrel with the concept of good business relationships, an undesirable and tightly closed system may develop under guanxi that may stifle competition.

China, of course, has been under Communist rule for more than half a century, and Chinese culture has not escaped satirical comments from pro-Communist writers. Leftist writer Lusin who died in 1938, see Lin Yutang (1955), makes such a comment when in one of his epigrams, #20, he states that: “The Chinese culture is the culture of serving one’s master, achieved at the cost of the misery of multitudes. Those who praise Chinese culture, whether they be Chinese or foreigners, assume that they belong to the ruling class.” He also gives another insight into Chinese culture in epigram #16: “Chinese people love compromises. If you say to them ‘This room is too dark, we must have a window made,’ they will oppose you. But if you say ‘Let’s take off the roof,’ they will compromise with you and say ‘Let’s have a window’”. The question that arises here is whether a person who is willing to compromise is more likely to become corrupt. If compromise does not lead to the abandonment of principles, and there is no evidence that in their ‘love for compromise’ the Chinese cross this line, then corruption and compromising need not be related.

A brief discussion of Taoism may also be helpful at this stage of our consideration of the question of culture and corruption. Lin Yutang (1955) states that Loatse’s book of Tao is essential in understanding the Orient, or Chinese behavior. The two main exponents of Taoism are Loatse and his disciple Chuangtse (the spelling used by Lin Yutang). Loatse’s book of Tao consists only of about 5000 words — brief by modern-day standards, but at that time, quite formidable. Chuangtse’s writings consist of some 33 chapters, but many of the chapters are regarded as forgeries; Lin Yutang presents 11 chapters on the Tao (covering 75 pages), which he considers to be the most philosophically important. Unlike the monumental writings of the Greek philosophers, the writings of these
two philosophers are quite short and can be read comfortably in one or two hours. The translation by Lin Yutang (1955) is, in the author’s opinion, perhaps the best of any. Other translations seem to greatly trivialize the subject matter. We know that trivialization must necessarily occur to some extent in any translation, but large doses seem to be almost unavoidable when the root language is Chinese. It is generally acknowledged that Lin Yutang was very knowledgeable in his own culture and also quite comfortable with Western culture. His translations seem to provide good answers to the exact problems, whereas other translations, especially those by Western writers, seem to give accurate solutions to some approximate or imagined problem.

Taoism is not a religion, but is a philosophy of life; this might be contrasted against the fact that the main religion, if one is practiced in China, is Buddhism. A religion normally assumes the existence of an after life, and it requires followers to pattern their lives in such a way as to reap maximum rewards in the after life. Taoism advocates certain actions and inactions that lead to some peaceful stability of both the individual and society. The notions presented by these two philosophers are considered and argued from both the thesis and the antithesis, and the solutions they propose seem to lean towards the retention of stability and the statuesque. The statements by Oscar Wilde: “a soberness of judgement” and “a freedom from invention” seems therefore to be obvious consequences of Taoism. The Chinese will therefore be slow to absorb the developments of the modern economies, especially those developments that require changes in their cultural values and attitudes. On the question of Taoism and corruption, it seems very unlikely that a serious admirer and practitioner of Taoism would sanction corruption; the contrary position can be strongly argued. Confucius, being an advocate the middle way espoused by the two philosophers, comments on corruption in one of his aphorisms: “... to enjoy wealth and power without coming to it through the right means is to me like so many floating clouds.

From all the above discussions it seems safe to conclude that a relation between culture and corruption, if it can be established, would, at best, be only a very loose one. And, indeed, one would be
making a very strong racial and controversial statement if one felt able to firmly establish a relationship between culture and corruption.

**Corruption and the Level of Industrialization**

A relation between corruption and the levels of industrialization or economic development seems easier to accept. Experience worldwide seems to point to the existence of this relationship: in the Asian context, it is easy to point to countries such as Indonesia and the Philippines as evidence of this relationship. While industrialized Japan is not exempt from routine high-level corruption scandals, such incidents appear to be more refined and sophisticated. At the early stages of economic development corruption can be easily observed and has a disorganized appearance. Disorganized corruption occurs in situations that may be generally described as repetitive; and repetitive situations can occur where documents concerning a new business need approval by the authorities, or where some regular payment needs to be made to a corrupt organization for protection or insurance. At this stage the scene is set for some form of 'easement' or bribe to be offered — but there has to be a taker to complete the act!

Experience in the early 1990's in China bears out this disorganized image. It was not uncommon for a joint venture company involving foreign partners to pay a local official their dues, which were demanded to obtain authorization for local services. However, and too often, a few days later another would replace the official previously in charge, and, as far as the new official was concerned, the decisions of the previous official were not biding. The reasons given could be that the previous official had overlooked certain rules and regulations — and the company was thus forced to deal with a new person, and go through the various procedures again.

This disorganized corruption could also be easily observed in Hong Kong in the early 1970's. Mini bus drivers would pay dues to the police at various roadblocks, only to discover that at the next roadblock another group of policemen would demand another payment. This problem was solved by the mini bus drivers demand-
ing that a sticker be given, which could be displayed on the wind-
screen. The next group of policemen at the next roadblock would
then see the sticker and know that payment had been made. Such
was the state, extent, and openness, of this disorganized corruption.
However, the issuing of paid stickers was a step towards an organized
and workable corruption, which became a fact of life and thus
largely ignored as ‘corruption’ but paid as one of the many penalties
of trading. Although that incident reflected life in the 1970s in
Hong Kong these forms of extortion continue across the Asian
continent in petty ways — like officials demanding a fee for each
sheet of information given, or for each sheet of paper constituting
an official application form when both are declared by higher
authorities to be free to applicants. In many ways this may be
cured by giving all in the hierarchy a decent salary — as is the case
in Singapore.

A type of disorganized corruption is also described by A. Margariti
(1979) in an immigrant area of New York in the early part of the
20th century. He emigrated from southern Italy soon after the end
of the first World War and offers examples from the entertainment
industry, mainly of the coffee bars in New York frequented by Italian
immigrants. The coffee bar in the Italian and French tradition is
the social meeting point for friends, and is the equivalent of the
pub tradition in the English speaking countries. It may be worth
noting that the social meeting point for the Chinese is the restaurant,
and that many restaurants often provide entertainment facilities as
the evening draws on. Margariti describes how the owners of coffee
bars, after having paid the dues to one gang, would be approached
by another gang for more protection money. If the owners refused
to pay the rival gang, bombs would be planted in the coffee bar
concerned. Such bombs would not kill customers since they would
be exploded after closing time. However, the damage to the coffee
bar would be clearly visible and customers got the intended message
that the particular coffee bar should not be frequented. Margariti’s
observations suggest that disorganized corruption occurs when there
is a lack of clear authority. He goes on to describe the gang warfare
that resulted from the disputed areas of control. Finally, when one
gang firmly established itself, businesses could operate and the area would become relatively peacefully.

There is also a type of corruption that is prevalent in single, one-off projects, usually infrastructure projects. This type of corruption cannot be described as disorganized, but is very open and rapacious and tends to be prevalent in developing countries. Italy has had the so-called problem of the “Mezzogiorno” probably since its unification. The Italian Government poured money into southern Italy for many decades without any major economic benefits. Here the problem is not one of disorganized corruption, but one where dues must be paid at many levels and the funds remaining will not be sufficient for delivery of the project at the quality specified. Poorly constructed roads, for example, will get washed away during the next heavy winter rains, and so the entire project is in fact never delivered. Examples of this extensive corruption that diminishes the original capital to a level where the project cannot be delivered as planned are also prevalent in Asia, particularly in government projects in less developed areas. Or more insidiously the dues extracted are not too onerous; the project looks to be complete, but will never produce its economic payback, as its background overheads were too costly. We are suggesting here a project efficiently may be costed at 100 units but has cause to loose 20 units in bribes, thus the 80 remaining are used to build the project and take it to completion. Later, the project must run at efficiency or yield far beyond its design parameters to repay a debt calculated on the original 100 units but now derived from a project with the characteristics of one of size 80. So the project, or inwards investment, fails both at its commencement and in its eventual yield to the community.

Hong Kong is now classified as a newly industrialized economy and corruption has taken on a more sophisticated image. For example, competitive bidding for projects has generated another form of corruption, if it can be called corruption. It is well known that many contractors in Hong Kong’s construction industry make original bids that are deliberately set at well below cost in order to secure projects. As projects progress, they will then look for legal
loopholes, for example, unusual geology in the foundation works, to increase payments. This practice can also produce output, which is below specification, because of expenditure being necessarily reduced due to a throttling of the project cash flows. This has led to some particularly bad and dangerous cases of short piling — the foundations do not go to the depth specified to support the buildings. If these practices are not detected through vigilant inspection the company can save costs and possibly make the project profitable. Combating this type of corruption requires the authorities to scrutinize bids and not necessarily award the project to the lowest bidder. However, this may in turn generate claims of favoritism from those holding financial strings, and from the general public who only see half the story.

A good example of well-organized corruption in modern Hong Kong can be found in the entertainment industry. It is said that one group, a so-called triad society, has such strong control that when a new establishment opens, the group will place one of its members in it to work as a full time staff member. This member can in fact make valuable contributions to the running of the establishment, providing valuable advice in dealing with customers or in preparing accounts. Here the corrupt organization in fact works very much like the owner of a franchise, offering valuable advice to the franchisee; in much the same way as the McDonalds chain of franchised restaurants. Here it is the nature of the business itself that is off limits; the corrupt organization “overseeing” the business is able to make positive contributions to the running of the business. In fact they are most likely legitimizing their other illicit cash flows — as we may say, that are “laundering” their dirty money.

Concluding Comments

The previous discussion first attempted to explore, in a qualitative sense, whether Asian cultural values are more prone to corruption than others. The general cultural descriptors used, particularly in connection with Chinese culture, such as group oriented, concern
saving 'face', and harmony, and so do not necessarily imply any a priori tendencies towards corruption.

The author's experience of over 25 years in an educational institution in Hong Kong, while difficult, to summarize precisely, suggests that Oscar Wilde's observation of the existence of a protective spirit in Asian culture is right. This spirit leads a lack of openness, an observance of a strict hierarchy and a decision making process that appears to mainly serve those in power. Departments in publicly funded bodies seem to be run by the appointed Heads as if they are small private organizations. In the public sector there are many publicly listed small companies, especially in the property sector in Hong Kong, which are controlled by Chinese families, typically owning from 30% to 60% of the issued capital. They often trade at a very large discount against their net asset values, and the majority shareholder is quite happy to accept the very low market valuation. Low valuation saves death duty fees should it be necessary to transfer ownership to another member of the family. Here too one feels that a protective spirit blinds the major shareholder to the fact that there are minority interests in the company, and the major shareholder cannot fully distinguish the difference between ownership and control. The concept of a division between ownership and control is a sophisticated one, and one that cannot be easily understood in rural or agrarian societies — but it is evident and may be experienced equally in both the public and private sectors in Hong Kong.

This general cultural feature of protectiveness, while in itself not necessarily leading to corruption, is always open to the accusation of being corrupt. In the context of a rural society such an accusation is easily rejected, but in a modern society consisting of many interlinked organizations and sub-organizations the accusation is more difficult to dismiss. Of course, a protective spirit is present to some degree in all cultures, but it seems to be readily observable in Asia, especially by persons with a Western cultural background, such as the author.

Hong Kong established an independent commission against corruption (ICAC) in 1974 under the then Colonial Governor, Sir
Murray MacLehose. This commission is regarded as a significant step in Hong Kong’s economic development, helping it move from a developing economy into a newly industrialized economy. At the time of the formation of the ICAC, it was thought essential that its lines of responsibility be separate from any government department and the Police. Corruption was very prevalent and very visible at that time, and it was fostered by an inability of the government to cope with the services required by a fast growing population that also included daily arrivals of many refugees from Mainland China. The history section of the ICAC web page (http://www.icac.org.hk) gives a vivid description of the extent and nature of corruption at that point in time. The problem was very serious, not only in the private sector, but also in the public sector. Examples in the public sector included firemen asking for “water money” before they would turn on the hoses; money was also required before firemen would turn off the hoses, since excessive water could damage products and parts stored in industrial buildings. If asked, a fireman at that time may have replied insightfully that many fires were deliberately started by owners of small businesses to collect insurance claims during slow economic conditions! Corruption was also very prevalent in the Police Force. A protected witness used the colorful analogy of the corruption bus to describe the extent of corruption in the Police Force. He suggested that there were three choices available: to ‘run alongside’ the corruption bus knowing full well what is going on, to ‘throw oneself in front of it’, or ‘jump on it’. The ICAC has had considerable success over the years, resulting in many high profile convictions. Even so, most authorities will admit that some form of sophisticated corruption still exists in Hong Kong, but now the vast majority of projects and government services are delivered on time and at the specified quality level.

The interesting question is whether other developed and developing countries can learn from Hong Kong’s experience with its ICAC. When the ICAC was first set up, Hong Kong was under colonial rule and it was able to recruit many highly paid expatriate officers. The expatriate officers, many of whom were not able to speak Cantonese to any significant degree, were well shielded from
the local culture, and thus they were able to maintain independence, and an "at arms length" relation with the community that they had to investigate. The ICAC is now well established and functioning effectively and most of its officers are local Chinese. Elsewhere, if sufficient independence can be maintained between an ICAC-like body and other government departments, it should be possible to establish an organization such as the ICAC that can operate effectively in a developing country. The State of New South Wales, Australia, while not an example in a developing country, set up its own ICAC in 1988. But many developing countries in Asia may not be able to provide the firm central government support that a body such as Hong Kong's ICAC needs to have in order to be able operate effectively.

After the collapse of the Soviet Union in the late 1980's, a very noticeable increase in corruption has taken root in its former member countries, particular in Russia itself. Although corruption may have been no less prevalent when the countries were under the strong central control of the communist party, now the corruption may have be better organized and/or well disguised. At the point when communism collapsed, there was the interesting question as to whether the countries involved could make the transition to Western-style democracies quickly, thus avoiding that early stage of disorganized corruption that many developing countries appear to go through. It seems that this was not possible, and that corruption too may have a certain course to run, and a certain role to play, in the transition to industrialization and economic development.

The West would like to see China move towards a more democratic political structure, and is hoping that economic improvements will change the political environment in that direction, leading to the eventual dismantling of communism. This too is an open question; economic improvements so far have not reduced the influence of the Communist party. The Party conducts regular purges of corrupt officials, and acknowledges that corruption is a major obstacle to economic development. However, whether such purges are simply a means of installing another group of corrupt officials or whether it is real progress is also an open question.
This chapter has attempted to explore links between corruption and the level of industrialization or economic development. Here many examples seem to exist which appear to support the existence of some relationship. A form of disorganized corruption was discussed with examples that seem to occur mainly in the early stages of economic development. Corruption will become more organized and possibly more efficient when a clear authority is established or when the rule of law is more strongly enforced. The clear authority may simply be a strong central government; how this government is established may not be important, and may even be an authoritarian regime such as the Communist party in China.

To conclude, a business may be able to tolerate a degree of corruption if the "story" ends once fees are paid. The business can incorporate such fees in the unit product cost and make a business decision as to whether the product or service has a market at such a cost level. Disorganized corruption brings uncertainty in costs and the viability of the business cannot ever be assessed, making national economic progress difficult and slow. To learn this is one step towards progress.

Note

The views expressed in the chapter are not necessarily those of the author's employer, The University of Hong Kong, which was kind enough to pay his salary while conducting the research that lead to this chapter.

References


Chapter 9

The Economy of Seepage and Leakage in Asia: The Most Dangerous Issue

Gilbert Etienne

Introduction

In this chapter we will engage in a form of 'scene setting' across a swathe of south east Asian countries. We will concentrate upon the problems associated with the diversion of funds — a form of corruption we must admit that is also practiced in other parts of the world. But here, as well as in other poor regions, its inequity has grave effects.

Pakistan, India, Bangladesh, Vietnam, Indonesia, China and other Asian countries face very serious challenges in infrastructure, agriculture, in their state owned enterprises and with respect to environmental management. No matter the increase in private investments, local or from outside, the situation could get worse in the next decade or so due to a lack of public finance. Such a shortage is bound to slow down their future growth, particularly in China, Indonesia and Vietnam, and prevent an acceleration of growth across South Asia. One major remedy would be to reduce the seepage and leakage of public money that has achieved such enormous proportions, that it looks to be the most critical issue for the coming decades.
There is, at last, a healthy reaction against corruption. The World Bank, the IMF, the OECD, and several governments of rich and poor countries are now striving to curb this rising disease. However, what I call the economy of seepage and leakage goes beyond corruption. I see the problem as having three tiers:

- misallocation of resources in general which are the result of government policies or weak administration: observable in the form of excessive subsidies, real estate speculation, wasteful expenditure, neglect of most urgent investments in infrastructure and lack of public operations and maintenance expenditures.
- then come losses of revenue: as tax fraud, smuggling, poor enforcement or collection of fees and taxes;
- finally, corruption that includes a variety of malpractices.

All these factors severely curtail public investment and recurrent expenditure that should be devoted to productive tasks at the time when these public funds are badly needed and in short supply.

In this chapter we are not dealing specifically with petty corruption, so common in our four countries in focus, and in many others. We know this creates a lot of resentment among the people, poor or rich because of the relative inequity. Too often they have to give a bribe to obtain what they are entitled to. On the other hand, the same people(!) or others offer a *baksheesh* to officials to receive illegal favors or advantages. Such shortcomings are no doubt regrettable, but they do not have such a damaging effect on the economy and social progress as the cases referred to below.

In spite of sound trends aimed at a reduction of the scale of government activities in industry and services, the State has still a major role to play as agent of development, no matter the rightist dogmas which have replaced, since the 1980's, the leftist dogmas, although the latter are reappearing in the polemics about globalization in the North-South context.

While this chapter is focused upon Asia, it seems likely that some of the following observations apply to Latin America and Africa. According to the OECD estimates: "Every year some eighty billion US$ is paid out worldwide in the form of bribes" and it may
be the "tip of the iceberg". Further, these data are confined to corruption only (OECD Observer, No. 216, March 1999). With reference to Latin America "a rash of scandals is testimony to the greater scrutiny rather than their being more widespread sleaze. But there are many more things governments could do to clean up" (The Economist, 16-6-01).

It is beyond my ability to survey the whole of Asia, that is why I have selected the countries which I am most familiar with and which I have visited repeatedly between 1952 and 2000. Such countries offer also more information on leakage than Vietnam, Indonesia, and Thailand. In China, government audit teams are frequently sent to check the accounts of SOE (State Owned. Enterprises); Other controls concern their administrative units. As a consequence, many reports are released to the Chinese press. In South Asia, enquiry committees, official reports, statements by politicians and officials frequently refer to leakage and seepage, as well as corruption. They too are reported in the press, while newspapers themselves denounce malpractices.

Chinese economists, Indian, Pakistani, Bangladeshi scholars come out with their own estimates in books and articles. And international publications, particularly from the World Bank and the Asian Development Bank, or NGOs like Transparency International are also quite outspoken. Some estimates, on black market, smuggling, illegal taxes are bound to be quite rough, unlike audit reports on specific cases. There may be also some overlapping between the various data. However, it seems that the data given below underline the magnitude of the problems and the diversity of losses for governments.

These estimates emphasize also the changes that have occurred in a number of developing countries — though not in all — during the past fifty years. In the early years, the lack of local capital availability was one of the major issues. Today, no doubt more capital funding through savings and from public aid or from private foreign investments is needed, but additional capital could be tapped by reducing leakage and seepage. A considerable fraction of the investment capital is lost at the moment and could be returned to
productive use increasing initial investment in projects, and ultimately reducing the burden on investment performance. The latter is simply because 100% of the investment would be put to the project, its forecast return on investment may well be achieved. Whereas if only 75–80% of the initial investment is placed, that cash flow has to work supremely hard to make any breakeven, missing as it does some 20–25% of initial investment that has disappeared though ‘leakage’.

Another difference vis-à-vis the early phases of development refers to the growing complaint about public funds allocations. Operations and Maintenance costs (O&M), recurrent expenditures and project lifetime costs have become increasingly important. They have to be properly balanced with investments in new projects: which is something not often done, so that O&M expenditures are neglected or even cut in favor of new capital ventures. One hidden reason is that new projects may offer more opportunities for *baksheesh* and patronage by local politicians than O&M expenditures, while the latter ironically in a number of cases, could bring more and quicker benefits.

We will illustrate below the enormous levels, and extent, of the ‘*leakages*’:

**China**

- smuggling 12 billion US$ in 1998; e.g. smuggling in the Xiamen case reached as much as 6.5 $b by 2000;
- tax evasion 30 $b in 1993; illegal electrical connection cost 804 $m in that year; and unpaid construction taxes rose to 2 $b by 1997;
- illegal taxes raised by local authorities, 800 $m to 1.4 $b per year, part of them ending in private pockets; a recent estimate gives the amazingly high figure of 13 $b in 1999;
- bad debts of State owned enterprises, around 200 $b in 1998; diversion of funds from grain departments for “illegal actions” 6.7 $b between 1992 and 1998;
• “false accounts” in 68.46% of large scale SOE audited in 2000, in most cases through deliberate diversion of funds;
• diversion of State budget funds to set up private luxury flats — 2 $b in 1997;
• expenditures in official banquets, nearly 15 $b in 1993; illegal gains by Hebei province cadres, reaching 3.6 $b by 1999

References: Beijing Information, 9-11-98; China Business Review, May-June 1994; China Daily, 23-3-98, 7-5-98, 22-12-98, 6-4-99, 28-6-99, 11-4-2001; The Economist, 12-8-00; Le Monde, 4-10-00; Far Eastern Economic Review, 31-5-01.

India

• under-invoicing of exports and over-invoicing of imports to and from USA, about 2 to 4 $b in 1994;
• illegal assets abroad 40 $b
• tax evasion at about 30 $b per year;
• subsidies, often of questionable value, equivalent to 15% of GDP in 1997;
• cumulative financial losses of State Electricity Boards were 2.8 $b by 1998 due to the diversion of funds allocated for electric networks maintenance or for irrigation works to private pockets, including free or very cheap electricity supply to farmers for opportunistic reasons;
• further losses in electric power supply, 40 to 50% of total output, half of it in pilfering and other malpractices estimated 4 $b per year
• non recovery of telephone bills, 750 $m in 1995;

All in all, it is estimated that the Indian GDP could be increased by 1.5%, and FDI by 12% if corruption could be checked

References: Times of India, 30-1-97; The Hindu, 13-2-97; Ministry of Finance on Subsidies, 1997; Economic Survey, 1996-97; World Bank Report on Power, 1998; Economic Times, 6-9-99; Business Standard, 21-1-00; Nau Bharat Times, 4-4-01.
Pakistan

- SOE losses reaching 2 $b by 2000;
- default loans to the banks 4.7 $b cumulative 2000;
- tax evasion 3 $b
- size of the black economy: 30 to 40 $b equivalent to one half or more of GDP;
- losses due to corruption 2.5 to 5 $b per year;
- power thefts from Karachi electric supply corporation equivalent to 35% of the power generated — through 450,000 illegal connections in Karachi and through 46,000 defective meters;
- smuggling 3 $b per year.

In addition, as a consequence of the continuing Afghan wars, narcotics and arms traffic contribute to the flows of black money.


Bangladesh

- losses due to corruption may be 2 to 3% of GDP per year; and 30% of funds devoted to development “disappear”;
- default loans of banks, 3 billion $, cumulative 2000
- 40% of total electricity consumed per year is not paid for;
- Titas (gas SOE) have cumulative losses due to poor management, thefts, non payment of bills of 200 $m through 1994 to 1997
- smuggling is quite prominent, but no estimates are available.


We do not have comparative data on other Asian countries but seepage and leakage are considerable. According to the Asian Development Bank, annual report 1998, “corruption (alone) has added 20–100% to the cost of procuring governments goods
and services in several countries”. Following the 1998 report of Transparency International, Vietnam and Indonesia seem to suffer from more corruption than the three countries quoted above; Thailand and the Philippines are at a rather similar level.

Over many years Chinese leaders in official statements and econo-mists in their articles complain about leakage and seepage. The Prime minister Zhu Rongji is particularly active, making personal enquiries and firing dubious officials. President Jiang Zemin has often expressed his concern: “The fight against corruption has become vital for the very existence of the State and the Party” (Beijing Information, 6-10-97). On June 2nd 2001 a top official research group produced a 308-page report for the Central Committee that is highly critical of the present situation (China Investigation Report 2000-2001 — Studies about contradictions among people under new conditions). It refers to growing inequalities, social tensions and disturbances, corruption and other abuses by communist cadres. In spite of these efforts, and the imposition of severe punishment (often a capital penalty), such defects do not disappear.

The concern on leakage and corruption is no less striking in India. Connected with these aspects comes the “criminalization of politics and politicization of crime” noted by P.R. Chari (The Hindu, 20-11-2000). According to the Indian elections commission, at least 40 members of Parliament and 700 members of State Assemblies face criminal charges. The corruption scandal was exposed on Internet sites by an Indian company in March 2001 where an article showed that a number of politicians, senior civil, and military officers had taken bribes: this shook the country. The Prime minister Vajpayee talked of the “spreading of a cancer” (India Today, 2-4-01), while a prominent member of the Congress Party admitted that “the system is thoroughly corrupt” (The Economist, 24-4-01). The judiciary has become more active so that some important political leaders have been sentenced to jail. The trouble is that the cases take a very long time to bring to the courts, and then all kinds of appeals follow.
In Pakistan, the fight against corruption and leakage has become more active under General Musharraf since 1999, so that people tend to be more careful. A number of politicians, some senior officials, and an ex-admiral have been arrested. Some default loans obtained by prominent personalities have at last been repaid.

In Bangladesh, such topics are no less openly discussed in the press. The report on the *Five-Year Plan 1997-2002* devotes several pages to various types of malpractices (Dhaka, Planning Commission, 1998: 220–225). Yet it seems that the judiciary is less active here than in the other countries. Also one sees relatively fewer details on leakage cases.

To sum up, in these four countries, one comes across growing efforts, first to expose publicly abuses, wastes and other malpractices and second, to reduce them. One must however admit that much remains still to be done. New cases keep on emerging although leakage and seepage have been increasingly denounced for the last ten years or so. Some of the most glaring cases of seepage and leakage are found in infrastructure. It is not uncommon to find that corruption, wrong allocations of public money, high subsidies, lack of maintenance expenditures, weak management and poor tax collection, pilfering (in the case of electricity) are interconnected.

**The Need for More Public Funds**

The need for more public expenditure runs into hundreds of billions US$ for the next ten years or so, particularly in infrastructure. A few years ago, several Asian governments had put much hope on private, foreign or local, investments along formulas such as BOT (build-operate-transfer) or BOO (build-operate-own) for electricity and transports. Experience has shown that the managers of FDI (foreign direct investments) are reluctant to enter such costly and risky projects, so that only a few projects are now being implemented under these rules. That reluctance is much greater now, following the east Asian financial crises and with the continuing political difficulties of China, Vietnam, Myanmar, India, and Pakistan.
As a result most Asian countries cannot escape their need for massive new domestically financed public investments, and they face considerable increases in their current public expenditures for maintenance and operations — wholly insufficient over many recent years. The levels in investment in the ‘standard’ infrastructure projects — upon electricity (and other fuels), roads, telephones and water (both clean and waste) have been sadly neglected.

The gap between supply and demand of electricity has already led to billions $ of losses for the economies concerned as we have seen above. These losses are continuing in India and Bangladesh, while in China the gap has been reduced with the slowdown of the economy, although many difficulties remain, due to insufficient O&M funds.

According to the World Bank’s estimates, in China, its infrastructure (mostly electricity, transport, telecommunications) would require 600 to 700 hundred billion $ for the period 2001–2010 (see Financial Times, 19-3-96). For India 315 to 340 billion $ for the period 1996–2006 for infrastructure without taking into account the railways (The India Infrastructure Report, New Delhi, ministry of finance, 1996). For Pakistan there are less comprehensive studies. Hydro-electricity and mostly multipurpose projects including reservoirs for irrigation would require 32 billion $ until 2015. In Bangladesh, Vision 2020, (Dhaka world bank and Bangladesh center for advanced studies, 1998), suggests that 300 billion $ are needed as investments over the next twenty-five years to reach an average growth rate of 7 to 8% per year, versus 5% in the late 1990s.

It is almost impossible to gather comprehensive data on the cost of better O&M (Operations and Maintenance) expenditures for infrastructure. What is clear however is the magnitude of the task. Over the past fifty years, electric supply and networks have grown very fast, from a very low level. While there were some ten — twenty thousand villages electrified in all these countries, today the bulk of villages in China, India and Pakistan are reached by electricity. Now all small towns enjoy electricity — and this equipment has to be maintained. We must not forget that while capital funds are needed for O&M, intellectual capital needs to be
built up in the form of suitable education and training of local people. Such training, coupled with adequate remuneration packages, might entice them to remain in the countryside rather than look ‘for the golden pavements’ of big towns.

No less progress has occurred in roads: improvements of national highways, construction of hundreds of thousands of kilometers of secondary roads to replace poor fair-weather non-metal roads. Originally electricity and roads, known to be important factors of development, were stumbling blocks to further progress, especially in South Asia. Aging electric equipment (power stations, transmission lines and distribution) resulted in too many breakdowns and low voltage [brown-outs] affected factories and the electric tube-wells needed for agriculture. Deteriorating roads delayed traffic and made it more costly; no matter if we focus on bullock carts, trucks or tractors. Then, if we review the parts of India where national highways are in good condition, they have become so congested that trucks make about only about 200 km per day, versus 500–600 in Western Europe, imposing considerable secondary losses upon the economy. As to railways, they are in particularly poor shape, particularly in South Asia, although the situation has improved in China in recent years. The Chinese government in conjunction with its South East neighbors plans to connect Singapore, by rail, right through the Beijing.

Other topics less discussed concern agriculture which still plays a major role in Asia, except in Japan, South Korea and Taiwan. Generally it contributes 20–30% of GDP, and employs 50 to 60–70% of the active population, except in China where it seems recently to have fallen below 50%. The maintenance of hydraulic works has been very poor over the past fifty years and new investments needed to promote further irrigation, flood control and drainage: these are slow to come. In China, about two thirds of the 84,000 reservoirs and of 246,000 km of dykes need important repair and rehabilitation since many major projects were not properly designed and were badly built in Mao Zedong’s days. In particular, the northern part of China suffers from an acute lack of water for irrigation, drinking and its industries. The whole area with 65% of arable land enjoys
only 20% of all water resources and its water deficit, estimated at 30 billion cu.m. in 2000, could reach 50 billion in 2020 (China Business Review, March — April 1998). That is one reason why the government intends to start a huge project to divert part of the excess water of the Yangzi river to the Northern Plain. The cost could amount to 18 $b (China Daily, 19-11-2000). Smaller projects are needed in other parts of the country in order to reduce their losses in irrigation volumes, which can reach 60% of the water released. This will expand the irrigated area — and is quite an analogous concept to the increase in efficiency of recovered financial funds if they are put to productive use, rather than being lost via 'leakage'.

In India and Pakistan the wide irrigation canals systems inherited from the British and expanded after 1947 cover respectively 20 to 25 million ha and 14 million $. O&M expenditures have been wholly insufficient, and part of the money allotted ends up in various pockets. A number of works have deteriorated so much that they should be rebuilt: only 38 to 40% of the theoretically available water reaches the plants. Estimates of the cost of rehabilitation are lacking, but in both countries they must be expected to run into billions of dollars. After this are the new major works needed to find water wherever the area is not fit for minor works such as tube wells. However, India (more so than Pakistan) suffers severely from a shortage of power to support the minor irrigation that depends on electric tube wells.

More flood control and drainage of land will aid land that suffers from excess water even under normal rainstorms. These are major issues in the eastern plains of India and Bangladesh, but progress on flood control projects is slow in both cases. However, projects to alleviate poor conditions could be put in place to reduce water logging and a salinity problem, especially in Pakistan and India — but again, progress is slow. Understandably of course from the viewpoint of outside funding agencies, as they consider the negative effects of economic leakage.

All these factors combined explain why the expansion of basic crops (which can be considered to be major, vital crops) has slowed down practically all over Asia. Of course this is aggravated when the
weather, with its drought or floods, is unkind; but funding difficulties exacerbates it.

