

BATTLING CORRUPTION WITHIN A CORPORATE SOCIAL RESPONSIBILITY STRATEGY

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"If anyone travels on a road in search of knowledge, Allah will cause him to travel on one of the roads of Paradise." — The Prophet Mohammad Ibn 'Abdullah (570–632)²

"Knowledge is a treasure, but practice is the key to it." — Ibn Khaldoun, Al-Moqaddima, Scholar and Statesman (1332–1406)³

I. INTRODUCTION

Bribes⁴ and kickbacks⁵ are common in international commerce and trade.⁶ Corruption remains taboo even though it is widely known that

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2. SAHIH BUKHARI, KNOWLEDGE, no. 356, 311, Vol. 1, bk. 3, *translated in* Univ. So. Calif., Center for Muslim-Jewish Engagement, <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/abudawud/025.sat.html>.

3. AL-MUQADDIMAH IBN KHALDOUN, [THE INTRODUCTION OR PROLEGOMENON] 21 (Dar AlShaab: 1959, Arabic Source). Ibn Khaldoun was a lawyer, sociologist, economist, and Muslim jurist. He wrote his masterpiece, “Muqaddimah or Prolegomenon,” in 1377 A.D. It is the first of seven volumes of “Kitab AL-‘Ibar.” See IBN KHALDOUN, THE MUQADDIMAH: AN INTRODUCTION TO HISTORY (N. J. Dawood ed., Franz Rosenthal trans., Princeton Univ. Press 1958) for an English translation.

4. “To promise, give or offer something, often illegally, . . . to procure services or to gain influence.” Definition of “bribe,” COLLINS LANGUAGE, <http://www.collinslanguage.com> (search “bribe” under the “English” tab).

5. “[P]art of an income paid to a person in return for an opportunity to make a profit, often by some illegal arrangement.” Definition of “kickback,” COLLINS LANGUAGE, <http://www.collinslanguage.com> (search “kickback” under the “English” tab).

6. SEC. AND EXCHANGE COMM’N COMM. ON BANKING AND URBAN AFFAIRS, REPORT OF THE SECURITIES AND EXCHANGE COMMISSION ON QUESTIONABLE AND ILLEGAL CORPORATE PAYMENTS AND PRACTICES (1976), [hereinafter SEC. AND EXCHANGE COMM’N], *cited in*

corporations often resort to such practices when dealing with those in the public sector, be they national or foreign public officials.⁷ In the mid-1970s, the United States Securities and Exchange Commission (SEC) found that illegal payments to foreign public officials and politicians were widespread in the United States corporate sector.⁸ This discovery led to national legal reform and the enactment of the United States Foreign Corrupt Practices Act of 1977 (FCPA).⁹

However, it was not until the mid-1990s that the international community responded to the persistent calls from various organizations to implement regional and international conventions.¹⁰ Undoubtedly, the United States played a fundamental role in lobbying for a global response to what it saw as a universal problem that seriously affected legitimate competitiveness in international business.¹¹

Various institutions, including the World Bank, generated further impetus for international measures and drew attention to the economic and social impact of corruption.¹² They especially highlighted the close link between corruption, development, and poverty.¹³ These developments stimulated the adoption and ratification of a series of regional and international anti-corruption agreements from the mid-1990s to the early part of this century.¹⁴ Today, companies with substantial economic strength, guided by profit maximization and investor obligations, have the potential to drive a state's agenda and policies, including investigation and enforcement of corrupt practices. In this regard, "corporations must see themselves as having social responsibilities to enable meaningful progress

INDIRA CARR & OPI OUTHWAITE, *Investigating the Impact of Anti-Corruption Strategies on International Business: An Interim Report*, Univ. of Surrey, May 27, 2009, n.5, available at <http://www.surrey.ac.uk/law/pdf/Corruption/Interim%20Report%20FINAL.pdf>.

7. SEC. AND EXCHANGE COMM'N, *supra* note 6.

8. *Id.* at 12.

9. CARR & OUTHWAITE, *supra* note 6, at 4. One of the most vital reasons for the enactment of the bribery prohibitions, according to the Foreign Corrupt Practices Act (FCPA) House Report signed on December 19, 1977, by President Carter, was that more than 400 corporations had admitted making illegal or questionable payments as of October of 1977. These companies, including some of the largest and most widely held public corporations in the United States, disclosed corporate payments in excess of \$300 million to foreign government officials, politicians, and political parties. In this regard, the legislative history reflects that a primary concern of Congress was the damage that such payments have caused to American relations with foreign nations in critical areas of the world. See WALLACE L. TIMMENY & ROBERT B. VONMEHREN, PRACTICING LAW INSTITUTE, FOREIGN CORRUPT PRACTICES ACT: THREE YEARS AFTER PASSAGE 13-27 (1981).

10. CARR & OUTHWAITE, *supra* note 6, at 4.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

towards fighting corruption.”¹⁵

Recently, companies have distanced themselves from images of profit-centeredness and exploitation by embracing socially responsible behavior.¹⁶ This behavior embodies what is often referred to as corporate social responsibility (CSR).¹⁷ By adopting specific codes of conduct, many companies have begun to promote integrity, transparency, and benevolent corporate citizenship both internally and externally.¹⁸ “Much of this change in corporate attitude seems to have been triggered by civil society.”¹⁹ For instance, environmental activists, non-governmental organizations (NGOs), and the media have widely publicized the illegal logging and deforestation activities of multi-national corporations.²⁰ “Increasingly, civil society sees itself as a major player in raising local and global awareness of social issues and as having the capacity to influence the behaviour of state and non-state actors.”²¹ CSR status is reinforced by the greater presence of public stakeholders at corporate meetings and negotiations within international institutions.²²

Since the second half of the twentieth century, CSR discussions have grown. The corporate and academic worlds use various terms and expressions to describe CSR, including “society and business,” “public policy and business,” “social matters management,” “stakeholder management,” and “corporate accountability.”²³ Essentially, CSR represents both a legal and social instrument that can remedy the ills of

15. *Id.* at 5. In other words, it is vital to ensure that companies recognize the responsibilities they owe to local communities and society at large and that they behave in a liable manner that takes into consideration the role played by the private sector in social issues, environmental protection, and the eradication of poverty.

16. *Id.*

17. *Id.* See also ROGER CROWE, ET. AL, *DEVELOPING VALUE: THE BUSINESS CASE FOR SUSTAINABILITY IN EMERGING MARKETS*, (2002) available at <http://www.sustainability.com/library/developing-value>. CSR is a relatively recent term used to refer to the general obligation and duties of businesses to participate in creating wealth, to obey formal and informal laws of society, and to enhance the welfare and the improvement of society. Within a global and free trade environment, governments and business understand that their respective competitive positions and access to capital – especially within a capitalist-based and free market economy – increasingly depend on public perception that they respect the highest global and international standards.

18. CARR & OUTHWAITE, *supra* note 6, at 5.

19. *Id.*

20. *Id.*

21. *Id.*

22. See generally *Principle Ten*, UNITED NATIONS GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle10.html> (last visited Feb. 1, 2011).

