

The International Anti-Corruption Regime

From the FCPA to the OECD Anti-Bribery Convention and Beyond

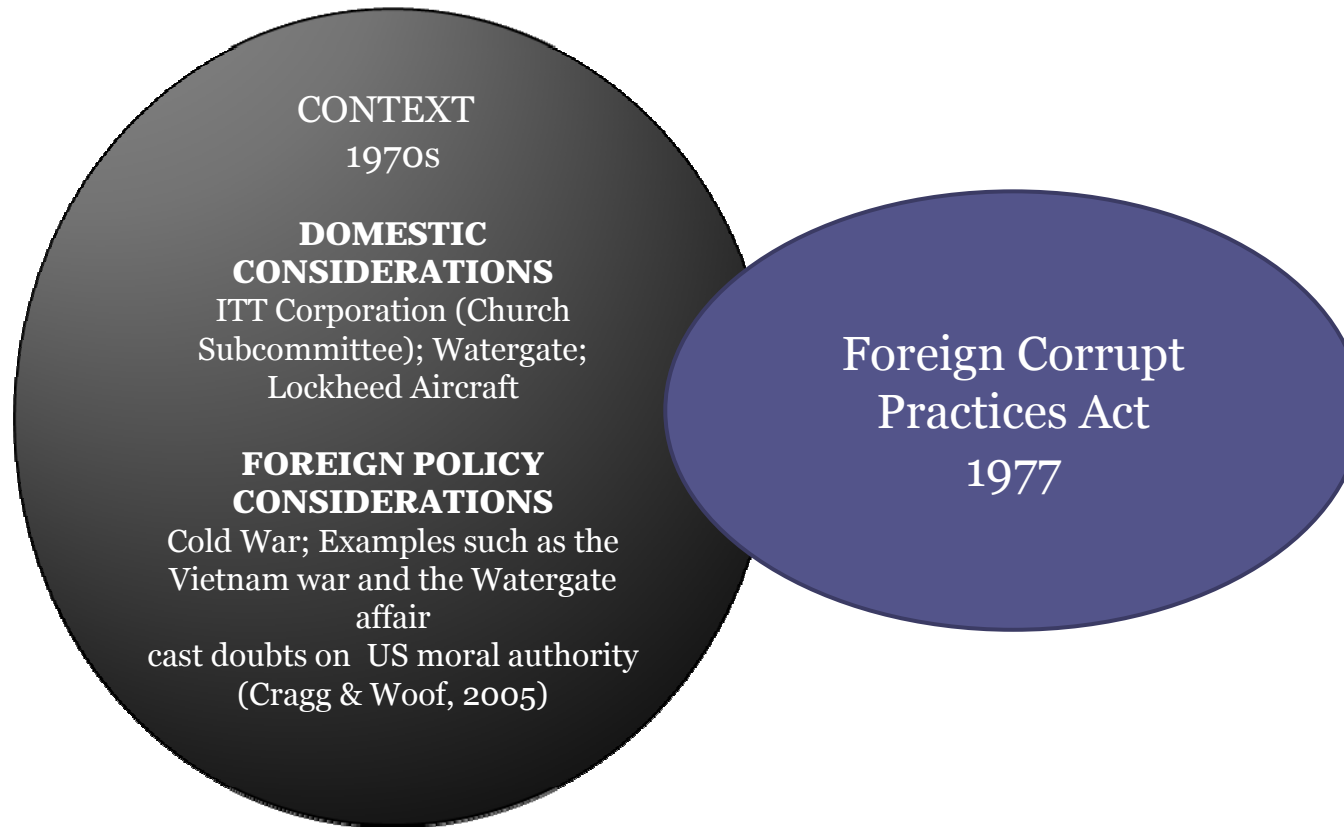
Abstract

- How did corruption, the paramount riddle of good governance, come to be addressed globally? While the international anti-corruption regime, largely taken for granted in the literature, and the US Foreign Corrupt Practices Act (FCPA) of 1977 have both received considerable attention, the link between the two has remained obscure. My poster presentation will trace the emergence of the international anti-corruption regime from its national origins in the US Foreign Corrupt Practices Act. It will show the mechanism through which the anti-corruption regime originated and spread from a nation state's attempt to protect its companies from the adverse effect on their competitiveness caused by a domestic anti-corruption act. The poster will further trace the mechanism through which the anti-corruption regime emerged from the US FCPA to the OECD Convention of 1997 and the subsequent appropriations of anti-corruption policies in the framework of the EU, UN, the IMF, and other international organizations. It will do so by first providing a scheme of the developments in the US Congress in 1976, the subsequent lobbying of US companies, affected by the Act, and their success at mobilizing the executive when a favourable change of administration occurred. Secondly, my poster presentation will address the international level by tracing how after a decade of US lobbying at the OECD, the Convention of 1997 was signed, which on its turn became one of the cornerstones of the global anti-corruption efforts. While stressing the importance of non state actors and NGOs such as Transparency International for the further development of the regime, the poster presentation will aim at underlying the undermined 'national' origin of the global anti-corruption efforts. It will therefore conclude that since the anti-corruption regime sprang from the inability of a nation state to preserve democratic norms in its domestic jurisdiction without exporting these norms to the international level, it presents a convincing example of how the tools of global governance came from the toolbox of the nation state itself.

International regimes and theories of hegemonic stability

- **International regimes and the return of the role of ideas to studies of International Relations** . The question of order in an anarchical system.