On the other hand private investments are rising in rural India and there is also much scope in Pakistan. Farmers tend to promote richer crops than cereals, to develop animal husbandry, orchards, vegetables, and fishponds. A clever farmer, if he gets electricity, can manage by himself to start an orchard with a drip system, but left to himself, he cannot rehabilitate thousands of km of irrigation canals or dykes. In other words the market and private investments cannot replace a larger commitment by the State: this is needed in all Asian countries.

One should also mention the enormous needs for more public funds, in addition to private ones, to stop the deterioration of environment and improve it. In China, “the economic cost of air and water pollution has been estimated to 3–8% of GDP per year” (World Bank, *China 2020*, Washington DC, 1997). The situation is quite comparable in India and Pakistan with costs equivalent to 4–6% of GDP.

Public funds are no less lacking in the fields of education (which we alluded to above), and health management. In South Asia, the rate of illiteracy is still high, in India 35%, Pakistan and Bangladesh around 55%, and public health remains weak across the regions. In China, the rate of illiteracy amounts to only 10%, but faster progress is badly needed in higher education. As to the whole health system, which was reasonably good in Mao Zedong's days, it has deteriorated.

Where can one find public money? Foreign aid and FDI cannot cope with such challenges; hence there are needs to strengthen local finance, banking and taxation. It is no less crucial to curb the vast losses of SOE in industries and banking — with their physical loses due to inefficiency and ineffectiveness of management practices, as well as fiscal inefficiency — due in part to corruption. The reduction of *leakage and seepage* would help replenish the exchequer and their raw material stocks. Basic defects such as poor management, a plethora of personnel, political interference, lack of autonomy... have been well identified in all four countries for twenty years or more... yet remedies are slow to come. At
the moment, the Chinese are the most active in addressing reforms, but even there much remains to be done. Naturally, and ultimately, we must acknowledge the very tight financial situation in Pakistan, Bangladesh, and in other countries like Indonesia and Vietnam, which curtails public funds available for development.

The Other Side of the Coin, and “Good Governance”

The latest fad in north—south debates refers to “good governance” and “good corporate governance”, which are both closely connected with attempts to reduce leakage and seepage, where corruption plays a prominent role. The tendency of rich countries is to sermonize — which is questionable. They would be on a safer ground if they began by being self-critical.

First, a sizeable part of malpractices is not the sole responsibility of the developing countries. Their foreign partners, not infrequently, are involved. That is why the USA, by 1977, adopted the foreign corrupt practices act in order to curb corruption of US companies’ employees. More recently, the OECD put pressure on its members to take similar measures. As a start, bribes should no more be deductible from income tax declaration, as it has been the case in most countries until now. There are several observations that follow these changes of practice:

Firstly, one sometimes wonders whether in the long run, the image of a foreign company refusing to engage into baksheesh might not have some commercial value. Besides, is it not in the interest of foreigners to deal with countries that enjoy a healthy [transparent] financial situation? One must however add that such a policy is easier to adopt for a large multinational corporation than for a medium size corporation that relies on less resources and, as a consequence, can take less risks to lose a contract. Or for a small and medium enterprise (SME) that live ‘from hand to mouth’ staggering from one minuscule contract to another, often under duress from its bigger downstream ‘partners’.

Second come political factors. Neither in western countries or Japan, nor in most Asian countries, is the political leadership
particularly impressive. At the moment personalities like Zhu Rongji who has thoroughly understood the implications of leakage does his utmost to fight against it. But these leaders are not so common in either rich or poor countries.

Third, corruption and leakage are not absent in rich countries, even if they are less widespread — that is why moral arguments and righteous indignation do not appear very relevant coming from the mouth of westerners. The situation may be seen in practical terms since western countries are in a much less tight financial situation, with much less acute poverty and less population pressure than developing countries thus they may lead by [bad] example. They can be seen to afford a certain amount of waste, losses, and corruption. For example, in 1998, the Audit Organization of the European Union discovered that 4.5 $b had been lost through fraud, theft and waste (Le Temps, 17-11-99). In Germany, according to the Federal Criminal Office “Corruption now holds a firm place in our public administration and business life” (quoted in The Economist, 11-12-99). As to France, its economy is doing fairly well, yet in 1999, 30 ex-ministers, over 100 former or present parliamentarians and mayors and a quarter of present or ex-heads of major corporations were “under formal investigation over various corruption scandals” (The Economist, 5-6-99) and the number has increased further in the past two years, with five ex-ministers in jail or condemned to prison. When the Crédit Lyonnais lost 100 billion [French] francs due to mismanagement and dubious practices, the 60 million French people have not been affected in their day-to-day life. The same can be said of the 400,000 inhabitants of Geneva, when the Cantonal Bank lost, under questionable circumstances, 1.5 billions US$. Many more examples could be quoted. In Asian or other developing countries, similar losses curtail growth and social progress that prevents a sizeable number of people from escaping their acute poverty. But, given the examples above from the rich western countries, it is not correct for them to sermonize against these practices that are [also] rife in Asia.

Closely connected to the north — south debate on good governance is an emphasis on democracy as a prerequisite to economic
and social progress. According to the new mantra this should lead to a substantial fall in corruption. The latter may prove as illusory as the previous one, in vogue though the 1950s-1960s, whereby it was said the developing countries were not ripe for democracy, and that was why they needed a dictatorship or at least an authoritarian regime. As is well known, many such regimes in Latin America, Africa and Asia have achieved a very poor record in development, and have fallen into an acceptance of widespread corruption.

Democracy is not a panacea either. Both Pakistan, in 1988, and Bangladesh in 1991 adopted a democratic system. In the former growth went down because of very poor leadership and instability. In the latter, growth rate did improve because of economic reforms which could have been introduced equally well by an authoritarian regime. In both cases corruption, which was quite widespread before free elections and a free press were allowed, has tended to increase. As to democratic India, corruption continued to increase since the first alarm bells started ringing in the early 1960s.

To sum up, such a binary debate does not look relevant. What matters is not the label on the bottle, or the selection of the system per se, but its content — which has led, over the past fifty years to a mixed picture of failures or successes under various political systems.

**How to Conclude?**

Although one notices in our four countries some progress in the fight against corruption, a lot remains to be done to combat all the forms of leakage and seepage. In the immediate future it is to be feared that these effects will remain substantially prevalent. That is why a fast growth (of 8% per year as envisaged in India for the coming Five Year Plan 2002 to 2007) looks very doubtful. The growth rate of 5–6% achieved in recent years in India and Bangladesh might be sustained — though it is not entirely predictable. We have to hope that India does not suffer from very bad monsoons, and the latter suffers from major floods and/or cyclones. Pakistan, with a growth of only 4%, (versus 5 to 6% before the 1990s) has seen an increase of poverty, is in such a tight financial position that to move
to a faster growth may take some considerable time. It is dependent also on an improvement in the overall political situation. In China it is well known that all their statistics often need adjustments: the 7% growth of 2000 could be around 6%, and it may remain so for a number of years, according to the forecasts of two of their best economists — Wang Xiaolu and Fan Gang (China Daily, 12-6-2000)

Thus, even assuming the best hypothesis, that is with a sharp fall of leakage and seepage, the defects in infrastructure and other sectors reviewed in this article will need at least ten years to be substantially removed. This means that a reduction of poverty looks doubtful, especially in South Asia, which has a lower level of development than China.
Introduction

This chapter will examine recent progress of Cambodia, Laos, Thailand and Viet Nam to set up effective institutions to fight corruption in the public sector, drawing on governance assessments recently carried out by the Asian Development Bank (ADB). It will make recommendations both for improving ongoing efforts at the country level, and for joining forces at the regional level. Anti-corruption efforts in these four countries reveal both similarities and differences, making the sub-region interesting for comparative analysis of the causes and consequences of different approaches.

Background

The effort to combat corruption has moved to the center of the debate about good governance, economic growth and poverty reduction. The impetus behind this move has come from many sources. Increasing flows of aid and foreign investment have increased the temptations for gatekeepers. The end of the cold war has reduced the willingness of donor countries providing aid to
overlook financial improprieties in light of broader geopolitical interests. Donor country fatigue has placed increasing pressure upon foreign assistance agencies to demonstrate that they are delivering maximum value for the money. The negative example of a handful of "kleptocratic" regimes has underscored the danger of political and social collapse if widespread corruption is allowed to fester unchecked.

Another factor is that in an era of increasing trade liberalization, an economic crisis such as occurred in the region in 1997 may be precipitated by pent-up structural weaknesses, including a combination of financial market, corporate and governance problems. For years, governance weaknesses had been eating away at the foundations of east Asia. Aside from the inherent fragility of a macroeconomic framework increasingly financed by short-term external debt, there was outward tolerance of the deterioration of public/private co-operation into closed circles of influence and privilege. Further, there was obliviousness to the mounting, and largely invisible, economic costs deriving from the lack of transparency and accountability and the shrugging acceptance of corruption. Indeed, there was even a benevolent view of rent-seeking and private collusion as necessary lubricants for the system. The weaknesses were not limited to the government or to lax supervision of the banking system, but included grave problems of corporate governance in the private sector itself, stemming from a lack of transparency and absence of strong competitive checks and balances.

Citizens in the region have served notice that they are no longer willing to tolerate such gross abuses of the public trust for private gain. The liberalization of the press has enabled journalists to write more freely about official indiscretions. Improvements in education and increased information flow between countries have made their public more aware of anticorruption efforts in other countries and less willing to tolerate systematic abuses at home. The rise of new global Nongovernment Organizations (NGOs) dedicated to fighting corruption has helped to bring and keep the issue in the spotlight. Foreign investors are also favoring countries that make concrete progress in their structural reforms.
The Countries in Focus

The four southeastern Asian countries covered in this chapter (namely — Cambodia, Laos, Thailand and Viet Nam) have expressed concern at the highest level about the need to combat corruption. These countries make up part of the Greater Mekong sub-region. With the onset of peace in the 1990s, there have been rapid changes and improvements in living standards and conditions, although setbacks have occurred since 1997. For instance, the Mekong countries are gradually shifting from subsistence farming to more diversified economies, and to more open, market-based systems. In parallel with this are the growing commercial relations among the Mekong countries in terms of cross-border trade, investment, and labor mobility. Moreover, natural resources, particularly hydropower, are beginning to be developed and utilized on a sub-regional basis. However, because of the legacy of conflict in the region, the militaries of the 4 countries are large, and in a position to take advantage of their prominent positions.

All of these dynamic factors pose major challenges to governance the sub-region. In 1995 the Asian Development Bank (ADB) adopted its governance stance in its Sound Development Management policy, which defines governance as

"the manner in which power is exercised in the management of a country's social and economic resources for development."

The policy specifies four conditions necessary for good governance: accountability, participation, predictability, and transparency. Later, ADB's anti-corruption policy was approved in 1998, defining corruption as:

"the misuse of public or private office for personal gain."

To get an initial view of the challenges in each country, ADB has carried out governance assessments. These assess the effectiveness of past assistance from the Bank and other donors, so as to formulate a role for the Bank in addressing future governance challenges.
The governance assessments are being done collaboratively with the World Bank, the United Nations Development Programme (UNDP), and other donors by providing isolated diagnoses so as to avoid duplicating efforts and thereby creating confusion in these countries. Both the ADB and the World Bank have recently adopted performance allocation systems for dividing scarce concessional lending resources: in the case of the ADB this is the Asia Development Fund. This work is going ahead despite the difficulties of making comparisons between countries based on governance. Of the four GMS countries discussed here, three are Asia development fund borrowers: Cambodia, Laos, and Viet Nam. As of 2002, the fund’s allocations to these countries will take into account their performance on a number of governance indicators.

In the assessments of the four Southeast Asian countries, ADB examines the strength of each government’s commitment to good governance, including sound macroeconomic and financial management, participatory and pro-poor economic policies, effective delivery of public services, and enforcement of contractual and property rights. Since the poor depend heavily on basic services in the public sector — such as health clinics, schools, courts and police — weak governance affects them the most. The ADB’s (1999a) recently approved poverty reduction strategy highlights that good governance facilitates participatory pro-poor policies, as well as sound macroeconomic management.

Since 1997, it is clear that the best performing regional economies are the ones most successful in carrying out structural reforms, including the combating of corruption. The People’s Republic of China (PRC), for example, has slashed state-owned enterprise and civil service employment, forced the military out of most businesses, and increased government revenues by nearly a half (in terms of percentage of GDP). South Korea has carried out drastic reforms in its banking system and of its largest companies. Both countries have toughened measures to combat (still serious) corruption. An outcome of these reforms has been better economic performance than in neighboring countries.
Attempts are also underway in the four southeast Asian countries to combat corruption by strengthening public administration, expenditure management, and by the enforcement of a sound legal framework at the national level. To effectively fight corruption, every public organization needs to build in safeguards to protect the public interest in all their policies, procedures and plans. Progress to date is uneven, with some countries performing better than others, and there are some better-performing sectors within countries.

Cambodia

A recent study carried out at the request of the supreme council on administrative reform of the council of ministers (World Bank, 2000a) found that Cambodian households believe that public sector corruption is Cambodia’s leading problem, and it is worse than three years ago. However, the enterprises surveyed found it by a close margin the second worst problem after street crime. Households, enterprises, and government officials surveyed all rank the courts as having the least integrity, followed by the Officer of the Prosecutor and the Customs Authority. Yet for the poor households surveyed, which among all households pay the largest percentage of their income in bribes, the largest bribes go to health and education authorities.

Further analysis shows that corruption is reduced in agencies with merit-driven personnel systems that reward skills, competence and performance. Corruption is increased where there are low public sector salaries, delayed salary payments, weak performance evaluation and disciplinary procedures, extra-budgetary funding mechanisms, and lack of complaint mechanisms leading to disciplinary action. Thus, there is reason to hope that corruption will decline as a result of broad-ranging reforms to the State that were launched in 1999.

At a meeting (Royal Government of Cambodia, 2001) chaired by Prime Minister Samdech Hun Sen, the ADB (2001a) launched its Cambodia governance assessment. ADB (2001b) updated the
findings of the governance study on Cambodia in a new study launched in May, which compares governance challenges in four countries of the Mekong sub-region.

The Cambodia governance study has been useful to the Government (council for administrative reform, 2001) in preparing its Governance Action Plan (GAP). These studies have led to Cambodia taking major steps in the past year to promote good governance and to improve public sector performance. Some examples include:

- Budget implementation in priority social sectors is gradually improving, while maintaining an overall expenditure restraint;
- The financial sector has seen bank restructuring and steps have been initiated to close non-viable banks;
- Public administration reforms include a civil service census, identification of ghost workers, the first phase of military demobilization, and crystallizing the concept of priority mission groups;
- In the area of natural resources, a widely consulted immovable property Law has been submitted to the National Assembly for Adoption, and a draft forestry, fisheries and water laws are now under preparation; and
- The Seila program has instituted decentralized planning, financing and management in about 1000 communes in seventeen out of twenty-four provinces.
- An independent supreme audit authority has been set up, reporting to the National Assembly.
- An anti-corruption unit has been set up in the Council of Ministers, and an anti-corruption law has been drafted.
- A legal framework and enforcement mechanisms are being established.

The broad-ranging reforms underway in Cambodia, if fully implemented, would go a long way toward reducing corruption. But what are the chances that they will be fully implemented? Reforms are never easy to implement by any government. Yet there is at least one important reason to anticipate that implementation will be even more difficult in this case — Cambodia has a recent tragic legacy of civil conflict, and there is the need to prevent future
conflict. We recall that Cambodia has experienced frequent, and unusually drastic, changes in its political and economic regimes, culminating in the Khmer Rouge period from 1975–79 when more than 1 million people were killed or starved to death, this was about 15% of the population.

The United Nations Transitional Authority in Cambodia (UNTAC) officially arrived in March 1992 to help govern the country until a new, legitimate government was established after general elections. The UNTAC operation was undertaken under extremely difficult and complex conditions: 360,000 returning refugees had to be repatriated, and the Khmer Rouge pulled out of the election process and resumed their civil war in the jungle.

General elections under UNTAC took place in May 1993. Following post-election turmoil and intensive negotiations, the three major political parties — the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC), the Cambodia People’s Party (CPP), and the Buddhist Liberal Democratic Party — formed a coalition government. This political compromise resulted in an uneasy arrangement of two co-prime ministers as well as co-ministers of the interior and defense. Fighting between the Khmer Rouge and the Royal Cambodian Armed Forces continued sporadically.

Serious political tension emerged within the CPP-FUNCINPEC coalition government in 1997 leading to fighting among the armed forces in Phnom Penh. The prime minister fled the country, foreign donors suspended or terminated a number of assistance programs, and many foreign private investors lost confidence and left Cambodia. Through 1997 and 1998, Cambodia’s growth rates were virtually zero.

In late 1997 agreement was reached to hold Cambodia’s second national election in 1998. Forty political parties ran for office, and three parties — the CPP, FUNCINPEC, and the Sam Rainsy Party — gained seats in the National Assembly. A new CPP-FUNCINPEC coalition government was formed in November 1998. Then mass defections by Khmer Rouge soldiers, and the death of Pol Pot in early 1998, ended for the most part three decades of civil war.
This legacy of conflict makes governance reforms difficult for at least two reasons. First of all, the destruction of the economy and skilled human resource base has eroded the necessary foundation for reform. During the Khmer Rouge period, Cambodians wearing glasses or other symbols of professional status were systematically murdered; others left the country. Thus, there are now severe shortages of qualified personnel in all skill categories needed for effective public institutions. In addition, because of the weak state of the economy following the conflict, Cambodia's GDP per capita is one of the lowest in the region. The combination of skill shortages and a weak economy hinders institutional development, and contributes to a low level of tax collection, leading *inter alia* to average salaries of government officials of US$18 per month. This must be compared to a minimum cost of living for an average family in Phnom Penh of around US$200 per month.

With these constraints, the government's reform capacity is dependent on assistance from international donors. For example, donors typically give *ad hoc*, extra-budgetary incentive payments to Cambodian counterparts (Godfrey, 2000). Counterparts surveyed received average donor supplements of $194. When their respective donor projects were completed, some found other projects, which continued the supplements. Those that did not find new donors had to find income from other sources, and thus became, in effect, part-time government employees. This roller-coaster income stream and the 'projectizing' of government ministries and provincial departments are seriously hindering the establishment of governance reforms: it sidelines the required build-up of capabilities.

A second factor hindering the implementation of reforms is the legacy of civil conflict itself. Collier (forthcoming) points out that because of the inter-group hatred left over from indoctrination during the conflict period, the chances of further conflict in a society like Cambodia's is high. Political disputes that would be minor in other countries can escalate easily to violence in Cambodia, as evidenced by an attempted coup in November 2000, and two hotel bombings in July 2001. To reduce the risk of such violence, the government is careful to address the needs and
grievances of the leaders of major factions. Since many state reforms are at least initially opposed by certain leaders, the government has to walk a tightrope — trying to move steadily forward on its reform agenda, while ensuring that there is robust constituency of support powerful enough to outweigh opponents, and to dissuade them from resorting to violence.

For example, one goal of the GAP is to complete a nation-wide demobilization and reintegration program of its military personnel to reduce defense spending, to allow for increases in public expenditures in other areas (including institutional changes to combat corruption), and to increase public security. Yet unless the program is perceived by factional leaders in the military as fair, then violent confrontations could ensue. This risk has slowed down implementation both by the government and by donors.

The staff of institutions in charge of managing valuable natural resources (including national parks and environmental protection) have not received sufficient living wages. This creates incentives for them to abuse their authority, for instance, by charging unofficial payments for services. In addition, the effective implementation of reforms requires the Government to address some sensitive issues such as political conflicts, the continuing military interests in logging activities, and cross-border smuggling activities. Again, the government needs to tread carefully to ensure that factional leaders perceive the process to be fair.

Because of Cambodia’s post conflict situation, *inter alia*, reforms have been delayed, and delays are likely to continue.

**Laos**

Corruption in Laos is a key constraint at all levels:

"The politically powerful avoid paying tax, accept 'commissions' for facilitating projects or awarding contracts, and pocket pay-offs for reducing charges, duties or taxes for family and friends" (Stuart-Fox 1997, p. 207). 


Donor-funded procurements are rigged to include funds for cars for personal use and ministers try to commandeer cars provided to support donor projects for their personal use. This sets an example for lower-level officials, who supplement their low salaries through similar behavior.

New opportunities for corruption opened up as economic reforms started to take hold in the 1980s. For example, giving provinces the right to trade directly with neighboring countries has opened the way for trade-related graft. The opening up to foreign investment has introduced opportunities to collect money to facilitate required authorizations, and the enhanced political and economic role given to the army has provided new opportunities for smuggling. Corruption has also spread to personnel management, leading to the rapid promotion of those close to powerful leaders (Stuart-Fox 1997). This behavior reduces government revenues, misallocates expenditures, reduces foreign investment, and erodes public trust. Many people believe that corruption has become so pervasive that it is now the main impediment to reform (Evens 1998). Naturally officials fear that their own actions will be discovered, and are uncertain what their status would be in a setting with less corruption.

The current government has taken many actions to address the problem, including setting up an anti-corruption commission in 1993, placing new controls on illegal logging, and publicly condemning lavish consumption (Khaosan Pathet Lao, news bulletin cited in Stuart-Fox, 1997).

Laos experienced its share of conflict until 1975, when the Lao people's democratic republic (PDR) was established. Since then, and unlike the situation in Cambodia, the ruling Lao people's revolutionary party (LPRP) has shown itself to be remarkably resilient. Transitions of power have tended to be smooth, the new generation of leaders has proven more open to reform, and the Politburo now has some ethnic diversity. Organized opposition to the LPRP is weak. A number of small guerrilla groups exist, bandits launch occasional attacks, and a few dissident groups are based in the USA and Eastern Europe. The media are entirely State controlled.
This political stability has helped to underpin the gradual development of institutions that could address corruption, although the necessary achievements are far from complete. There is some progress in three areas: establishing a constitutionally-based foundation for rule of law, a gradual expansion of political participation, and improvements in public financial management. A more robust system of rule of law can begin to punish corrupt officials. Expanded participation can expose and challenge leaders to rein in corrupt behavior, and improved financial management provides tools both to prevent corruption, and to catch corrupt officials in the act.

Constitutional Foundation

The foundation for an integrity system based on rule of law in Laos came when the supreme people's assembly adopted the constitution in 1991 (Savada, 1994), declaring the country to be a people's democratic state. Although the assembly had been charged with drafting a constitution in 1975, it gave the task a low priority. However, international development agencies were reluctant to invest in Lao PDR in the absence of fixed, knowable law.

Following Politburo approval in 1990, a draft constitution was made public. Despite calling for discussions of the draft, first among party and government officials and then among the public, the LPRP viewed disagreement with its party line unfavorably, and reiterated that a multiparty system would not be forthcoming.

While the 1991 constitution contains elements of an earlier revolutionary orthodoxy, it is clearly influenced by the economic and political liberalization within Lao PDR and the dramatic changes in the wider socialist world.

The constitution establishes the legality of a set of authorities that resemble the traditional differentiation between executive, legislative, and judicial branches of government. The delineation does not imitate any particular model (neither Vietnamese, nor Russian, nor French), but it pays respect to the idea of basic responsibilities lodged in designated institutions.
Even though the constitution has not changed the imbedded patterns of the Laotian political system or threatened the party's dominant role, it has the potential to protect human rights and respect for the law, by the rulers as well as the ruled. It is expected that the observation of crumbling of communist regimes elsewhere, accompanied by widespread pro-democracy movements, will direct that Lao PDR will accede to growing demands for a more dependable rule of law.

Some heartening legal and judicial improvements have taken place, including the evolution of an identifiable system of legislation, the publicizing of laws and decrees, the expansion of legal training, the completion of a bench book for judges, and the development of a private Bar. However, the vast majority of new laws have not yet been enforced.

The legal system's overall capacity remains weak and faces many of the same systemic problems as the civil service. These problems cannot be addressed with donor-funded projects alone, but require political commitment and financial support. As a result, businesses will continue to be hampered by ambiguous rules, opaque enforcement procedures, and opportunities for administrative intervention and discretionary actions. Laws tend to be enforced in ways that benefit vested interests.

Political Participation

A gradual expansion of participation is another feature of the emerging integrity system. Lao PDR is, at best, at the very beginning of democracy. At present, the public participates in only two elections, namely, those for the National Assembly and for village heads. Even so, within this apparent democracy the party controls elections and determines the outcomes by pre-selecting the candidates.

At the national assembly election in December 1997 only four nonparty candidates were selected to stand, of which only one gained a seat. Since then, some positive changes have taken place: members now discuss and vote on draft laws and do not enact all those submitted; an electronic voting system allows secret ballots; microphones
permit members to speak from their seats, thereby promoting more debate. A department of citizens’ complaints and petitions has been established.

Nevertheless, much more work is needed to make the national assembly a truly effective legislative body. Agenda setting needs to be more systematic and validated through nationwide public consultation; legislative drafting and floor deliberation processes need to be streamlined and legal draftspersons should be better trained. Legislative committees should be given more technical skills; session proceedings should be documented; and new laws, regulations, and session proceedings should be disseminated more widely and systematically. The National Assembly is proceeding to address these and other improvements with support from a UNDP project (Reyes 1999).

Improving Financial Management

Improvements in public financial management constitute a third feature of the integrity system. Lao PDR is a member of the International Monetary Fund (IMF), which in 1998 laid down an international code for public financial management (IMF, 1998). The code covers four broad requirements: clarity of roles and responsibilities; public availability of information; open budget preparation, execution, and reporting; and independent assurances of integrity. The government has made some progress in moving toward these requirements.

As concerns role clarity, the constitution requires the national assembly to approve both the budget and the development plan, but contrary to the code, the national assembly does not receive detailed information on the budget. There is also no indication that the national assembly approves or reviews extra-budgetary spending, quasi-fiscal activities, or government equity holdings.

Lao PDR generally does not comply with the code’s requirement for public availability of information. While a budget document was released to the public for the first time in 1997 for fiscal year (FY) 1997/98, it did not cover extra-budgetary activities, contingent
liabilities, tax exemptions, quasi-fiscal activities, or original and revised estimates for the preceding two years, or fiscal reporting practices as required by the code. Nevertheless, publishing the budget was a promising step toward compliance, although no such publication was released for FY1998/99.

The FY 1997/98 budget did not conform to the code's requirement for open budget preparation, including public disclosure of economic forecasting assumptions, fiscal risks, overall budget balance, and accounting standards.

As concerns independent assurances of integrity, government accounts are incomplete, inconsistent, and difficult to comprehend, and there is no independent audit authority (World Bank, 1997: pp. 99–113). The ministry of finance's department of financial Inspection only inspects the accounts of government organizations where financial problems are known to have occurred. This limited role is reportedly due to the lack of staff and expertise. The ADB has provided technical assistance to help set up a national audit office; however it is under the office of the Prime Minister, and thus not in compliance with the minimum standard of independence.

The IMF's code also calls for the administrative application of tax laws to be subject to procedural safeguards. Here the situation has recently improved with assistance from a UNDP/IMF project (IMF/UNDP, 1999). Various reforms have reportedly improved the filing rate from 30 to 80 percent and increased collections significantly. Customs procedures have also improved, although customs revenues have not, probably because of low [quoted] valuation of imported goods, smuggling, and the tariff reductions required by ASEAN.

Largely because of problems on the revenue side, the fiscal deficit has gradually worsened since the late 1980s, and reached 14.8 percent of GDP in 1998, excluding grants. For the first time, part of this deficit was not covered by foreign assistance and had to be financed by the Central Bank.

Even when the government is determined to move on a specific issue, capacity for market-oriented development management,
including indicative planning, policy formulation, and coordination, is limited. Until conditions change, significant progress is doubtful.

**Thailand**

Thailand is undergoing its most fundamental political change since 1932 when the monarchy was replaced by a constitutional system. The hallmark of the change is the new constitution, which reflects broad Thai aspirations for greater democratization and more responsive and accountable government. Important reforms since the new constitution was promulgated include 11 new economic bills as part of the nation's response to the economic crisis. These bills lay the framework for improved functioning of the economy, modernized bankruptcy (reorganization and restructuring) procedures, and establishing strong regulatory frameworks for banks and other financial institutions.

Under the new constitution, five institutions will play an important role in advancing accountability and integrity at all levels of government: the National Counter Corruption Commission (NCCC), the freedom of information commission, the national audit commission, the judiciary, and the ombudsmen. The constitutional requirements of increased decentralization and role for civil society and the media are also contributing to combating corruption. However, making progress in fighting corruption will require going beyond such watchdog mechanisms. Every public organization needs to build in safeguards to protect the public interest in all their policies, procedures and plans.

**National Counter Corruption Commission**

Prior to 1975, anticorruption activities fell under police jurisdiction. Although the law provided for heavy punishment if officials were convicted, loopholes made detecting and prosecuting corruption difficult, and regulations hampered police investigations. To strengthen the effort to combat corruption, the Counter Corruption
Commission was established in 1975. Its activities were divided into three areas: suppression (complaint investigation), prevention, and public relations, but it also had limited effectiveness.

The NCCC is a new constitutional body, separate from the executive and reporting directly to the national assembly, with powers to address corruption and reverse its deleterious effects on growth and development. It has the power to request asset and liability statements (ALS) from politicians and senior bureaucrats, and to remove them from office if a statement is deemed false. The NCCC can also investigate and prosecute cases of corruption, abuse of power and malfeasance.

Recent Thai and ADB governance studies confirm the importance given by the new constitution to combating corruption (ADB, 1999b and 2000; Pasuk and Sungsidih, 1999; Borwornsak, 2001; National Democratic Institute, 2000). The new government that came into office February 2001 has avowed its commitment to prevent and suppress corruption by strengthening the NCCC, and by amending laws and regulations to facilitate investigations, to prevent conflicts of interest, and to encourage citizens to expose corrupt officials. (Kingdom of Thailand, 2001).

The NCCC estimates that up to 30 percent of government procurement budgets may be lost due to corrupt practices. Based on data for 2000, this would be more than the combined budgets of the Ministers of Agriculture and Public Health. At the upper end, it would exceed the combined budgets of agriculture and public health.

In carrying out its new mandate, the NCCC faces the challenges of transforming itself from a branch of the office of the Prime Minister into a public autonomous organization, developing new and more flexible practices in management, personnel administration, and budget and financial management. The NCCC needs the capacity to prevent, investigate, and deter corruption at the local level. It must have additional training in appropriate investigative techniques and the recruitment of staff in disciplines such as money laundering and forensic accounting. The NCCC currently has a staff of 570. It is governed by a nine-member commission, appointed by
the government and serving for a four-year term (NCCC, 1999 and interviews). The ministry of interior has agreed to provide 50 staff to help the NCCC combat corruption in government procurements, particularly at the sub national level. Although the additional expertise from the ministry will be welcome, extra care must be taken to ensure that the independence of the NCCC isn’t compromised.

The NCCC has had some early successes, including the forced resignation of a senior minister for alleged corruption. The Constitutional Court narrowly rejected another high profile case against the serving Prime Minister. He had been charged with concealing assets from scrutiny by the NCCC prior to attaining office.

_Freedom of Information Office_

In addition to the NCCC, four other institutions will play an important role in advancing accountability and integrity at all levels of government: the freedom of information commission, the national audit commission, the judiciary and the ombudsmen.

Among the earliest reforms to be implemented was the freedom of information (FOI) Act, developed and passed prior to the passage of the 1997 constitution. Several high-profile cases have highlighted the value to the public of the Act, tested its coverage, and developed important precedents in its application. NGOs and businesses have indicated their frustrations with the lack of availability and timeliness of information on government proceedings, budgets and activities.

Nonetheless, members of the FOI Commission view the progress as quite good. However, staff capacity development is needed to develop effective understanding of legal principles and precedents, to create a first-class office, which responds quickly and effectively to public requests, and to create procedures within government agencies that specifically strengthen information sharing with the public.
National Audit Commission

The office of the auditor general, previously part of the executive, became an independent public agency in 1999. In 2000, it was reconstituted as the Office of the National Audit Commission. It is responsible for conducting compliance, financial, and performance audits of ministries, government agencies and departments, SOEs, and sub national government units.

The national audit commission (NAC) is now also required to report its audit findings to parliament and to make them public. In addition, the commission's role has changed considerably from that of its predecessor: it is implementing global standards on government auditing, emphasizing performance auditing, and the development of adequate internal controls.