23. H.R. BOWEN, *SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN* 51–71 (1953). One of humankind’s greatest challenges this century will be to ensure sustainable and balanced development. This can be realized only if there is respect for the natural systems and the international standards and norms protecting core societal values.

globalization that handicap sustainable development.²⁴ CSR can also be viewed as an interlocutory term that concentrates on various fields of private and commercial business to create a positive impact on the society in which a business operates. This framework may include human rights law, labor law, environmental law, and other fields. However, from a moral or ethical perspective, anti-corruption and anti-bribery issues have received considerably less attention than those of environmental protection, human rights, or labor rights. This is perplexing since corruption has harmful effects on the living conditions of all individuals.²⁵

Many see corruption as a problem pertaining exclusively to white-collar workers and administrative and government officials.²⁶ This is an inaccurate perception. Like labor, human, and environmental rights, corruption mitigation represents a critical aspect in advancing the CSR field. To stimulate comprehensive change in CSR, not only must officials set goals and make improvements in the areas of labor, environmental, and human rights, but they must also work toward removing corruption, bribery, and unethical behavior from corporate culture.

Corruption is a crosscutting and devastating phenomenon, be it political, social, economic, or cultural.²⁷ Several corporations have argued that accountability and transparency reduce corruption, with administrative

24. Kristina K. Herrmann, *Corporate Social Responsibility and Sustainable Development: The European Union Initiative as a Case Study*, 11 IND. J. GLOB. LEGAL STUD. 205, 205 (2004).

25. However, this is rapidly changing, especially recently, due to a realization of the devastating and dangerous effects of corruption on societies in general. In the past, mostly legal scholars and political scientists addressed corruption concentrating only on political, administrative, and government corruption through extortion and bribery. Only in the last fifteen years, economists have realized and started to provide evidence of the detrimental effects of corruption in monetary, economic, and business terms when dealing with business and commercial transactions on national and global levels.

26. In contrast, because of the direct impact human rights, labor rights, and environmental rights have on our everyday lives, CSR advocates have prioritized the advancement of such rights in general. Anti-corruption standards should be considered "enabling standards," without which CSR is unattainable.

27. Corruption stunts growth, distorts economies, and corrodes the social structure. It undermines society and development. Poor and developing countries are hardest hit. It is possible to combat corruption and reduce its negative impact only if political will is credible enough to attract a genuine support of civil society, all government stakeholders, and the private sector in order to attack both passive and active corruption. See Michael Johnston & Sahr Kpundeh, *Building a Clean Machine: Anti-Corruption Coalitions and Sustainable Reform* (World Bank, Policy Research Working Paper No. 3466, 2004), available at http://www.wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/02/01/00009486_20050201162214/Rendered/PDF/wps3466.pdf. See also Sahr Kpundeh, *Political Will in Fighting Corruption*, in CORRUPTION AND INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES (United Nations Development Program, 1998) [hereinafter Kpundeh, *Political Will*], available at <http://mirror.undp.org/magnet/Docs/efa/corruption/Chapter06.pdf>.

integrity being crucial to achieving better governance. Yet while the world realizes the importance of eliminating corruption, the problem of how to curb this phenomenon persists.

Corporate bodies and NGOs must organize and design procedures to reduce the opportunity for corruption and create incentives for public integrity.²⁸ Corporate collaboration with states, NGOs, and civil society provides an effective means of creating a visible, legitimate reform movement that allows all interested people to learn from each other.²⁹ Thus, it is vital for corporate organizations to build coalitions to counteract corruption.³⁰ Accordingly, with the globalization and international expansion of trade, corporations should pay increasing attention to their ethical values and social responsibilities. To achieve these targets, corporations have utilized various tools.³¹

The following analysis falls into three sections. Having established the conceptual and ethical groundwork in Part One, Part Two contains an analysis of CSR principles. Part Three examines the role of CSR in battling unethical behavior, especially corruption, through anti-corruption policies and other measures for combating this phenomenon with particular emphasis on the 2003 United Nations (U.N.) Convention against Corruption. To clarify the analysis, this Note focuses on the following two sets of inquiries: First, are corporations cognizant of the relevant anti-corruption conventions and soft-law instruments? How do they perceive these measures? What impact, if any, have these conventions had on companies? Have corporations adjusted or changed their behavior as a result? Second, have corporations voluntarily adopted codes of conduct or other internal measures that promote CSR? Do these measures include a commitment to confronting bribery or corrupt behavior internally and on the part of their agents and those in their supply chain? Is CSR a useful and effective tool in tackling corruption generally? If so, to what extent? This Note concludes in Part Four by arguing that CSR should be a priority among practitioners in fighting unethical corporate behavior.

II. CSR PRINCIPLES AND FOUNDATIONS IN THE ECONOMIC

28. See Johnston & Kpundeh, *supra* note 27. Cooperation among civil society, the private sector, and the government to institutionalize the attack on corruption will yield good governance; Vito Tanzi, *Corruption Around the World: Causes, Consequences, Scope, and Cures* 5 (Int'l Monetary Fund, Working Paper No. 98/63, 1998).

29. Edward G. Hoseah, *Plenary 3: Measures to Combat Corruption at the Local, National and International Level* (2001), available at <http://www.isrc.org/Papers/Hoseah.pdf>.

30. *Id.*

31. See generally Charlotte Durrant, *What Are the Advantages and Disadvantages of Codes of Conduct in Regulating Moral Behavior in Business?* (2008) (unpublished student paper, 2008 Institute of Business Ethics essay competition postgraduate category winner) (on file with author).

GLOBALIZATION ERA

The growth and development of international trade and commercial business transactions reflects greater economic integration under the umbrella of globalization. Consequently, CSR has come to the forefront of corporate concerns.³²

The International Organization for Standardization (ISO) defines social responsibility as the “responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organization.”³³ The European Union (EU) conceptualizes CSR broadly. The EU model is described as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”³⁴

32. Herrmann, *supra* note 24, at 206. See also Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705, 731 (2002).

33. *Guidance on Social Responsibility, Resolution 3*, (Int'l Org. for Standardization, Working Group on Social Responsibility, ISO/WD 26000, 2007). In 2003, the OECD defined CSR as the liability of businesses to develop societies in which they operate, promise investment opportunities, provide jobs and produce goods and services that consumers want to buy, and the obligation of businesses to respect the laws and regulations in the society where they exist. See also ANDREW KAKABADSE & NADA KAKABADSE, EDS., *CSR IN PRACTICE: DELVING DEEP 7* (2007). Also, CSR is known by a variety of other names including, “corporate accountability,” “corporate citizenship,” “corporate ethics,” “responsible entrepreneurship,” and “triple bottom line.” Likewise, there is a view toward referring to it as “corporate sustainability” or “responsible competitiveness,” especially as CSR becomes increasingly integrated into modern business practices. See also Jacqueline Cramer, *From Financial to Sustainable Profit*, 9 CORP. SOC. RESP. & ENVTL. MGMT. 99, 102, 106 (2002).