- **International regimes** (rules and practices clustered around an issue area) **as tools of global governance**.
- **Theories of Hegemonic Stability** (predominant influence of one state over others) is a 'state of the international system' (Puchala, 2005) in which the predominant power steers the international system. In theories of hegemonic stability (Kindleberger, 1973; Keohane, 1980) the hegemon steers the international economy by adding certainty, order and predictability to the system through the creation of rules that guide international commercial and financial matters.
 - The main bulk of research in the 1980s was concentrating on the presumed erosion of US hegemony in the previous decade. In the words of Balin (1993) "the US has not acted as the sole hegemon since the 1970s ...a group of great powers replaced the US as the hegemon." This was possible through an 'institutionalized hegemony,' which is based on a 'liberal economic order in terms of great power cooperation.' (Balin's analysis provides a picture of Gramscian hegemony of historical blocs).

Foreign Corrupt Practices Act 1977





The road to Lockheed:

- ITT International Telephone and Telegraph Corporation offered the CIA 1 million US dollars to change the elections in Chile
- Subcommittee chaired by Senator Church concluded that ITT had not acted 'unlawfully' – it breached an ethical not a legal standard of international business
- 1973 ITT investigations closed Subcommittee Church extended mandate to Watergate

Controversies surrounding the adoption of FCPA

- Corporations vs. legislators (hearings at the Senate, competitors' advantage)
- Senator Proxmire vs. Ford Administration
 1. Commitment to Securities Exchange Act
 2. Foreign Policy implications

- ‘Bribery of foreign officials by some US companies casts a shadow on all US companies . . . [and] creates severe foreign policy problems. The revelations of improper payments inevitably tend to embarrass friendly regimes and lower the esteem for the United States among the foreign public. It lends credence to the worst suspicions sown by extreme nationalists or Marxists that American businesses operating in their country have a corrupting influence on their political systems.’ (US Senate, 1976)
- Report to the American Congress
General Accounting Office survey (1981)