However, the national audit commission currently lacks teeth to enforce its findings. Few of the cases of potential criminal misconduct that the commission uncovers are forwarded by the parliament to the proper authorities for prosecution or other disciplinary action. At a minimum, the commission's efforts to track the disposition of cases should be strengthened and given greater transparency and publicity. In addition, methods of improving systems, procedures, and internal controls must be enhanced. Greater attention must also be devoted to strengthening interagency cooperation in response to audit findings.

Another major issue confronting the commission is its ability to ensure that proper controls and monitoring arrangements are in place to prevent the misuse of resources under decentralization. The commission staff are concerned that their ability to monitor resource use at local levels may not be adequate, and argue that decentralization must be done gradually.

Judiciary

Unlike previous constitutions, the new constitution firmly establishes the principle of constitutional supremacy; thus any law, act, or decree that is contrary to or inconsistent with the constitution will
be unenforceable. A new constitutional court will ensure the constitutionality of all legislation and the functioning of state organs in accordance with the constitution. It also rules on high-level corruption cases referred by the NCCC, such as the alleged asset concealment case against the Prime Minister mentioned above. The new constitution also provides for the courts to be self-administered rather than by the Ministry of Justice. New administrative courts will be able to adjudicate disputes between state entities or officials and private citizens. Finally, the constitution provides for a supreme administrative court and administrative tribunals, plus the creation of an appellate administrative court if necessary. An independent judicial commission of administrative Courts will regulate their activities.

**Ombudsman**

Thailand’s first Ombudsman was appointed in April 2000, and the second approved by the senate May 2002. The Ombudsman inquires into complaints when a government ministry or agency, a state owned enterprise, or a local government entity stands accused of failure to comply with the law or to perform its duties effectively, and has caused injury to the public or to the individual originating the complaint. The Ombudsman is also empowered to refer cases to the constitutional and administrative courts. Since the Office of the Ombudsman was constituted, about 2000 complaints have been received, and about half have been settled to the satisfaction of the complainant. Most complaints concern land titles, police, and public utilities.”

**Sub-national Institutions, Civil Society, and the Media**

In addition to the four main accountability institutions, there are other constitutional mechanisms that can help to combat corruption. Take, for example, the new emphasis on decentralization. By the end of the 8th Plan period (2001), the share of local spending
(including intergovernmental transfers and relative to total government revenues) will increase to 20 percent from approximately 14 percent in 2000. Local spending is expected to increase to 35 percent of total government revenues by the end of the 9th Plan period (2006).

Both NGOs and the World Bank-funded social investment fund (SIF) have developed a considerable body of experience in working with local villages. The SIF experience suggests that significant cost savings may be realized by devolving local procurement to the local level. One example of this is the local of construction of community childcare centers. Following government standards of construction, community bidding on projects has resulted in building such centers for 300,000 Baht, compared to the “standard cost” of 700,000 Baht. Thailand development research institute staff indicates that villagers involved in their pilot project did not support “standard cost” approaches, identifying them [or this] as a significant source of corruption, which once identified could be controlled.

SIF management does not claim that all communities are able to realize such savings by eliminating corrupt procurement practices. The SIF internal evaluation indicates that some local leaders have not acted transparently, and where transparency is low, the opportunities for corruption continue. The broader dissemination of the village transparency manual would provide strengthened tools for villagers. In pilot villages, this alone has triggered major changes in village political economy, vastly reducing the role of local “influential people.” The term “influential people” is used in Thailand to indicate local strongmen who skirt the law, often under the protection of provincial or national level politicians, for whom they act as campaign canvassers.

Civil society can help ensure government accountability in other ways. Citizens can initiate through a petition an investigation by the NCCC with the intent of impeaching an official; or call for an investigation by the NCCC to inspect and ascertain anomalies of the ALS of the council of ministers (Kingdom of Thailand, 1997). Among other areas for investigation are new ethical standards provided in the NCCC Act of 1999, which prohibit officials from
engaging in any activity that results in a conflict of interest. It is clear that no single organization or group of citizens can develop expertise to effectively oversee the vast array of government policies and programs.

Civil society can also play a critical role in communicating through the media to a broader public. Civil society's understanding of specialized issues often exceeds that of journalists. Civil society provides an important counter to the perspective of government. Some associations and NGOs have independent capacity to undertake research on issues of concern to their membership. It is still essential to develop a non-partisan network of civil society organizations that specialize in various aspects of governance and, can provide effective, accountable oversight to supplement the efforts of the NCCC. The organizations should develop a non-adversarial, partnership relationship with government agencies for which they provide oversight, as well as with the NCCC.

Viet Nam

As in Laos, new opportunities for corruption have opened up as economic reforms started to take hold in the 1980s. Unlike PRC, Viet Nam has a weak track record in implementing structural reforms to address the problem.

Viet Nam ended over three decades of conflict in 1975, but paid a steep price for victory, including an estimated 1.5 million deaths and the loss of another 1 million citizens who fled the country after the war, including many skilled professionals and technicians. For this and other reasons, the unified government did not succeed in achieving its initial goals for economic development and poverty reduction.

To address these problems, the fifth national party congress held in 1982 sanctioned privately-held small enterprises and the "family economy" for agriculture. The latter gave greater scope for individual initiative, and began to lead to increased agricultural production. Building on this, a major economic reform process known as the Doi Moi renovation was launched in 1986.
Analysts of Viet Nam’s policy reforms since 1986 (Fforde and de Vylder, 1996; McCarty, 2001) find a number of reasons for the rapid, largely successful transition from a planned to a market economy. These included the timing and gradualist approach of policy reforms, the fact that central planning had only been partially implemented and the ability to benefit from being located in a rapidly growing region aided by the credibility and advantages of citizens perceiving the reforms as being of domestic origin. Another factor was the maintenance of political stability since, unlike in Cambodia, the Viet Nam regime has been in power since 1975.

Naturally, Viet Nam’s impressive accomplishments have been accompanied by an increased awareness of corruption. It was widely reported that nearly one third of Vietnam’s public investment expenditure in 1998 — equivalent to 5 percent of GDP — was lost to fraud and corruption, and the situation hasn’t improved since then. Among efforts to reform the integrity system in Viet Nam are improvements in public administration, sub-national government, and the legal and judicial framework.

Public Administration

Corruption in Viet Nam thrives because of complicated and unclear administrative procedures, excessive regulations, the opaque nature of decision-making, lack of public information, bureaucratic discretion on the part of middle-level officials, and long delays. State agencies and individuals regularly violate laws, and those responsible for law enforcement also often violate the law in their adjudication practices. Corrupt practices are also exacerbated by the weak accountability of the State enterprise sector. Another contributing factor is low public sector pay. Despite some recent increases, the basic salary is equivalent to about US$12 per month, while the most senior civil servants receive around US$104 per month. However, salaries represent only part of civil servants’ remuneration. They also receive allowances (including for housing) and collect various payments for services rendered in their work. In some cases, the ministry or agency pools these unofficial payments...
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and distributes them to staff at the end of the month. Despite this, many civil servants cannot make ends meet without a second income. This results in civil servants pursuing various strategies to augment their incomes, ranging from holding multiple public sector offices or maintaining other employment through to petty bribe taking and corrupt practices.

Businesses report many types of corruption, including “speed money”, e.g. payments to move a tax matter more rapidly through the tax bureaucracy, payments to secure a rapid, true estimate of taxes owed, or bribes requested in exchange for under-stating tax obligations. There is also reportedly embezzlement through falsification of records, such as tampering with official receipts for tax payments. There are reports of overprinting of documentary strip stamps, auxiliary labels, and cigarette stamps. There are also cases of the selling of choice positions, delaying remitting taxes to benefit from the “float”, paying bribes to investigators to sit on cases, delay investigations, or dismiss complaints, and irregularities in public procurement.

Both government and Vietnamese communist party (VCP) policies emphasize their opposition to public sector corruption, and the government has issued new decrees on corruption and on the elimination of wasteful practices in the public sector. Disciplinary actions as a result of investigations by the state inspectorate and the VCP are also increasing. Recent achievements also include simplifying administrative procedures in ministries and agencies at the central and local levels, restructuring ministries through mergers, defining roles and functions more clearly, and introducing more transparent personnel procedures. In 1990, 18,000 officials were dismissed or charged with corruption. In 1998, the ordinance against corruption was approved, and the Prime Minister established a hotline to receive business complaints. In addition to the general state inspectorate, several ministries now have units for tackling grievances and corruption. The VCP launched an anticorruption campaign in 2000, but results have been limited. Promulgation of the civil code in 1998 provided the public with avenues for redressing complaints and for mediation in disputes with government
administrators. Additional measures are needed, for example, minimizing red tape and arbitrary discretion, increasing the amount of information in the public domain, harnessing citizens' groups to fight corruption, and developing an appropriate legal framework (World Bank, 2000b). The government's efforts to turn state enterprises into shareholding companies could help to reduce corruption, but the process has been slow. 5,991 state enterprises remain; in comparison, only 502 have been "equitized" (PERC, 2001). By comparison, the PRC by 1999 had cut state enterprise employment by nearly half in 2 years.

The government's recently completed public administration review (PAR) review proposes a number of additional reforms. The review's recommendations include a variety of provisions, such as obtaining public comments on draft legislation, improving the dissemination of information about new legislation and about court judgements, streamlining the corporate regulatory framework, and professionalizing the civil service. However, targets being set are modest, and progress toward achieving them slow. Again, the comparison with PRC is instructive; while Viet Nam targets a 15% drop in civil service employment, PRC is on track to achieve a 50% drop.

Improvements in public financial management are also underway. Transparency lies at the heart of the Vietnamese constitution; however, achieving this vision will require changing how decisions in the public sector are taken and communicated. Progress made includes an improvement in external debt management and agency reporting of financial information, and the drafting of new accounting standards that are 95 percent in compliance with international accounting standards, the publication of some budgetary information, and development of the National Audit Office.

These initial steps provide a basis on which to build. Given that the budgetary system allocates financial resources according to society's goals, the need to improve budgetary data and information flows is imperative. Some of these measures could be undertaken immediately, such as the publication of more detailed information about the budget and public accounts, including audit reports.
Also, as in other countries, every public organization needs to build in safeguards to protect the public interest in all their policies, procedures and plans.

**Sub-National Government**

Another factor that increases the risk of corruption is the strong autonomy of major provincial areas. For example, some municipalities have set up dozens of public enterprises, many of which are nonproductive vehicles for rewarding loyal cronies. The government has tried to cut back on the creation of such new enterprises through stricter regulations, with only intermittent success. Viet Nam's local administration system is divided into three levels: provinces (61 units), districts (600 units), and communes (10,330 units). Each locality at all three levels has a representative body, the people's council, and an executive body — the people's committee — which correspond to the National Assembly and the government at the central level. Although they are set up as separate bodies, the people's committees and people's councils often have overlapping membership. The local people elect the people's councils, with candidates usually nominated by the Viet Nam fatherland front. The people's councils select the chairs and vice-chairs of the people's committees.

While ultimate legislative authority rests with the National Assembly, provincial and local government departments report to the local people's committees and assemblies and to the central line ministries. Responsibility for planning, implementation, and operation of facilities is also split, although large urban centers and a number of provincial governments enjoy a high degree of autonomy. Overall, the interrelations between different levels of government are complex in terms of supervision, accountability, reporting, and allocation of tax revenues.

Complexity with respect to the relations between different government agencies is increased by the unclear demarcation of the mandates of various agencies, leaving room for discretion in the interpretation of responsibility and accountability, and resulting
opportunities for corruption. This makes more coherent the de­
centralization of management to local administrations, which is
a high priority goal of the PAR. However, the lack of capacity within
local authorities to provide public services efficiently presents
a hindrance to decentralization. Problems with efficiency and
accountability in part reflect the low morale of underpaid local
officials and their lack of training, along with inadequate recurrent
funding (Rondinelli and Hung, 1997).

Legal and Judicial Framework

As mandated by the 1992 constitution, Viet Nam has been engaged
in building a state ruled by law. Many laws have been passed, courts
and legal aid centers established, courthouses built, standards set for
judges, lawyers educated, prosecutors and law enforcement officials
trained, legal information systems developed, programs to disseminate
legal information to the public instituted, and legal education and
professional training institutions created and/or expanded and
improved. The international donor system has complemented Viet
Nam’s own heavy investments in developing its legal system by
providing substantial assistance to all the main components of the
legal and judicial system. Although much has been achieved, officials
and donors agree that much remains to be done.

Current efforts in developing the legal and judicial system
have the following shortcomings that hinder efforts to combat
corruption: the lack of a clear law development strategy; an
inadequate institutional framework for effective implementation
and enforcement of the law, especially in regard to the quality and
independence of trials; and the lack of a coordination strategy
and action plans. In the legal reform area, Viet Nam’s and PRC’s
track records are both weak.

The quality of laws and regulations is weak in several respects.
Superior and subordinate regulations are often inconsistent, and
sometimes provisions contradict each other. The resulting un­
certainty is aggravated by the practice of not precisely specifying
what provisions of previously issued legal documents are to be
abrogated when a new legal document takes effect. Provisions in superior regulations are sometimes too general, leaving too much discretion to lower-level regulations. In other cases superior regulations may be too detailed and cause difficulties in implementation and the need for a lengthy process to revise inappropriate provisions.

The process of preparing legal documents sometimes fails to encourage active participation by relevant state organs and entities with legal expertise, and public opinion is also not sought. The mechanism for reviewing draft legal documents to check their constitutionality, legality, uniformity, consistency, and enforcement feasibility is also still weak. Another weakness is that preparation tends to be done without proper policy studies and research, which means that legal documents often have to be revised shortly after their promulgation. In addition, subordinate regulations are often not prepared together with superior regulations, causing implementation delays and uncertainties. These weaknesses are caused partly by inappropriate rules and procedures and partly by a lack of capability on the part of those entrusted with the tasks.

Local authorities play an important role in implementing legal institutions; however, they issue too many legal documents, which leads to the fragmentation of administrative power and non-uniform application of legal provisions. One reason for this situation is that no law regulates the promulgation of legal documents by local authorities. The situation is similar at the national level, in that there is no requirement that legal documents must have been published before they take effect.

Many administrative procedures are cumbersome and excessively regulated, creating opportunities for abuse of power and corruption by state officials, and the quality of services provided does not yet meet the expectations of people and business. State agencies have been slow to implement reforms in this area, perhaps because of a lack of awareness of the needs, an inability to find ways to improve procedures, and a lack of motivation.

Fundamental attitudes in relation to respect of the law have not yet developed. State agencies and individuals regularly violate laws,
and those responsible for law enforcement also often violate the law in their adjudication practices.

An additional problem in addressing corruption is that Viet Nam’s judicial system is centralized with ultimate decision-making authority resting with the national assembly. The system has not yet developed the predictability and quality of decision-making needed to support a market-based system in areas such as contract dispute resolution. Only the national assembly is authorized to interpret its legislation and the concept of precedents has not been established. Neither the reasoning underlying decisions nor the decisions themselves are published in a systematic way for the record: there is thus no public record, as we would understand it.

Many judges do not have legal training and their appointments are based on patronage. The credibility of the system is thus low, and viewed as open to bribery. Modernizing this system is essential to provide a foundation of relative certainty for private investment decisions. A program of legal and judicial reform was approved in 2001 by the Prime Minister as part of a Public Administration Reform Master Program, and based on a Legal Needs Assessment carried out with assistance from international agencies.

Next Steps

Now that Viet Nam has succeeded in the mainly unguided emergence of unregulated markets, it faces different challenges in developing a sound basis for market-led growth, including the rule of law, transparency, effective government regulation, and successful anti-corruption strategies. This is proving difficult because, among other things, Viet Nam’s prior reform success was mainly in response to external economic pressures and bottom-up societal changes. However, the next stage of reform requires a more proactive approach for which the government has little preparation or precedent. Further, the nomenklatura, who enjoy rents and privileges under the present system, having much to lose from cutting back the remaining market distortions and opaque bureaucratic systems, also cause delays.
Many of the important early reforms involved dismantling controls where the political decision was difficult, but implementation was straightforward. By contrast, some of the administrative reforms now required are less controversial in principle, but are complex to implement. Some require new institutions, which necessitate agreement about appropriate models and the translation of agreed principles into appropriate legislation. The institution-building tasks are lengthy, involving deep-seated changes in systems, practice, and understanding, or they require parallel movement on a number of fronts.

These reforms do not lend themselves to simple conditionality, nor can they be fully accomplished within the time frame of a typical technical assistance project or loan. Viet Nam's partners need to adapt their procedures to support this lengthy process.

**Regional Efforts**

In addition to country-based efforts, these four countries all participate in regional efforts to combat corruption. For example, the Asia-Pacific Initiative on combating corruption was launched in 1999 at a workshop held in Manila attended by 250 participants from over 35 ADB (2000a) and OECD countries and economies. Since then, the initiative works to co-ordinate anti-corruption activities amongst regional anti-corruption practitioners and with the international donor community, and to strengthen public-private partnership and support civic organizations in their fight against corruption. Its objective is to put in place the framework conditions for effectively combating corruption by identifying appropriate political, institutional, and other reforms necessary for the various participating countries.

The initiative is a partnership of Asia-Pacific governments, businesses, media, and NGOs, along with a range of sponsoring international organizations including ADB, the Organization of Economic Cooperation and Development (OECD), the Department for international development (UK), foreign ministry of the government of Japan, Konrad Adenauer Foundation, office of the Prime
Minister of the Republic of Korea, organization of economic co-operation and development, Pacific Basin economic council, transparency international, United Nations development program, United States agency for international development, and the World Bank.

At a conference in November 2001 in Tokyo, seventeen members signed an anti-corruption action plan for Asia-Pacific, a legally non-binding document that contains a number of principles and standards towards policy reform that interested governments politically commitment to implement. Cambodia, Lao PDR, Thailand and Vietnam have indicated that they may agree to sign up to the action plan, which would be a sign of their commitment to fight corruption more aggressively. The action plan will build on existing relevant regional and international instruments and good practices such as the anti-corruption policy of the ADB, the APEC public procurement principles, the 40 recommendations of the FATF as supported by the Asia/Pacific Group on money laundering, the OECD convention on combating bribery of foreign public officials in international business transactions and the revised recommendation, the OECD council recommendation on improving ethical conduct in the public service, the OECD principles on corporate governance, the PBEC charter on standards for transactions between business and government, the United Nations convention on transnational organized crime and the WTO agreement on government procurement. This process is supported by a website (www.oecd.org/daf/ASIAcom) that provides information on on-going and planned assistance programmes and initiatives.

Conclusions

This chapter has examined recent progress of Cambodia, Laos, Thailand and Viet Nam to set up effective institutions to fight corruption, drawing on governance assessments recently carried out by the Asian development bank. These countries make up part of the greater Mekong sub-region, and it is an important regional grouping roughly lying between two huge countries — India and China — and bridging their cultures also. We find corruption
hinders economic development and poverty reduction in all four countries. Earlier, economic reforms involved dismantling controls where the political decision was difficult, but implementation was straightforward. By contrast now, some of the structural reforms needed to combat corruption are less controversial in principle, but are complex to implement. Some, for instance, require new institutions, which necessitates agreement about appropriate models and the translation of agreed principles into appropriate legislation. All four countries have taken steps to combat corruption, with Thailand the furthest advanced; yet concrete results are hard to obtain. Anti-corruption efforts in these four countries reveal similarities but a striking range of variation, making them an interesting site for comparative analysis of the causes and consequences of different approaches. For example, the recent legacy of civil conflict adds a particular challenge to Cambodia.

In addition to national efforts to combat corruption, regional efforts can provide knowledge and support for the national champions, and will help to measure relative progress.

Note

The views expressed herein are the personal views of the author and may not reflect the views of the institution with which he is affiliated. The analysis in the section on Lao PDR is based on information up to the end of 1999.

References


Combating Corruption in Southeast Asia


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Chapter 11
The Institutional Economics of Legal Institutions, Guanxi, and Corruption in the PR China

Matthias Schramm and Markus Taube

Introduction

The phenomenon of corruption in the Peoples' Republic of China has recently gained greater attention in the public discussion, as the media have reported more intensively on cases of exposed corruption, associated arrests, court sentences and even executions.\(^1\) Many have the impression that the extent of corruption in China has increased dramatically, but this conclusion is not warranted. The phenomenon has existed for some time (Kwong, 1997) but has

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been increasingly brought into the open, not least because the ruling elite have realised that rampant corruption seriously jeopardises the successful continuation of the economic transformation process and will also endanger their own claim to power in the medium term.²

This study examines the phenomenon of corruption in China using the instrument of the new institutional economics. The goal is not to illuminate here the relationship between the parties involved in corruption using a principal-agent analysis. Instead, the analysis focuses on the institutional framework for corrupt transactions in China whose goal is to prevent opportunistic behaviour of one of the involved parties. In this respect, especially the relationship between corruption and the guanxi networks will be examined, and, in addition, how they are affected by the (non-)existence of a functioning legal system.

The study first provides a working definition of the corruption phenomenon and a description of the methodological approach (Section 1). Then, the order-creating function of the Chinese guanxi networks is presented (Section 2), followed by an analysis of the particular importance of the guanxi networks for the coordination of corrupt transactions (Section 3). The complementary and substitutive relationship between the two order systems of the guanxi network and the legal system and the ensuing implications for the corruption phenomenon in China are examined in Section 4. A summary of results concludes the study.

The Corruption Phenomenon

Corruption probably dates back to the very first instances of organized human life (Klitgaard, 1988, 77ff). In China, the penal code

²The president of state and general secretary of the communist party of China, Jiang Zemin is quoted as saying that the struggle against corruption in the party and government is 'a matter of life and death of the party'. See Agence France Press (2000:c) 'Communist party orders corruption cases to be used as ideological fodder', in: http://insidechina.com/news.php3?id=184548, download on 02.08.2000.
of the Qin Dynasty (221–207 BC) already included the phenomenon of corruption and placed heavy penalties on it. The problem of corruption seems to be closely linked to the institutional conditions of humans living together. Once the constitution of institutions permits the escape from the Hobbesian jungle, this step also establishes and codifies the power of Leviathan and enables its (parasitical, self-seeking) exploitation in societal interaction (Hobbes, 1651). Institutional power over transactions — also of an economic nature — seems to inevitably lead to corrupt and corrupting behavior, or, in the words of Lord Acton, 'power tends to corrupt and absolute power corrupts absolutely'.

**Definitional Considerations**

Corruption is closely linked with the norms and formal and informal rules of a specific society (Goudie & Stasavage, 1998), and cannot be viewed in isolation of its societal context. This means that a definition must necessarily be presented in a generalized form. Accordingly, and especially with regard to the Asian and specifically the Chinese cultural context, it would be appropriate to follow the argumentation of Max Weber and to place the definition at the end of an epistemological process instead of at the beginning (Weber, 1904 & 05). Nevertheless, we will attempt a definitional framework into which the further steps of the investigation will be inserted and which will also expand the framework.

One of the most general definitions is offered by Bardhan for whom corruption is ultimately 'the use of public office for private

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3It was an 'Pflichtverletzung im Amt' (infringement of duties in office) to accept gifts, to grant personal advantages, to bribe and to embezzle. The penalties ranged from reprimands to arrest, banishment and corporal punishment (Heberer, 2001). One of the oldest Indian sources on corruption dates back more than 2300 years (Klitgaard, 1988).

4Comment of Lord Acton (1834–1902) in a letter to Bishop Mandell Creighton (quoted after Bardhan, 1997).

5This is particularly the case for judgements regarding the moral and to a certain extent the legal dimensions of an action that is considered corrupt.
gain' (Bardhan, 1997): and a wide-spread definition in the literature based on Klitgaard sums up corruption as (Klitgaard, 1988):

Behaviour that deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status-gains; or violates rules against the exercise of certain types of private regarding behaviour. (Ney, 1967)

These very broad definitions form the basis for the following considerations, which will further specify the definition. Accordingly, the characteristics of corruption or corrupt behavior are:

- **System-specific or system-immanent, de facto personally related power exploited for personal gain.** This includes monetary and non-monetary rewards that transcend the income for work performed and that can be driven by both egotistic and also altruistic motives.
- **An immanent contract concluded via a specific transaction, i.e. the transference of property rights, which because of its illegality is not subject to any officially legitimized institutional executive or sanctioning instance.**
- **At least two economic subjects always interact in the above transference of property rights.** This explicitly excludes the theft or embezzlement of state property as well as influencing the political process to preserve power.

In addition to these characteristics of corrupt relationships, we also need to categorize the various identified types of corruption that are essential for an analysis of the phenomenon. A distinction can be made between spot-market corruption and relational corruption. Spot-market corruption includes all transactions that are carried out to avoid an isolated and immediate punishment or for gaining an isolated and immediate privilege. The transaction relationship ends with the exchange of the particular property rights and has no importance for the participating economic subjects either before or after the transaction. An example is giving policeman money to avoid getting a ticket for a traffic violation. Although the existence
and frequency of such transactions certainly allow for conclusions to be drawn with regard to the underlying institutional framework, i.e. its sanction possibilities and the credibility of sanction threats, this aspect of corruption is not the object of further analysis in this study. Instead, focus will be placed on the phenomenon of relational corruption, which also in Asia accounts for the major share of corrupt activities. This is understood as long-term (multi-periodical) transactional relationships which are formed on the basis of an implicit contract and which ensure the attainment of a system-immanent advantage (at least for one of the contracting partners) by influencing the political decision-making process on various levels; without the transaction this advantage would only be attainable — if at all — by using additional resources. Examples are the obtaining of licenses, access to public contracts, or the avoidance of safety or environmental-protection requirements.

**Theoretical Considerations**

Even though the theoretical discussion has not achieved definitional clarity or a widely accepted categorization, the occupation with the corruption phenomenon has been a component in the economic research programme for some time. The main studies include those of Becker (Becker, 1968), Krueger (Krueger, 1974), Rose-Ackerman (Rose-Ackerman, 1978), Klitgaard (Klitgaard, 1988) and Tanzi (Tanzi, 1995). The economic analysis has been increasingly concentrating on the application of the instruments provided by the new institutional economics. Recourse is taken primarily to the principal and agent theory, which is used in a variety of forms. The common element in these models is the examination of the relationship between the superordinate institutions (principal) and the acting officials (agents). The corrupting individual is included in this

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6Interest is focused here on studies that deal explicitly with the institutions that the corruption is based on (or with institutional deficits) and incentive structures. The literature that deals with the effects of corruption on economic growth is not considered here. For the latter, see in particular P. Mauro, 1995.
relational network as a third element, which takes place, as by Klitgaard, via the incorporation of a client (Klitgaard, 1988). Mostly, however, the newly created transactional relationship is constructed as a principal & agent model with the special case of the existence of two principals who pursue and implement various goals and an agent who is obligated to both of the principals (Rose-Ackermann, 1978; Groenendijk, 1997). In addition, game-theory models are also finding increasing use for portraying within such models the sanction and incentive mechanisms as well as the economic dependencies in a corrupt transaction (Dabla-Norris, 2000).

Further model approaches make use of the theory of rent seeking. The argumentation is that corruption payments can be demanded on the basis of monopoly power created by institutional particularities. This approach examines scenarios in which resources for establishing or preserving particular institutional arrangements are used in order to siphon off monopoly rents vis-à-vis third parties, for example, in the form of corruption payments (Rose-Ackermann, 1978). In this theoretical framework we must include the analyses that examine the origin of corruption in the context of economic transformation processes and their institutional particularities. Points to examine here are, firstly, the discretionary scope for decision-making, which is created in the wake of such comprehensive processes of change and, secondly, other types of system arbitrage that result from the parallel existence of market-economy system elements and atavisms of the former command-economy system (e.g. consciously constructed dual price systems or poor institutional fits between sub-sectors that arose during the process of change) (Abed & Davoodi, 2000).

In all of these explanatory approaches, the general tendency of observing social and institution conditions only on the margins is a problem.7 In many cases, then, arguments as to what is perceived as a corrupt or criminal transaction are hardly possible.

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7An exception here is at best the examinations of corruption based on a transformation-induced system arbitrage.
Especially theoretical explanations using rent-seeking or principal-agent models are often implicitly based on normative assumptions as to what transactions in a society are already regarded as corrupt or still as normal political processes, such as lobbying activity. However, ‘reciprocity is in any society a rule of life, and in some societies at least it is the rule of life’ (Noonan, 1984; Posner, 1980). In China, owing among other things to the weakness of formal institutional arrangements, a system of transactions tied to persons as well as implicit and relational contracts has been established, and this system is in need of closer examination. Thus, in the following, this system of the so-called guanxi networks will be analyzed, and in the light of these results a new assessment and explanation of corruption in China will be given.

The Institution of the Guanxi Networks

The Chinese guanxi networks can be understood as institutions that arose centuries ago to secure trade relations in an environment that was insufficiently covered by the formal legal system (Carr & Landa, 1983; Posner, 1980). In numerous areas they are still an ordering factor in Chinese society, and virtually every Chinese person is connected to at least one guanxi network. These guanxi networks are based on personal relations marked by certain common elements such as coming from the same village or region, serving in the same military unit, belonging to the same party unit, schools, associations, etc. However, membership in a guanxi network is not limited to such common experience but can also be arranged by a person in a position of trust whose reputation is the guarantee of the proper behavior of the person introduced. In this way individual people are able to expand their radius of economic relations, backed up by guanxi networks, to include various networks each with different resources (Krug & Polos, 2000). A targeted expansion of

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8‘Resources’ refer to the information, goods and services accessible to the affiliated club members.
one's network to people who are regarded as useful for the pursuit of common interests can also be achieved by the giving of gifts. By accepting the gift or service, the involved person obligates himself to perform an undefined reciprocal service at an unspecified time in the future. Thus, by accepting the gift or service, an implicit contract is concluded the fulfillment of which is linked to the particular network (Hsing, 1998).

The mutual exchange of services and the acceptance of abstract debt obligations is the main integrating force within a guanxi network. It can be understood as a mutual investment in social capital (Dasgupta & Serageldin, 1999), which is the framework of a system of order that co-ordinates the interaction between the network members. The resources used for this purpose are by no means insignificant. In a village investigated by Yan in the province of Heilongjiang, a household spends between 10% and 20% of its disposable income for the nurturing of its guanxi networks (Yan, 1996). The Hong Kong independent commission against corruption (ICAS) determined in 1993 that Hong Kong businessmen spent 3% to 5% of their investment in mainland China on gifts and maintenance of guanxi networks (Ming Pao, 21.08.1993, as quoted in Chan, 1999).

Guanxi networks can be seen as clubs that guarantee their members the enforceability of available property rights in an institutionally disorderly environment, thus lowering transaction costs (in the form of contact and especially control costs). The club assures that members have the certainty of disposal over their rights. The expenses necessary for club membership can be seen as an investment in social capital, which upon joining have the characteristic of sunk costs. The stocks of social capital created in a guanxi network are fixed costs for the members (Ben-Porath, 1980), which however enable the variable costs of contacts, negotiations and implementation of transactions between club members to be reduced to a minimum. Since the fixed costs are higher than the variable costs, the incentive for a high intensity of interaction is an integral part of the guanxi system. Contract fulfillment is assured
in that information regarding the honoring or breaching of contracts spreads rapidly among the club members. Co-operative, contract-honoring behaviors thus also become the dominant strategy in one-period games (unique transactions between club members) since these unique games are bound up in an iterative system of multiple games (transactions) with other club members.\(^9\) Honoring contracts and co-operative behavior is positively sanctioned by the possibility of engaging in further, low-cost transactions with club members. In contrast, the response to opportunistic behavior is a withdrawal of goodwill or even exclusion from the club,\(^{10}\) which, for the club member affected not only means the loss of investment but also a massive cost increase for future transactions. These costs could be so high that withdrawal from the field of activity is necessary with possibly existence-threatening implications (Carr & Landa, 1983; Goudie & Stasavage, 1998).\(^{11}\) The increase in utility that can be gained by maintaining long-term business relations thus clearly exceeds the short-term gains from an opportunistic breach of contract.

