

Anti-Corruption Policy
*Can International Actors Play a
Constructive Role?*

Edited by
Susan Rose-Ackerman
and
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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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Library of Congress Cataloging-in-Publication Data

Anti-corruption policy : can international actors play a constructive role? /
Susan Rose-Ackerman and Paul D. Carrington.

pages cm

"Based on the papers prepared for a 2011 workshop on anti-corruption policy organized at the Rockefeller Foundation Center in Bellagio, Italy."

Includes bibliographical references and index.

ISBN 978-1-61163-303-0 (alk. paper)

1. Corruption--Congresses. 2. Political corruption--Prevention--International cooperation--Congresses. I. Rose-Ackerman, Susan. II. Carrington, Paul D., 1931-

K5216.A6A58 2011
345'.02323--dc23

2013000943

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

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Preface

This edited volume is based on the papers prepared for a 2011 workshop on anti-corruption policy that we organized at the Rockefeller Foundation Center in Bellagio, Italy. For the workshop, we asked each participant to prepare a short paper that focused on the way international bodies might contribute to the anti-corruption effort. Most of these original contributions have been revised for inclusion here.

As a law professor and a social scientist, we were eager to cross the disciplinary divides between lawyers and social scientists and the sometimes deeper divisions between academics, on the one hand, and practitioners from international financial institutions and from the worlds of journalism and civil society. This edited volume is the result of our collaborative effort.

We have grouped the chapters into four thematic sections. After Rose-Ackerman's introductory reflections in chapter 1, we begin with two chapters by World Bank staffers that summarize the promises and challenges of good governance programs in International Financial Institutions. Then, in the next section, we broaden the focus to include chapters dealing with other types of international actors, such as civil society, business, and the media. A final chapter in that section questions whether democracies will invariably support the anti-corruption agenda. The next two sections focus on international law and dispute resolution. Several chapters consider the strengths and weaknesses of existing anti-corruption treaties, such as those promulgated by the OECD and the UN. One chapter assesses another type of institution: the Financial Action Task Force. The last section confronts the overlapping roles of public and private law in the control of transnational bribery. Chapters discuss the World Bank's sanctioning system and the status of contracts tainted by bribery, especially ones that are the subject of international arbitration. We conclude that sec-

tion with Carrington's proposal for expanding the international private law remedies for fighting corruption

We are grateful to all the participants and especially to those who took the time to revise their contributions for this volume. We are ably assisted by Susan's assistant Cathy Orcutt and by two student editors, Lynn Hancock, a graduate student in Political Science at Yale, and Lauren Ross, a law student at Duke. The workshop was made possible through the generous financial support of the Rockefeller Foundation, the Open Society Institute, the Yale Law School, and Duke Law School. We are very thankful for their assistance.

Paul Carrington, Duke University
Susan Rose-Ackerman, Yale University
November 2012

Contributor Biographies

Patrick Alley is a director of Global Witness and co-founded the organization in 1993. He took part in Global Witness' first investigations into the Thai-Khmer Rouge timber trade in 1995, and since then has taken part in over fifty field investigations in South East Asia, Africa and Europe, and in consequent advocacy activities. In addition to his cross-organizational involvement, based on the organization's experience in tackling conflict diamonds, and former Liberian President Charles Taylor's arms for timber trade, Patrick focuses on the thematic issue of Conflict Resources, particularly in the Democratic Republic of Congo, and in the past in Liberia and Côte d'Ivoire. Patrick also specializes in Global Witness' work on forest and land issues, especially challenging industrial scale logging and land grabbing in the tropics. In addition, he is involved in the strategic leadership of Global Witness.

Paul D. Carrington is a Professor of Law at Duke University and the former Dean of its law school. He is a graduate of the University of Texas (1952) and the Harvard Law School (1955). He is the author or editor of seven books and numerous symposia, and is the author of more than one hundred articles in academic legal journals. Recent books are *Stewards of Democracy* (1999); *Spreading America's Word* (2005); *Reforming the Supreme Court: Term Limits for Justices* (edited with Roger C. Cramton, 2006); *Law and Class in America: Trends since The Cold War* (edited with Trina Jones, 2006); *American Lawyers* (2012). Since 1985, he has researched the merits and demerits of American dependence on private enforcement of public law. He is now advocating the use of that method to enforce international law and national laws enacted to deter transnational corrupt practices.