34. 35 *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, at 6, COM (2001) 366 final (July 18, 2001). See also Adam Lindgreen et al., *Corporate Social Responsibility Within the Organization*, 12 CORP. REPUTATION R. 83 (2009). In 2003, Novethic defined CSR as follows: “Linked to the application by corporations of the sustainable development principle, the concept of CSR integrates three dimensions: an economic dimension (efficiency, profitability); a social dimension (social responsibility) and an environmental dimension (environmental responsibility). To respect these principles, corporations must pay more attention to all the stakeholders [...] which inform on the expectations of civil society and the business environment.” Kakabadse, *supra* note 33, at 18. In 1974, Danone stated that CSR includes five recommendations: (1) scale workforces to meet actual needs but limit job insecurity and the negative effects on the layoffs; (2) develop and apply compensation policies that provide incentives consistent with the business conditions and environment of each company; (3) develop personal potential and encourage contributions from managers and all staff

Generally, from the definitions and concepts posed above, it is clear that a corporation is not only a self-centered, profit-making entity, but it is also an organization whose behavior is integral to society, the economy, and the environment in which it exists, whether local or global. Corporate executives and staff subscribing to this view are becoming more aware that CSR provides labor, human rights, and environmental protections to the communities in which they sit and to the people they employ.³⁵ The business case for such social responsibility among corporations is becoming clearer as globalization progresses. It includes the following: managing risks, protecting and enhancing reputation and brand equity, building trust and “license to operate,” improving resource efficiency and access to capital, responding to preempting regulations, establishing good stakeholder relationships with current and future employees, customers, business partners, socially responsible investors, regulators and host communities, encouraging innovation and new ways of thinking, and building future market opportunities.³⁶

Questions may arise concerning the international attempts to promote CSR in its legal and social functions. One of the main roles of the U.N. is to strengthen and encourage cooperation between developing host countries and transnational corporations.³⁷ However, international norms or codes of conduct specifying corporate liabilities that protect global human rights have yet to be adopted.³⁸ Governments and private commercial corporations have made few steps toward developing legal frameworks for addressing human rights abuses in host countries.³⁹

Those international attempts may be examined with respect to the various aspects of CSR mentioned above. As international labor law is concerned, there are several conventions and treaties between state governments and specialized organizations. For example, the International

members, helping them to achieve both their own aspirations and the goals of the business; (4) work in partnership with employees for better working conditions and greater businesses efficiency; and (5) open and improve lines of communication with employees and their representatives. *Id.*

35. Herrmann, *supra* note 24, at 206. See also Mark Chong, *Employee Participation in CSR and Corporate Identity: Insights from a Disaster-Response Program in Asia-Pacific*, 12 CORP. REPUTATION REV. 106 (2009).

36. Herrmann, *supra* note 24, at 206–7 (citing Jane Nelson, *Corporate Social Responsibility: Passing Fad or Fundamental to a More Sustainable Future?*, 7 SUSTAINABLE DEVELOPMENT 37, 37 (2002), available at <http://www.p2pays.org/ref/40/39787.pdf>).

37. Barbara A. Frey, *The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights*, 6 MINN. J. GLOBAL TRADE 153, 159 (1997).

38. *Id.*

39. *Id.* NGOs are also taking steps to encourage transnational corporations to use their influence to promote human rights in countries in which they are doing business.

Labor Organization (ILO)⁴⁰ creates specific protections for workers.⁴¹ Free trade agreements (FTAs) are taken into consideration. In 1994, FTAs began to address labor rights. The North American Free Trade Agreement (NAFTA) was the first multi-lateral convention to emphasize the link between law and CSR. The North American Agreement on Labor Cooperation (NAALC), the Jordan-U.S. FTA, and the Central American Free Trade Agreement (CAFTA) followed a similar approach. In addition to labor conventions, international environmental law treaties usually contain corporate liability clauses to eliminate unfair compensation and environmental damages.⁴² Several examples exist including the Brussels Convention on Liability for Nuclear Damage, the 1969 International Convention on Civil Liability for Oil Pollution Damage, and the 1984 Protocol to that Convention.

CSR experts acknowledge “corruption distorts market competition, breeds cynicism among citizens, undermines the rule of law, damages government legitimacy, and corrodes the integrity of the private sector.”⁴³ These adverse impacts inevitably link corruption to poverty and other social ills such as pollution and crime. Indeed, combating corruption should weigh heavily on every country’s economic and political agenda.⁴⁴ A rapid development of international anti-corruption standards has been realized, and a variety of incidents have compelled change in the domestic and

40. See INTERNATIONAL LABOUR ORGANIZATION, <http://www.ilo.org> (last visited Feb. 1, 2011) (The ILO represents one of the most important key international CSR initiatives of governmental or inter-governmental bodies.).

41. The International Labor Conference (ILC) has adopted 185 conventions and 194 recommendations, including the 1949 Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, the 1981 Occupational Safety and Health Convention, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the Convention Concerning Discrimination in Respect of Employment and Occupation in 1958, and the Convention Number (26) of Minimum Wage-fixing Machinery in 1928. Moreover, the International Convention on Population and Development (ICPD) deals with workplace reproductive health. This convention encompasses a neutral view of reproductive health. See Phillip R. Seckman, *Invigorating Enforcement Mechanisms of the International Labor Organization in Pursuit of U.S. Labor Objectives*, 32 DENV. J. INT'L L. & POL'Y 675, 686 (2004). It is also the only document that actually adopts the right of reproductive health. It defines reproductive health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” See Rebecca Kathleen Atkins, *Multinational Enterprises and Workplace Reproductive Health: Extending Corporate Social Responsibility*, 40 VAND. J. TRANSNAT'L L. 233, 235–36 (2007).

42. See Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L. J. 443 (2001).

43. Ben W. Heineman, Jr. & Fritz Heimann, *The Long War Against Corruption*, FOREIGN AFFAIRS, May/ June 2006, at 85.

44. See Bhanoji Rao, *A Multilateral Initiative to Combat Corruption*, HINDU BUSINESS LINE, Oct. 3, 2006, at 8, available at 2006 WLNR 23779779.

international political realm.⁴⁵ Notably, the Organisation for Economic Co-operation and Development (OECD) played a vital role in CSR when it adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) in 1997. The Convention serves as a model for states to criminalize bribery of foreign public officials when the offenses are committed in their jurisdiction or territory.⁴⁶

The legislative, executive, and judicial involvement of state governments along with private sector organizations could help further the campaign against corruption. Because unethical corporate behavior is an offense of universal dimensions, it becomes necessary—even vital—to create a new set of norms in international commercial and business transactions. For CSR to succeed, the global community must pay greater attention to sustainable development, globalization, governance, corporate sector responsibility, financial ethics, effective leadership, and business tool consistency. Therefore, the key issue is combating corruption while increasing social awareness. Moreover, to develop and enrich CSR, the private sector must share the responsibility. The business community must become willing to fight against corruption. This willingness is a vital and fundamental component of CSR in battling corruption in business transactions.

III. THE BUSINESS ROLE OF CSR IN BATTLING CORRUPTION, EXTORTION, AND BRIBERY

The detrimental social effects of corruption and other unethical business practices in both developed and developing countries are well

45. *See, e.g.*, Organization of American States, Inter-American Convention Against Corruption, March 29, 1996, O.A.S.T.S. No. B-58 (first multi-lateral legal framework to combat public corruption in international business transactions), *available at* <http://www.oas.org/juridico/english/treaties/b-58.html>.