On the basis of this co-coordinating mechanism which clearly reduces the transaction costs of economic exchanges, the Chinese guanxi networks have advanced the development of the division of labor in the economic process (and also economic development) in Chinese society over the centuries, and they continue to exist as complementary and parallel mechanisms for ordering economic interaction. Especially in the reform period since 1979, the organization of economic activities by the guanxi networks has regained importance. The Chinese reform model of gradual transition which is advancing the restructuring of institutional conditions in the form of a hardly foreseeable trial-and-error procedure rather

\(^9\)Axelrod shows that co-operative behaviour only becomes the dominant strategy in repeated games and is able to overcome the prisoners' dilemma (Axelrod, 1983).

\(^{10}\) For a documentation of sanctions of varying degrees practised in China, see Wank, 1999.

\(^{11}\) For a concrete example of how the mechanism is used in a Chinese community, see Krug & Polos, 2000.
than a system of economic policy that creates planning confidence (Rawski, 1999) is a cause of great institutional uncertainty in economic interaction (Wank, 1999). The reform period is characterized by the dissolution of established, central-administrative ordering mechanisms and a not always simultaneous creation of new, more strongly market-oriented elements. This leads to vacuums in the system of order which are filled by reverting to traditional, institutional arrangements and behavior patterns and thus to a new heyday of personally oriented, relational assurance of transactions in guanxi networks (Root, 1996).

Corruption in the Context of Guanxi Networks

In a society permeated by such guanxi networks, an analysis of the behavior of isolated individuals can never be absolute but must be subject to an evaluation that is relative and suited to the situation. The definition of morally correct behavior is not identical for all interaction partners but is based on the identity of the counterpart. Members of the core groups, i.e. a guanxi network, experience,

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12 The first formal contract legislation, which did not take effect until 1 July 1982, four years after the reform process had begun, was still strongly bound to the old central administrative system and quickly came into contradiction to subsequent laws and decrees. Nevertheless, the law was not revised until 1993 and it was not until October 1999 that a comprehensive, uniform contract law went into effect. Even more problematic than this delayed reform legislation is the poor enforcement of existing law, which is the result of administrative interventions and an often insufficient training of the personnel that enforces the law (Tao & Zhu, 2001; Wank, 1999).

13 It would be wrong, however, to attribute the recent gain in importance of the guanxi networks solely to the planning uncertainty that has arisen in the wake of the Chinese transformation process. Already in the previous century, the Maoist policy of strengthening the allocative decision-making power of the state coupled with the expansion of the discretionary power of local cadres assisted the formation of personalised relational networks: guanxi networks. The guanxi networks that developed in this period were profitably used and expanded in the era of economic restructuring under Deng Xiaoping (Nee, 2000; Chan, 1999; Yan, 1996).
in general, a different behavior than individuals on the outside.\textsuperscript{14} This is particularly important for the further analysis since the provision of certain goods or the implementation of transactions, which from the perspective of a guanxi relationship appear as normal and even necessary transactions within the club, from the perspective of a legal system that is independent of personal relationship would certainly fall within the sphere of corruption (Goudie & Stasavage, 1998). Insofar as guanxi networks and legal systems co-exist, there is a blurring of the limits between regular economic transactions and corruption.\textsuperscript{15} For the individual economic actor this means that as long as no clear hierarchy exists between these two systems, and as long as guanxi transactions are assigned a clearly delineated functional zone within the legal system, conflicts of interest will always arise between maintaining club discipline, on the one hand, and following legal statutes, on the other.\textsuperscript{16} Accordingly, a not insignificant portion of behavioral patterns that are classified as corrupt by external institutions such as the World Bank or the OECD are important aspects of the social fabric

\textsuperscript{14}The difference that emerges here is that between zijiren (in-group members), to which also all members of the guanxi network belong, and the wairen (out-group members). The latter are generally classified as sheng (raw) and thus have lower importance in all social interactions; they are confronted with an entirely different array of norms and rules. The situation-adequate relativizing of Chinese transaction relationships is also to be understood in this sense. These relationships are seen to be oriented around the collective in general (e.g. the guanxi network), but in particular social contexts they take on individualistic-discriminatory features (Gabrenya & Hwang, 1996).

\textsuperscript{15}This effect is further exacerbated by the reformulation of value concepts and behaviour codes raised in the transformation process. Slogans such as ‘let some first become rich’ or Deng Xiaopin’s famous saying, ‘regardless of whether the cat is black or white the main thing is whether it catches mice’ were by no means politically acceptable between the second half of the 1960s and the end of the 1970s. Determining the boundary between barely legal and already illegal behaviour has become much more difficult for the individual citizen to determine (Heberer, 2001).
What is more, the network-preserving transactions, which appear illegal from the viewpoint of a supra-individual, codified legal system, are precisely that which establishes institutions that create legal certainty in a relational, person-oriented environment. A moral and ethical evaluation of (economic) transactions, which are nothing more than social relationships, that is divorced from the social context (a not insignificant part of which was constructed by these very trade relation), is thus not justified. Examining the case numbers of corruption in China under this point of view, it is necessary to relativize the accusation of corruption in many areas.

It would be wrong, however, to dismiss the entire phenomenon of Chinese corruption as a problem of classification, caused by the parallel existence of two systems of order with differing functional principles and values. In Chinese society — independent of and beyond the gray zone that results from the parallel existence of personally bound and personally independent ordering mechanisms — there is also a clear, normative differentiation of morally unimpeachable behavior and corruption or illegal granting of advantage, etc. That is to say, corrupt behavior aimed at achieving private advantage can very well be identified in China, and there is a considerable amount of it. A particular characteristic here is that considerable portions of these corrupt transactions take advantage of the existence of guanxi networks (Lee, 1991). It must be noted, however, that such transactions in interplay solely with the environment outside of the given guanxi networks can be classified as completely ‘corrupt’. Within the network itself they serve the formation of social capital and the maintenance of relationships just

\[16\] Moreover, in the context of the Chinese transformation process, which is only roughly controlled by the central state and otherwise based on the trial-and-error principle, the interpretation of specific behaviours as correct or incorrect is by no means always consistent. Instead, observations have shown that particular measures that were tolerated or even promoted at one point in time because they were considered useful for the economic development of a region or an industry, at a later point of time were then classified as illegal and were prosecuted. The concepts ‘legal’ and ‘corrupt’ are thus subject to a relativity that is determined by the changeable progress in the transformation process (Ding, 2000).
as any other ‘regular’ transactions and are indistinguishable from them.

It is a fundamental insight that corrupt transactions, just like all other economically based interactions, are grounded on the exchange of specific bundles of property rights and like these must deal with the cost problems of transaction initiation (search and information costs), of contract completion (negotiating and decision costs) and safeguards against opportunistic behavior of the transactions partners (monitoring and implementation costs).\(^{17}\)

Corrupt transactions, however, are particularly endangered by ex post opportunism. Since corruption payments are a form of investment, which have no value outside the transaction, the payer places himself in a potential hold up of the receiver who can demand additional payment or who may not — or not sufficiently — perform the agreed service, without needing to fear counter measures from the payer.

In light of the illegal character of corrupt transactions, the established, formal institutions of the national market and legal systems cannot be laid claim to (Goudie & Stasavage, 1998), so that other ordering mechanisms must be utilized (Rose-Ackermann, 1999).

The ideal solution of such a problem from the perspective of new institutional economics is the ‘vertical integration’ of all transaction partners under the roof of a governance structure that encompasses the entire transaction: an enterprise (Williamson, 1985). This solution, however, is not available for corrupt transactions because of their illegal character and the fact that one party is usually part of the public administration and not internalisable.

In contrast, the Chinese guanxi networks seem to offer a practicable, and under the given conditions, a transaction-cost-minimizing (best practice) solution for the problem of corrupts transactions. The suitability of guanxi networks for the solution of the problem of corrupt transactions is seen in the ability of this institution to transform high-risk exchanges into self-implementing contracts. At the same

\(^{17}\)On the costs of market utilisation, see Richter, 1990. For the specific risks and uncertainty factors of corrupt transactions, see Goudie & Stasavage, 1998.
time, they are an approximation of an ideal solution in terms of institutional economics: with their significant investments in building the network, all participating parties document a credible commitment; they expend resources which can only lead to a pay-off if future transactions are carried out in the interests of all contracting parties. The above argumentation shows that these contractual relations are 'stable' since all participating parties must have an interest in long-term transaction relationships. Because of their high portion of such investment costs, guanxi networks create governance structures that force contract-honoring behavior of the transaction partners, analogous to vertical integration solutions (Reja & Tavitie, 2000). Guanxi networks thus manage to provide an infrastructure in which the transaction partners can safeguard themselves from the ex post opportunism of one side.

The use of guanxi networks for co-coordinating corrupt transactions not only makes sense in functional terms; it is also optimal with regard to transaction-cost theory. As described above, transactions co-ordinated in guanxi networks have high fixed costs but low variable costs. For the individual this means that with a high volume of transactions the average cost of individual transactions can be lowered. There is thus an incentive to use a guanxi network for as many transactions as possible. The individual can thus use the same ordering mechanism that forms the basis for his 'regular' transactions also for transactions carried out with the clear intention of manipulating for personal advantage the political decision-making process — transactions that must accordingly be classified as 'corrupt'. In this way he can not only save the costs of setting up a special system for coordinating corrupt transactions but can additionally also lower the average costs of all transactions co-ordinated via this guanxi network.18

18An example for the simultaneous use of guanxi networks for co-ordination of legal and illegal transactions is the phenomenon of smuggling in southern China. Most of these smuggling transactions are co-ordinated by the same guanxi networks that also serve the arrangement of legal relationships (foreign trade, direct investment) between parties, mostly in southern China, Hong Kong and Taiwan (Heilmann & Gras & Kupfer, 2000).
Chinese guanxi networks are thus both efficient and transaction-cost-lowering ordination mechanisms for initiating, conducting and controlling transactions in an environment characterized by high institutional uncertainty. The question that must be examined is the extent to which an intensified establishment of an institutionalized and codified legal system will lead to a displacement of the guanxi networks that permeate Chinese society, or whether the existence of two systems that offer legal security is possible in an economy in the long term. The following analysis of the complementary or substitutive position of guanxi networks in a legal system will therefore also try to clarify the questions of the medium-term continuation of the institutional underpinnings of a significant portion of what can be classified as corruption in China.

Guanxi Networks and Codified Law as Competing Systems of Order

The increasing opening of the Chinese economy in the wake of the transformation process requires to an increasing extent an institutional framework that supports market transactions to ensure the availability of enforceable property rights. With this and also the impending membership in the WTO in mind, the Chinese leadership is endeavoring — and also obligated — to develop and introduce a legal system that codifies the security of property laws at a supra-personal level. Such a legal system will stand as a direct competitor to the established guanxi networks, which have been the main guarantor of property rights. Guanxi networks and a legal system thus characterize two independent systems of order that are initially not mutually exclusive. Although their coexistence seems quite possible within certain limits, the questions remains as to...
whether this coexistence is desirable and can be permanent from overall economic and individual perspectives. The establishment of an institutional framework that offers legal security at a supra-individual level beyond social relationships seems at first glance to offer significant advantages especially with regard to transaction frequency, the free choice of transaction partners, and especially transaction costs.\textsuperscript{20} This should lead individuals to no longer rely on the system of guanxi networks to secure their transactions since there is now no uncertainty regarding the enforcement of contractual rights. From this standpoint, guanxi networks should gradually lose importance and ultimately disappear once a functioning legal system gradually becomes established. For the phenomenon of corruption, this would mean that an important ordering mechanism would disappear, the transaction costs for corrupt transactions would increase, and, ceteris paribus, the incidence of corruption must decline.

The superiority of a supra-individual legal system postulated here vis-à-vis the personalized guanxi networks is, at closer examination, doubtful and certainly not supportable as a categorical formulation. Supra-individual legal systems appear superior in terms of their ability to provide good legal security, but this unambiguous assertion is no longer possible with respect to the transaction costs that are linked to the provision of good legal security. Especially the utility and cost-based rationale for shifting transactions once co-ordinated by guanxi networks to the ordering mechanism of a legal system appear doubtful in terms of the concepts of path dependency and embeddedness.\textsuperscript{21}

\textsuperscript{20}As a result of his cliometric studies, North asserts: 'The move, lengthy and uneven, from unwritten traditions and customs to written laws has been unidirectional as we have moved from less to more complex societies and is clearly related to increasing specialization and division of labor associated with more complex societies.' (North, 1990).

\textsuperscript{21}For the future viability of guanxi networks, see also Wang, 2000.
Transaction Security as a Public or Club Good

In terms of the establishment of institutional order, legal security can be regarded as a public good. In contrast, legal security provided by guanxi networks, as discussed above, could be labeled a club good. Seen in these terms, a number of characteristics emerge that must be considered in the analysis. The central feature here is the optimal club size. With an increasing number of club members, an effective sanctioning of infringements is no longer assured. Once the optimal size of a club has been exceeded, the costs informing club members of individual infringements increase (Carr & Landa, 1983). Sanctioning misbehavior, which depends on the complete information of all club members regarding the trustworthiness of all others, can no longer be guaranteed under all circumstances. This could make opportunistic behavior appear worthwhile for some individuals (Buchanan, 1965), and the function of the club as a guarantor of legal security for its members is thus challenged.\(^{22}\)

With a public good, provided by a codified and institutionalized legal system, this problem does not arise (Buchanan, 1965). On the contrary, even an expansion of the number of ‘consumers’ of this good will not, by definition, allow any rivalry in consumption to arise. Additional users lower the per-capita payments without giving rise to crowding effects (Sandler & Tscharhart, 1997). Especially in rapidly growing economies such as China, the increase in transaction partners and the advancing division of labor via specialization is a motor for this growth (North, 1984). With an increasing division of labor, Guanxi networks have definite limitations because of their club character; since the optimal club size is reached much before the optimal permeation of a division of labor (and accordingly the

\(^{22}\)This can be seen in terms of the prisoners’ dilemma model in which defecting is the dominant strategy — as long as there are not an endless number of games. Once there is a significant likelihood that opportunistic behaviour will not be recognised and sanctioned because of information deficits, there is an incentive for opportunistic behaviour in dependency on the degree of sanctions — an incentive to prefer defecting over co-operating.
optimal number of transactions and transaction partners) has been reached.

**Fixed and Variable Costs of Transaction Assurance**

As shown above, guanxi networks can reduce the variable costs of a transaction to a minimum. After a comparatively high initial investment in social capital for membership in the club, only marginal transaction costs (mostly limited to search costs) accrue for all further transactions. Since, however, the investments are in the form of sunk costs, these are no longer significant in an individual's utility maximization calculations. Guanxi networks thus contain an immanent incentive for maximizing possible transactions, since each additional transaction must only be assessed in terms of its variable costs. In contrast, there are opportunity costs for club membership that arise because transactions with outsiders are not possible. These costs are hence a function of the club size, and decrease as the club size increases.23

In an institutional legal system there are no fixed costs for the individual. Legal security exists for every transaction and protects every transaction. In such a system, however, there is a fundamental difference between the existence of rights and their enforcement. The legal security granted by such a system is thus closely bound to the credibility and impartial application of sanctions. If one of the supports is weakened, however, be it that the judiciary is not sufficiently independent or the executive is not able to enforce the imposed sanctions, the system loses its functionality in many areas.24 It must be clearly understood that the judiciary must

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23 See here also the discussion of optimal club size and the control costs dependent on this in Sandler & Tschirhart, 1997 and Carr & Landa, 1983.

24 Despite decades of intensive efforts in establishing a codified legal system with independent courts, great uncertainty still remains in China concerning the true independent status of the court system and thus the role of the courts as a legal arbiter (Wank, 1999).
not only be free of preferences in a personal regard but must also give out clear signals of its credibility. A codified legal system does not establish the public good of contractual and legal security simply as a matter of course. Rather, it is the task of particularly specialized individuals to manifest this in everyday social dealings. It is not clear, however, whether precisely these specialists, who because of their institutional position have (spatially limited) monopoly power, can be exonerated of opportunistic behavior (Elster, 1989).

If, in addition, an economic community is highly opportunistic, i.e. contractual infringements are relatively frequent; the costs of pursuing claims that the individual must bear are very high. In the case of a contractual infringement, the individual thus incurs extensive transaction costs, which can be characterized as legal implementation costs. Accordingly, an individual who engages in a transaction has a high ex ante uncertainty over the actual variable costs of the transaction, which are a function of the likelihood of a contract infringement by the transaction partner as well as the institutional law enforcement. This uncertainty becomes part of the individual's maximization calculation and tends to reduce the number of transactions carried out.²⁵

Path Dependency in the Use of Systems of Order

A reduction of the importance of guanxi networks for the ordination of economic transactions and a strengthening or sole use of the legal system is prevented to a great extent by the phenomenon of path dependency (David, 1985). In the final analysis, path dependency points to competition failure in the area of institution selection

²⁵It should be pointed out that there is no agreement as to whether informal institutions should be introduced in any form as restrictions in an individual's utility calculations. It is often pointed out that informal institutions are obeyed not because of external sanctioning mechanisms but because the utility they give the individual, since complying with them is part of the individual's direct preferences — as a result of socialisation and internalisation (Mummert, 1995).
owing to the lack of possibilities for setting up several parallel institutions and making a direct comparison of performance.\textsuperscript{26} Instead, decisions are made under conditions of great uncertainty for the establishment of a specific institution for which investments are made, in the form of sunk costs, create incentives for the retention of the institutional solution that has been chosen even if, at a later point in time, another institution may be considered a better option. A change in systems of order among the competing systems is thus not made solely on the basis of weighing up the accruing costs per transaction. An economic actor with a short-term orientation will persist in using a once-established system of order until the opportunity costs of maintaining the existing system surpass the costs of constructing a new system within the calculation period that is relevant for this economic subject.

As shown above, guanxi networks display a great amount of sunk costs, which account for the great inertia of this ordering mechanism. The low variable costs of using this mechanism and the high fixed costs make it extremely resistant to changing to a competing mechanism once the initial investment has been made in the social capital it is based on. This means that the performance of the Chinese legal system must be regarded as considerably superior to the guanxi networks for the individual economic actor to view as rational the use of the legal system instead of the guanxi networks to safeguard transactions. Alternatively, massive pressure by political decision-makers must be exerted for legal systems to displace the guanxi networks.\textsuperscript{27} It is also an open question whether these decision-makers are themselves truly interested in the establishment of an independent, unbiased legal system.

\textsuperscript{26}In the course of the Chinese transformation process, precisely this has occurred in a number of cases. By selecting regions whose differing institutional arrangements were tested within the context of pilot projects, it was possible to test the performance and suitability of competing institutions (World Bank, 1992).

\textsuperscript{27}Such a politically induced replacement process can be associated with massive compensation payments to the 'losers' of structural change, depending on the political constellation.
Embeddedness of Order Mechanisms

An additional argument for the continuation of guanxi networks stems from their embeddedness (Granovetter, 1985) in Chinese society as a whole. Within the overall system, the choice and arrangement of institutions does not follow economic efficiency criteria alone but is also influenced by cultural and social factors (DiMaggio, 1994). On the basis of their development within China over the centuries and millennia, the guanxi networks are strongly anchored in Chinese society and have an important function not only on the economic level but also dominate interaction on a political and social level. For Hamilton, guanxi networks are the primary cultural feature of China and stand, moreover, in an antagonistic relationship to the Western system based on legal rights.

In the West, Christianity combined with preexisting institutions to produce clear jurisdictional lines of top-down personalized authority. In the economic sphere, this led to legal definitions of property and ownership. But Chinese institutions rest on relationships and not jurisdictions, on obedience to one's own roles and not on bureaucratic command structures. [...] Both jurisdictional principles and the autonomous individual are historically absent in the Chinese worldview, and thus were not incorporated in Chinese institutions. Instead, Chinese society consists of networks of people whose actions are oriented by normative social relationships. (Hamilton, 1994)

In this light, it seems doubtful that a rapid replacement of guanxi networks — motivated by economic efficiency considerations alone — by a comprehensive legal system is likely.28

Conclusions

This article has attempted to illuminate the institutional foundations of corruption in China. To do this it was first necessary to contrast

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28DiMaggio, however, sees a counter trend on the global level, 'If anything, relational contracting seems to be on the rise, as more firms develop “network” alternatives to conventional markets and hierarchies' (DiMaggio, 1994).
the traditional understanding of corruption from the perspective of a personally unbound legal system with an analysis of a system where socio-economic interaction takes place within personally bound systems of order: the guanxi networks. The results show that there are many areas where legal and moral assessments are not possible without taking into consideration the underlying social system. Whereas certain transactions are considered corrupt from the standpoint of a personally bound legal system, the same transaction from the perspective of guanxi relationships appears to be normal and even a necessary measure for maintaining a personally bound system of order. The definition of corruption cannot be made universally but must be undertaken on the basis of the system of order that a society is based on. In light of the parallel existence of both a personally independent legal system and numerous personally bound guanxi networks, the classification of individual behaviors in China as 'corrupt' must, in most cases, remain relative.

Apart from this relative concept of corruption that derives from the parallel existence of two systems of order, another form of corruption was also identified. This is not an endogenous part of the functional mechanism of guanxi networks but instead takes advantage of the coordinating mechanisms of existing guanxi structures. In actual fact, guanxi networks offer a transaction cost minimizing solution (best practice) for the problem of order that corrupt transactions are confronted with. Guanxi networks, by binding investments in social capital, are able to transform very risky trade relationships into contracts that are self-implementing. Insofar as transaction activity within guanxi networks have high fixed costs and low variable costs, it is obvious that already existing guanxi networks transcend their normal use and are also used to co-ordinate illegal, corrupt transactions. In this way, not only the average costs of all transactions carried out can be lowered, but also it is also possible to economize on the expenses for creating a special security mechanism for the share of corrupt transactions.

The intensified efforts to establish a legal system in China raise the question of whether this will displace the guanxi networks and ultimately also weaken the phenomenon of corruption.
An analysis of the factors that determine such processes of institutional change — institutional performance, cost structures, path dependency and embeddedness — shows, however, that a substantial displacement of the guanxi networks, even with a further strengthening of the Chinese legal system, is not to be expected. Thus, from this side, no stimulus for reducing the phenomenon of corruption in China can be anticipated.

References


Chapter 12

The Nature of Corruption Hidden in Culture:
The Case of Korea

Yong-Lin Moon and Gary N McLean

Introduction

The elimination of corruption has been a major policy target for many Asian leaders, especially since the end of the second World War in 1945. Since that time, many Asian countries have striven to establish western style democracy in their politics and economy. Only a few countries, however, have managed any level of success in accomplishing even a semblance of that goal — Japan, Singapore, Taiwan, Hong Kong, and South Korea. But their successes have been only in relative terms. In fact, it might be more accurate to say that they have been somewhat more effective in fighting corruption than other Asian countries. Believing that no country can develop economically and socially with corruption alive in its midst, most Asian countries continue to fight corruption.

The Problem

South Korea may be one of the most troubled of these countries about its efforts to curb corruption because there is a realization that they might lose what they have achieved economically unless they can curb corruption successfully. South Korea is small in size
but a giant in world trade, standing 13th in international trade. Its GDP is about 15th in absolute amount among 170 countries (National statistics office, 2000). Experiencing the exchange monetary crisis in 1997 (alias “IMF crisis of 1997”), Koreans learned that they need to adopt global standards of action (open, fair, rational, and law abiding) if they want ongoing economic development.

The fight against corruption has a long history in Korea. For example, “anticorruption” was the main and principal cause for the coup d'état in 1960 by Gen. J. H. Park. The two recent presidents (Kim Y. S., 1993–1998, and Kim D. J., 1998-present) promulgated a strong anticorruption policy and campaigned against corruption. Both presidents established a Presidential Committee on Anti-corruption and gave them plenipotentiary power. But despite these efforts, few people would conclude that corruption has diminished, or even that the two presidents were, themselves, free of corruption (A question of revenge, 2001).

Some blame the failure of the anticorruption efforts on Confucianism. They say that Koreans are damned to be corrupt as long as they are immersed in Confucianism: “We can survive only without Confucius” (Kim, 1999). Some say that Koreans should return to the true basics of Confucianism, which they have lost since the early 20th Century: “We can survive only with Confucius” (Choi, 1999). These are the claims of two competing bestsellers. Several thousand years after his death, Confucius is emerging as both a culprit and a possible savior. Most scholars and journalists do not subscribe to either extreme position.

Corruption is a multifaceted phenomenon. It comprises many factors and components: socio-economic, cultural, politico-systematic, bureaucratic-administrative, psychological, and so on. This multifaceted aspect of corruption must be taken into account if anticorruption efforts are to succeed. Despite the widespread awareness that the principal enemy of progress is corruption, and South Korea’s use of various measures to counter corruption, to date, they have ended in vain.

One source reporting the extent of the perception of corruption has been provided by annual surveys conducted by Transparency
International (TI). According to TI, Korea’s perceived level of corruption declined some from the early 1980’s to the late 1980s (Transparency International, 2001), and, by 1995, ranked 27 out of 41 countries (Transparency International, 1995). By 2000, Korea was ranked 48th of 90 countries. At the same time, Japan ranked 23rd, Taiwan, 28th, and China, 63rd (Transparency International, 2000). (For a history and explanation of the TI scales, see Galtung & Pope, 1999.)

The Questions to be Addressed

Why have the efforts had so little effect? The answer lies in a careful analysis of the nature and character of corruption. Of course, corruption has both general and specific features that lie in culture. While the general features of corruption may be common among cultures, that is not the focus of this chapter. Rather, we will focus on the specific and idiosyncratic features of corruption in Korea. The primary focus, then, will be on the following three questions:

1. What are the cultural factors hidden in corruption in Korea? Answers to this question lie in historical and ideological analysis.
2. Why are Koreans inclined toward corruptive practices when it goes against their high level of education and enlightenment? This question calls for practical and psychological analysis in human relations and business.
3. What alternative approaches exist for anticorruption in Korea? Social and political system changes, as well as education and cultural environment changes, will be examined in answering this question.

Approaches to Answering the Questions

To answer these questions, we use primarily a review of the literature. We then use our own experiences within the Korean culture to outline a systematic and comprehensive approach to address the problems of corruption in South Korea.
Cultural Factors Hidden in Corruption: Historical and Ideological Analysis

Koreans have long lived in a mixed culture of Buddhism, Taoism, and Confucianism. Most of the kingdoms in Korea's 5,000-year history spawned and supported one of those religions or philosophies. For example, each of the most recent dynasties of Koryo (935–1392 AD) and Chosun (1392–1910 AD) had its own state religion and exerted considerable effort to propagate it among its populace. In the era of Koryo, Buddhism prevailed for more than 400 years so that everything related to Buddhism was respected and valued.

With the overturn of Koryo, the Chosun dynasty took the stage with a strong emphasis on the philosophy of Confucianism, which became the state philosophy. The founders of the kingdom vehemently rejected the Buddhist tradition of Koryo. From then on, everything began to change. Buddhist temples and monks were shunted off to the mountains and things Confucian were treasured and valued. Confucianism exerted its dominance for over 500 years until the beginning of the 20th Century.

The legacies of 400 years of Buddhism and 500 years of Confucianism have each mixed with Taoism and, as a result, developed many distinctive folk beliefs. Thus, Korea, as the "Land of Morning Calm," so named by European visitors in the 18th Century, has been steeped in a mixture of Buddhism, Taoism, and Confucianism for more than 1,000 years until recently.

Therefore, the characteristics of Korean traditional values are better defined by the mixture of these three ideologies than by any one of them. Many scholars have indicated that Korea's traditional values reside in shamanism. Other scholars (e.g., Choi Chi-won of Shilla Dynasty) have given it the proper name, Poong Lyu (whose literal meaning is: Poong=wind, Lyu=stream or flow). But any indigenous name indicating Korean traditional values as a whole is not yet widely accepted and used.

Koreans generally understand Confucianism as indicating their traditional values as a whole. So Confucianism hereafter in this
chapter is used for the distinctive meaning of Korean traditional values comprising the mixture of Confucianism, Buddhism, and Taoism.

In spite of these values, however, “corruption has been a serious problem in South Korea since the sixteenth century” (Quah, 1999, p. 246). According to Tipton (1998), these values provided the elite with power, as, “from the lowest level to the highest, officials in effect purchased their offices with bribes, and then spent their time in office attempting to recoup their expenses and if possible turn a profit” (pp. 99–100). Tipton went on to outline several efforts at reform throughout the 19th Century, all of which failed because those in power, the elite, strongly resisted the reforms because of what they would have had to give up. One response to the reforms was to bar foreigners from active involvement with the country, which, of course, ended with the Japanese occupation.

Efforts at a full-scale introduction of western democracy and civilization into Korea occurred after World War II (1945), initially through the Committee for the Preparation of Korean Independence, resulting in the establishment of the Korean People’s Republic. The Russians in the north accepted the party and its reforms, but the US military refused to recognize it, thus destroying early efforts at democracy in the south (Tipton, 1998). This struggle continued as two governments emerged in Korea, leading, ultimately, to the Korean War. Early Korean leaders, such as Rhee and his Liberal Party, in spite of appearances at democracy, still relied heavily on control, power, fraud, and bribes in governing the country (Tipton, 1998). No subsequent president, to date, has escaped accusations of widespread corruption. The same poor reputation has tarnished other political leaders and many major businesspersons.

Yoo (2001) reported President Kim Dae-jung’s analysis of the cause of the 1997 economic crisis as

the lack of democratic accountability in Korea, which led to the close association between politicians and corporate leaders, and an economy dominated by the government and corruption. Those problems distorted market forces and weakened business and financial institutions. (p. 15)
Thus, there have been fewer than 50 years of real struggle for democracy in South Korea. During that time, the populace, in particular, has begun to feel and experience ways of life other than their own, which they had cherished for 1,000 years; but the weight of 1,000 years is far heavier than 50 years. Although what we see now in Korea are the appearances of highly westernized cities, systems and people, what we actually feel and experience in Korea are the touch and smell of 1,000 years of tradition.

In computer analogy, every hardware system of modern Korea is like that of western countries. But its software is not like theirs. The computer hardware systems are almost the same, but its operating systems are quite different. Just as an operating system of a computer can make its system more or less efficient, the culture of a country can make its societal systems work efficiently or not. It is apt, perhaps, that Hofstede described culture as “the software of the mind” (Hofstede, 1991, p. 4).

Since the reestablishment of the Republic of Korea (1948) after World War II, Korea has been well equipped with the social systems of western democracy and a capitalist economy. As expected, parts of these systems have worked well, while others have not worked so well. Despite the miserable disaster of the Korean War and the severity of ideological confrontations between South and North Korea, Korea has still achieved a miraculous economic development. Korea has been quite optimistic that they would become a member of OECD first and then emerge as a member of the G9 club of advanced countries.

In 1997, however, to their dismay, the Korean economy was hit by an unexpected shortage of foreign exchange and collapsed completely. This disaster gave Koreans a pessimistic outlook for their future. Is it possible for the existing socio-political and economic systems to guarantee sustained development? Answers from most Koreans were negative. Many Koreans understand that the 1997 economic crisis was a natural consequence of the system and its surrounding environment that spawned irrationality, unfairness, and corruptibility. Many Koreans seem to be paying more
attention to corruption now, seeing it as one of the major culprits of the 1997 IMF crisis. Since the crisis, the climate of “no more development without sweeping out corruption” has prevailed. This climate helped launch a strong anticorruption drive as a political agenda and also a civil movement by high-level administrators, including President Kim Dae-jung.

Despite a strong will and sophisticated systematic measures, the anti-corruption drive seems not to have been very successful. Why? Two wheels support corruption: incomplete systems and internalized cultural values. These two wheels drive the cart of corruption anywhere money and favors are. To disable the cart of corruption, both of the wheels must be ripped off. Reforming systems and strengthening law enforcement must be among the powerful antidotes used, but they are not sufficient remedies for corruption. The history of anti-corruption efforts around the world proves this case so far. In Korea, it seems that every kind of systematic approach to anticorruption has been tried, except for a streamlined approach to revitalizing internalized cultural values.

While socio-political and economic systems work best without corruption in an environment that favors rationality, fairness, and openness, such environments are not guaranteed by the systems themselves, but by the people living in and with them. These values have flourished more in western-European traditions, leading to the lowest levels of corruption in the world. But such values do not exist to the same extent in other cultures.