Kevin Davis B.A. (McGill), LL.B. (Toronto), LL.M. (Columbia) is Vice Dean and Beller Family Professor of Business Law at New York University School of

Law. His research focuses on: transnational anti-corruption law; quantitative measures of the performance of legal institutions; and, innovation in contracting. Publications include: “Does the Globalization of Anti-Corruption Law Help Developing Countries?” in J. Faundez and C. Tan (eds.), *International Economic Law, Globalization and Developing Countries* (2010); “The Relationship between Law and Development: Optimists versus Skeptics,” *American Journal of Comparative Law* (2008) (with Michael Trebilcock); “Taking the Measure of Law: The Case of the *Doing Business Project*,” *Law & Social Inquiry* (2007) (with Michael Kruse); “Self-Interest and Altruism in the Deterrence of Transnational Bribery,” *American Law & Economics Review* (2002).

Roberto de Michele is a law graduate from the University of Buenos Aires with an LL.M. from Yale Law School. He is currently a lead specialist in the Inter-American Development Bank’s Capital Markets and Financial Institutions Division. He was the director of Transparency Policy Planning of the Anticorruption Office of the Argentine Republic, and manager of the Private Initiative Program for the Control of Corruption at Citizens Power Foundation (Fundación Poder Ciudadano), and he has worked as a consultant for the World Bank, the Inter-American Development Bank, the United Nations, and the OECD, among other agencies. He is a founding member of the Association for Civil Rights (ADC). He is the author of the book *Los Códigos de ética en las Empresas*, among other publications, and one of the co-authors of the Anticorruption Toolkit for the UN’s Global Compact on Anti-Corruption.

Pascale Hélène Dubois is the Suspension and Debarment Officer (formerly known as the Evaluation and Suspension Officer) for the World Bank, where she reviews sanctions cases brought against firms and individuals accused of fraud and corruption in Bank-financed projects. She decides whether to suspend the contracting eligibility of the firms and individuals subject to debarment proceedings; if there is no appeal, the decisions of her office are final. Dubois has been involved with the Bank’s anticorruption efforts for close to a decade. She came to the World Bank after a career as a transactional attorney in the private sector. She is a Certified Fraud Examiner (CFE), Co-Chair of the ABA Section of International Law’s Anti-Corruption Committee, and teaches a course on international anticorruption at Georgetown University Law Center. Dubois received her Lic.Jur., *cum laude*, from the University of Ghent, Belgium, and her LL.M. from New York University.

John Dugard is Professor of International Law, Universities of Leiden and Pretoria; Member of UN International Law Commission (1997–2011); Judge *ad hoc* International Court of Justice; Member of Institut de Droit International;

UN Special Rapporteur on Human Rights in the Occupied Palestinian Territory (2001–2008); Author of *Human Rights and the South African Legal Order* (Princeton 1978); *International Law. A South African Perspective* (Juta, 4th ed 2011).

Robin Hodess joined Transparency International in 2000 to establish the *Global Corruption Report*. She became Policy and Research Director at TI in 2004, and in January 2010 became TI's Group Director for Research and Knowledge. Prior to joining TI she developed a program on economic globalization entitled, "Justice and the World Economy" for the Carnegie Council on Ethics and International Affairs. She has taught media and politics at the Free University Berlin and Leipzig University (1997–98) and served as assistant director for international security programs at the Center for War, Peace and the News Media at New York University (1992–94). Hodess holds a Ph.D. and M.Phil. in international relations from Cambridge University (UK) and a B.A. in history from the University of Pennsylvania.

Jana Kunicová is a Senior Public Sector Specialist at the World Bank and a cluster leader on political economy and governance in the Public Sector and Institutional Reform cluster in the Poverty Reduction and Economic Management department of the Europe and Central Asia Region. She works on governance and political economy issues across the region, and especially in Central Asia, where she is a public sector and governance coordinator for WB programs. In Tajikistan, in particular, she manages a large governance program, focusing on the implementation of the Governance and Anti-Corruption Strategy for 2010–2014. Kunicová holds a Ph.D. in political economy from Yale University. Her research on governance, institutions and corruption has appeared in the *British Journal of Political Science*, *Party Politics*, and edited volumes. She is a core member of the World Bank Political Economy Community of Practice.

Johann Graf Lambsdorff holds a professorship in economic theory at the University of Passau, Germany. He studied mathematics and economics at the Universities of Frankfurt am Main and Göttingen, Germany. In 1995 Graf Lambsdorff designed the Corruption Perceptions Index on behalf of Transparency International and oversaw its production until 2008. He is globally recognized for his work on measuring corruption, the institutional and behavioral economics of reform and his lectures and keynote speeches on anti-corruption. His research also embraces topics in monetary and international economics. His books and articles have been published by Cambridge University Press, Routledge, *Journal of International Economics*, *Journal of Con-*

flict Resolution, Economics of Governance, Kyklos, Public Choice, Journal of Economic Psychology and Journal of Economic Behavior and Organization.