46. STUART H. DEMING, *THE FOREIGN CORRUPT PRACTICES ACT AND THE NEW INTERNATIONAL NORMS* 309 (1st ed. 2005). Many steps have been taken in this area, including the treatment of the supply dynamic and the demand dynamic of corruption under the Council of Europe (COE) Criminal Law Convention; the COE Civil Law Convention concerning remedies for those whose rights and interests are affected by corruption; the EU Convention on the Protection of the Communities' Financial Interests 1997 and the EU Corruption Protocols 1996 and 1997; the Organization of African Unity Corruption Convention (OAU) 2003; and the U.N. Convention, which represents the most comprehensive and global model in battling corruption. Also, the efforts in fighting corruption and bribery have been expanding to multi-lateral lending institutions like the World Bank, the Regional Development Banks, and the International Monetary Fund (IMF). In addition, efforts extend to the international activity of NGOs like the role of the International Chamber of Commerce Business Code of Conduct (ICC) and Transparency International's (TI) efforts to highlight the perception of corruption. *See Id.*

recognized.⁴⁷ These practices include everything from the bribing of public officials and others in positions of power to obtain illegal licenses, creating illegitimate contracts and tax concessions, to price fixing and bid rigging.⁴⁸ International awareness has led to the introduction of several measures and procedures designed to curb these activities in the private sector.⁴⁹ These measures involve a range of stakeholder and regulatory approaches, both legal and non-legal in character.⁵⁰ The critical question now becomes the extent to which these measures are achieving their objectives.

A. Anti-Corruption Policies as a Preliminary Tool for CSR

The 2000 United Nations Global Compact (UNGC) signaled the opening of a global outlet for addressing corruption in the CSR movement. Although the UNGC's initial platform of nine principles neglected to address corruption, its participants soon realized that unless the issue was confronted, the UNGC could not be effective.⁵¹ As a result, the tenth Anti-Corruption Principle was adopted on June 24, 2004.⁵²

47. CARR & OUTHWAITE, *supra* note 6.

48. *Id.*

49. *Id.*

50. *Id.*

51. The UNGC nine principles in the areas of human rights, labor, and the environment enjoy universal consensus and are derived from the Universal Declaration of Human Rights, the ILO's Declaration on Fundamental Principles and Rights at Work, and the Rio Declaration on Environment and Development. The Global Compact asks companies to embrace, support, and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, and the environment as follows: a) Human Rights: Principle (1): Businesses should support and respect the protection of internationally proclaimed human rights and Principle (2): make sure that they are not complicit in human rights abuses. b) Labor Standards: Principle (3): Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; Principle (4): the elimination of all forms of forced and compulsory labor; Principle (5): the effective abolition of child labor; and Principle (6): the elimination of discrimination in respect of employment and occupation. c) Environment: Principle (7): Businesses should support a precautionary approach to environmental challenges; Principle (8): undertake initiatives to promote greater environmental responsibility; and Principle (9): encourage the development and diffusion of environmentally friendly technologies. *The Ten Principles*, UNITED NATIONS GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited Feb. 1, 2011).

52. *Principle Ten*, *supra* note 22. This Principle stipulates that "[b]usinesses should work against corruption in all its forms, including extortion and bribery." *Id.* See *Anti-Corruption*, U.N. GLOBAL COMPACT, http://www.unglobalcompact.org/Issues/transparency_anticorruption/index.html (discussing the processes and the reasons that lead to the addition of the anti-corruption principle) (last visited Feb. 1, 2011). Notably, the UNGC is a U.N. initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies and to report on their implementation. The Global Compact is a principle-based framework for businesses, stating ten principles in the fields of human rights, labor, the environment, and anti-corruption. Under the UNGC, companies are brought together with

Other CSR instruments, such as the OECD Guidelines for Multi-national Enterprises (OECD Guidelines)⁵³ and self-regulation initiatives, such as codes of conduct found in several multi-national corporations, refer to anti-corruption practices as a shared liability and duty of the business sector. The OECD Guidelines deal specifically with bribery and recommend several mechanisms to mitigate the problem in business practices. Multi-national corporations play an important role in global economic development. While guidelines are useful in principle, their success in practice depends upon the degree to which these organizations observe and abide by the regulations of their home and host countries.⁵⁴

Positive developments notwithstanding, the focus of the CSR movement on anti-corruption standards largely continues to be incidental. Anti-corruption standards and policies enable social responsibility values to be realized in two ways. First, because CSR values are mutually reinforcing, anti-corruption standards can have a positive effect on other CSR goals, such as transparency. Transparent business transactions guarantee a greater degree of fairness and encourage the participation of numerous interested parties. In turn, parties, such as the media, labor unions, and environmental organizations, will each strive for their own interests, resulting in comprehensive and positive CSR conditions for society at large.⁵⁵

U.N. agencies, labor groups, and civil society. Also, the UNGC is the world's largest corporate citizenship initiative and as a voluntary initiative has two objectives: "Mainstream the ten principles in business activities around the world," and "Catalyze actions in support of broader U.N. goals, such as the Millennium Development Goals (MDGs)." *Overview of the U.N. Global Compact*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/index.html> (last visited Feb. 1, 2011). Historically, the UNGC was first announced by the U.N.'s Secretary-General Kofi Anan in an address to the World Economic Forum on January 31, 1999, and was officially launched at U.N. headquarters in New York on July 26, 2000. Moreover, the UNGC office is supported by six U.N. agencies: U.N. High Commissioner for Human Rights; U.N. Environment Program; International Labor Organization; U.N. Development Program; U.N. Industrial Development Organization; and U.N. Office on Drugs and Crime. See UNITED NATIONS GLOBAL COMPACT, <http://www.unglobalcompact.org> (last visited Feb. 1, 2011).

53. See generally ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2008) [hereinafter OECD GUIDELINES], available at http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html (outlining the OECD Guidelines and eleven particular policies behind them). See *Guidelines*, OECD WATCH, <http://oecdwatch.org/about-oecd/guidelines> (last visited February 1, 2011) (discussing the Guidelines and debate surrounding them). See also ETHICS WORLD, <http://www.ethicsworld.org> (last visited Feb. 1, 2011) (providing a comprehensive list and analysis of private sector codes of conducts and CSR reporting).

54. Lucinda A. Low & Timothy P. Trenkle, *U.S. Anti-Bribery Law Goes Global*, BUS. L. TODAY, July/Aug. 1999, at 14. It is important to know how Corporate Governance (CG) works among diverse jurisdictions.

55. See Marella Buckley, *Anti-Corruption Initiatives and Human Rights: The Potentials*, in HUMAN RIGHTS AND GOOD GOVERNANCE 173, 173-01 (H.O. Sanno & G. Alfredsson eds.,

Second, business practices free from corruption can secure a long-term platform of CSR goals. If ending corruption is not treated as a prerequisite to all corporate efforts, CSR practitioners will continue to work upon a foundation of quicksand, especially with respect to the environment.⁵⁶ The U.N. Oil-for-Food program is one such example. Designed to alleviate the suffering of the Iraqi people, the program was taken hostage by several corrupt Iraqi officials and greedy multi-national corporations. As a result, over 2,000 companies paid more than \$1.7 billion in bribes during the program.⁵⁷

Examples such as these clarify that anti-corruption measures are necessary and essential conditions for sustaining CSR. Hence, combatting corruption should be a priority for the CSR movement. Otherwise, resources and efforts will continue to be wasted, as corruption always finds a way to jeopardize and displace CSR goals.