In Korea, the values most cherished for more than 1,000 years have been filial piety and loyalty to known people. Until just 100 years ago, Koreans lived in a Confucian society in which filial piety enjoyed utmost priority and overrode any other value. An episode illustrates this dramatically. In the Seoul area in the 19th Century, a Korean general of a militia corps, gathered from all over the country, confronted an invading army from a foreign country. When the two sides were on the verge of decisive fighting, the general was notified of the death of his mother. With the unanimous advice of his staff, he abandoned everything and went back for her funeral. As a result, the war ended as a complete loss without the command
of the general. Nevertheless, the general has been honored as a paragon of filial piety to this day.

The problem with corruption is described in Myrdal's (1968) *Asian Drama*, a real drama in which western values of rationality, fairness, and openness engage in a war against Confucian values of filial piety and loyalty to known people in Korea. Who wins? It's a close battle. The IMF crisis in 1997 showed clearly that rationality, fairness, and openness were still greatly hampered by traditional values of Confucianism, at least in the economic and business sectors. Kim (1998a) outlined the continuing widespread corruption within Korea, from the white envelopes containing cash (*ch'onji*) passed on to elementary school teachers to insure good grades; "young lecturers to get jobs at colleges; drivers to avoid speeding tickets" (p. 52); entrepreneurs to public servants; export inspectors; police officers and fire fighters; "officials at tax and patent offices and other government agencies" (p. 53); and even senior banking officials. Corruption in Korea remains rampant.

While Confucian values may be good in their own right, they generate serious problems when they override rationality, fairness, and openness in the public sector and in businesses. In those arenas, western values have become global standards of conduct that leave little room for Confucianism to override them.

Although some scholars, like Leff (1964), Lui (1996), and Nye (1967), have acknowledged positive effects from some [*optimal*] level of corruption, they provided very limited explanation for some of the underdeveloped countries in Asia (Kim, 1998b). Korea is now in the stage of economic development in which it must keep step with global standards of rationality, fairness, and openness. Koreans should not mix these two sets of values, at least in economic and business sectors. However, although Koreans are flatly determined to expel corruption, the culture that they treasure, cherish, and are proud of is spawning corruption. Koreans seem to be in a dilemma, as described in the Bible in Matthew (26:41): "the spirit is willing, but the flesh is weak."

This dilemma is vexing, especially because of its approach-approach nature. The two competing value sets are both worth
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keeping. To give up Confucian values for another set of values is not desirable and, most importantly, not possible because it means giving up the Korean way of life. So the dilemma must be solved through a win-win strategy, not through a zero sum strategy. This calls for compromising the weaknesses with the strong points of the other value set and co-existing. Confucian values may have merit in the personal, familial, and in-group domains of life (though even these are now being challenged by some segments of the society, e.g., the relation between men and women), but they have drawbacks in the public domain of life. Western rationality and fairness have merits and drawbacks in different domains of life from Confucianism. Therefore, it is time to search for the wisdom to discern the good and the bad of Confucianism according to the domain of life so that we encourage the good and delete the bad.

In the next section, the nature of Confucian values will be discussed in more detail with regard to corruption. Discussion of the possibility of anticorruption measures in changing culture/values will follow.

Psychology of Corruption in Human Relations and Business

While there are ten commandments in the western Judaeo-Christian tradition, there are three-five commandments in Confucian tradition. The threes are the core catechism of Confucianism and have dominated the everyday lives of the Korean people for hundreds of years.

The threes indicate that there are three imperative principles given to and operating between subjects and kings, between sons and fathers, and between wives and husbands. The fives refer to five distinctive virtues given to and operating between the following categories of human relations: loyalty between kings and subjects, filial piety between sons and fathers, affinity between friends, rank and order according to age difference, and status distinction between men and women (e.g., a woman ought to obey her father before marriage, her husband after marriage, and her son after her mate’s death).
The most striking difference between Confucian commandments and those of Judaism and Christianity is the detailed definition of human relations activities. While Judaeo-Christian commandments describe the content of virtues and their priorities, Confucian commandments depict the form of human relationships and their priorities. The form of human relations prevails ahead of the content of the virtues at issue. For example, in the Korean culture, honesty is subject to the pattern of human relations at stake. That is, the value of being honest has a different meaning according to the people involved in a Confucian society. In both the west and the east, when being honest does harm to one’s family, honesty generally becomes a lower priority. But it is a matter of extent. In Confucian tradition, honesty is much more likely to be set aside for the benefit of the quality of human relationships. The value or importance of virtues such as truth, honesty, fairness, and rationality are subject to or depend upon the quality of human relationships as prescribed by the three-five commandments.

All of the three-five commandments, of course, do not survive as strong values today. Some are old fashioned and have been, or are being, discarded, while some are still rampant. Loyalty to one’s superior and the strict distinction between husbands and wives are thought by some to be old-fashioned. But filial piety among family members, affinity among friends or known people, and strict rank-order according to age difference continue to be strongly influential in every aspect of social life among Koreans today. Insidiously, all of the three-five commandments still reside deep in Korean unconsciousness. Whenever they have a chance to leak out, they erupt, no matter how irrational and absurd it seems.

Here’s an example: A former president of Korea in the 1980's was accused of corruption by using unlawful power. A huge amount of money had been collected from entrepreneurs and deposited in his bank account. A public hearing was held in the Korean Assembly (the Korean Congress). Many former staff members close to the former president were called and questioned. Most of them tried to tell the truth so that their remarks were not supportive of their superior. Only one person (alias Mr. A) among the staff refused to
make any comment that seemed harmful or negative to his former superior, regardless of the truth. After the hearings, he became like a Triton among minnows, while the others were regarded as betrayers bent on saving only their own lives. The generally sympathetic sentiment of the Korean populace was directed not to the people who told the truth but to the person who stuck to Confucian principles. Truth came after loyalty and affinity. Mr. A was seen as a paragon of loyalty. It was said that Mr. A was served wine free of charge by owners or waiters who applauded him.

Nobody in Korea denies the importance of truth, honesty, fairness, and openness. And nobody in Korea denies the distinctive features of the Korean way of life subsumed in Confucian values. It is a real Korean dilemma between the two approach-approach values. Both sets of virtues are simultaneously valuable, but often in a Korean’s life, they are in conflict. Truth is good in its own right. But when telling the truth harms one’s family, friends and superiors, a Korean feels obliged to speak against the truth to survive in the Confucian society.

Although there are some differences in degree, Koreans, Japanese, and Chinese experience the same dilemma. Confucian values prevent the western values of rationality, justice, fairness, and openness from fully blooming in real life settings. Some additional examples will illustrate this.

An apology for World War II crimes has not been as easy for the Japanese as it was for the Germans. For the Japanese, an apology means recognition of their ancestors’ faults and remorse for their actions. Such an apology would stimulate their deep consciousness of potentially defying their ancestors. Despite the evidence of many massacres, provision of comfort women, and the use of live humans in medical experiments, they have not made a sincere apology. This is not understandable in terms of rationality, fairness, honesty, and openness. But the psychology of such a culture confines them to self-contradiction. They are more afraid of deceased ancestors than of live human beings’ rational, just and fair demands. These modern demands are rational, just and fair, according to some, yet Confucian values override rationality and justice in Japan.
Human rights are at issue between China and western advanced countries. The basic idea of human rights is quite different between the West and the East. In western tradition, human rights originate from the assumption that all human beings are equal. But in Confucian tradition, human rights originate from the assumption that human beings are human only if they act like humans. It is no wonder that humans and animals are nothing but different points on the same continuum of life in Buddhism, Taoism, and Shamanism. The indigenous concept of human rights in China impedes their acceptance of the western and seemingly rational concept of human rights. What may seem to be outright violation of human rights in the eyes of westerners may seem to be normal social policy in the eyes of the Chinese. Traditional values struggle against western values of rationality in China, too.

Viewed from this standpoint and in this context, corruption can be defined as a phenomenon in which Confucian values override rationality, fairness, and openness in public activities, such as politics, business, and public administration. Confucian values may not be a problem in private sectors, such as in friendship and family relations. In fact, it might enrich the sentiment and meaning of life. But when Confucian values are influential in business and public affairs, favoritism and partiality prevail.

Confucian values are more influential in Korea than in other Asian countries. As a result, they enjoy deep and rich sentiments and security within the tight network of family, friends, and many private, in-group systems. On the other hand, they produce favoritism and partiality, thereby endangering and undermining public business. It is necessary, therefore, not to mix the two sets of values by drawing a line around the private and public domains. This may be an effective antidote for corruption in Korea.

**Agenda for Anticorruption: Changes in Systems and Culture**

Before and after the 1997 IMF Crisis in Korea, there were abundant discussions and controversies on the nature of corruption and anticorruption measures. The most serious and interesting argument
was on the role of Confucianism relative to corruption. A young professor of Chinese classics (Kim, 1999) attacked Confucianism as a major culprit endangering overall societal development, including corruption, in his best-selling book. In opposition to his argument, a Confucian (Choi, 1999) from the National Association of Confucians wrote a book criticizing the young professor's position. The two authors were invited to many TV talk shows and debate programs.

The controversy gave many Koreans a chance to think about what Confucianism does mean to Koreans, especially in this modern time. Like Hamlet's question, "To be or not to be?" Koreans are facing a very serious question: "To keep or not to keep Confucianism?"

Koreans have asked such big questions three times over the last 1,000 years. The first was at the establishment of the Chosun dynasty (1392 AD) after the overthrow of 400 years of the Koryo Kingdom. At that time they asked: What does Buddhism mean to Korea? After many struggles, they discarded Buddhism as a state religion and took up Confucianism, instead. Confucianism then prevailed for more than 500 years.

The second was at the time of the first landing of Christianity around 1784 during the Chosun dynasty. Some Confucians who were the first to be versed in Christianity began to ask a serious question: What does Christianity mean to Korea as an alternative to Confucianism? The defiant responses produced tens of thousands of martyrs. Confucianism did not fall. But through these controversial events, Christianity settled down in the Korean peninsula and can now boast the greatest number of Christians compared with China and Japan. The controversy, though it seemingly failed at that time, has changed the society greatly.

The third is now at the beginning of the 21st Century: Will Korea take off to become a new member of the advanced countries or remain as it is now? Without adopting global standards of conduct, there is no way to move into the company of advanced countries. One of the most perplexing obstacles to the adoption of global standards of conduct lies at least partly in the attributes of
Confucianism. Thus people have begun to raise the question: What does Confucianism mean to Koreans who have an imperative of adopting global standards of conduct? Just as previous challenges to Confucianism brought about meaningful change, how this question is answered will also bring about significant change, no matter what the results are.

While the controversy on Confucianism is necessary and worthwhile, an either-or decision approach is neither desirable nor possible. First, Confucian values with their merits and demerits compared with western values have been in place for nearly 1,000 years. Eliminating them now would elicit a fundamental loss of Korean identity; so the focus of the controversy should be on removing its demerits while reinforcing its merits. Second, from past experiences, it is almost impossible to trade the Confucian value system with another. Because Confucianism constitutes the flesh and skeleton of Korean culture, it could be quite dangerous to prune out some Confucian values.

The solution to the controversy of Confucianism should be sought within the framework of coexistence of eastern and western values. In history, two kinds of coexistence between the East and the West have been attempted. Confronting western civilization's onslaught in Asia at the turn of the 19th Century, China and Japan needed a motto for their populace with guidelines on how to deal with the totally different thought and culture. The Chinese slogan was, "Chinese body with Western function," while the Japanese slogan was, "Eastern mind with Western technology." These slogans suggest that they tried to add western values to their existing style of thought and values. Maybe, thanks to the slogan, Japan succeeded in keeping its traditional values and culture, while making the best use of western technology.

Koreans survived the tumultuous era of the 19th and 20th centuries without any such slogan. Now it is time for them to agree upon such a slogan to overcome the conflict between Confucianism and western values, such as: "Confucian being with Western business." While Koreans would observe Confucian values in private life, such as in character-building and family and human relations, they would
do public work and business strictly within global standards of conduct. The slogan provides a guideline that should make a clear distinction between the two domains.

For the slogan to mean something helpful for Koreans in overcoming the conflict between the two value sets, a social movement by citizens' NGO groups is essential to encourage people to use the appropriate value system in the appropriate context. With this approach, the quality of their life and their economic development could both be achieved.

Doubt may be raised concerning whether both value systems can be carried and made to work within a person according to the domain in which they are involved. Many moral psychologists have found that humans can use different modes of moral reasoning and standards according to the life domain they confront (Nucci, 2001; Turiel, 2000). Another doubt may be from a social engineering point of view: How can we propagate the motto, "Confucian being with Western business"? Education, including both school- and work-based, and civic movement and campaigns are the means to such propagation. As the slogan includes social issues, values choices, and decision-making processes, a values clarification approach (Simon, 1985; Kirschenbaum, 1977) or Kohlberg's Dilemma Story Approach (Higgins, Kohlberg & Power, 1991) may be worthwhile to try.

There are other things that might be done, especially within the context of lifelong education, both in the community and in the workplace. Some possible solutions include:

- Courses could be developed and offered on western values and ethics to help adults understand what the transition to this mix of values will mean for them and how they will operate within the constructs of the new systems.
- Systems need to be put in place to hold politicians, business people, workers, labor officials, and others in positions of leadership accountable for acting according to the new system of values (McLean, 2001).
• Just as Transparency International annually estimates the perceived corruption of countries, the government of South Korea might well establish an institute that ranks the perceived corruption of the chaebols (the major conglomerate corporations in Korea), politicians, and other leaders. Awards might well be made to those who have expressed in their lives the best of the western values in their public lives and the Confucian values in their private lives.

• The media might well take a more active role in holding up as examples those whose lives best express the desired new values paradigm. While it has been common for the media to hold up those who violate such values systems, it has been unusual to hold up models of those who exemplify the desired values systems.

• Explicit and enforceable codes of ethics could be established for businesspeople and politicians. This might remove some of the ambiguity, such as the distinction between a gift and a bribe (Chang, Chang & Freese, 2001) that people often face within a transition to new ethical values.

• An ombuds office could be established, with power to act independently and be free from the influence of government officials. Anyone could file a complaint with the ombuds office, with the requirement that an investigation be made in a timely manner and charges brought where evidence justifies it.

The government must move away from its pervasive pursuit of political and economic regionalism, with clear divisions between the East and the West of South Korea (Ahn, 1999). The same is true sectorally. Focusing economic power in the hands of 30-some chaebols is “inefficient and inequitable” (p. 87). Until all people feel as if they are equally treated within the law and within the political and economic life of the country, corruption or the perception of corruption will remain powerful within Korea.

A very interesting idea takes advantage of the high level of Internet access in Korea. One group, Citizens Solidarity for General Elections, has targeted politicians who take bribes, violate human rights, or are incompetent, and has posted their names on a widely accessed website.
The political parties are paying attention, with the expectation that the site will influence who parties put forward as their candidates in the next election (Weaving a web..., 2000).

The index that measures the perception of corruption — Transparency International — suggests, in its title, another requirement for the elimination of corruption — transparency. The more transparent transactions are, the more difficult it is to hide them, and the less likely it is that corruption will occur (Kagan, 1998). Thus, rules and regulations creating systems that encourage transparency would be very helpful in minimizing corruption in South Korea.

The power of the labor unions may well be a strong influence on forcing the elite to practice in an ethical (i.e., non-corrupt) way, especially if they can convince the middle-class of the sincerity of their efforts and gain their support and sympathy (Ravich, 2000).

Kim (1998a) made a number of anticorruption suggestions. Basically, he suggested that there must be fewer incentives for corruption, fewer opportunities for corruption (including “reduction of government size and regulation, democratization of policy-making, and reduction of discretion” (pp. 57–58)), and increased risks if corruption is practiced, through increased detection and increased penalties.

In the end, the elimination of corruption is basically a question of leadership. The most effective anticorruption intervention is to have leadership that is committed to integrity, equality, transparency, openness, and democracy at all levels, in all regions, in all sectors, and among all classes. If Koreans will elect a president and an assembly with such a commitment, who can and will follow through on this commitment, then Korea may truly expect to eliminate corruption.

**Conclusion**

The struggle to overcome corruption to free the Republic of Korea to regain its journey toward economic development will be neither smooth nor fast. It will require a gradual, evolutionary process of
massive cultural change, widely supported by the populace and those in leadership. Without such a commitment, the negative consequences of corruption will continue to impede South Korea's economic, political, and moral development.

References


Weaving a web to catch the corrupt (2000, February 7). Business Week: 58.

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Chapter 13

Combating Corruption in Thailand: A Call to an End of the "White Buffet"

Maneewan Chat-uthai and Gary N McLean

Introduction

Corruption is a global phenomenon and has been widespread in many societies, and corruption can happen in every circle. This chapter aims at providing a comprehensive overview of corruption in Thailand, including its root causes and current landmark cases. As in other parts of the world, corruption in Thailand has become commonplace and can no longer be concealed from the public eye. The past few years have surfaced monumental corruption and scandals enacted by top government officials, military, police, local community, private business, public health, and even religious leaders. The 2000 Corruption Perception Index (Transparency International, 2000) has thus put Thailand in a trust status that is deteriorating from the 34th rank (of 41 countries) in 1995 (Transparency International, 1995), to tied-for 60th rank (of 90 countries) in 2000.

Thai views of corruption are reflected in neat phrases used to describe the act of consuming the public wealth: “hot tea fees,” “eating along the river tide,” “gifts of good will,” and the famous “white buffet” cabinet — referring to the highly-placed political figures who ganged up to loot the public treasury and trust. This chapter explores how the Thai public has accommodated existing corruption
and examines the range of corruption that now exists. It also provides recommendations for anticorruption activities.

**Corruption Defined**

Generally, Thais have used the English word, “corruption,” to describe the carrying-off of civic and national wealth, mainly by public officers. The Thai phrase for corruption is rather subtle — *Chor Raj Bang Luang*. “Raj” is the people, “Luang” is the public, “Chor” is cheating, and “Bang” is hiding or embezzlement. These four words when combined form the meaning of corruption: an act of cheating the people and embezzling public wealth. There is a clear distinction between taking the people’s wealth (cheating) and taking the public wealth (hiding, embezzling), both of which are considered shameful within the Thai culture. *Chor Raj* is generally the act of taking away civic wealth, by either voluntary or forced bribery. Examples include gifts of goodwill and fees (the hot-tea fees) and threats and hassling hurdles put up by state officers leading to “civic offerings” (bribes) to speed up the government work process. *Bang Luang* refers to the act of taking away the public wealth and/or intercepting financial gains from reaching the public. Corruption in this sense, therefore, covers all acts of abusive use of state power leading to the restraining of public and civic interest. This is seen in the case of inflating the price of pharmaceuticals centrally procured by the ministry of public health. This causes the government to pay more for lower quality medical products that do the patient more harm than good. More importantly, corruption can be viewed on a cause-arousal and response basis involving key actors — the public and civic officials — with shared benefits/interest. For example, the construction of a new highway provides the opportunity for officials from the Department of Highway’s Construction Division to award the work to the company that offers ‘under-the-table’ money or luxurious artifacts, such as a car or valuable appliances. In this case, the budget allocation for the new highway generates the opportunity for officials to ask for side benefits. Shared interest is seen from both sides — the giver and the receiver make profits through collaboration.
The official facilitates the bid award, and the bidder gives tangible benefits in return. Similar to hand clapping, it needs two hands to accomplish its mission. In the world of corruption, it operates on the 'no demand, no supply' basis. If there is no need to get things done illegally or irregularly (no demand), there is no opportunity for people to offer assistance (no supply). Then, there is no need to abuse state power. Figure 1 displays this "corruption continuum."

Corruption stretches to both ends of the continuum. Corruption is not necessarily confined to public officers, but corruption can be collaborative and organized between the public and civic officials who join forces to enhance the group's interests with or without direct intention to inhibit the nation's interest. Corrupted government does not necessarily have to rob tangible public wealth. Misuse of office time, resources, and expertise can be included in the corruption category if its consequences involve the loss of public interest and opportunity.

The Thai public is currently experiencing a paradox of "Corrupt but capable." Corruption has become sensational and has captured increasing public interest. Corruption in the new sense has somewhat altered from the traditional sense of shameful disgrace to the creatively organized behavior used to take away public interest and property.
To a certain extent, the public is flexible in accommodating corrupted but capable officers. Their acts are seemingly acceptable as long as they do not swallow all the wealth. Figure 2 illustrates the frequent, diverse, and complex phenomenon of corruption in Thailand.

Figure 2: Corruption model: Routing vs. looting of the nation’s wealth
Public wealth includes natural resources, human resource competency and expertise, and power and authority residing in the law. Private wealth includes heritage, human resource competency and expertise, production of goods and products, electoral votes, and fundamental civic rights. Routing of corruption can come from both the citizen and public, resulting in three major corruption categories:

CI is the most frequently found type of corruption. It usually involves a large category of public wealth and public officials, as in the case of budgetary procurement for public goods and construction of infrastructure, concession of government resources/services, privatization of public enterprises, and regulatory control of specific business. As for the private citizen, concealment of one’s wealth to avoid taxation can be considered as corruption, according to the Corruption Act, if the person also takes part in public administration. A landmark case was seen in the trial and indictment of two top parliamentary officers, which unveiled the new type of corruption in the Thai glossary of terms. For example, Article 293 of Thailand’s Constitution requires public office holders to declare their wealth and debts before, and after, taking office. One MP and Minister of the Interior filed a false document of 45 million baht worth of debt. The NCCC investigated the issue and decided that the MP had violated Article 295 of the Constitution; subsequently, the MP has lost the court case and has been barred from holding office for 5 years.

C2 concerns the misdemeanor of public officers or the abusive use of state power to enhance financial self-gain from private citizens. It does not necessarily decrease or affect the nation’s wealth as in the case of accepting bribes or collecting fees (usually referred to as “under-the-table” transactions or “a gift of goodwill”) to speed up the work process and state services. The prime actor of C2 is the public officer working in connection with the business people cum politicians. However, corruption can include the misuse of intangible public assets, such as public office hours; entitlement authority; professional image; trust and respect — as in the case of “moonlighting”, or the use of public time for personal business
and interest; or favoritism towards an appointment or displacement of public officials.

The prime actor of C3 is the civic group that seeks the abusive use of state power for their self-interest. Though C3 is mainly performed by the private sector and primarily for the benefit of their business, it usually requires the collaboration of state officers to render state power to help increase or protect the illicit wealth of the groups. Corruption can take many forms. The use or not of the authority or power that consequently induces benefits for particular interest groups is sufficient for the indictment of corruption charges — such as performing as a guardian "Mafia" for certain businesses, or overlooking the known location of illicit gambling places. Another popular form of corruption is also found in the case of buying electoral votes from eligible voters. Block votes are harvested when the incumbents arrange financial grants to the voters who, in return, vow to cast votes for him/her. The payment is usually done as close to the actual election date as possible to make the promise worth remembering. The night before the election is regarded as the "Howling Night," when money is spread throughout the community. To determine whether the promise has been kept is not difficult. An estimate of block votes in a specific area will identify the number of lost votes, leading to the possible tracing of who did and did not support the candidate.

In sum, the determinants of corruption include the following:

- A recipient of benefits or gains, either in tangible or non-tangible form, including the gift of goodwill, covering what was received in the past and expected benefits in the future.
- Illegitimate acts that are not consistent with the law, including the intention to violate state rules; abusive use of state power; use of force, threats, and mismanagement for self or group interest; voluntary withholding of state authority to suppress illicit activities; direct involvement in forgery and fraudulence; and shared interest and benefits induced by the use of state power.
- Such gains directly damage public interest and put the national stake in jeopardy.
• The use of state power by responsible state officers to procure self or group interests.

Evolution and Forms of Corruption in Thai Society

The historical roots of corruption can be traced back to 1352 AD in the reign of King U-thong of the Ayudhaya dynasty, when a penalty code was established to punish misbehaving royal servants. The code was practiced for 556 years before the criminal act overrode it in the reign of King Chulalongkorn of the Chakri dynasty. Corruption in those early days included the embezzlement of royal funds; misuse of feudal fees; abusive use of power to take away by force other people's wives, children, and slaves as one's own patrimony; and assistance given to criminals to escape prosecution. Penalized acts against the wrongdoers in the absolute monarchy era were generally severe and involved the constant threat of death and torture, i.e., beheading, cutting off of hands and feet, being heavily chained, or being whipped by an iron rope.

The legal code to suppress corruption evolved significantly in 1932 at the juncture of a major political change from absolute monarchy to constitutional democracy. The first draft of the Corruption Act BE (Buddhist Era) 2502 (equivalent to 1959 AD) was announced and later developed to become the Prevention and Suppression of Corruption Act in the Public Sector in BE 2518 (1975). It focused primarily on three major grounds: corruption by government officers, misdemeanor acts by government officers, and irregularity of wealth acquisition. After the issuance of Thailand's constitution BE 2540 (1997), the Act against Corruption has become institutionalized with the establishment of an independent public office — the National Counter-Corruption Commission (NCCC), comprising the so-called magic nine, including nine commission members for nine-year terms of service. The NCCC acts as national prosecutors of corruption cases. Final rulings are to be deliberated by the Constitutional Court. Landmark cases of the NCCC include the termination of a top minister who was barred from politics for
5 years and the recent indictment of a high profile politician on the concealment of wealth and mishandling of property taxes.

Across much of Asia we find that interpersonal networking is the norm. This is called ‘guanxi’ in Mandarin and ‘quan-xi’ in Southeast Asia. As stated below, it is a ‘special’ relationship that involves honor between the parties, but from its Confucian roots, automatically invokes cronyism and nepotism. These two aspects help support several forms of corrupt practices.

“Quan-xi, which refers to a special relationship among (sic.) two persons or two parties in a network in Chinese, is an example of a potential source of corruption, though a similar term has not been explicitly included in the Thai (cultural) vocabulary” (Duby-Villinger, 2001, pp. 105–106). Another cultural source that supports corruption in the Thai society is the very strong power distance that makes it difficult, if not impossible, for subordinates to speak out against their superiors, allowing for inappropriate behavior to be overlooked in deference to the hierarchy. Power distance is one of five measures of culture offered by Hofstede (1980, 1991).

Corruption is both an art and a science that evolves constantly. Interestingly, it has taken many forms and becomes hard to detect. From the prime corrupter found mainly in public offices, corruption has now fallen into the hands of business tycoons who successfully maneuver corruption to multiply their assets. From the traditional “hot tea money,” businessmen have found a variety of deceptive techniques, as in the case of customs duty and export exemption fees, or in every legal loophole they can find. For example, while it is legal to award the bid to a contractor who meets certain rules, it is corrupt to write the specifications in such a way as to exclude certain contractors and pave the way for a particular contractor to get the contract. A second example also applies. Export credit exemption vouchers were filed for that can be used for import tax exemption. Through this channel, import tax vouchers were sold to car importers who applied the vouchers to minimize the import tax. Many car importers doubled their profits by falsely categorizing the car, i.e., by adding extra accessories to make the car qualify for lower tax charges. With respect to corruption, the “gang” is clever. They study
all of the loopholes with the help of the customs officers. For instance, an 11-seat van is considered less luxurious than a 9-seat van. People who want a mini-van want to have more seats than in a sedan, but still want to have more luxury than in a normal mini-van — the 9-seat category, therefore, is subject to higher import charges because it is luxurious. The importer of the 9-seat van, therefore, will add 2 ‘monkey seats’ so they can file for the 11-seat category with a lower duty charge. After the van reaches the showroom, it is transformed back to an elegant 9-seat van that can be sold at a higher price.

A more sophisticated corruption technique is seen in the case of concessions in the telecommunication industry in which monopoly rights were given to the bidder with the highest bribe. Fierce competition in the business arena has intensified corruption, with abuses of state power becoming a viable means to gain the cutting edge. The first burst of the bubble economy was seen in 1996 when the Bangkok Bank of Commerce collapsed with nearly US$3 billion non-performing property loans. Domino effects overtook the stock exchange, wiping out 48 finance/security companies, along with the trust and interest of foreign and domestic investors. Though weak bankruptcy/foreclosure laws had much to do with the plunging economy, corruption also contributed to make the crisis hard to recover from, and it paved new ways for an insider group to gain from this heavy loss. An aftermath of the crisis was the devaluation of the baht; and at that time the leakage of a cabinet resolution provided an enormous advantage for a group of businesses that had purchased huge amounts of dollars in advance, thereby doubling their assets overnight.

Analysis of Behavioral Patterns and Enabling Factors: A Common Path to Willing Bribery

Corruption is a learned social behavior, similar to what Bandura (1969) referred to as vicarious experience, an imitative behavior with consequences. This occurs especially when imitative behaviors
result in positive rewards or in the removal or prevention of aversive stimuli. As corruption leads to gains and enhancement of self-interest, either tangible or intangible, it is reinforced by its own consequences. The behavior is then likely to be imitated or copied. In many instances, corruption has set an example of how to make an overnight profit, especially with no hard evidence filed against the perpetrators, and thus no punishment. There is also an increasing tendency of acquittal if charges are filed since the public wealth is massive and often goes unnoticed. Without the disclosure of relevant officers, no one can truly tell the magnitude of damage caused by corruption. Vicarious experiences thus affect those who witness the event. When corruption reinforces the ideal of getting rich quickly, there is an increasing tendency for others to follow the trail to attempt to emulate, or better, the early pioneers.

Corruption still persists despite severe punishments because the embedded practice has become acceptable in the sub-culture. It has become normative to pay 'hot-tea fees' to speed up government service. The pathway to corruption is therefore ranged from voluntary, lured or forced by both parties. There are cases that government officers are forced to take the bribe as both negative reinforcement avoidance and positive reinforcement seeking. The analogy of “eating along the river tide” is applied in this case when the big boss signals the green light to facilitate the request. To stand against the tide, as a whistle blower, simply means being ready to get wiped out of the organization, so negative avoidance applies solidly here. There are motives to abuse the use of state power and wealth since there is no whistle blower in this case for everybody has his/her shares in one big gulp. Diffusion of responsibility may be applied in this context to explain why corruption survives well and has become a widespread practice.

The origins of corruption can be traced back to the old practice during the feudal time when public officials were not paid salaries but allowed to retain a portion of taxes and fees collected from feudal servants. Acting as the mediator, the officials were entrapped to overcharge the farmers and embezzle a portion from the feudal lord leading to what has been earlier described as Chor Raj
Bang Luang. Corruption in this sense confirmed what Acton (1902) concluded in his book, *A Study in Conscience and Politics*, that “power corrupts. absolute power corrupts absolutely” (p. 161). State power, therefore, has been the enabling factor for public office holders to misuse their powers for self-interest.

Wongharnchao (1973) viewed corruption as a matter of subjectivity amidst a value system. A determinant of corruption needs a reference point and varies from one society to another depending on the collective experience and interpretation within the community. Even within one community, there is no absolute definition for corruption, for it is a fluid concept based on the societal norms and value judgment of people at a particular point in time. For instance, traditional merit awards may unintentionally contribute to corruption. Out of good will and intention, willing bribery often occurs as a result. Similarly, favoritism and nepotism have stemmed from the patronage system to become the spoils system, whereas privilege is concentrated within one's own network or circle of friends. Corrupt behaviors, therefore, are contingent upon the consequences and damages to civic wealth and rights.

Corruption may start small like receiving a gift or a token of appreciation for a multi-billion baht project. It is difficult to draw the line as to where corruption truly begins since corruption, as stated earlier, encompasses both tangible and intangible benefits. From a token of appreciation, it may expand to cover expressions of gratitude one feels towards favorable consequences, as was the case when a tycoon politician ‘hastened’ a request for a luxury car to be parked at his collegial statesman’s garage merely as a gift of goodwill. In this regard, it requires a call of good judgment. The acceptance of a goodwill gift has to be weighed against social norms and professional ethics (Kraivixian, 1967).

Suthee Arkasrerkr has been an exemplary public officer and an advocate of ethical behavior on the part of state officers. Living a modest life and riding public transportation to work, Arkasrerkr has now retired as secretary-general of the former Counter Corruption Commission. In a paper on “Causes of Corruption,” Arkasrerkr (1981) identified four factors affecting a person’s decision to corrupt.
Corruption is the end result of a decision-making process which individuals reach the conclusion that corruption is a viable and preferred alternative in order to optimize the chance to get what they want with minimal risk of being caught.