Abiola O. Makinwa (née Falase) LL.B. (Ife), LL.M. (Lagos), LL.M. *cum laude* (Rotterdam), Ph.D. (Rotterdam) is a member of the faculty of the International and European Law program of The Hague University of Applied Sciences where she developed the first Dutch law undergraduate course on Multinationals and Corruption. Her recently published book, *Private Remedies for Corruption: Towards an International Framework* focuses on the role of private actors in the fight against corruption. In August 2010, Abiola was awarded the first HIL Young Talent Essay Award for her essay entitled “Future Thinking through the Prism of International Corruption.” In June 2011 she was invited to join the Group of Experts Meeting of the World Legal Forum on the Inclusion of “International Fraud and Corruption” in The Hague Utilities for Global Organizations (HUGO) project.

Olaf Meyer is a Senior Research Fellow at the Centre of European Law and Politics at the University of Bremen, Germany. He holds a Ph.D. from the University of Muenster and a MA from Oxford University. Olaf studies corruption from the perspective of international commercial law. In particular, he searches for effective private law remedies in cases of corruption with a view to strengthening victims’ rights and to open a second front against corrupt individuals, thereby supplementing the means of criminal prosecution. He has edited the book *The Civil Law Consequences of Corruption* (2009).

Aileen Elizabeth Nowlan worked with Pascale Dubois at the World Bank in the summer of 2010. She earned a J.D. from Yale Law School in 2012 and is currently a lawyer at Cleary Gottlieb in New York focusing on litigation.

Joost Pauwelyn is Professor of International Law at the Graduate Institute of International and Development Studies (IHEID) in Geneva, Switzerland and Co-Director of the Institute’s Centre for Trade and Economic Integration (CTEI). He is also Senior Advisor with the law firm of King & Spalding LLC. His area of expertise is international economic law, in particular, the law of international trade and investment. Before joining the Graduate Institute in 2007, he was a tenured professor at Duke Law School, USA. He also served as legal officer at the World Trade Organization from 1996 to 2002 and practiced law at a major Brussels law firm. Joost has been a Visiting Professor at Georgetown, Stanford and Harvard law schools.

Mark Pieth is Professor of Criminal Law, Basel University; Chairman, Working Group on Bribery in International Business Transactions, OECD; Chair-

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Francesca Recanatini joined the World Bank in 1998 and currently leads the Anti-Corruption Thematic Group, providing guidance on anti-corruption issues and accountability. She coordinates work on governance and anti-corruption diagnostic tools in Latin America and Africa, she manages the Actionable Governance Indicators project, and launched an initiative to promote the capacity and effectiveness of Anti-Corruption Authorities. She holds a Ph.D. in Economics from the University of Maryland, and began her career at the Maryland's Center of Institutional Reforms and Informal Sector (IRIS) at the University. She has published papers on corruption and poor governance, contributing recently to the *Global Handbook on Research and Practice in Corruption*, Adam Graycar, editor (2012); and to the *International Handbook on the Economics of Corruption*, Susan Rose-Ackerman and Tina Søreide, eds. (2011).

Susan Rose-Ackerman is the Henry R. Luce Professor of Jurisprudence (Law and Political Science) at Yale University. She earned a Ph.D. in economics from Yale University and has held fellowships from the Guggenheim Foundation and the Fulbright Commission. She has written widely on corruption, administrative law, federalism, and law and economics. Her most recent books are *International Handbook on the Economics of Corruption* (vol. I, editor, 2006; vol. II, editor with Tina Søreide, 2011); *Corruption and Government: Causes, Consequences and Reform*, 1999 (translated into 17 languages); and *From Elections to Democracy: Building Accountable Government in Hungary and Poland* (2005). Her current research interests are comparative administrative law, with a focus on the United States and Western Europe, and the political economy of corruption and its control.

Tina Søreide is a Postdoctoral Research fellow in law and economics at the Faculty of Law, University of Bergen, on leave from her post as Senior Researcher at Chr. Michelsen Institute (CMI) in Bergen, Norway. From 2008 to

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Michela Wrong has spent 18 years reporting on Africa. As a correspondent for Reuters news agency, based in first Cote d'Ivoire and then Zaire, she covered the turbulent events of the mid 1990s in west and central Africa, including the fall of Mobutu Sese Seko and the post-genocide period in Rwanda. She then moved to Kenya, where she became Africa correspondent for the *Financial Times*. In 2000 she published her first book, *In the Footsteps of Mr Kurtz*, the story of Mobutu, which won a PEN prize for non-fiction. Her second book, *I didn't do it for you*, focused on the Red Sea nation of Eritrea. Her third book, *It's Our Turn to Eat*, tracks the story of Kenyan corruption whistleblower John Githongo and was described as "a cross between Le Carre and Solzhenitsyn." She won the 2010 James Cameron prize for journalism "that combined moral vision and professional integrity."