B. The Way Ahead

In order to mitigate corruption, the CSR movement must take a combined confrontational and cooperative approach. Through a confrontational approach with the business sector, CSR practitioners can destabilize corrupt corporations by impacting their profit margins. Such methods can include a naming-and-shaming initiative or seeking recourse to the "Specific Instances Procedure"⁵⁸ of the OECD Guidelines. With the latter approach, NGOs and trade unions typically bring cases before national offices, called "National Contact Points," when multi-national corporations fail to comply with OECD Guidelines.⁵⁹ This procedure, although not legally binding and often subject to criticism, has triggered some positive effects.⁶⁰

2002) (discussing the mutually reinforcing impact between anti-corruption initiatives and human rights).

56. The presence of valuable natural resources may lead to bribes that affect the awarding of concessions for natural resources extraction. See JESSICA DILLON ET AL., CORRUPTION & THE ENVIRONMENT: A PROJECT FOR TRANSPARENCY INTERNATIONAL 23 (2006), available at <http://www.columbia.edu/cu/mpaenvironment/pages/projects/spring2006/Transparency%20International%20final%20report.pdf>.

57. PAUL A. VOLCKER ET AL., REP. ON THE MANIPULATION OF THE OIL-FOR-FOOD PROGRAMME BY THE IRAQI REGIME (Oct. 27, 2005), available at <http://www.iic-offp.org/documents/IIC%20Final%20Report%2027Oct2005.pdf>.

58. See OECD GUIDELINES, *supra* note 53.

59. Apart from "specific instance procedures," NCPs and governments, as well as other stakeholders, can use the OECD Guidelines to raise the awareness of companies to the risks of corruption and to encourage them to adopt mechanisms that reduce their involvement in corruption.

60. Regarding corruption, OECD Watch reports that until March 2006, nine cases have been brought in reference to alleged violations by corporations of Chapter VI of the OECD Guidelines pertaining to "Combating Bribery." See QUARTERLY CASE UPDATE (OECD Watch, Amsterdam, The Netherlands), Spring 2006, available at

In light of these approaches, CSR cooperation with the private sector should focus on anti-corruption measures and standards. CSR practitioners should conduct empirical studies in order to determine the extent of immediate and long-term damages that corrupt practices have had on the business sector. This has been described as the “business case against corruption.”⁶¹

C. *Why Should Businesses Care and What Can the Private Sector Do?*

What about the influence and power of the private sector in leading anti-corruption initiatives?⁶² To what extent is the private sector responsible for rooting out public sector corruption? Should businesses even assume this social responsibility? Though not a traditional responsibility, several trends highlight the private sector’s initiative to tackle systemic corruption. Today, we see increased attention among businesses to the following initiatives: stakeholder engagement, which plays a critical role in ensuring business sustainability, especially by encouraging transparency; the CSR function as seen in the practice of integrating CSR throughout all departments within companies; innovative corporate governance mechanisms and internal controls; and collaboration between businesses and civil society as seen through collective action and knowledge sharing.⁶³ Examples include Transparency International’s

http://oecdwatch.org/publications-en/Publication_1874/at_download/fullfile. The Trade Union Advisory Committee to the OECD has also brought several claims against corporations, although in general they refer to alleged violations of the Labor and Employment Chapter of the OECD Guidelines and only incidentally to corruption. See TRADE UNION ADVISORY COMM., THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: TUAC INTERNAL ANALYSIS OF TREATMENT OF CASES RAISED WITH NATIONAL CONTACT POINTS: FEBRUARY 2001 MAY 2005, (n.d.), available at <http://old.tuac.org/statemen/communiq/ListofcasesMai5e.pdf>. Although a confrontational view is sometimes needed, it is usually the case that a cooperative initiative between business sectors and CSR practitioners will attain more effective and long-term respect for CSR. See PRICEWATERHOUSECOOPERS, CONFRONTING CORRUPTION: THE BUSINESS CASE FOR AN EFFECTIVE ANTI-CORRUPTION PROGRAMME 27 (2008) (citing Huguette Labelle, *Civil Society and the Private Sector: Fighting Corruption is Good Business*, DEVELOPMENT OUTREACH, Sept. 2006) [hereinafter BUSINESS CASE], available at <http://www.pwc.com/gx/en/forensic-accounting-dispute-consulting-services/pdf/pwc-confronting-corruption.pdf>.

61. See BUSINESS CASE, *supra* note 60.

62. See Press Release, Global FS Consulting Exchange, Building a Culture of Compliance is the Key Driver in Widespread Use of Anti-Corruption Programs (Dec. 7, 2006), available at http://web.archive.org/web/20080204031654/http://www.conference-board.org/utilities/pressDetail.cfm?press_ID=3019.

63. Peter Brew & Jonas Moberg, *The Power of Joining Forces – The Case for Collective Action in Fighting Corruption*, in BUSINESSSES AGAINST CORRUPTION: CASE STORIES AND EXAMPLES: IMPLEMENTATION OF THE 10TH UNITED NATIONS GLOBAL COMPACT PRINCIPLE AGAINST CORRUPTION 128 (Birgit Errath ed., 2006), available at http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbookFINAL.pdf. See also AMINA EL-SHARKAWY ET. AL., A REPORT ON THE GLOBAL HIGH-LEVEL E-DISCUSSION:

Integrity Pacts, UNGC Networks,⁶⁴ and the involvement of international and local Chambers of Commerce.

1. Ethical Legality and Morality in Corporations and CSR

Notions of legal ethics and morals in businesses began emerging in the 1990s and have expanded in the United States—particularly in large firms—and Europe. Codes of conduct, or codes of ethics, necessarily reflect the regulated culture of the companies that utilize them. The nature and effectiveness of these codes depend on the extent to which industries utilize them. Most codes contain a statement of the corporation's major philosophical principles and values and articulate the ethical parameters in guiding employees' actions and behaviors.⁶⁵ Nonetheless, these codes of ethics are voluntary in the U.S. government, even after financial scandals in some large firms. Codes of ethics represent an important part of corporate culture and constitute an essential CSR tool. They should provide a supportive, moral framework for employees rather than constitute a repressive, dictatorial method of control over them.⁶⁶

TOWARDS A MORE SYSTEMATIC FIGHT AGAINST CORRUPTION: THE ROLE OF THE PRIVATE SECTOR (2006), available at http://www.improvinggovernance.be/upload/documents/summary_PartnCombatCorpt.pdf. Collective action with other companies offers an effective way to create a level playing field on which to compete and increases the impact on local business practices beyond the capacity of any one company.

64. U.N. Global Compact Networks are clusters of UNGC participants who come together to advance the UNGC's 10 Principles for CSR. Currently, over sixty networks throughout the world exist. Their role facilitates the progress, both local and foreign subsidiaries of a corporation, in their implementation of the Ten Principles, while also creating opportunities for multi-stakeholder engagement and collective action. *Local Networks*, UNITED NATIONS GLOBAL COMPACT, <http://unglobalcompact.org/NetworksAroundTheWorld/index.html> (last visited Feb. 4, 2011).