Figure 3 illustrates a decision tree to indicate whether a person is more or less likely to make a corrupt decision. The entry point at which one first begins to think of corruption is motivation to meet self-serving interests and to exclude the organization's goals. While everyone has some unmet needs, people may act in a corrupt way simply because there is an opportunity to do so, or because one is tempted to take a shortcut to wealth. Corruption is further intensified when the risk of being caught is minimal and rewards are assured. The following decision tree rules out the myth of poverty as the primary cause of corruption. Overcoming corruption is possible, as evidenced by successful cases prosecuted against powerful politicians who ganged up to buy votes in an attempt to hold the majority of seats in parliament. Even when the magnitude of unsatisfied needs is high, people with integrity and honesty can still make sound ethical decisions in seeking alternatives other than corruption. To break the vicious circle will require minimizing shortcuts and adding in powerful quenchers.

The Corruption Suppression Act of the State Office (BE 2518) encompasses all types of misconduct and misuse of state power, by means of performing or not performing one's duties, not performing oversight that is costly, or generally failure to protect the nation's wealth and interest. Corruption can appear to be legitimate when state power is adept at enhancing a particular group's benefit. In this sense, it is referred to as "eating along the river tide." When a judgment call can be in favor or disfavor of a certain request or individuals, special arrangements can be made. On the other end, corruption can involve the avoidance of rules and regulations for the benefit of the requester. State officers are, therefore, "eating against the river tide," which is more harmful and risky than the former.
Combating Corruption in Thailand

Figure 3: Decision tree for corruption
Since corruption is the consumption of public and private wealth, it involves two parties—the taker and the giver vs. the public and the private. Regardless of the forces against corruption, corruption thrives for several reasons. Table 1 exemplifies psychological frameworks reinforcing the occurrence of corruption.

**Table 1: Frameworks reinforcing the occurrence of corruption**

<table>
<thead>
<tr>
<th>Parties involved and areas affected</th>
<th>Public wealth</th>
<th>Private wealth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Losers: Citizens</td>
<td>Hidden in nature, public do not know that corruption is taking place</td>
<td>Willing to be bribed to get something else</td>
</tr>
<tr>
<td></td>
<td>Unaware of the undermining impact of corruption; non-threatening and unseen effects</td>
<td>Acceptable, customary practice</td>
</tr>
<tr>
<td></td>
<td>None of my business or too busy making ends meet</td>
<td>A gift of goodwill, ways to express gratitude</td>
</tr>
<tr>
<td></td>
<td>Learned helplessness; I am such a helpless creature</td>
<td>Counter-balance, mutual benefits</td>
</tr>
<tr>
<td></td>
<td>Habituation; everybody does it.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Twisted belief and declining moral principle; a crooked chief is acceptable as long as he can run the office</td>
<td></td>
</tr>
<tr>
<td>Losers: Public</td>
<td>The state is too great to be damaged</td>
<td>The private person can afford the payment</td>
</tr>
<tr>
<td></td>
<td>Unforeseen effects</td>
<td>The crook deserves the corrupted</td>
</tr>
<tr>
<td></td>
<td>Habituation and learned helplessness; everybody does it and who am I to quench it?</td>
<td></td>
</tr>
</tbody>
</table>
Since corruption is hidden and illicit in nature, it is difficult to get “caught in the act.” Therefore, corruption often goes unnoticed and undetected. Similar to a buffet party, one can hardly tell who takes what food from the table at what time and in what portions. But what one can observe finally is that there is not much food left on the table — somehow someone has taken the food. And this is perhaps what inspired the “white buffet” cabinet to seek public office and enjoy legitimized corrupted wealth with no consequences. By the time people notice the food quantity, some guests may have already said goodbye and left the room forever. Quite often the catcher and the wrongdoers belong to the same group, which makes it difficult for a corruption case to surface. Imagine if police officers take bribes from drug dealers; it is almost out of the question that a warrant will be sought to arrest oneself.
The recent Constitutional Court trial of a high profile politician for the concealment of wealth set a new tone relating to how Thais view corruption. Seemingly, popularity has significant effects on how the general public sees the issue of corruption, and this supersedes what used to be the threshold of ethical criteria. Public attitude is shifting in how the public is reacting to this case. Though the case was about concealment of assets, the side effect is that the concerned parties have allegedly managed to evade a huge tax payment. In a lighter way, the public heard two messages: first, normative practice allows businesses to transfer wealth, and second, the mistake was a technical error and purely an honest mistake. In this case the outcome was that a political party leader was prosecuted on the charge of wealth concealment when he was in public office five years ago. On 7 November 1997, at the time of taking the position, he did not report his wealth, which had been put under other people’s names, worth 2,371,726,371 baht. On 4 December 1997, when he left the position, he did not report his wealth, which had been put under other people’s names, worth 1,523,139,657 baht (Annual Report of the National Counter-Corruption Commission, 2000, p. 113). It’s not clear because the evidence is not clear. Perhaps these estimates are incorrect. Perhaps he actually did lose this much — remember it was during the economic crisis of 1997. Certainly a gain is not reflected in these numbers. As the person is again holding public office, the case has to go through the NCCC whose final verdict was submitted to the Constitution Court on 18 June 2001 because the defendant had been found guilty earlier of falsely reporting of his wealth, and violation of article 295 of the Constitution. The defendant, however, claimed that he was not aware of the wealth, and the slippage had been because of an error in number made by his administrative secretary who did not know that there was wealth under others’ names and the complexity of the reporting form, that somehow made him fail to report the true numbers of assets and wealth. This leads to the plea of “honest mistake.” The case has been submitted to the Constitutional court and is now pending for the final verdict of the Constitutional court.
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Though the NCCC portion of the trial has ended, tension continues because there is a movement to amend the Constitution and to restructure the power of the NCCC, especially in regards to the public definition of corruption. The final results of this case will lead to a new round of discussion about corruption redefinition.

Cases and Studies of Corruption in Thailand

The magnitude of corruption can be viewed from both financial and social dimensions, and its severity is often determined by the amount of money involved or the extent of damaging consequences. The worst form of corruption is perhaps that connected to the judicial system that is supposedly the citizen's last resort. Common corruption cases involve budgetary procurement of equipment and public goods, construction of infrastructure, customs and taxing, concessions related to privatization of public utilities, and regulatory control of a specific business. With combined transactions of 6.9 billion baht, by its nature the telecommunication business induces corruption, given 1% extra on the fees is said to be sufficient for a lifetime fortune. Under budgetary procurement, top cases involve substances of national security, specific aid/relief projects, loan or international grants, and purchase of expendable goods since the latter is difficult to trace after consumption.

A survey conducted by the Engineering Institution of Thailand summarized the corruption process and illicit surcharge rates (Anti-Corruption Strategy Report, 2000). See Table 2.

A survey conducted by the Political Economy Center of Chulalongkorn University in 1999 (Phongpaichit, Treerat, Chaiyapong & Baker, 2000) reflected the perceptions and experiences of Thai households about corruption in the public sector. Major findings include:

- corruption in the public sector was ranked as the third most serious national threat after poverty and the rising cost of living (see Figure 4)
Table 2: Examples of corruption processes and resulting costs

<table>
<thead>
<tr>
<th>Stages</th>
<th>Parties involved</th>
<th>Customary fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. At the beginning of the project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inflate budget — 30–40% above market rate</td>
<td>Chief of the project</td>
<td>15% of total project cost</td>
</tr>
<tr>
<td>Combined into a bid package for influential groups</td>
<td>Director-general/Minister</td>
<td>7%–30% of construction price</td>
</tr>
<tr>
<td>Disclose base rate and details of BOQ (base of quotation)</td>
<td>Estimator</td>
<td>40,000 baht — 0.1% of price value</td>
</tr>
<tr>
<td>Exchange information, specifications</td>
<td>Specifications designer</td>
<td>40,000 baht per month</td>
</tr>
<tr>
<td>2. During project monitoring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department A</td>
<td></td>
<td>3%–5%</td>
</tr>
<tr>
<td>Department B</td>
<td></td>
<td>15%</td>
</tr>
<tr>
<td>Office C</td>
<td></td>
<td>10%</td>
</tr>
<tr>
<td>Department D</td>
<td></td>
<td>1.5% before contract signing</td>
</tr>
<tr>
<td>Mayor</td>
<td></td>
<td>10%–15%</td>
</tr>
<tr>
<td>Project controller</td>
<td></td>
<td>5,000–40,000 baht/month</td>
</tr>
<tr>
<td>Forced OT (Overtime)</td>
<td></td>
<td>5,000–20,000 baht/month</td>
</tr>
<tr>
<td>Forced purchase of materials</td>
<td>Specifications designer</td>
<td>3%–5%</td>
</tr>
<tr>
<td>Invoice disbursement</td>
<td>Finance officer</td>
<td>20,000 baht up to 5%</td>
</tr>
</tbody>
</table>
### Table 2 (cont’d)

<table>
<thead>
<tr>
<th>Stages</th>
<th>Parties involved</th>
<th>Customary fees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3. Bidding</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concealed, limited circulation of bid</td>
<td>Procurement officer</td>
<td>5%</td>
</tr>
<tr>
<td>announcement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summary report for finalist</td>
<td>Committee secretary</td>
<td>2%</td>
</tr>
<tr>
<td>Vote casting for finalist</td>
<td>Committee</td>
<td>5%–10%</td>
</tr>
<tr>
<td><strong>4. Accepting the Work</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Periodic acceptance</td>
<td>Committee, Controller</td>
<td>Leisure, accommodation 5,000–10,000 baht/person</td>
</tr>
<tr>
<td>Periodic disbursement</td>
<td>Finance</td>
<td>20,000 baht — 5%</td>
</tr>
<tr>
<td>Overrule defects</td>
<td>Controller, Committee</td>
<td>20,000–40,000 baht/month</td>
</tr>
<tr>
<td>Overlook details/facilitating</td>
<td>Controller</td>
<td>Overtime, employment of spouses and relatives</td>
</tr>
<tr>
<td></td>
<td>Chair, director</td>
<td>Secure position after retirement</td>
</tr>
<tr>
<td>Extension with no fines</td>
<td></td>
<td>10% of fines</td>
</tr>
<tr>
<td>Speed up the license within 60 days</td>
<td>Controller, committee</td>
<td>1–2 million baht (of 1,000 million baht project)</td>
</tr>
<tr>
<td></td>
<td>Bangkok Metropolitan Administration</td>
<td></td>
</tr>
<tr>
<td>Issue</td>
<td>Score</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Poor economy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of Living</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corruption, public</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drug use &amp; Trade</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costly services</td>
<td></td>
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<tr>
<td>Costly education</td>
<td></td>
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<tr>
<td>Bad roads</td>
<td></td>
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<tr>
<td>Cost of health care</td>
<td></td>
<td></td>
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<tr>
<td>Bad services</td>
<td></td>
<td></td>
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<tr>
<td>Crime &amp; violence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corruption, private</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Figure 4**: Nationwide perceptions of corruption (mean score on a 7-point scale)
• Police and members of parliament (politicians) are rated as the least honest state officers
• Land, Police, and Tax are the top three bureaus with accumulated bribes of 88%
  One-third of the respondents were offered money to buy their votes at the last general election
• 3% of the respondents offered payment to get their children admitted to public schools, and 13% of the households involved had been solicited for payment for school entrance and court cases. Transaction costs for these purposes totaled 25 billion baht.

Research on corruption in the Thai bureaucratic system was conducted by a group of economics professors with support by the National Counter-Corruption Commission (Phongpaichit, Phiriyarangsan, Treerat & Niyomsilp, 1997). The study aimed at advancing understanding of causes and thus the prevention of bureaucratic corruption. Among the major findings are that the primary sources of corruption are public losses or leakage of government revenues, as in the case of value-added tax fraud by businessmen; customs procedures; and government concessions in the telecommunication industry. Hence, the study attempted to create a set of indicators and recommendations to combat corruption.

Tax fraud was found in the case of forged documents, deceptive evidence, and submission of false reports — with or without the assistance of public officials. The forgery often went unnoticed because advanced techniques were usually used by the business. In the customs clearance process, “tea money” donations have been a frequent practice. Results of the survey of 430 businessmen confirmed that the value-added tax was the easiest and most frequent point of evasion; followed by income tax, import tax, and customs duty. The latter has become a recent scandal that broke out during the parliamentary open debates. The opposition party revealed the deceptive customs duty of luxurious imported vans in the Toyota and Mercedes Benz family (as detailed earlier).
Past and Present Efforts to Quench Corruption, and the Results

As it is hard not to taste honey at the tip of the tongue, corruption finds its place among those with discrete power and authority. Klitgaard (1996) equated corruption of state officers as:

\[
\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability} - \text{Transparency}
\]

Absolute discretion can be self-destructive as it allows the power holders to maximize judgment calls and therefore legitimize corruption. A root cause of corruption among public office holders used to be attributed to low income and salary. But monumental corruption cases in modern days have been found among influential groups who are far from being poor. If poverty is not the cause of corruption, what really causes corruption? Many attempts have been made to strengthen public attitudes against corruption and to provide the moral ground to say ‘no’ to all kinds of temptations. It is interesting that religious leaders who used to set an exemplary role model also have fallen from grace in scandals. Another school of thought urges clarification of the public notion and recognition of corruption and the securing of strong legal measures and acts as a countermeasure against corruption among politicians. It is time to nullify their acts that hinder and damage the prosperity of public wealth — economically and socially — under the guiding principle of fairness and justice for all.

The negative connotation of corruption should be spelled out clearly as intolerable. Corruption is the nation’s crime that harms and violates the fundamental rights of people to have equitable wealth, resources and opportunity. Opportunity can be costly and often escapes public attention for its effect is prolonged and snowballs far into the future. Strict control measures need to be put in place to allow the congruency of what is said and done. A ray of hope has been lit in the Thai Constitution with the reformed National Counter-Corruption Council and the Constitutional Court as key mechanisms to indict corrupt politicians. Another ray is perhaps shining in recent attempts to formulate the national anti-corruption plan of action.
Section 295 is designed to detect corruption in government office and to monitor the abusive uses of state power. The detection of corrupt wealth may be found through the formula:

\[ X_2 = X_1 + Y \]

where \( X_1 \) is the assets declared prior to joining public office; \( X_2 \) is the assets declared at the end of public office; \( Y \) is the traceable assets gained during public office.

Any discrepancies found may be attributed to unknown wealth that may be subject to subpoena or state investigation on grounds of corruption (we noted such an ongoing case above).

To prevent corruption needs collaboration to take place between the public and private sectors. The National Counter-Corruption Commission is still by far the major instrument to address the issue of corruption. Efforts to quench corruption should focus on bribery that is widespread in government departments, on the collusion in government bidding, by the simplification of bureaucratic red tape and regulations, and strengthening of consumer protection groups to act as watchdogs and be whistle blowers when things have gone astray. More importantly, the solution to corruption requires long-term commitment and efforts to reform the bureaucratic system, the police, the judiciary process, and politics. In practice, to ensure effective and strict measures to decrease corruption is to establish a code of conduct for officials and politicians, the use of public hearings and open investigation [and public reprimanding] of wrong-doers (Phongpaichit, Phiriyarangsan, Treerat & Niyomsilp, 1997).

**Emergence of Good Governance and Civil Society: Another Promising Sign?**

Phongpaichit and Baker (1998) argued that the boom economy of the 1990s allowed the sums involved in corruption to be much greater than in earlier years. It also brought a transition in the beneficiaries from bureaucrats and military to businesspeople, including those in
the provinces. However, they argue that their emergence occurred during the boom years of "The Mobile Phone Mob" (p. 233).

They were children of the new, globalizing world... They wanted to see Thailand as a modern nation — not just prosperous but also sophisticated and politically mature. They wanted to be ruled by people as enlightened and sophisticated as themselves, not strutting generals or corrupt, gangsterish businessmen (pp. 233–234).

The emergence of this urban middle-class with such different expectations has put considerable pressure on the authorities to attack corruption.

Though corruption is complex, public forums and concerned authorities are working to address the issues. A national seminar on "Strategy to Combat Corruption in Thailand: A Plan of Action" was organized in October, 2000, which concluded that, to combat corruption in a holistic way, all partners in society must be involved. In essence, prevention and suppression have to be done simultaneously. Positive and negative reinforcement must be applied to enhance good behaviors and quench undesirable ones. Stricter measures and stronger punishment must be applied to denounce corruption as a threat to national security and prosperity.

Key recommendations from the workshop led to four major reforms, including legislation, government administration, politics, and education. Figure 5 was presented at the seminar to illustrate the formation of the "Crystal Clear Society."

The seminar also recommended three plans of action to combat corruption, including the promotion of the "Clean Coalition" or a network of morally sound individuals who would work to create a society with a conscience, to provide protection and surveillance, and who would urge strong punishment to suppress wrong doings. Sample activities in each plan are in Table 3.

Phongpaichit and Piriyarangsan (1996) summarized the causes of bureaucratic corruption as "low moral standards of individual bureaucrats, by the deficiencies of the administrative system, and by the pressures and constraints which society imposes on officials" (p. 179). In an attempt to confront all of these issues, they recommended:
Combating Corruption in Thailand

Figure 5: The crystal clear society

Following: Yawaprapas, 2000: 143
<table>
<thead>
<tr>
<th>Plan and objectives</th>
<th>Suggested activities</th>
</tr>
</thead>
</table>
| **Plan 1: Promotion of the Clean Thai Coalition**  
Objective: To create a network, “clean Thai coalition,” as one of the national agenda | Creating academic networks, public dialogues and forums addressing the threats of corruption  
Public awareness raising campaign and use of various learning modules, i.e., stage play, radio, TV, etc. (See also Pongsudhirak, 1997.) Constantly disseminating information on “clean society”  
Embed learning in training curriculum at all levels of education, orientation and training courses of public officers/politicians, etc. |
| **Plan 2: Prevention of at-risk activities**  
Objective: To establish surveillance and an early warning system to monitor undesirable behavior from the national to local level | Monitor and evaluate corruption and create at-risk indicators  
Establish a plan of action to reduce at-risk situations by improving the decision-making system, reduction of personal judgment, encouraging an open system and transparency  
Inform external and internal constituents of the plan to create a clean coalition  
Constant monitoring and evaluation |
| **Plan 3: Suppression of the undesirables**  
Objective: Develop strenuous and serious action to combat corruption | Intensify penalty and punishment on corruption charges  
Reform, revise relevant laws and measures  
Speed up prosecution process and notify public of results |
• Attempts must be made through education and the home to help individuals learn to distinguish between "what is legitimate and what is corrupt" (p. 179).
• Objective measures for freedom from corruption must be developed through "political controls, administrative controls, and public controls" (p. 179). These would include things like improvements in salaries, improved checks and balances, improved processes, clarification of rules,
• Increase the power of National Counter-Corruption Commission to impose penalties on those "found guilty of corruption" (p. 180).
• Reduce the extent of the bureaucracy.
• Require periodic reporting of one's assets.
• Government programs be created to eradicate poverty and to minimize income disparities.
• Reform the police administration (the group whom the public perceived as having the highest level of corruption).

As a corruption-free society has become a central goal for anti-corruption efforts, several coalition networks have been formed with increasing participation of independent organizations and the civil society. One coalition, known as the Civic Coalition Against Corruption, was established on 1 May 2001 and deals primarily with providing public information on corruption scandals and cases. The coalition's objectives include:

• Mobilize support of civic society in surveillance, monitoring, and resolving of corruption.
• Support the press to conduct in-depth investigation of corruption cases and inform the public of the results
• Support and assist volunteer groups and member organizations in fighting against influence and negative impact as a result of their attempts to unveil corruption
• Support the strengthening and capacity building of the civic network to address corruption
The 5-year vision of the coalition highlights four major efforts —

- the increase of civic knowledge, awareness and understanding of corruption;
- change societal norms to accommodate appropriate power utilization and consumption;
- the reduction of enabling factors of corruption; and
- the cultivation of "anti-corruption" values among youth.

Major strategies include the recruitment of civic groups to monitor the government, independent organizations to prevent and resolve corruption, and promotion of social values praising decent acts and denouncing corrupt crooks. The coalition is operating on the principle that corruption is monumental, and to fight against corruption can only be achieved through the public will and strength. In recent months, the coalition network has launched a revealing series of corruption cases in an effort not to let go of lessons learned as a result of corruption. The coalition has been established through a fund-raising campaign to form a foundation of people’s networks to combat corruption.

Human resource development (HRD) is present in many of these recommendations for change. As McLean and McLean (2001) noted, human resource development is defined in many ways throughout the world, often under the influence of the specific country’s culture. In Thailand, according to Na Chiangmai (1998), the definition used for HRD in Thailand includes a strong emphasis on community development and the application of HRD to the needs of the Thai society. It is significant, therefore, that so many of the actions needed within Thailand include changes within the culture and society. Happily, as increasing numbers of Thai universities add programs in HRD, there becomes an increasing pool of trained HRD professionals with skills to influence the processes of change management within Thailand.

In spite of all of these suggestions, however, it is improbable that corruption will disappear in Thailand until its leaders — both at the top and in its parliament — become truly committed to eradicating corruption (Quah, 1999). Tipton (1998) argued for
the development of leadership at all levels as "Thailand's future success depends on the balance between the state and private capitalists" (p. 470). He argued also that there is a need to get the military out of government, and to provide greater balance between Bangkok and its provinces. Nevertheless, as Quah noted — no number of programs or pronouncements (vast or small) will change the situation if exemplary leadership is not developed.

Concluding Remarks: Clean Hands Save Thy Land

We conducted an interview with Mr. Klanarong Chanthik (July 24, 2001), Secretary General of the National Counter-Corruption Commission — this was enriching and serves as a summary of this chapter.

Chanthik's reputation as a brave person has been accumulated through spotlighted corruption cases that he brought to final prosecution. In a closing argument put forth at the Constitution court in June, 2001, to indict an extremely popular high ranked politician on wealth concealment, Chanthik stated: "Acting on behalf of the NCCC, my patriotic spirit is no less than any other Thai. I deeply recognize the importance and impact of what I am doing. But there are certain rules and laws to be observed."

Chanthik proclaimed that corruption is a detrimental societal problem. "It is a crime of the nation, and the solution is no longer the sole responsibility of the NCCC, but shall rest in all of us." He further observed that it is a fallacy to consider poverty as the sole cause of corruption, and law enforcement alone is far too ineffective to combat corruption. As corruption lies deep in the mentality and rationalization of the people or the way they see it, there certainly is an emergent need to rebuild an anti-corruption society. "It is time to take immediate action against corrupted people and power," urged Chanthik. To fulfill the clean-hands slogan, four strategies were recommended to save Thailand, including efforts to revitalize social moral conscience, reshape civic discipline, encourage the "watch dog" society, and create a community able to denounce corrupted power and wealth. "It is truly time to declare war with corruption
through effective prevention and a strong code of punishment. It all has to start from the top down, demonstrated by exemplary leaders who ‘Walk the Talk’.

On the dilemma of “crooked but capable,” Chanthik also had an answer. He viewed each action as having its own consequence. As the crooks get cracked by the stick, the capable will simply enjoy the carrot. A concluding remark of the NCCC top person was, “Believe me, there is no honest mistake in the corrupted world. The truth is always that people know exactly what they are doing or about to engage in. It is their selective rationalization that blinds them from moral conscience.” This perhaps has much to do with the self-exoneration mechanism, in which people choose to substitute moral action with customary practice of the “everybody does it” attitude. They use the lack of a witness, or no valid proof of guilt, and the power to rest assured of being a crook without being caught as excuses to be corrupt. As Chanthik said, “If we change the attitude of the Thais, we will succeed in reducing, if not eradicating, corruption at all levels.”

References


Chanthik K (2001, July 24). Personal interview conducted by the first-named author.

Combating Corruption in Thailand


Na Chiangmai C (1998, October 1) *Current outlook and trends of HRD in Thailand*. Handout distributed in International HRD course, University of Minnesota, St. Paul, MN, USA.


Introduction

Let us suggest, with a degree of benevolence, that the current administration has committed itself to serve its people faithfully in the name of the government of people. The commitment was considered as its pride and joy since it achieved the first overturn of political power against the past regimes, which were lacking in legitimacy. So it was now their will to reform the old misdeeds. Thus we see a democratic country normally has obligations to pursue justice and to devote itself to the public interest. These obligations consist of laws and systems, and institutions, which are implemented and controlled by the administrative parts of the government. However it follows that if the government is blind to the duties of the officials and the corruption of a few of its elite, then mistrust and confusion in its society will never disappear.

Presently we are witnessing in Korea an enormous collision of the corrupt and the anticorrupt thrashing about like surging waves. A recent scandal involving a president of a venture firm who was hit by bribery (to the value of about $800,000) by a garbage man of the Blue House (the Korean President's House, so-called Chong-Wa-Dae) reveals how deeply our society is corrupt (Kim, 1999). In
fact, the issue of corruption in Korea is not a new thing. Since the first democratic government of Lee Seung Man (the first Korean president, 1948–1960), all the following Korean administrations have tried to fight against corruption, but they failed.

Although the first republic in Korea, for example, received enough official development assistance (ODA) from overseas sources which gave them a chance to combat corruption, that republic collapsed due to various political corruption scandals — such as the-rigged election of March 15th, 1960. The third republic was established by a military coup d'etat on May 16th 1961, (and a fourth republic followed in 1972), were a little bit more successful in combating corruption through more innovative measures. Economic development under the dictatorship of the president Park Jung Hee, however, brought about corruption once more notwithstanding their avowed good aims. Ironically the corruption served as a catalyst for economic growth!

The fifth and sixth republics (through 1981–1992) did not overcome the spate of corruption, and unfortunately the two ex-presidents, Chon Doo Hwan and Roh Tae Woo, were put into a judicial settlement. Inevitably the people's mistrust towards the government was growing, since for decades the people had been suffering from the corruption. In addition, there had not been enough research or study upon any policy for anti-corruption, even though many people recognized how important it was to carry out systematic improvements to prevent corruption. Soon after President Kim Dae Jung's inauguration in 1998, we — the people and the government — introduced and implemented various initiatives to combat corruption, resulting in success to some extent. Still, the corruption of political power was not completely abolished.

There is a characteristic of corruption in Korea that is a kind of time-honored tradition without which a social success would be almost impossible. What is called 'a culture of corruption' dominates the everyday lives and the minds of the public. That is why, in order to combat corruption, we need to reform consciousness as well as innovate change in the conduct of administrations. Successful models of anti-corruption elsewhere should be considered.
Corruption in Korea even acted as a springboard for the careers of public servants, and as a lubricant for economic development. For too long the officials have remained complacent in the culture of corruption under regimes lacking in legitimacy. Unless we eradicate corruption from our society, even the basic frameworks of our nation may be threatened: and by not acting we will not strengthen our competitiveness. Thus, 'corruption' has to be explored for many reasons, and we must analyze how to create effective anti-corruption measures.

This chapter is trying to cast light on corruption from many different viewpoints. Focusing on four countries in Asia — Hong Kong, Singapore, Malaysia and Korea — it considers the anti-corruption infrastructures and their corruption prevention systems of the first three countries in order to comment on the situation in Korea. To gather primary evidence, the author visited the independent commission against corruption (ICAC) in Hong Kong, and the corrupt practices investigation bureau (CPIB) in Singapore — their legislative instruments and their research data were the main focus.

First, we introduce cases in Hong Kong, Singapore, and Malaysia that were success stories in combating corruption. Second, we offer an analysis of the roles of the anti-corruption agency (ACA) in Malaysia, the ICAC in Hong Kong, and the CPIB in Singapore. Lastly, we review the current administrative situation with respect to Korean corruption, and we suggest possible countermeasures — focusing on the board of audit and inspection of Korea.

**Individual National Anti-Corruption Systems**

The anti-corruption measures in Asia are noted for their strict, even harsh, punishment levels, and their strong legal enforcement acting against corruption. Most Asian countries already have appropriate laws and they apply them. For instance, Korea has the law on the
public servants, the public servants in provinces, and the public servants' ethics, but they are not effectively enforced. In this chapter we will examine why this is generally so.

Hong Kong

(1) Background

Before the mid 1970's Hong Kong was totally spotted by corruption. At that time people in Hong Kong used phrases that reflected social corruption. "To get on the bus" meant to actively get involved in corruption; "to run with the bus" was just to remain indifferent to corruption; also "to stand in front of the bus" meant to make known or resist corruption. The first two were practical choices for people, but the last was considered impractical (Manion, 1996).

In 1948, Hong Kong set the law on the prevention of corruption ordinance, which strictly punished congressmen, businessmen, and the government officials who committed corruption. Imprisonment up to five years and a fine up to $10,000 was possible. There was a special body called anti-corruption branch established under the police department, but it was too inefficient. So the legislature formed the standing committee on corruption in 1957 and it included the executive and the legislative personnel by 1960. In 1971, the law on the prevention of bribery ordinance was set up, which indicated that if a public servant possesses or maintains inappropriate wealth, he or she might be accused of the crime of corruption. If he or she hides his or her belongings, it is a crime too. A delegation from the United Kingdom, headed by Mary Maclehose, came to Hong Kong in order to advise on the eradication of corruption. It supported the creation of the basic law on independent commission against corruption ordinance in February of 1974, which instantiated the independent commission against corruption (ICAC). At first it was criticized because it was not in harmony with Chinese customs and tradition. Today, Hong Kong is known worldwide for having a clean civil service and providing a level playing field in business (although there are underground hints, now it has reverted to the
force of Beijing, that it will soon approach the levels of corruption seen in mainland China. The slogan "One China — two laws" can not be maintained for long as the border between Hong Kong and the mainland become more free and the neighbors [with their different ethics] more freely mingle).

Hong Kong’s success in substantially reducing corruption has been hard earned by a close partnership between the community and the ICAC. ICAC has the powers of investigation, arrest, and detention and of granting bail, which are fundamental to any law enforcement agency. It contributed to maintaining Hong Kong as a fair, just, stable and prosperous community. It also educated the public against the evils of corruption by the use of television and radio commercials, as well as by printing advertisements to publicize the work of the ICAC.

(2) Organization and activities

The Commission has three departments (i) of operations, (ii) corruption prevention and (iii) community relations. The ICAC was given specific legal powers to bring the corrupt to book under the law of independent commission against corruption ordinance.

- First, the ICAC has the powers of arrest, detention and of granting bail for misuse of office, as well as crimes facilitated by or connected with suspected corruption offences.
- Second, the commissioner or the vice-commissioner has the power of issuing a warrant for the arrest perpetrators of corruption-related crimes regardless of public or private.
- Third, the commissioner or the vice-commissioner has the powers of investigation to unravel and identify the transactions and assets concealed in different guises by the corrupt.

These powers include:

- Searching bank accounts;
- Holding and examining business and private documents;
• Requiring the suspects to provide details of their assets, income and expenditure;
• Fourth, the commissioner or the vice-commissioner makes every ICAC officer vow not to receive bribery from anyone.

The operations department receives, considers and investigates alleged corruption offences, while the community relations department educates the public against the evils of corruption and enlists public support in combating corruption. The corruption prevention department examines practices and procedures of government departments and public bodies to reduce corruption opportunities and offers corruption prevention advice to private organizations upon request. Its commissioner is directly answerable to the chief executive, so the independence of the commission is assured. The chief of each department can limit the power of his subordinate if that person's behavior is suspected, such as prohibiting the disposing of his belongings or to request their financial disclosure statements. Also ICAC officers can arrest and detain each other without a warrant. They are not affected by personnel administration, and usually get higher salaries than other governmental officials — which helps combat any inclination to accept monetary 'gifts'.

(3) Ethics code of public servants

According to the law on bribery prohibition, and the chief executive's command on receiving an entertainment, the public servants of Hong Kong must follow ethics code as follows (Chun Soo II, 1999):

• In Hong Kong the public servants may not receive cash, securities, gifts and entertainment without permission from the Chief Executive. If the gifts are no more than ordinary for other people and are not directly related with the job, they are acceptable.
• A public servant's loan from a friend cannot be more than HK$2,000 and it must be paid back before 14 days.
• In case a public servant receives a gift not in accordance with the code of conduct, he or she must obtain a prior approval
from his or her chief. If the public servant fails to obtain a prior approval, he or she must obtain an ex post facto approval.

- A chief should order his or her subordinate officials to return honorarium which is not approved. If it is impossible to return it, the chief should dispose of it.

- Any public servant who is in violation of the chief executive's codes on ethics faces a fine of HK$100,000 or 1 year's imprisonment.

