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DEPARTMENT OF TECHNICAL CO-OPERATION FOR DEVELOPMENT and CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS

CORRUPTION IN GOVERNMENT

Report of an Interregional Seminar
The Hague, the Netherlands
11-15 December 1989

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NOTES

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Part One

REPORT OF THE SEMINAR

I. ORGANIZATION OF THE SEMINAR

The problem of corruption in government has come to be recognized universally as a major concern in public management. Developing countries attach high priority to improving the institutional arrangements and processes of government to reduce the level of distortions in official behaviour and conduct leading to corrupt practices. Most countries have made considerable strides in improving the legal and administrative procedures to cope with the increasingly complex task of arresting corruption in public affairs. Experience indicates that governments must ensure that their public service maintain the highest standards of integrity, openness and transparency on the one hand, and strengthen the judicial and criminal system on the other, to serve the changing needs and demands of public administrative systems.

Recognizing the strategic significance that good government plays in the development process and to facilitate an exchange of ideas on causes, effects and measures to reduce corruption in government, the Development Administration Division of the United Nations Department of Technical Co-operation for Development and the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, jointly arranged, in collaboration with the Ministry of Foreign Affairs and Ministry of Justice of the Netherlands, an interregional seminar on the subject. The interregional seminar was held at The Hague from 11 to 15 December 1989. The Government of the Netherlands provided host facilities.

The United Nations Development Administration Division and the United Nations Crime Prevention and Criminal Justice Branch commissioned three technical papers covering the major dimensions of the subject. These offices of the United Nations prepared an aide-memoire on the theme of the seminar. Each participant prepared a paper on his/her own country experience on the lines suggested by the Secretariat. A draft Manual to Combat Corruption prepared for submission to the Eighth United Nations Congress for the Prevention of Crime and Treatment of Offenders, to be held in Havana, Cuba, in 1990, was circulated for comments.

The seminar was attended by senior officials from 18 developing countries in Africa, Asia, the Middle East, Latin America and the Caribbean. Also present at this seminar were the representatives of Australia, the Federal Republic of Germany, Italy, Japan, the Netherlands, the Union of Soviet Socialist Republics and the United States of America. An observer from the International Criminal Police Organization and the Independent Commission Against Corruption (Hong Kong) also attended. An official from the office of ombudsman in Papua New Guinea participated in the meeting at his request in his personal capacity. These senior officials were drawn from governmental ministries/departments/offices of prosecutors/auditors general/central vigilance commissions/ombudsmen/civil service

commissions. Observers from relevant non-governmental organizations and scientific institutions also participated in the seminar.

The seminar was inaugurated by Prof. Ernst M. H. Hirsch Ballin, Minister of Justice, the Netherlands. In his opening statement the Minister said that the Government valued the tradition of close relationship which the Netherlands maintained with the United Nations. Although nobody could deny the seriousness of corrupt government practices and their negative effects on society as a whole, one had to realise the difficulties the United Nations faced in opening the subject to discussion at the international level. Following the joint initiative of two departments of the United Nations, it appeared that the only chance for conducting fruitful and substantially relevant discussions on this subject was by approaching it from various angles. One could not reasonably analyse corruptive phenomena without addressing the question of methods required to counteract them. There could be structural problems due to bureaucratic traditions, inefficient management or lack of financial or personnel resources to provide for adequate systems of checks and balances. Development co-operation should cover wider areas, and in particular the creation of basic conditions for the maintenance of a stable legal, administrative and economic order as prerequisite for a peaceful society. The full text of his opening statement is given in annex I.

The Director of the United Nations Development Administration Division delivered the introductory remarks (annex II). He stated that the seminar was part of a global effort of the United Nations to provide assistance to developing countries, among others, in strengthening civil service, management development, crime prevention and the criminal justice system by studying some urgent issues and developing alternative and improved ways to accelerate the process of socio-economic development and institutional strengthening. The problems of corruption in government were essentially multidisciplinary in nature. There was a lack of clarity in individual perceptions of bureaucratic corruption and inefficiency in public management. The creditable achievements in the social and economic field by developing countries had to be recognized. Experiences had to be studied with a sense of realism, objectivity and positiveness.

The seminar elected the following officials:

Chairman	Mr. J. J. M. van Dijk (Netherlands)
Vice-Chairman	Ms. Patricia Sto. Tomas (Philippines)
Vice-Chairman	Mr. Enrique Del Val Blanco (Mexico)
Rapporteur	Mr. Joseph K. Gyimah (Ghana)
Co-Rapporteur	Mr. Augustine Ruzindana (Uganda)

After the constitution of the bureau, the seminar adopted the agenda. The seminar report was unanimously adopted on 15 December 1989. The report presents analytically some of the major implications of corruption in public affairs, the role of the criminal justice system, and an assessment of institutional mechanisms developed to combat corruption; and it provides some, guidelines for follow-up action.