65. Durrant, *supra* note 31, at 2–3.

66. *Id.* at 2–5. “As a part of ‘moral management,’ codes can be seen to help employees make ethical decisions by clarifying their conception of what is expected from them and giving them ‘ethical justifications’ for their decisions. Codes can help organizational members look beyond the ‘ethical legality’ of a situation, prescribed by law, to its ‘ethical morality,’ aiding consideration of their ‘fiduciary obligations’ including but also beyond the corporate structure.” *Id.* at 2. Also concerning the “theory of ‘organisational bureaucracy’ in which members of an organisation are regulated under a ‘firmly ordered system of super- and sub-ordination,’ codes could therefore be seen as suppressing individuality and restricting, or indeed freeing, an organizational member, from moral deliberation.” *Id.* at 3. “Ethics of care and feminist ethics also find codes of conduct problematic, and, similar to postmodern ethics emphasise the importance of ‘feeling rather than thinking’ when dealing with ethical dilemmas.” *Id.* at 4. Some scholars “found that codes were ‘not powerful enough tools to affect ethical decision making behaviour’ and that if they were to be influential, it would be through the methods used to communicate them rather than the content of the codes themselves.” *Id.* at 5. Also, other scholars have “found that codes were ineffective because they were disregarded by organizational members, and because they were viewed by management ‘as documents to be produced, publicised, and then ignored.’” *Id.* It is difficult, especially practically, for these codes to achieve their job in controlling the

2. *Ethical Leadership and CSR*

Ethical leadership is essential if codes of conduct are to be adhered to and are to be used to successfully regulate the moral behavior of employees. If employees consider corporate leadership unethical, codes of conduct will fall into contempt. Therefore, codes are only as good as the leaders who advocate for them.⁶⁷ One scholar found that most employers were unlikely to have a code of ethics, and employees often considered such administrative measures to be ineffective as an ethical tool in small businesses.⁶⁸ Yet the small business sector constitutes a considerable portion of the economy on both a national and global scale.

In 1996, the International Chamber of Commerce (ICC) adopted a more stringent code of conduct outlining rules to combat extortion and bribery in international business transactions. Provisions include the prohibition of accepting bribes or kickbacks, requirements for companies to control payments by their agents, and rules concerning record keeping and auditing illicit payments or secret funds. Although the ICC urged its members to adopt these rules, they were intended as a voluntary code of corporate conduct rather than a formal measure. Whether codes of conduct are the correct means to be used for CSR purposes remains to be seen. But should such measures be used with a range of other ethical instruments?⁶⁹

In sum, the approaches used to confront corruption are usually divided according to ethical or business reasoning; however, the former model does not seem to be as persuasive as the latter.⁷⁰ For this reason,

ethical conduct and behavior among the organizational members. *Id.*

67. *Id.* at 5–6.

68. *Id.* at 5.

69. See, J.A. Byrne, *Businesses Are Signing up for Ethics*, BUSINESS WEEK, Feb. 15, 1988, at 101. See also Archie Carroll & Michael Meeks, *Models of Management Morality: European Applications and Implications*, BUSINESS ETHICS: A EUROPEAN REVIEW, April 1999, at 108–16; Cathy Cassell et al., *Opening the Black Box: Corporate Codes of Ethics in their Organizational Context*, 16 J. BUS. ETHICS 1077, 1077–93 (Jun. 1997); Gerald F. Cavanagh et al., *The Ethics of Organizational Politics*, 6 ACAD. MGMT. REV. 363, 363–374 (1981); Margaret Ann Cleek & Sherry Lynn Leonard, *Can Corporate Codes of Ethics Influence Behavior?*, 17 J. BUS. ETHICS 619, 619–630 (Apr. 1998); Lawrence B. Chonko et al., *Ethics Code Familiarity and Usefulness: Views on Idealist and Relativist Managers under Varying Conditions of Turbulence*, 42 J. BUS. ETHICS 237, 237–252 (Feb. 2003).

70. This is in part due to the general underestimation of the negative effects of corrupt business practices on the everyday lives of individuals. On the other hand, the business case is probably more powerful in relation to the fight against corruption than with respect to issues of human rights, labor, and the environment. Corruption can corrode the soul of financially efficient businesses. For instance, a common corrupt practice within the private sector is the potential supplier's bribery of an employee in charge of purchases in order to be selected as a regular supplier. In such an event, the most efficient supplier and the one providing the best cost will not be selected, which means that the company is wasting resources. Corrupt practices are also common with regard to hiring personnel and through embezzlement of property belonging to the company. These other corrupt acts and unethical

CSR practitioners should concentrate on working closely with the private sector in order to increase the level of transparency, encourage internal loyalty, and affect better commercial relations with the public sector. The UNGC provides the following key reasons to avoid corruption: legal risks; reputational risks; higher financial costs; repeat demands via tolerance; exposure to blackmail; erosion of internal trust; and a general vested interest of companies in sustainable social, economic, and environmental development.⁷¹

*D. Eliminating Competitive Disadvantage in the International Market Economy and Enhancing Transparency Standards*⁷²

An issue that requires urgent attention from both the business and CSR communities is competitive disadvantage. If a company is bribing a foreign public official in order to secure a contract, other corporations are likely to take the same approach to remain competitive. This so-called prisoner's dilemma perpetuates the self-justifying, yet unethical, rhetoric: "If others are doing it, I have to do it in order to maintain business opportunities."⁷³ Consequently, in 1997 the U.S. Government addressed the issue in order to promote a more level playing field in international business transactions.⁷⁴ The United States' efforts culminated in the OECD Convention on Combating Bribery in International Business Transactions.⁷⁵ As a result, all OECD members and six non-members agreed to criminalize bribery of foreign public officials.⁷⁶ However, today with the rise in

private sector practices can harm in many ways, most notably financially, as in the Enron scandal.

71. See BUSINESSES AGAINST CORRUPTION: CASE STORIES AND EXAMPLES: IMPLEMENTATION OF THE 10TH UNITED NATIONS GLOBAL COMPACT PRINCIPLE AGAINST CORRUPTION (Birgit Errath ed., 2006), available at http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbook_FINAL.pdf.

72. In other words, "Fair Competitive Markets" as an economic and legal notion, simultaneously introduced to the global free market economy represents a central issue that has highly harmful and damaging consequences for the business community.

73. This argument is not new and was repeatedly used by the American business sector regarding their European competitors after the enactment of the FCPA in 1977. See TIMMENY, *supra* note 9; ANATOL RAPOPORT & ALBERT M. CHAMMAH, PRISONER'S DILEMMA (Univ. of Mich. Press 1965) (discussing the prisoner's dilemma).