**Singapore**

Asian countries with their background based on a Confucian culture, with few exceptions, are challenged by the problem of active corruption in their higher echelons, although the population generally may enjoy reasonable economic development. Singapore is the exception. It has kept its government free from corruption since its independence in 1965, and it has maintained an annual growth rate of about 9%, with a national income per capita of around US$32,000.

As far as their politics is concerned, the ruling people's action party (PAP) of the incumbent Prime Minister Goh Chok Tong and senior minister Lee Kuan Yew has held political power for 40 years. Unlike the saying 'absolute power corrupts absolutely', the PAP is cited as a reasonable example of transparent politics. There is not even a hint of the term 'political fund'. By minimizing the election campaign fund, the headquarters of PAP is funded only by its members' dues, and each district party chapter is funded by subsidiary businesses such as kindergartens, and bazaars.

For higher officials a strict code of ethics is applied. Tan Kia Khan, who was the ex-prime minister Lee's right-hand man, was punished for a scandal relating to accepting commissions from the Boeing company in 1965: he was a minister of national development at that time. And in 1976, Wi Tun Buhn, a secretary of state and alumni of Mr. Lee, was sent to the prison for corruption.

Singapore demands that administrative officials strengthen self-control or self-inspection for the purpose of eradicating the causes
of corruption. By providing high salaries, rewards and excellent working conditions for the public officials, Singapore makes them more devoted to their work and thus helps prevent possible corruption (Quah, 1995, 1999).

The anti-corruption efforts by the top leadership such as prime minister Goh Chok Tong and senior minister Lee Kuan Yew play a very important role. Mr. Lee publicly announced that he has no individual possessions, and the opposition parties were never able to blame him for such matters. Nor could the western press ever criticize his integrity, although it mentioned his dictatorship — since they are fundamentally inclined against dictatorships.

The Prevention of Corruption Act, formulated in 1937, was revised in 1960 to have more binding powers. The main point was to grant a stronger power to the director of the corrupt practices investigation bureau (CPIB). The director is appointed by the prime minister, and can arrest corruption-related suspects without a warrant. Criminals’ accused of corruption may face imprisonment up to 7 years, with fines.

(1) Background

Established in 1952, the corrupt practices investigation bureau (CPIB) is an independent body that investigates and aims to prevent corruption in the public and private sectors in Singapore. From the 1940’s to the 1950’s corruption and violation were widespread in Singapore. In those days the anti-corruption branch — known simply as the Singaporean police, handled all the crimes relating to corruption. The Branch, however, did not achieve satisfactory results, in part, because the policemen themselves were stained with corruption. That is why there emerged a strong need for an organization to investigate corruption that was itself independent from the police. In the early days, the CPIB had some difficulty in collecting proof of individual corruption because the relevant laws were not efficient. Another problem was a lack of cooperation by the public sector. Most of the public officials were doubtful, and even scared, of the CPIB’s activities. After 1959, when the People’s Action
Party took power, this situation began to change. The punishment against the corrupt officials became harsher and they purged corruption from public life. The CPIB restored the confidence of the public with respect to officials as the government was seen to have implemented the anti-corruption policies faithfully.

(2) Legislation

In 1960, the government of Singapore established more still effective law against corruption — the prevention of corruption act. The CPIB derived its powers of investigation from the Chapter 241 of the prevention of corruption act. And a new law, corruption (confiscation of benefits) act, was passed in 1989. This law empowers the court to confiscate and freeze all the properties gained through corruption.

(3) Organization and Activities

Elimination of corruption in Singapore was possible because of the severe institutional mechanism. The prevention of corruption act established in 1960 strongly precludes corruption of politicians and public officials. Further, a director who is directly responsible to the prime minister heads the CPIB. The bureau consists of 49 officials, among whom there is one director, two deputy directors, five assistant directors and 41 special investigators. There are two divisions in the bureau, one is the operation division and the other is a specialist support division. Each of division is responsible to a deputy director.

The main activities of the CPIB are as follows:

- the bureau is responsible for safeguarding the integrity of the public service and encouraging corruption-free transactions in the private sector.
- it is also charged with the responsibility of checking on malpractice by public officers and reporting such cases to the appropriate government departments and public bodies for disciplinary action.
besides bringing corruption offenders to book, the bureau carries out corruption prevention by reviewing the work methods and procedures of corruption-prone departments and public bodies to identify administrative weaknesses in the existing systems that could facilitate corruption and malpractice. It recommends remedial and prevention measures to the heads of the departments concerned.

Although the primary function of the bureau is to investigate corruption under the Prevention of Corruption Act, it is empowered to investigate any other seizable offence under any written law that is disclosed in the course of a corruption investigation. With enough suspicion the bureau can arrest the suspect without a warrant (Kim Byung Chul, 1996).

**Malaysia**

*Anti-corruption law*

This law, established in 1997, contains much against corruption. Especially the system of a director-general is notable. This person, the director-general, is held responsibility for the following under this law —

he receives reports and must follow-up enquires upon them
he must investigate any suspicious acts
he helps disclose any crimes he enquires about — discussing the practices, systems, and procedures in the public sector and undertakes to correct them
to prevent any more corruption, he guides and instructs the corruption-related criminals
he gives advice to the chiefs in the public sector to assist them in changing their practices and systems to minimize the possibilities of corruption
he educates the public in detail about anti-corruption
Lastly, he enlightens people upon the reasons they should combat corruption.
Anti-corruption agency (ACA)

In parallel with the national vision, in 1996 the ACA formulated its own vision, mission and strategies. They are meant to put in to focus the need for a concerted effort in the fight against corruption, while at the same time to devise and to fine-tune other workable solutions. Based on the information they collect, the ACA prosecutes anyone with any provable case of corruption or any offence under the corruption laws or generally prescribed laws.

While the ACA procures, collates and vets all information received for the efficient detection and identification of all forms of corrupt activities and abuse of power, it inquires and investigates cases of corruption, malpractice and abuse or power efficiently and rapidly. By enforcing the laws and the regulations fairly and firmly, their sovereignty and that of the public and the nation's interests are consistently upheld. The ACA is also empowered with specific administrative powers enabling it to endorse or submit reports to the heads of departments to initiate disciplinary action against civil servants; or for the identification of weaknesses in the departments' machinery with suggestions as to their remedies. Ordinarily these reports are forwarded as offshoots of investigations of corruption cases.

Through the studies and appraisal of the administrative and management systems of specific government agencies or departments, the ACA detects weaknesses that provide potential opportunities for corruption, and so makes appropriate recommendations for their remedy. Vetting exercises are also carried out to ensure that only those not under active investigation by the ACA, or those with criminal records in the ACA, are considered for promotion, appointment to important positions, or have offers of awards or optional retirements. It is encouraging to note that certain financial institutions before finalizing their own recruitment of top managerial positions send the candidates' names to the ACA for vetting.
To help build a corruption-free society grounded on universal spiritual and moral values and spearheaded by a clean, efficient and trustworthy government, the ACA works in cooperation with the government and the world-class anti-corruption organizations. It formulates and mounts anti-corruption campaigns through the mass media, forums, seminars, workshops, joint operations, conducting surprise checks, etc. In order to upgrade the ACA into a highly professional and reputable agency, they develop systematic and organized human resources development and proactive leadership programmes. Special attention is focused upon enhancing the leadership and management quality at all levels of ACA officers through the application of these human resource development programmes, the management of information technology and through improved work processes.

**Strategy**

The government of Malaysia has endorsed the ACA's three-pronged strategy spelt out in its vision, namely:

Reinforcement/Consolidation strategy: Through this strategy, among other things, proposals for the improvement of the ACA's scheme of service, financial allocation, manpower development and the strengthening of relationship with other agencies are being made.

Prevention and promotional strategy: Under this strategy, the ACA, with the backing of the Government Special Cabinet Committee acts as an adviser to both government and provincial agencies in their planning and implementation of preventive programmes towards instilling an awareness on the evils of corruption. This is being done through talks and dialogues and the distribution of videotapes containing inspiring religious talks, or corruption dramas on anti-corruption themes. One objective is to motivate or encourage them to combat corruption within their folds. Another is to give appropriate recognition to individuals or agencies that have exhibited exemplary conduct in combating corruption directly or indirectly.
Enforcement strategy: This strategy focuses on law enforcement efforts which includes reviewing the effectiveness and adequacy of the existing laws on corruption, especially the provisions pertaining to investigation, prosecution and sentencing. As a matter of fact, a comprehensive proposal amalgamating the laws on corruption has been drafted, and it is being studied by the Attorney General’s Office.

Comparative Analysis

Administratively the region is in a little flux. Hong Kong, once a British colony for a long time, is now a special administrative region since its return to China 1997. And Singapore is a city-state, which became independent from the Malaysian federation in 1965. Currently the people's action party (PAP) of Prime Minister Goh Chok Tong is the ruling party of Singapore, while Hong Kong is now a special administrative region of people’s republic of China, under the governance of the chief executive, Tung Chee Hwa. It follows that the anti-corruption bodies in most of the Asian countries are very diverse. For instance — a secretariat of the president, a public prosecutor, the police, the board of audit and inspection, the independent commission against corruption (ICAC) and the corrupt practices investigation bureau (CPIB) are all the examples of the relevant anti-corruption authority according to the legal system of the countries in focus in this chapter. In the case of Korea, the board of audit and inspection is a constitutional and independent organization; also, the law on the board of audit and inspection specifies its role of audit and inspection.

The ICAC of Hong Kong and the CPIB of Singapore both have common functions and powers in keeping with the board of audit and inspection of Korea, but in the field of anti-corruption, they have stronger powers than those made available to the board of Audit in Korea. While this board in Korea does not have the power of investigation (it only indicts the public prosecutor), the ICAC of Hong Kong and the CPIB of Singapore have not only the power of investigation, but also of arrest without a warrant. In Korea, a warrant must be requested by the prosecutor and issued by the court.
We might see that Hong Kong and Singapore deal with corruption through mechanisms independent of government but have quite different duration since incorporation. The ICAC of Hong Kong was established in 1974 and the CPIB of Singapore in 1952 (although the anti-corruption branch (ACB) of Singapore was created as a part of criminal investigation department in 1937), while the board of audit and inspection (BAI) of Korea was established in 1948. Later, in Korea, the commission for the prevention of corruption (CPC) was set up in April 1993 as an advisory body for the chairman of the BAI. More recently under the Kim Dae Jung administration the presidential commission on anti-corruption was established as an advisory body to the President on September 10th 1999. Independent working against corruption is commonplace in Hong Kong and Singapore, yet despite strong powers and roles, the BAI and the public prosecutor in Korea are very poor in fulfilling their role. Perhaps one reason is that the staff of the BAI in Korea is only about 800, while ICAC of Hong Kong has more than 1,400 and Korea has a vastly greater geographic spread. While the public prosecutor in Korea is criticized by the people about his independence and neutrality, those discharging equivalent positions in Hong Kong and Singapore enjoy the support of people and they never yield to any pressure. Hong Kong and Singapore have established anti-corruption laws, while in Korea the ultimate law is still pending in their parliament. While the CPIB of Singapore is responsible to the Prime Minister and the ICAC of Hong Kong to the chief executive, the BAI of Korea is under the President of the republic as a constitutional government agency.

Most countries attempt to carefully control the corruption of the public officials legislating against bribery, frauds, theft, misappropriation, tax evasion, drug traffic, gambling and malpractice of business. In a sample of Asian countries we may see that anti-corruption laws were established in Singapore in 1960, in Hong Kong in 1948, in Thailand in 1975, in Malaysia in 1961 and in India in 1947. The US and the UK also established relevant laws to cope systematically with corruption. But it is only recently, in 1999,
following the concerted pressure by the OECD that its member countries agreed to act coherently against corruption, and became signatories to its anti-corruption charter.

Anti-Corruption Systems and Strategies in Korea

Anti-Corruption Systems

Kim Dae Jung's administration has launched comprehensive anti-corruption programmes in response to the people's desire for a corruption-free society. The Korean people expected the government to reform the society overall as they have experienced and come to understand the adverse effects of corruption on the economy during the financial crisis and subsequent political turmoil. Although Korea rapidly attained enormous economic development in only a few decades, the long-standing collusion between politics and business proved to be a major cause of the unprecedented economic crisis of 1997. The Korean government's new anti-corruption programmes now perfectly tie in with the efforts of the international community to eliminate corruption around the world. In conformity with the anti-bribery treaty that was signed by members of the OECD and went into effect in February 1999, the Korean government has also tightened its inspection and punishment of those businesses offering bribes to a foreign entity.

The main actions of the incumbent government are —

- The government picked areas where corruption is most rampant — areas that include taxation, construction, the environment, the police and food control — and asked experts in each to conduct research into ways to prevent corruption.
- The government plans to establish anti-corruption systems by enacting laws and forming preventive organizations so that efforts to excise corruption can continue after the term of the government of the people expires.
- The government plans to drastically increase the participation of citizens in anti-corruption projects. Each and every citizen
should become a watchdog. The government plans to introduce diverse systems so that officials and private citizens can cooperate with each other.

- The citizens and the government have thus joined forces to launch a nationwide campaign for the common goal of cleaning up Korean society.

We will now overview the main characteristics of Kim Dae Jung Administration’s anti-corruption programs.

**Presidential Commission on Anti-Corruption (PCAC)**

The independent presidential anti-corruption commission was created on September 10th 1999, and it received a great attention from people. The special commission is mandated to:

- help the government establish anti-corruption policies, deliberate on government practices, and make recommendations;
- evaluate the progress of the anti-corruption programmes at all levels of public organizations;
- carry out anti-corruption education and publicity;
- support civic organizations’ clean-up activities both domestically and internationally; and
- conduct surveys and collect materials for the formation of an effective anti-corruption movement.

There are of course differences of opinions about the commission among the ruling party, the opposition party and the non-governemental organizations (NGO).

**Protection of whistleblowers**

An advocatory system for the rights of employees to ‘blow the whistle’ on fraud, corruption, government waste, and violations of environmental laws is used as a corruption-controlling device in most of the developed countries. Kim Dae Jung’s administration also
introduced such a system enforcing civil watchdog procedures leading to punishment if found guilty. In order to encourage the prosecution of people the government specified in the anti-corruption act that any successful prosecution against corruption may be rewarded 5–15% of the government income. Procedures for prosecution and the protection of whistleblowers are specified in the act so that a prosecutor may not be identified, but protected. Punishment is prepared in case the accused perpetrates harm to the prosecutor, or if the prosecution is false.

Financial disclosure of the public officials

When there is a financial change of more than US$10,000 a year in other than the specified salary, a financial disclosure statement for the increase is mandatory. The person should prove the financial increase, and if not, he or she is punished for a dishonest transaction and the non-disclosure of the fact. The power of investigation is strengthened.

Punishment of the corruption-related person

The punishment has become stricter against accepting a gift of money or any other valuables, and even the pardoning and restoration of rights are limited.

In case anyone gets dismissed from office for corruption, it is forbidden to restore him within 5 years if the returning office is related to the previous one; or in 15 years if the returning office is the public arena; and in 10 years if he underwent a criminal punishment. A person or a corporate body that offers bribery is punished equally severely as the one who receives bribery — so that the bribery in civil society may be eradicated. For a gift of money or any other valuables the related interest, as well as the gift itself, is to be confiscated regardless of the giver or the receiver.
Privileges of the former post of retired officials

There are some cases in which retired officials who previously worked in the area related with approvals or permissions get a job in a related field. Herein they are very likely to act as a corrupt liaison between the public and the private. Thus, the government strictly controls and limits the retired public officials who apply for these jobs.

When judging whether the previous job of a retired official is related with the new one he or she is applying for, his or her previous job must be considered up to 3 years before retirement, and examined again during the 2 years before retirement. As for the companies a retired official may not work for, the government expanded the net of companies by replacing ‘the companies with capital $10,000,000 or more and with turnover of $30,000,000 or more’ with the new definition of ‘the ones with capital of $5,000,000 or more, and with turnover of more than $13,000,000’.

Citizen ombudsman system

To make the system more easily accessible to citizens and to handle matters objectively from the citizen’s point of view, Kim Dae Jung’s Administration adopted the Citizen Ombudsman system. Focused in the areas that are the most susceptible to corruption — such as the construction sector — citizen ombudsmen are hired to monitor the procedures. If a given number of citizens request inspection (1000 in a central ministry, and 500 in a local province), an appropriate inspection agency must conduct inspection and report the result. By including a number of experts in governmental committees, as recommend by NGOs, it became possible to perceive if there is any corruption in the operation.

Evaluation and Problems

Like many other countries, Korea has tried to eradicate corruption through a series of legislative acts and systems on its own, but failed
to root out corruption. Most of the policies resulted in a one-time event and will end at the expiration of the president's term.

Soon after President Kim Dae-jung's inauguration in February 1998, he launched a full-scale effort introducing and implementing various initiatives to uproot corruption, firstly focusing on the public sector. The comprehensive programs included plans for administrative reforms in corruption-prone areas such as housing, construction, the tax administration, police work, environmental management and the food-and-entertainment businesses. In consultation with experts and representatives of the private sector, the government provided for alternative policies. However, the anti-corruption act, the prohibition of money laundry, the protection of Whistleblowers, and the special prosecutor act are all stillborn due to the acute dispute between the ruling party and the opposition. Even worse, the Political Reform Act, which is aimed at reforming one of the main sources of corruption, has been cast away.

Meanwhile, some positive outcomes such as the presidential commission on anti-corruption (PCAC), Citizen Ombudsman system, and the innovation of many administrative regulations set the stage for new anti-corruption policies to be implemented. Unlike in the past administrations Kim Dae Jung's administration showed much more strenuous effort to engage in anti-corruption policy making. Nevertheless, the government has its own limits too in that the policies tended to be inclined towards political punishment.

When the PCAC was established there was a great deal of criticism about how it should be operated. Responsible directly to the president, the commission plans and implements anti-corruption policies and provides advice to the President on issues relevant to fighting against corruption. As the anti-corruption act was established, PCAC became confused in developing ways to improve existing government programs for preventing corruption. This shows the limitation of a temporary body, which includes members from the private sector, in the struggle for hegemony among the public prosecutor, the BAI, and the Chong Wa Dae. In addition, the overlap of the work with the commission for the prevention of corruption (CPC), which
is an advisory body for the chairman of BAI, resulted in inefficiency of the anti-corruption systems.

**New Ways for Anti-Corruption Systems**

*Independence of the board of audit and inspection*

The BAI does not have powers of investigation nor of jurisdiction even though it can charge, and request punishment. With this entire backdrop the work of the BAI against corruption is faced with limitations.

In spite of the inspection of the performance of government operations and duties of government officials, the BAI was limited to ex post facto measures rather than preventive ones. To be able to investigate the entire range of corruption, the BAI first needs to be strengthened in terms of human resources. It is doubtful whether the BAI staff of only 850 can cover all the audits and inspections of all the public officials in Korea. Kim Young Sam’s Administration has intended to revise the laws regarding the BAI, but they did too little. Realistic institutions should be introduced.

We suggest several ways to create a stronger BAI —

- the BAI needs to be reorganized and enlarged. Currently it has only one division for inspection of performance of government operations and duties of government officials. It is short-staffed too. The current level of ‘inspector’, which corresponds to a deputy minister, should be upgraded to the level of minister. And to collect information secretly about the corrupt officials, a new task force needs to be installed in the BAI — something like the performance inspection intelligence.

- to revise the laws about the BAI the responsibilities and rights regarding the inspection of the governmental works need to be redefined in greater detail. Integration of all the separate inspection bodies in each administrative system at all levels should also be considered. A system for the dispatching of inspectors from the BAI to each governmental body needs to be examined.
The BAI should be able to have its branches spread all over the local provinces.

- the BAI needs more empowerment. Even though it has the power of audit and inspection, it does not have the right of investigation. This limits the BAI to cope only with the 'side works', not the main part.
- scientific research and analysis should be added to the workflow of the BAI so as to derive better the direction of inspection policies.

It is quite important to evaluate the BAI in a systematic way to search for better implementation of its policies. In addition, it can be debated as to whether the BAI should belong to the executive branch or to the parliament. Also the BAI should be empowered to chase the bank accounts involved in the corruption; thus the constitution and/or the laws for the BAI need to be reconsidered to determine its independence.

**Anti-corruption law**

In order to prevent corruption by government employees, the anti-corruption law has called for the formulation of a code of conduct for civil servants, and for strengthening of the financial penalty against corrupt officials and citizens. This is done by recovering any personal gains (and government losses) caused by corrupt practices, as well as confiscating the bribe itself. Provisions for establishing and managing an anti-corruption organization, citizen watch groups and public participation in anti-corruption movements, the codes of conduct for public servants, the education and public information campaigns to strengthen public awareness against corruption were all included in the law.

Presently most of the Asian countries have legislative measures against corruption. The anti-corruption law was established in Singapore in 1960, much earlier in Hong Kong in 1948, and in Malaysia in 1961.
Recently the Korean national assembly passed the anti corruption bill submitted by the Millennium democratic party on June 28th 2001 after more than five years of discussions. It is expected to go into effect by January 2002 following presidential approval. This law allows for the creation of an anti-corruption commission under the presidential office, the protection of whistle-blowers, the people’s right to ask for an audit and inspection, rewards for reporting corrupt activity, and sanctions against officials fired for corruption. According to the law anybody finding evidence of corruption can report it to the commission, while government officials are mandated immediately to notify it of illegal acts. People within government organizations reporting corruption will be protected from any discriminatory action in the workplace, through those making false reports face up to ten years imprisonment. Officials fired for corruption will be banned from working in any similar posts for five years (Chosun IlBo, 2001).

International cooperation

The public prosecutor’s offices (PPO) in Japan and Italy, on the basis of their solid and rigid independence, put an end to the oligarchy in their countries, which had lasted for over 50 years after World War II. This was possible because they actively investigated the illegal connections between the politics and the businesses such as the Mafia or the Yakusa. The PPOs of both countries commonly enjoyed the neutrality, the independence, and the strong support from their people and what might be described as their divine dedication to the work. The ICAC of Hong Kong, responsible only to the Chief Executive, secures its independence from the government and the political hierarchy. The ICAC educates people about the issues deriving from corruption, as well as preventing the corruption by its own investigations. In addition, the ICAC metes out severe punishment to corrupt officials, and searches for transparent personnel administration. The CPIB of Singapore also develops various programmes to fight corruption and institutionalizes these routines. Thus, in order to maximize the effect of anti-corruption
policies Korea should observe and take into account such foreign success models — especially those successful Asian models. As a consequence we might see the interaction between the ICAC, the CPIB, and the ACA of Malaysia. Education programmes will become possible, in which staff are selected from the anti-corruption bodies such as the BAI or the PPO, and exchanged with foreign institutions for mutual benefit.

**Strategies and efforts to combat corruption in Korea**

The honest national leaders who have lived in the Asian countries generally state something like — ‘the immoral and unethical behavior in the public service is one of the most serious problems that obstructs national and democratic development’ (Gould, 1983).

The implementation and operationalization of efficient anti-corruption strategies are significant and effective. In particular, considering the causes of painful changes in previous political regimes and their failures to combat corruption, we may point out clearly that the need for integrated strategies for controlling corruption in Korea is urgent. However, a one-time campaign has been seen to have an extremely limited impact on the level of corruption in a given polity (Theobald, 1990). That is, we need a sustainable and integrated strategy for controlling corruption. These strategies need to be dynamic and workable in order to attain the ultimate goal.

Some plausible anti-corruption strategies are noted as follows —

1) taking the causes of the failures of past regimes into consideration, the current Korean administration is aggressively pursuing comprehensive and systematic corruption prevention policies in cooperation with the public and business through basic strategies —

   Promotion of administrative reforms in corruption-prone areas
   Establishment of anti-corruption infrastructure
   Expansion of citizen participation in administration and anti-corruption activities
Building public support for anti-corruption programme
Systemic implementation and enforcement of anti-corruption policies and programs

2) since 1999, the government has identified 100 priority tasks necessary to prevent and eliminate corruption. Among these, 30 tasks are ‘general’ tasks that should be implemented throughout the government; and the other 70 tasks are more specifically aimed at addressing problems in corruption-prone areas such as housing, construction, tax administration, police work, environmental management, and food and entertainment business.

3) unreasonable and excessive regulations can lead to corruption since people are likely to be tempted to bribe government officials in order to avoid their encumbrance in regulations — and government officials tend to abuse their abundant discretion to their own benefit. These aspects need to be addressed.

Conclusions

The anti-corruption systems of Asian countries have been reviewed with a focus on Hong Kong, Singapore, and Malaysia. Their models needed to be considered and linked to those of Korea because the latter suffers from inefficiency and a lack of an effective anti-corruption infrastructure. Systematic and strenuous activities of the ICAC or the CPIB can be very illuminating for the Korean situation. For example, the ICAC’s consistent effort to maintain the trust of people [towards itself] by swearing to root out corruption presents a lesson to Korea. The great success of the ICAC was possible only with the financial assistance from its ‘local’ people. Also the strict enforcement of laws by the CPIB in Singapore makes corruption disappear. Similarly the ACA of Malaysia severely punishes the public officials corrupt with bribery or property misappropriation.

Corruption being a complex and universal phenomenon in developing countries it is imperative that preventing corruption should be sought because it threatens the very pillars of the democratic experience in those countries (Werner, 1983). That is why we need
to carefully observe the reality of corruption, and seek an effective anti-corruption strategy. As mentioned earlier, Korea, Singapore, Malaysia, and Hong Kong have struggled with their own strategies for controlling corruption. The experiences of Hong Kong and Singapore in preventing corruption show that it is not really difficult to minimize this aspect if a strong system and the political will are present — as well as having their citizen's cooperation. Conversely, although such political will of the top political leaders in the case of Korea is strong, systematic and well-organized measures, and the efficient and effective anti-corruption discipline for the public officials are still lacking. As a consequence, it has been very difficult to reduce corruption in Korea. In this country, more dramatic incentives to encourage the public officials low morale should be implemented. The government should consider appropriate increases in the official's payment structure (following the example of Singapore). Further, it should resolve promotion problems in its official hierarchy if the anti-corruption strategies are to work better (Kim, 1996).

One of the main reasons why the corruption is not eradicated in Korea is that without any integrated policy for anti-corruption there were just shocking one-time counter measure events. We have found there was no real coordination network, nor a working linkage handling the anti-corruption drive, which led to a hegemony struggle among the relevant organizations. In addition, there was no educational programme, nor any public campaigns that could promote awareness against corruption. Now, with such problems in mind, the Korean Government should seek for a comprehensive and systematic approach in dealing with corruption problems and consider the successful cases of other Asian countries.

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Chapter 15

An Exploration of the Dynamics of the 'Corrupter' and the 'Corrupted': Developing Cutting Edge Practices to Prevent Seduction

Lionel Stapley

Introduction

Probably the principal reason for the widespread condemnation of bribery is its inherent inequity; it is obviously unfair to have special payments, and secret influence decide issues that should be decided on their merits. However, it is suggested that the reason that bribery is so widely condemned, may also be seen as the reason for its attraction. Faced with the possibility that a bribe can guarantee success, as opposed to facing up to the doubts and difficulties involved in competing in the usual manner, some may find bribery so seductive that they will gladly succumb to the temptation. The circumstances or effects of the environment that they find themselves in may seduce others. In general terms, the purpose of this chapter is to explore some of the dynamics concerning the relationship between the ‘corrupter’ and the ‘corrupted’ and to help in the development of cutting edge practices that will reduce the chances of seduction into bribery.

Corruption is not an individual activity but one that involves two people or two groups and we therefore need to explore the subjective state of both parties to the corrupt act. Starting from a cultural relativism perspective, I shall seek to provide an understanding
of difference and how this can lead to misconceptions and behaviour such as stereotyping. But, to gain the deeper understanding required it is necessary to explore what we mean by values, attitudes and beliefs. This will provide a basis for some sort of understanding of the problems both parties face when working with those from a different culture. But this will not be complete until we also understand something of the environmental influences on those from the west that are doing business in Asia.

Bribery is considered reprehensible. Even in Asian and other countries where it is alleged to be common, most people deplore it, except at the lower levels of some government bureaucracies where bribes are regarded as part of the compensation system, almost on a level with commissions or gratuities. No matter which society we are referring to we can be sure that bribery is condemned because of its inherent inequity. All ethical systems recognise the need for equity; all ethical systems deplore the practice of bribery. Yet, when a bribe is expected as part of a transaction it still presents us with a considerable moral dilemma.

What, then, we might ask is right and ethical and just? These terms, and that question are going to become more important in the future than in the past as societies throughout the world have become more crowded, their economies more competitive, and their technologies more complex. We might well consider that the ethics of management — the determination of what is right, proper and just in the decisions and actions that affect other people — goes beyond simple questions of bribery, theft and collusion. It really needs to focus on what societal and organisational relationships are — and ought to be — with employees, customers, shareholders, creditors, distributors, and neighbours — members of the societies in which we operate.

The concept of ethics is derived from the Greek word ethos, which has been loosely translated as meaning internal character. It has been defined as a process by which individuals, social groups, and societies evaluate their actions from the perspective of moral principles and values. This evaluation may be on the basis of traditional convictions, of ideals sought, of goals desired, of moral
laws to be obeyed, or of an improved quality of relations among humans and with the environment. When we speak of 'ethics' and ethical reflection, we mean the activity of applying these various yardsticks to the actions of persons and groups. A general inference to be drawn from this definition is that ethics focuses on human activity done knowingly and to a large extent willingly. However, to have a deeper understanding we need to have an awareness of the way these processes develop in the individual.

Although the terms 'ethics' and 'values' are often used interchangeably, distinctions can be made between the two concepts. One distinction is that ethics tends to focus on the conduct of individuals, whereas values represent the fundamental beliefs that individuals hold about conduct. In other words, values are the underlying beliefs and attitudes that help determine conduct. Distinctions made between these two concepts suggest that rather than viewing them as interchangeable their relationship might be better described as interdependent. Values and associated notions such as attitudes and beliefs will be looked at in some detail later but for now the concentration will stay with ethics.

That there are differences between various groups as to ethics (and values) is not in question. But in terms of what is right and ethical and just, these differences create considerable difficulties. One way of trying to understand these differences is to look at them from an ethical relativism perspective.

**Ethical Relativism**

Moral standards of behaviour differ between groups within a single culture, between cultures and between times. Both sides base their arguments on a belief system as to what is best for the national society, but, of course, these beliefs may well differ. The question in ethical relativism is not whether different moral standards and ethical belief systems exist; they obviously do, and we all have experience to confirm that fact. The question is whether there is any commonality that overrides the difference. The fact that there
can be two different moral standards, both of which can be considered to be right, is confusing to many people.

The peoples and societies of the world are diverse; their institutions, fashions, ideas, manners, and mores vary tremendously. This is a simple truth. Sometimes an awareness of this diversity and the degree to which our own beliefs and habits mirror those of the culture around us stimulates self-examination. In the realm of ethics, familiarity with strikingly different cultures has led many people to suppose that morality itself is relative to particular societies, that right and wrong vary from culture to culture.

One of the problems is about trying to understand how we should live with each other and with ourselves. Clearly this is a problem that we need to study. But, some people are so struck by the difficulty of reconciling differences of view on moral matters, especially between people from different cultures, that they adopt a position of moral relativism; they contend that there are no moral truths to be discovered; no such thing as the difference between right and wrong but simply the difference as drawn by this society or that. Thus, according to this relativist view, there can be no critical enquiry into what we should think is ethically defensible, only empirical enquiry into what we or others, do happen to think.

But why should we agree with this view? There is no good reason to believe it: the mere fact that there is disagreement, even deep disagreement, on moral matters between different cultures is consistent with the truth of relativism but also with its falsity. There are plenty of reasons to disbelieve it, since if it were true we would have to abandon many of our convictions, such as, for example, the idea that there can be no moral progress — and regress — and that some practices accepted in other societies and not our own are less — or more — enlightened than our own.

Part of the appeal of the relativist stance is that it cuts the ground from under the feet of those who adopt attitudes of moral superiority towards people of different cultures and customs. Yet just because we reject the relativist view about the impossibility of comparing customs and practices critically, we need not condone ignorant smugness and prejudice towards other people's strange customs.
Overriding all cultural differences there is also agreement on moral and ethical issues. As was stated above, no matter which society we are referring to we can be sure that bribery is condemned because of its inherent inequity. All ethical systems recognize the need for equity; all ethical systems deplore the practice of bribery.