30% -42% loss of foreign business

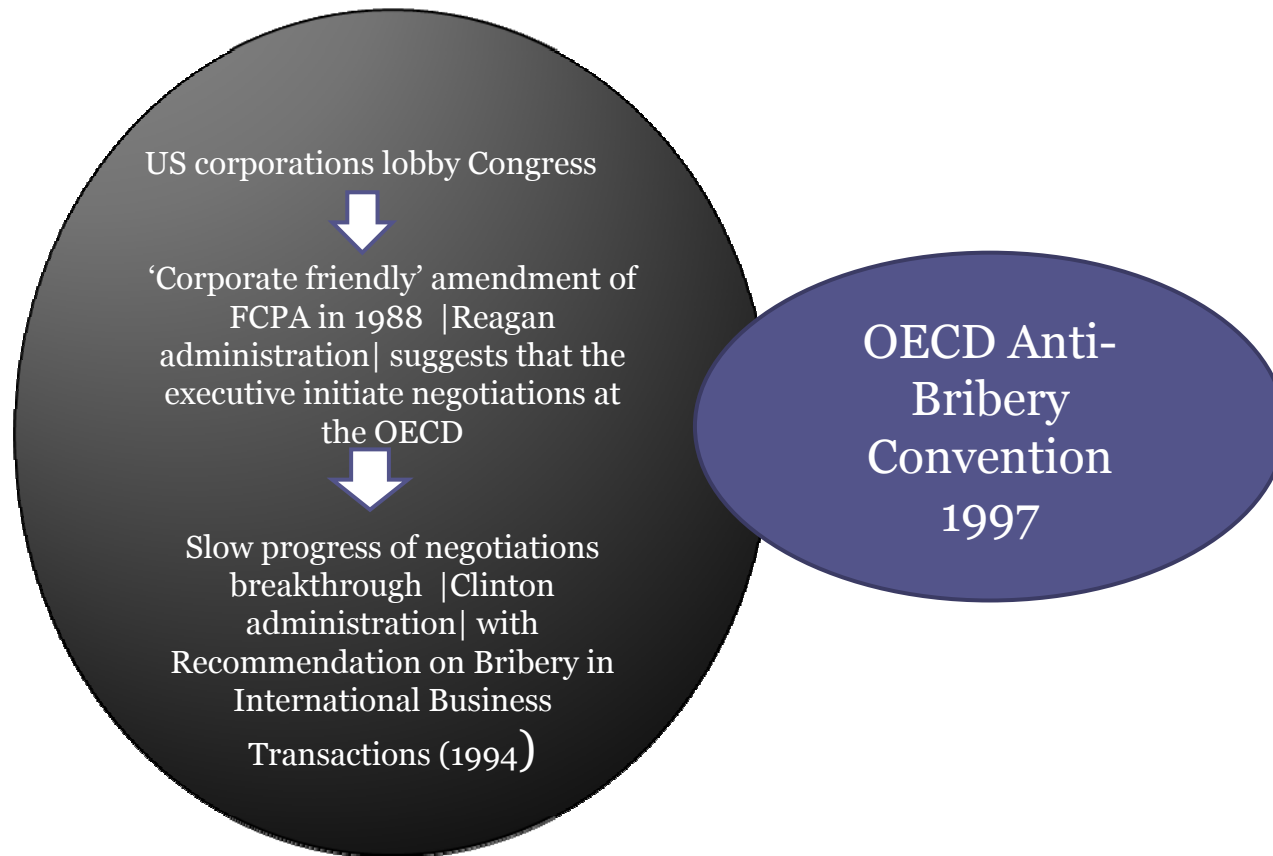
55% Compliance induced significant costs (increased accounting and auditing)

55% costs exceeds benefits



Reagan administration’s amendment as part of the Omnibus Trade Act.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997





OECD REPORT : 2003

From tolerance to condemnation

'If today 35 countries have agreed to impose criminal penalties on those who bribe foreign public officials in order to obtain business deals, twenty years ago, the corruption of international deals was broadly tolerated. Only companies from one country, the United States, were forbidden to bribe foreign public officials: after the Lockheed Aircraft scandal in 1977, the US Congress passed the *Foreign Corrupt Practice Act (FCPA)*, which made companies liable to fines of up to \$2 million per violation and individuals up to \$100,000 and imprisonment for up to five years. Apart from this exception, several arguments would be put forward regularly to justify bribery in foreign markets. For instance, in the name of the principle of State sovereignty, States are to bear individually the principal responsibility to assure that their own houses are in order; foreign States should not interfere with local affairs. Or: if corruption was the de facto norm in developing countries, then foreign firms were only adapting to the local customs.

The OECD's work on international bribery began in 1989, at the initiative of the United States, whose companies, constrained by the FCPA, complained to be at disadvantage with competitors. Eight years later, the major exporting countries of the world adopted the Convention. The evolution of the global context of the 1990s helped bring OECD efforts to a successful conclusion. The end of the cold war eroded support for kleptocratic regimes. Scandals exposed in the press heightened public awareness of the damages caused by corruption. As the price of bribery in proportion to the contract's value continued to escalate, companies found it increasingly difficult to compete internationally.'



Some questions raised

- How do you govern *transnational* actors in an *international* environment?
- Is a domestic act in a powerful state or a hegemonic power a more efficient tool of global governance than an international arrangement?
- Do the tools of global governance have to come up from the toolbox of the nation state itself?