74. FRITZ HEIMANN & GILLIAN DELL, TRANSPARENCY INTERNATIONAL, 2006 TI PROGRESS REPORT: ENFORCEMENT OF THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS (Jun. 26, 2006), available at http://www.transparency.org/content/download/7489/46695/file/TI_SecondOECDProgressReport.pdf. Undoubtedly the United States represents the leading force against corrupt business practices carried out abroad. In 2005, there were thirty-five prosecutions in U.S. courts against multi-nationals. As of June 2006, there were fifty-five investigations underway. *Id.*

75. See DEMING, *supra* note 46, at 309.

76. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND RELATED DOCUMENTS (2010), available at <http://www.oecd.org/>

foreign direct investment (FDI) in emerging markets, international competition has once again incentivized corrupt corporate practices in securing business deals. In light of the fact that multi-national companies from OECD countries are reluctant to face corruption, countries from emerging markets must lead their multi-national corporations toward stronger CSR standards in their international business transactions.⁷⁷

If multi-national corporations from OECD countries want to remain competitive, they need to level the playing field with their global counterparts. This initiative requires joint efforts between CSR practitioners and the business sector. Most of the applied CSR mechanisms exist in corporations from the West. Hence, attention must be paid to developing CSR mechanisms and policies in these often-neglected emerging economies.

Unethical and illicit corporate behavior also distorts competition between multi-nationals and small and medium sized enterprises (SMEs). Since competition between multi-national corporations and SMEs is limited, it must be addressed in order to mitigate corrupt practices from businesses at all economic levels.⁷⁸ Because of their limited resources, it is difficult to expect SMEs to hire regulatory personnel to manage new internal anti-corruption programs or adopt ethical codes and internal reporting procedures.⁷⁹ Thus, it is vital to target corruption in SMEs in

dataoecd/4/18/38028044.pdf. Non-OECD members that were parties to the convention include Argentina, Brazil, Bulgaria, Chile, Estonia, and Slovenia. The adoption of many international treaties and the participation in several global approaches towards the development of CSR reflects that Egypt has a strong basis for the principles of CSR. Although Egypt did not ratify the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, it played an active role. Egypt only recently signed the OECD Declaration on International Investment and Multi-national Enterprises. Egypt is the first Arab and African country to sign this declaration, which is considered a new phase and step in Egyptian investment policy. This signing will require the adoption of new strategies and standards with regard to CSR in general and CSR of foreign investors in particular. Egypt has a problem with the proper applicability of various laws and regulations. It is a problem of corruption. Social awareness must be raised and collective measures are highly recommended to curb corruption.

77. Despite most of the emerging market countries making several efforts to fight and cut corruption domestically, many still have a lenient attitude toward corrupt practices and unethical, immoral behavior in businesses overseas. *See, e.g.*, DONALD R. CRUVER, *COMPLYING WITH THE FOREIGN CORRUPT PRACTICES ACT: A GUIDE FOR U.S. FIRMS DOING BUSINESS IN THE INTERNATIONAL MARKETPLACE* (2d. ed. 1999); JEFFREY P. BIALOS & GREGORY HUSISIAN, *THE FOREIGN CORRUPT PRACTICES ACT: COPING WITH CORRUPTION IN TRANSNATIONAL ECONOMIES* (1997).

78. As most efforts to battle corruption involving the private sector are aimed at large multi-nationals, SMEs escape from transparent, legal, and licit business practices and therefore possess a comparative advantage. This needs to be changed. For instance, the application of the Tenth Principle of the anti-corruption program of the UNGC is designed in a style that would be impossible for SMEs to apply. *See Principle Ten, supra* note 22.

79. All of these are costly, and SMEs cannot be realistically expected to participate in anti-corruption programs if participation demands higher costs and less profit maximization.

order to have a coherent strategy and comprehensive policy against corruption worldwide.⁸⁰

*E. U.N. Convention Against Corruption 2003: A New Tool for Corporate Social Responsibility*⁸¹

In 2003, the U.N. adopted the Convention against Corruption (U.N. Convention),⁸² which reflected the fundamental spirit of CSR. The U.N. Convention has proven valuable in addressing the fight against corruption, particularly in the field of international business transactions. The primary objectives of the U.N. Convention are the criminalization of corrupt practices, the implementation of measures to deter and prevent corruption, the establishment of legal mechanisms for recovering stolen assets, and the means of providing technical and mutual legal assistance and information exchange. These objectives focus on both the public and private sectors.⁸³ In addition, the Convention is comprised of articles that criminalize acts closely related to corruption or connected to it, such as laundering the returns of corruption, concealing or holding the revenues of corruption, and assisting or encouraging corruption. Furthermore, these agreements allow for remedies such as the freezing, seizing, and confiscation of assets

These anti-corruption programs for SMEs should be external and carried out by stakeholders in a consulting role in the form of making informative decisions. For SMEs, combating corruption will not only enhance competitive markets but will also have an impact on the battle against corruption in general. While efforts to curb corruption by large corporations have the effect of fighting "grand corruption," "petty corruption" will be more effectively curbed by anti-corruption standards and measures in the SMEs sector.

80. In reality, CSR should pay more attention to the SME sector. *See generally* U.N. INDUST. DEV. ORG., *CORPORATE SOCIAL RESPONSIBILITY: IMPLICATIONS FOR SMALL AND MEDIUM ENTERPRISES IN DEVELOPING COUNTRIES* (2002). *See also* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *OECD SME AND ENTREPRENEURSHIP OUTLOOK 2005* (3rd ed. 2005), *available at* <http://books.google.com> (search ISBN number "9789264009240").

81. *See* United Nations Convention Against Corruption, G.A. Res. 55/61, U.N. DOC. A/RES/55/61 (Oct. 31, 2003), *available at* http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf. Under the U.N., the different regional anti-corruption efforts culminated in the adoption in October of 2003 of the U.N. Convention Against Corruption. It is the first globally negotiated anti-corruption convention to address and introduce the bribery of public officials in the context of international business. Many of the concepts and measures reflected in the OECD Convention, the Inter-American Convention, the COE Criminal Law Convention, and the COE Civil Law Convention have been incorporated into the U.N. Convention. However, this treaty is more comprehensive in its scope of applicability than the other anti-corruption initiatives. Additionally, both United States and Egypt have signed and ratified the U.N. Convention. *See also* Consent & Undertaking of Metcalf & Eddy, Inc., *United States v. Metcalf & Eddy, Inc.*, No. 99-CV-12566-NG (D. Mass. Dec. 14, 1999), *available at* <http://corporatecompliance.org/Content/NavigationMenu/Resources/ComplianceBasics/MetcalfEddy.pdf>.

82. *See* DEMING, *supra* note 46, at 337.

83. *Id.* at 338.

acquired through criminal acts as defined in the provisional articles. The United Nations Convention also permits compensation for the harms caused by any of those criminal acts. Following this critical step, the CSR movement has developed and achieved a series of measures and tools for exercising pressure on the private business sector to consider the social, cultural, and environmental consequences of their corporate practices.⁸⁴

At both the national and global level, the counterattack on corruption has evolved through an increasingly integrated legal framework of multi-lateral treaties, national laws, and legal regulations.⁸⁵ Until recent years, CSR advocates have largely left corruption to the jurisdiction of state and national law enforcement authorities.⁸⁶ However, CSR practitioners have begun to improve the legal framework and enforcement mechanisms through cooperation with the business sector.⁸⁷ With these efforts culminating in 2003, the U.N. Convention has become the most comprehensive, effective, and vital tool in eliminating corruption within the private sector to date.⁸⁸

According to the U.N. Convention, there are several stipulations, duties, obligations, and recommendations for state parties in the fight against corruption that have considerable potential impact on business practices. Consequently, states must develop comprehensive anti-corruption policies and practices.⁸⁹ Additionally, they must criminalize bribery of foreign public officials.⁹⁰ Within the private sector, states must criminalize the embezzlement of property in business dealings and ensure that persons are held both civilly and criminally liable and subject to effective and proportionate fiscal and administrative sanctions.⁹¹ In

84. This can be realized and achieved by voluntarily utilizing CSR initiatives; although these CSR tools are not binding, they have been fairly efficient. The OECD Guidelines, the U.N. Global Compact, the Extractive Industry Transparency Initiative, and the International Chamber of Commerce Anti-Corruption Commission are all examples.