The fact that people are different creates considerable problems. In some instances it may be fairly obvious why they are different but in all situations it will be helpful to know how they have come to the position they are at. In effect, we still need to gain a deeper understanding of the differences of view on moral matters. We need to try to understand the processes that have resulted in their diverse development. To do so, it will be helpful to take a step further by exploring how we develop values, attitudes and beliefs that lead to decisions about what is ethical right and just.

**Values, Attitudes and Beliefs**

The primary meaning of integrity comes from its Latin ancestor integer, 'whole'. By the middle of the sixteenth century integrity had also acquired its moral sense: 'soundness of moral principle; the character of uncorrupted virtue; uprightness, honesty, sincerity'. Webster's dictionary expanded this sense to embrace an 'adherence to a code of moral, artistic, or other values'. Serving the truth, in the fuller sense as a value close to goodness and other than self, is central to the concept of integrity. It means accepting what is true, right or good from whatever quarter it comes.

The subject matter of ethics is personality, and only in reference to the personality structure as a whole can value statements be made about single traits or actions. The virtuous or the vicious personality, rather than single virtues or vices, is the true subject matter of ethical enquiry. Humans are able to have an awareness of themselves as separate entities; an ability to remember the past, to visualize the future, and to denote objects and acts by symbols; their reason to conceive and understand the world; and their imagination through which they reach far beyond the range of their
senses. To understand this process we need to have an appreciation of the way our character is developed and molded.

By means of the primitive processes of splitting, projection and particularly of introjections a rich world of inner objects, or representations in the mind of external objects, is built up; be these ‘objects’ significant people, values, feelings or concepts. Early introjections (taking in of external objects), since they are virtually all the infant has, are particularly potent, and the inner ‘objects’ (the mental images) they create are never forgotten. These early introjections, which of necessity are of parents or parental figures, create an inner object commonly referred to as the conscience or in technical terms, the superego. The introjection of the ‘good’ parent creates what I shall refer to as the ideal conscience, that is, a sense of ideals and positive morality — a pattern of what to do. And introjection of the ‘bad’ parent creates what I shall refer to as the persecutory conscience, a sense of guilt and negative morality — of what not to do. Initially, conscience is built up by identifying with, that is forming and taking in and retaining mental images of parental figures. As will be further explained, this same sort of process may occur later in life in exchanges between other authority figures such as schoolteachers and managers in organizations.

Attitudes have been defined as ‘relatively lasting organizations of feelings, beliefs, and behavior tendencies directed towards specific persons, groups, ideas, or objects. An individual’s attitudes are a product of the person’s background and various life experiences. As with personality, significant people in a person’s life — parents, friends, members of social and work groups — strongly influence attitude formation. Your attitudes are made up of your beliefs and feelings toward someone or something. You can’t observe attitudes per se but attitudes serve as a guide to behavior. The behaviours associated with an attitude can be identified by anyone who observes interaction between people. Thus, attitudes are very important to you because they dictate the way you interact with and treat other people or groups.
When evaluative feelings are attached to personal beliefs, attitudes are formed. An attitude is a conscious and selective judgment about a person, object, concept, or event. An attitude provides a mental predisposition to behave with consistency toward its subject. As forms of cognitive learning, attitudes tend to endure or persist over time. But attitudes can be changed. The changeable character of attitudes is important when we seek to manage performance, reduce conflict among groups, shape a corporate culture, or adopt ethical behavior.

Attitudes can apply to general classes of objects or groups, or to a specific person or idea. We can appreciate, therefore, that attitudes will exert a predictable influence on our behavior.

Attitudes involve three components: cognition, affect, and behavior. These are expanded on below:

**Cognition.** Attitudes involve a cognitive component or the beliefs, opinions, knowledge, or information held by the individual. A cognition is the belief or accepted data base that is conceptualized about an object, person, event or ideal. Beliefs can be transmitted through folklore or education. Alternatively, the database can emerge from direct experience.

**Affect.** Attitudes involve an affective component or the feelings, sentiments, moods, and emotions about some person(s), idea, event, or object. The affective component is the evaluation or judgment attached to the cognitive belief or data. Affect can involve liking or despising some people or some things. Usually affect is the process of attaching an emotional sentiment (either acceptance or rejection) to the object, person, event or idea.

**Behavior.** Attitudes involve a behavioral component or the intention or predisposition to act. Once the beliefs and affective evaluations are made, overt behaviors should follow consistently.

These components do not exist or function separately; thus an attitude represents the interplay of a person’s emotions, cognitions, and behavioral tendencies with regard to something — another person or group, an event, an idea and so on — in the individual’s
social world. For example, where someone, or some group, holds a very strong negative attitude about corruption, they will most likely not wish to conduct business with someone or some group who are considered to be corrupt. Conversely, where someone, or some group, is ambivalent about corruption it will not affect their dealings and relationships with anyone else or any other group no matter what their reputation and practice is regarding corruption.

Beliefs and values often combine to form all-encompassing ideals called values. A value is established when a belief or concept is enduring and provides a personally preferable mode of conduct or end-state of affairs. Often a value is the sum total of many attitudes that together provide personal commitment and consistency, for example, ‘honesty’ and ‘fairness’ are values.

We develop what we might refer to as personal value systems, by organizing a constellation of beliefs concerning preferable modes of conduct or existence. Since values are more general or abstract than attitudes, their influence on behavior tends to be less direct. Like attitudes, values are learned and may change as a result of societal or organizational experience. We conceive of values as normative propositions, held by individual human beings of what human beings ought to desire, e.g., the desirable. They are supported by internalized sanctions (our conscience), as described above, and function as:

(a) imperatives in judging how one’s social world ought to be structured and operated, and
(b) standards for evaluating and rationalizing the propriety of individual and social choices.

This approach emphasizes that values are normative standards by which human beings are influenced in the choice of their actions. The primary function of values in terms of organizational behavior is that they serve as determinants and guidelines for decision-making and action. Although of necessity, values have their origins in the influence of parents or parental figures, this dynamic continues through life with societal influences becoming more influential as time goes by.
The Influence of Society

It is significant that many of the value-attitude systems, which are shared and transmitted by the members of a society, are important to the well-being of the society rather than to that of the individual. The individual acquires such desirable but personally disadvantageous value-attitude systems as a result of the social rewards that come with their assumption and incorporation into specific patterns of overt response. The goal of eliciting favorable responses from others stands side by side with every one of the individual's more immediate and specific goals, and no pattern of behavior can be completely successful and rewarding unless it serves to achieve both.

The personality is not only a continuum but is also a continuum in a constant state of change. The process of developing new responses and extinguishing old ones goes on throughout the lifetime of the individual. Without such flexibility it would be impossible to survive in a world in which not only the external environment but also the individual's own potentialities are in a constant state of flux. However, there seems to be a fairly close correlation between the ease with which a particular response can be extinguished and its position in the scale of specificity. In general, the more specific a response the easier it is to extinguish it. Owing to environmental or other changes, a response that is linked with a single situation or with a very small number of situations, can easily become subject to the conditions that will lead to extinction. More generalized responses, on the other hand, are likely to be rewarded in connection with some situations even when they are unrewarded or punished in connection with others. It is a common experience that while specific patterns of overt behavior are fairly easy to extinguish, value-attitude systems are extremely hard to extinguish. Such systems tend to survive even when their overt expressions have been inhibited in many situations and to reassert themselves with almost undiminished vigor when new situations involving the particular value factor arise.
Perhaps the most outstanding and most continuous of human psychic needs is that for emotional response from other individuals. The term emotional response is used advisedly since the eliciting of mere behavioral responses may leave this need quite unsatisfied. We all know what it means to be alone in a crowd. It is this need for a response, and especially for a favorable response, which provides individuals with their main stimulus to socially acceptable behavior. People abide by the mores of their societies quite as much because they desire approval as because they fear punishment. (For a thorough discussion of attachment needs see Marris, 1974).

The need for emotional response from others is so universal and so strong that many social scientists have regarded it as instinctive in the sense of being inborn. Whether it actually is so or whether it is a product of conditioning is a problem that may never be solved. What we can say is that individuals are so completely independent on others during infancy that they cannot survive without eliciting responses from their parents or other carers. There is much good evidence that young infants require a certain amount of emotional response for their well-being. Indeed, as we are reminded by the eminent psychoanalyst Ferenci, 'Babies who aren't loved don't live'. Since all individuals go through the experiences of infancy, the question of whether this need is innate or acquired is really an academic one. In either case its presence is universal.

To summarize, our values and attitudes together form a stimulus response configuration that I have referred to as a value-attitude system. Once established in the individual, such systems operate automatically and, for the most part, below the level of consciousness. A single system of this sort may underlie several different patterns of overt behavior, providing motivations for all of them. Thus the individual's value-attitude system relative to cruelty may lead him to withdraw in one situation or to interfere in another.

The functional importance of value-attitude systems derives primarily from their emotional content. Behavior, which is not in accord with the individual's value-attitude systems, elicits responses of fear, anger, or at the very least, disapproval. This holds equally
whether the behavior is his own or that of others. Thus an individual who performs an act contrary to one of his own established value-attitude systems will experience considerable emotional disturbance both before and after. In most cases he will have such a reaction even though he knows that the act will not entail punishment. This disturbance will diminish with repetitions of the act, but will reappear with each new situation involving the particular system.

Similarly, other peoples' acts, which are contrary to one of these systems, will elicit emotional responses even when they do not threaten the individual in any way. This projective aspect of value-attitude systems will be familiar to anyone who has had to adjust him or herself to life in an alien culture. Even when the members of such a society are completely friendly and co-operative, merely observing certain of their behavior patterns is likely to make the outsider exceedingly uncomfortable. Which, basically, brings us to the point of this chapter, the need to explore the subjective state of both parties to the corrupt act.

**Analysis and Discussion**

From the foregoing we can appreciate the influence of both societal and organizational dynamics on the processes that are occurring. I should now like to concentrate for a while on organizational aspects. I shall start with the notion that it is helpful to view organizations as processes of human behavior. Organizations exist because people create and sustain them and, therefore, it is the members of the organization that we need to refer to. Essentially, human organizations have no structure other than the patterns of behavior that are also their internal functions. When these patterns of behavior stop, the organization ceases to exist (Khan, 1976).

From this view of organizations as processes of human behavior it therefore follows that they are contrived, and being of human construction they are infinitely susceptible to modification. They do not conform to the laws of growth and death that characterize biological organisms; there is no particular size and shape they must attain, or lifecycle they must follow. Functional branches or
systems do not hold organizations together, the cement that holds them together is ultimately psychological. In order that the organization is to exist, people must be motivated to engage in the stable recurring patterns of behavior that define the organizations and give them continued existence (Stapley, 1996: 50).

It is also helpful to go beyond this and to view organizations as a psycho-social processes. That is, we need to conceptualize the organization as a process of human behavior that is both psychological and social at the same time. At the 'social' level we need to analyze the technological, economic, sociological and political factors; the products and services the particular organization provides; and, the organizational structures, strategies, and procedures that management have created; that together comprise the everyday life of the company. These aspects of the processes of human behavior may be regarded as the ‘external’ realities of the members of the organization.

At the ‘psycho’ level we are talking about the subjective experience of members of the organization: about what goes on in the minds of members of the organization. This may include the ideas and ways of thinking about how they perceive the external realities and about how they shape their action towards them. Such actions will be influenced by their beliefs, values, hopes, anxieties, and the defense mechanisms they employ. Put another way, we are referring to the ‘internal’ realities of the members of the organization. It will be appreciated that these two levels — the external and the internal worlds of the members of the organization — are in continual interaction and it is false to divide them, but, for clarity of analysis it will be helpful to do so. In following paragraphs this approach will be applied to both Asians and those from the west who are doing business in Asia, but it may be helpful if I first refer to a consideration of the way our perceptual process works.

In all circumstances, whether Asian or western, and no matter what the particular experience is we need to appreciate that unless we are able to classify our experience on some basis of similarity we
will be unable to make sense of that experience. The way that we do this is to categories data perceived by our sensory processes according to our previous knowledge and experience. By the process of perception we impose some structure on new input, compare it with a pool of old information, and then either add to it or eliminate it. For all of us, the basis for our perceptive process is the pool of internalized information that in turn provides the basis for our self-concepts, which are the individual's views of himself. They begin in childhood and expand through object relations first with the mother and then with other significant family members. The object relations with the parents provide a continual psycho-social basis for learning what is pleasurable and what is distressing.

Whatever culture we are part of (be that societal or organizational), we seldom if ever enter any general situation which no human has ever experienced in the moral field. For morals are bound up with interpersonal and social relationships which have been with us since the dawn of civilization. The perceptive process means that we try to place a particular situation into its appropriate class of general situations. Otherwise we can apply no principles or rules to it. Sometimes these rules may be grouped together into codes. We can identify five kinds of codes, which will almost certainly overlap with each other: personal, group, social, legal and professional codes.

**Personal codes.** From our family life and early education we evolve our own personal code of ethics, which may or may not be consciously formulated as a set of rules e.g., 'always speak the truth'. We modify this personal code as our experience of life's situations accumulates.

**Group codes.** Groups that remain together for any length of time develop their own 'group personality' and code of morality. The latter is enforced by various degrees of social approval or pressure, culminating in ostracism for the extreme deviants. Consequently the individual faced with a moral problem may find one possible answer in the unwritten code of ethics of a group to which he belongs.
A group's influence on the moral standards of an individual member may be for the better or for the worse. Group codes are vitally important when any common action must be taken. For it is the value and ethical practices of the group and not an individual that will inform the consensus or majority decisions. Just as the individual leader or member can influence a group's morality, so also he is influenced by it — for better or worse.

Social codes. Looking beyond the individual and the group, we may discern another range of ethical guidelines in the unwritten social attitudes and norms of the day: the social code. We can distinguish this from the formal legal code — which at least reflects a society's moral assumptions — by emphasizing its unwritten form, being more in the nature of those norms in groups that are identified by social psychologists. In contrast to the legal code these standards have no other authoritative backing than the pressure or force of public opinion, and its ultimate sanction again is social hostility leading to ostracism, that silent prison without bars or warders.

This social code of morality, often derived from religion, shares in common with an individual's own code for behavior, two handicaps. First, it is difficult to apply in complex professional situations. Secondly, the rate of technological and social change has speeded up to such an extent that they often appear to be out-dated.

Legal codes. One solution is to make the society's morality applicable to general situations by enacting it into a carefully devised legal code. Law is the body of rules, whether formally enacted or customary, which a state or community recognizes as binding on its members or subjects.

The law is not morally neutral, for justice itself is a moral value. Moreover, the law recognizes the morality that emerges in a society from instinctive preference and free debate. Its function is to occupy new ground only when it is consolidated. It is for the legislature to
determine when the time has come to consolidate new ideas into the consensus and likewise to expel the old. Therefore an individual hesitating about the morality of a proposed action may well find some moral guidance in the law of the land.

**Professional codes.** Professional codes have some affinities with personal, group, social and legal codes, yet they retain a character of their own. Those occupying professional roles find themselves in general situations where the rules and principles of social or personal codes do not offer enough clear guidance. To cope with these uncertainties the professions concerned have evolved their own code of good conduct. Broadly speaking, these define the moral behavior which is expected of its individual members by the profession as a whole, (bearing in mind its standing or status) in society and the need to maintain sufficient public trust for the particular work to be done effectively. Therefore a professional code of ethics characteristically has both practical and moral ends in mind. It contains the profession's wisdom on how the inherent tensions between values that arise in its recurring general situations may be best resolved.

The good news is that all attitudes, beliefs and values are capable of modification and change. Although there will be strong internalized values that have been influenced from childhood, through family, group, societal, legal and professional experiences; none of this is set in stone and all values are capable of change. However, for change to occur there is a need for self-reflection and the adoption of new values that replace the previous ones. In some circumstances this will be more difficult than others; in particular, it will be difficult when to change one’s values means isolating oneself from others. It will be recalled that the goal of eliciting favorable responses from others stands side by side with every one of the individual’s more immediate and specific goals, and no pattern of behavior can be completely successful and rewarding unless it serves to achieve both.

All the while we are in our host culture we will share most, if not all, of the five kinds of codes referred to above, with our families,
friends, and work colleagues. But, even in our own native country, this may not be the case when we meet people from different family or societal groupings, or from different professions and organizations. And, it will almost certainly be far less likely when we are required to work in another country, especially one with a considerably different culture from that which we are used to. In these circumstances, it may be particularly difficult to control and manage our emotions to the extent that we can listen to and understand the other party to our business activity.

Learning about the dynamics of life is a matter that has to be considered in the context of a relationship between two people, or two groups of people. As Gregory Bateson (1979), pointed out, it is correct (and a great improvement) to begin to think of the two people to the interaction as two eyes, each giving a monocular view of what goes on and together giving a binocular view in depth. This double view is the relationship. Relationship is not internal to the single person. Indeed, it would be nonsense to talk about ‘dependency’ or ‘aggression’ or ‘prejudice’ and so on as an individual activity. We cannot be dependent unless there is someone to be dependent on; we cannot be aggressive unless there is someone to be aggressive with; we cannot be prejudiced unless there is someone to be prejudiced about; and, we cannot be corrupted unless there is someone to be corrupted by. All such words have their roots in what happens between persons, not in something other inside a person.

When two people or two groups of people come together to do business, each party will bring with them their own values regarding corrupt activity. When each of them is confronted with the possibility of corruption, their perceptive process will compare the information with their pool of internalized information which will include the codes (or absence thereof) under the above five categories. The likely reaction is bound to differ for both the Asian and western parties to the relationship. An analysis of how and why each adopts their different approach is the matter that will help us to know the sort of responses we need to develop. I shall start with the Asian response and then move to the western.
Asian Corruption

Asians who are party to this relationship, and doing business in their own country: are not removed from their culture; and, are still surrounded by the social or external objects that they rely upon for support. The organizational structures, strategies, and procedures that organization management has created; that together comprise the everyday life of the company will still be available to them. Such actions will be influenced by their beliefs, values, hopes, anxieties, and the defense mechanisms they employ. In other words, their internal objects will also be available to them.

What they do and the action they take may be apparent, but why they do it will be influenced by their internal values. If the shared values of Asian culture do not include a belief that corruption is wrong; if there are no internal or social sanctions against corruption; it will be an accepted practice. Even if being part of the legal code prohibits corruption; group, societal, and cultural influences will be greater. This may be especially so where there is corruption on the part of officials and those charged with the responsibility of law enforcement.

What we are in effect saying is that where corruption is part of the organizational and societal culture, individuals will adopt the same values because of their attachment and affiliation needs. At an individual level they may understand that corruption is morally wrong and that it is contrary to the law. However, the fear of punishment does not match the fear of being ostracized. This all-important need for attachment will override other needs and values.

As was stated above, the most outstanding and most continuous of our psychic needs is that for emotional response from other individuals. It is this need for a response, and especially for a favorable response, which provides individuals with their main stimulus to socially acceptable behavior. People abide by the mores of their societies quite as much because they desire approval as because they fear punishment. If we are to bring about a change in Asian values we need to bring about a culture change.
We may view ethics as a process by which individuals, social groups, and societies evaluate their actions from the perspective of moral principles and values. And, ethical behavior means the activity of applying these various yardsticks to the actions of persons and groups. All the while ‘the way things are done around here’ includes corruption we can be sure that the moral principles and values are not strong enough to prevent such behavior. Elsewhere, I have described (see Stapley, 1996; Stapley, 2001), what is required to bring about a change in societal culture. In this instant, what is required is a change to a culture that will result in corruption being internalized and viewed as unacceptable. This will only happen if those in positions of authority in Asia take steps to change that culture by developing official strategies, structures, and behavior at the highest levels.

This is likely to be a slow process, and, even with the best of will and the greatest effort, it will take several years. Being part of ‘the way things are done around here’ presents those concerned with a difficult and persistent problem. One that will only be effectively dealt with if there is concerted, consistent and continuing activity aimed at gaining an acceptance of institutionalized ethical behavior. But, of course, there are two parties to the corrupt act and the other party can play a significantly helpful role.

Positive action can be taken in regard to those from the west who may become ‘corrupted’. Government leaders, top management staff, and, academic scholars, in the west can influence their own personnel who are traveling to do business in Asia in a more direct manner and thus ensure that, as far as possible, this problem is not perpetuated by the weakness or frailty of their own staff; or by the attraction and seduction of wrong-doing, on the part of the corrupted. It is to those from the west doing business in Asia — the other party to the relationship — that I shall now turn to. For them this may be a totally different experience and above all, we need to understand the effects on them of Asian environmental influences.
Western Corruption

As a convenient starting point we need to be aware that in every change there is a loss of the currently known. What happens to the personality when we go through a process of dramatic socialization? From the moment of birth a child is related to the world around him, and the roles that a person performs in life are made up of a complex series of focal action patterns that constitute a repertoire of problem solving solutions. This repertoire because it is based on experience, assumes that reasonable expectations of the world will be fulfilled. As time goes by, the individual's stock of 'solutions for all eventualities' grows greater, and novel solutions become rarer. Any major change will affect this situation. In such a case, the change not only alters expectations at the level of the local action patterns but also alters the overall plans and roles of which these form a part. Such a change is a huge upheaval and one that could result in disintegration — it is a world which is in chaos.

That I require the continuity, consistency and confirmation of my world that Kernberg (1966) refers to, is without doubt. If the possessions and roles by which we gain our continuity, consistency and confirmation are shared, then we can assume that if we lose our ability to predict and to act appropriately, our world will begin to crumble, and since my view of myself is inextricably mixed up with my view of the world, that too will begin to crumble. If I have relied upon other people or possessions to predict and act in many ways as an extension of myself then the loss of those people or possessions can be expected to have the same effect upon my view of myself as if I had lost a part of myself. In other words, if I am in an alien environment I am without my usual support.

The missing external part of our environment (the socio) is reasonably obvious to the individual in an alien culture but we also need to be aware that the internalised objects of the internal part our environment (the psycho) still travels with us. These include, at the macro level, national values and attributions that will be significantly different depending on one's cultural background. At the micro level, these will be more about
those influences that derive from the culturally patterned behaviour of significant individuals, starting from when we were children. Thus, the experience of working in a society where our stock of 'solutions for all eventualities' is found to be ineffective, presents us with huge problems.

I have described elsewhere (see for example, Stapley, 1996; Stapley, 2001), that one of the effects of entering an alien culture which creates the experience of 'culture shock', is that we lose our social or external objects which are normally available to us and which we use for our projections whether good or bad. In these circumstances, it seems that we are more likely to make use of our internal objects for the projection of feelings such as those of anger and inadequacy. This leads to the reported experiences of those suffering culture shock — the comparison to dying, anxieties about body health, an inability to communicate, and of feeling like helpless children.

Faced with these extreme forms of anxiety there are several courses of action we can take. One frequently adopted approach is to deal with the anxiety provoking material by repression — the exclusion of any direct influence on consciousness or on behaviour. Such an outcome of conflict, in which one tendency is driven down to the unconscious and confined there by the other, is usually designated by the technical term 'repression'. The result being that the individual then normally becomes quite unaware of the existence of any such tendency within their mind. For some in this situation, the anxiety provoking material may be the emotional disturbance arising from the conflict with their conscience or values regarding corruption.

In these circumstances, some individuals may respond by totally excluding any notion of conscience from their minds and behaving in an uncaring and unethical manner. Thus, the individual may be easily seduced into all manner of corrupt behaviour. In this state, there will be an absence of any sense of ideals and positive morality — a pattern of what to do; or, sense of guilt and negative morality — of what not to do. In this situation, faced with the possibility that a bribe can guarantee success, as opposed to facing
up to the doubts and difficulties involved in competing in the usual manner, some may find bribery so seductive that they will gladly succumb to the temptation.

There can be little doubt that those who are subject to ‘culture shock’ are extremely vulnerable. This extends beyond those weak characters referred to above and may literally include anyone subject to this experience. All subject to the unsettling and anxiety provoking situation of culture shock do not have the continuity, consistency and confirmation of familiar external objects but more than this, they may also discover that internal objects such as their values are at odds with those of the culture of the society and organisations they are now working in. Most people in the west are not normally involved in bribery and other forms of ‘serious’ corruption. They have developed values that consider bribery to be reprehensible and non-ethical. Here, they may find that their values regarding corruption are being ignored, dismissed, and perhaps derided by those they are working with. In this vulnerable state — which at worst will have reduced them to feeling like helpless children — they will be desperately seeking to satisfy that most vital of all human needs — the need for attachment to other human beings.

It will be recalled that the most outstanding and most continuous of human psychic needs is that for emotional response from other individuals — the need for attachment. It is this need for a response, and especially for a favourable response, which provides the individual with his main stimulus to socially acceptable behaviour. The individual acquires such desirable but personally disadvantageous value-attitude systems as a result of the social rewards that come with their assumption and incorporation into specific patterns of overt response. The goal of eliciting favourable responses from others stands side by side with every one of the individuals more immediate and specific goals, and no pattern of behaviour can be completely successful and rewarding unless it serves to achieve both. People abide by the mores of their societies as much because they desire approval as because they fear punishment.
Faced with an unfamiliar world, one that is experienced as excluding them at multiple levels — language, external objects, and values — those from the west may feel that they are deprived of this primary need for attachment. The need for emotional response from others is so universal and so strong that they may be so desperate that they are prepared to do almost anything to achieve this need. This may include giving up on values that consider bribery to be reprehensible and non-ethical. In other words, to identify with the values of the other party in an attempt to gain acceptance and inclusion. This sort of behaviour might also be referred to as ‘going native’.

The goal of eliciting favourable responses from others stands side by side with every one of the individuals more immediate and specific goals, and no pattern of behaviour can be completely successful and rewarding unless it serves to achieve both. No matter that the individual may be aware that corruption is unacceptable or illegal behaviour in their home country, they are likely to abide by the mores of the society they are now in because they desire approval. The fear of punishment, which together with strong societal disapproval in the west, is no longer a factor of any significance in this environment.

If individuals who go from the west to work in Asia, have their values compromised because of the need for attachment this will do little to help the less corrupt nations to reduce corruption. There is clearly a need for those in positions of authority in the west to develop notions about what might be done to help the less corrupt nations to develop filters and practices that will enable their representatives to lead by example. Given the complexity of the dynamic processes occurring, responses that come under the generic heading of ‘quick fixes’ are unlikely to be helpful. Much good work is being done through the auspices of several influential international organisations. But, it is suggested that the most effective strategies and practices may be those aimed at ensuring that those from the west doing business in Asia do not succumb to the seduction of corruption. In the following paragraphs I shall set out what I feel are the basic requirements in the design and
development of cutting edge strategies and practices aimed at reducing corruption.

Many of the existing responses have been on the lines of familiarisation courses. These are a helpful starting point but it is suggested that they are nowhere near sufficient to deal with the sort of deeper understanding that the above problems require. Familiarisation courses will enable those who are about to work in Asian countries with the opportunity to learn something of the 'socio' or external aspects of their impending experience. At this level they can learn about the technological, economic, sociological and political factors that they will experience; the products and services that are generally available; and, the societal and organisational structures, strategies, and procedures that are in place; that together comprise the everyday life of the society or company they are visiting. In other words, those aspects of the processes of human behaviour that will be the 'external' realities of members of organisations who are about to visit Asian countries.

However, if we want those who are about to visit Asian countries to know something about the 'psycho' level; about what is likely to go on in the minds of those people, we need to provide them with opportunities for learning about their subjective responses to culture shock. At this level we need to be aware that each individual is likely to react in a different way. It is very much a matter of the subjective experience of each individual and about what goes on in the minds of each individual. We know that this may include the ideas and ways of thinking about how they perceive the external realities and about how they shape their action towards them. And, that their actions will be influenced by their beliefs, values, hopes, anxieties, and the defence mechanisms they employ. In other words, we are now referring to the 'internal' realities of those who are about to visit Asian countries. I deliberately refer to 'opportunities for learning' because these are not matters that can be taught or trained. Rather, what is required is some form of experiential learning.

As described above, simply providing individuals who are about to travel to Asian countries with information about their external realities is not sufficient. The fact is that the more important knowledge they
require is about their internal realities; about how they are likely to react to the changed cultural realities. For many years, Group Relations Conferences have provided members with opportunities to learn, in an experiential way, about their own involvement in societal and organisational dynamics. More specifically, such events enable members to develop greater maturity in understanding and managing the boundary between their inner world and the realities of their external environment. (For a fuller description of Group Relations Conferences see Miller (1989). For applications of the Group Relations approach see Gould, Stapley & Stein (2001)).

The structure of a Group Relations Conferences is such that it involves the removal of many of the conventional trappings. This, coupled with the interpretations of the staff; and, the intensity of the 'social island' combine to call in question existing assumptions and to generate new insights. In this environment, three different types of learning are likely to occur. At the simplest level, members learn to identify and label some of the unfamiliar phenomena that they encounter, but they do so as observers. A second kind of learning goes beyond observation to insight, though it is also partly conceptual: the experience adds to the ways in which the individual classifies the world and relates to it — particularly involvement in unconscious processes. Members often speak of Conference learning as giving them another perspective on human behaviour, including their own, and that is often what they mean. They may however be referring to a third type of learning, which implies not an additional perspective but a different perspective.

This third level is referred to by Bateson (1973) who describes this third level as 'it entails a capacity to doubt the validity of perceptions which seem unquestionably true'. He goes on to describe how this is something different from merely replacing one apperceptive habit by another. It is also something different from being knowledgeable about one's own character. The experience of this third level of learning is the experience of becoming responsible for one's behaviour. It is the realisation of unconscious behaviour such as dependence as something one is, and is doing. Second level learning is the minimum level of learning which is
desirable for individuals travelling to new cultures. The Group Relations approach provides opportunities for members to learn that ‘socio’ processes will be affected by and cannot be isolated from ‘psycho’ processes. It is this difference that will provide the required cutting edge development.

Concluding Remarks

Viewing the corrupt act as a relationship between two people or two groups of people is exceedingly helpful. Relationship is not internal to the single person or individual group; and, we cannot be corrupted unless there is someone to be corrupted by. Corruption has its roots in what happens between persons, not solely in something-or-other inside a person. We are therefore able to influence corruption both directly and indirectly. By taking action to change the Asian culture to one where corrupt behaviour is internalised as unacceptable, we can directly influence the corrupter. In addition, those in the west can develop strategies and practices to ensure that those from the west who are likely to be seduced into corruption are sufficiently aware of and able to control and manage their emotions, so that they will not act in corrupt ways. If that were the case, the simple truth is that there cannot be a corrupt act. Thus, while acknowledging the difficulties associated with bringing about societal and organisational culture change in Asia, western strategies and practices can indirectly but effectively help to control corruption in Asia.

Consequently, the positive activities of Government leaders, top management staff, and academic scholars in the west, in preparing those who are travelling to Asia to do business, are vitally important. The results will not only be highly influential in respect of their own organisational activities but also in respect of the extent of corruption in Asia. However, to achieve their aim it cannot be stressed strongly enough that these positive activities must provide opportunities for learning at both the ‘socio’ and ‘psycho’ levels. Without the latter, members of organisations will not be sufficiently prepared. To achieve this end, it also requires that those employed
to provide the opportunities for learning need to be consultants working in a systems psychodynamic manner who have the necessary skills and awareness to create and facilitate appropriate learning opportunities.

References

Fighting CORRUPTION in Asia

Fundamental changes within economies are needed to create arm’s-length relations between governments, corporations, and banks. We are taking risks when investing in the future, and risk-taking demands openness and truthfulness from the agents we employ. If investors and accountants can concur on the degree of disclosure that is morally right we may come to some global agreement on what constitutes corruption — but to do this we have to bring together those who advocate profit-making with those who see this as usury; and we have to care for the future in novel ways — unknown in the past — so as to allow firms to be locally inefficient (apparently) while preserving the environment.

This book looks widely at the prevailing situation in Asia and considers how little some governments are doing to guide their institutions towards probity and transparency. While fundamental changes are needed around the globe, it is in the developing nations that there is scope for radical change in the near future, as their institutions are re-created to meet the modern world. Once developed and functioning their managers will have the opportunity to facilitate and re-direct the institutions in the developed world, which happen to be more conservative than their own.