85. DEMING, *supra* note 46, at 309, 319, 337, 361. The most notable multi-lateral conventions concerning the private sector are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997; the Inter-American Convention Against Corruption 1996; the United Nations Convention Against Corruption 2003; and the African Union Convention on Preventing and Combating Corruption 2003. For an in-depth analysis of national laws and regulations against corruption, see *Text of the OECD Declaration on International Investment and Multinational Enterprises*, OECD, http://www.oecd.org/document/53/0,3343,en_2649_34887_1933109_1_1_1_1,00.html (last visited Feb. 6, 2011).

86. DEMING, *supra* note 46, at 305–08.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* Most of these illicit criminal acts and behaviors should be treated as felonies rather than misdemeanors, according to the main classification of the criminal offenses, due

addition to confronting problems with private-sector bribery, corruption, and concealment of these actions,⁹² the U.N. Convention promotes ethical standards in corporate accounting and record keeping, monitoring, and auditing, and also emphasizes transparency among private entities and the prevention of conflicts of interest.⁹³

CSR practitioners should bear in mind that while the potential of the U.N. Convention is great,⁹⁴ its effectiveness depends on the level of state action. While one of the initial goals for the CSR movement is to apply pressure on national governments to implement and enforce the Convention, CSR practitioners should hold the business sector to higher standards of accountability through governmental action and policy initiatives.

IV. CONCLUSION AND POLICY RECOMMENDATIONS

“The advent of globalization has brought about unprecedented changes in the pace and nature of business practices in both the community market place and the work place. In the context of an evermore connected and inter-reliant world, intense demand for economic growth pressures societies to address myriad environmental, economic, social, and health issues facing populations, businesses, and governments.”⁹⁵

Nothing erodes sustainable economic development more than corruption. Given its systemic pervasiveness, the private sector plays a critical role and has a vested interest in assuming social as well as economic responsibility. Though implementation rests firmly in the hands of national governments, corporations cannot ignore their critical role in creating a sustainable anti-corruption initiative.⁹⁶ Looking ahead, companies face several challenges.⁹⁷ However, the private sector can generate viable

to the serious implications and devastating impacts on society. *See also* SUE TITUS REID, *CRIME AND CRIMINOLOGY* (McGraw-Hill, 9th ed. 1999).

92. United Nations Convention Against Corruption, *supra* note 81, at arts. 21, 24.

93. *Id.* art. 12, ¶¶ 1–2.

94. *See* Durrant, *supra* note 31, at 6.

95. ZYNIA L. RIONDA ET AL., *CORPORATE SOCIAL RESPONSIBILITY IN PRACTICE CASEBOOK* (July 2002), available at http://www.rhcatalyst.org/site/DocServer/CSR_casebook.pdf?docID=101.

96. Sustainable anti-corruption initiatives can be implemented through codes of conduct or ethics. As stated before, codes of conduct can harness the market power of informed consumers to halt abuses against workers in developing countries. Governments cannot inspect every workplace and catch every lawbreaker. Codes of conduct offer new options through private sector self-regulation using civil society vigilance. *See* Lance Compa, *Trade Unions, NGOs, and Corporate Codes of Conduct*, NGO CAFÉ, <http://www.gdrc.org/ngo/codesofconduct/compa.html> (last visited Feb. 6, 2011).

97. *Id.* Codes of conduct should address the corporation’s functional responsibilities toward other constituency groups, not just the narrow focus of internal employees. Any code of conduct must reflect the local needs of workers and guarantee the core standards of the ILO, provide the resources, training, monitoring, and reporting mechanisms to make it work,

solutions to fight corruption by serving as a role model to the larger business community. Through collaboration with government and civil society in knowledge-sharing forums, through creation of an ethical corporate culture via increased responsibilities, and through innovative solutions to reduce the risk of corruption in corporate governance, the private sector can make a significant impact.

CSR practitioners must prioritize the battle against corruption. It is important to focus on specific goals and policies and build upon the current mechanisms developed by the international community, especially the U.N. Convention.⁹⁸ The CSR movement possesses the potential to strengthen commitments made by state parties by developing model theories into everyday business practice. Therefore, it should be concerned with protecting and promoting integrity, stability, and good governance while encouraging the disruption and control of serious crime. Through such commitments, states will increase the wellbeing of their national economies, institutions and enterprises and promote a better understanding of the real and practical risks facing business today.⁹⁹

and be clear and in accordance with recent labor law and corporate law standards. Codes of conduct also need to reflect the right of workers to freely associate, to form and join trade unions, and to bargain collectively. They should also define the minimum standard of wages. Moreover, they must provide for the hours of work that comply with applicable laws and industry standards. In addition, codes of conduct must reflect the principles of non-discrimination at all levels and the obligation of the corporation to make an effort to improve working conditions. Jill Murray, *Corporate Codes of Conduct and Labour Standards*, INT'L LABOUR ORG., <http://actrav.ilo.org/actrav-english/telearn/global/ilo/guide/jill.htm> (last visited Feb. 6, 2011).

98. An effective enforcement and execution of this treaty will benefit the business sector because it will comprehensively level the playing field among business competitors. In contrast, effectiveness could be enhanced by collaboration between CSR teams and the private sector. The focus on anti-corruption and its integration in the corporate citizenship agenda are two of the most important developments. They contribute to greater market integrity and hold the promise of infusing improved governance in the public and private spheres alike.

99. It is important to focus on the threats confronting the financial system—in particular financial institutions—from those who engage in self-dealing, corrupt practices, and fraud, or who assist and facilitate the crimes of others. Such threats, however, are complex and manifest themselves at many diverse levels. For instance, as in previous years, considerable emphasis is placed on the problems that confront those who operate in the financial world, primarily as a result of regulatory and enforcement actions designed to address specific criminal issues, such as disruption of highly profitable crime or terrorism. Thus, programs should be designed by those working in enforcement, compliance and the financial sector with the deliberate intention of focusing on real and practical issues and providing, at a truly international scale, better approaches and greater co-operation. Consequently, the new regulatory systems that will be brought into operation, both domestically and universally, will inevitably place much greater emphasis on ensuring integrity and sanctioning those who abuse their positions of trust. It also attests to the deep concern of governments and financial institutions as to the extent of the risks to stability and security thrown up by economic and financial crimes such as corruption, abuse and in particular the impact of money laundering

and organized crime. Therefore, it is important to get a better understanding of the real issues involved in preventing and controlling economically motivated fiscal crime.