II. NATIONAL RESPONSES

The experiences of countries in preventing corruption in government vary depending on a number of interrelated factors. Among them are legal, juridical, social, and political conditions, degrees of economic development, educational levels, stages of administrative and institutional modernization, and systems of public management. Contributions from participants in the written reports and oral presentations have brought out a wealth of initiatives taken by the various governments in dealing with the problem of official corruption. Notwithstanding the diversity of conditions and approaches, the reported national experiences reflect certain basic common trends.

Foremost among these trends is the awareness of the negative effects of corruption, as well as its serious consequences on both the developmental processes and the attainment of basic human rights, the foundation of government. There is also an increasing realisation that corruption is assuming new forms and dimensions, particularly in connection with the increasing transnationalization of crime. Corruption in government is perceived as the abuse of public power and authority for private and other group gains. The implications of corruption are far-reaching, and there is no dispute that it is a complex, multi-faceted social phenomenon, with various manifestations.

The seminar conducted in-depth discussions on the forms of corruption in government, and its causes, consequences, and relationship with organized crime; and it assessed the existing measures against corruption, as well as appropriate actions to be taken against it at the national, regional and international levels.

As regards the various forms of corruption, it was noted that they range from acceptance of money or other rewards for awarding contracts; violations of procedures to advance personal interests, including kickbacks from development programmes or multinational corporations; pay-offs for legislative support; and the diversion of public resources for private use, to overlooking illegal activities or intervening in the justice process. Forms of corruption also include nepotism, common theft, overpricing, establishing non-existing projects, payroll padding, tax collection and tax assessment frauds.

Corruption in government is pervasive at all levels of public management, including, in some countries, the deliberate mismanagement of national economies for personal gain, as well as the creation of special privileges for pursuing the particular interests of the ruling group, secured through government apparatus. The majority of participants pointed to systemic impunity as the underlying element of the various forms of corruption.

Causes of corruption include the persistence of traditional values and cultural approaches, poverty, ignorance and lack of knowledge about individual entitlements, greed, and patronage.

Corruption takes place as a result of inadequacies in existing public management systems, as well as social, cultural, political, and economic factors. From a social and cultural point of view, the role of communal bonds and kinship ties within a social framework sometimes play a major role. The system of values fostered by a traditional group in most cases, in group loyalty before legitimization of public values, may pose conflicts between prevailing social norms and notions of public interest as reflected in a normative system. Several participants drew attention to cultural factors embedded in ancient community values. In this sense, much of what is believed to be corruption is in fact justified as an expression of traditional solidarity. Some participants drew attention to the far-reaching implications of social changes which some societies have seen in relation to the process of modernization, industrialization, migration and demographic growth.

The seminar reviewed several other causes which give rise to corrupt practices and misconduct in government. Among them are extension of the public sector to the point where management of the economy and provision of services becomes inefficient; the asymmetry of relationships favouring those in control of state power; stifling entrepreneurship and competition; economic shortages in which public officials assume extraordinary control over scarce goods and services; weakening of supervision and effective public control over the administration; and erosion of the civic spirit in modern political systems.

In addition, it was noted that in some cases a state bureaucracy was deliberately transformed into a system of impediments to deny basic services to the public, and so provide opportunities for corrupt officials to solve artificially created problems. Comments were also made on the problem of conflict of interests of politicians who are public administrators and also represent powerful private or group interests, thereby creating situations inviting incentives to corruption.

It was observed that the absence of administrative/legal regulations and a morass of rules open to manipulation can provide opportunities for corruption. The ambiguity of many regulations was also mentioned as an additional source of corrupt practices.

A review of the consequences of corruption indicated that they vary from country to country. One particularly limiting factor in measuring its effects and consequences from a comparative perspective has been the absence of rigorous methodology and data to analyze critically the problem in terms

of government performance, effect on public resources, and general morale in the public service. Some argued that the consequences of corruption could be "catastrophic", particularly in terms of economic and social costs. In addition, corruption was identified as a major detrimental factor in the economic malaise in some countries. Examples were given of pernicious effects in the agricultural, manufacturing, industrial, financial and commercial sectors. Recent disclosures made in one country in the course of legislative inquiries had revealed that in certain projects up to 70 per cent of the nation's total infrastructure budget was lost in corrupt activities, while only the remaining 30 per cent was actually spent in a productive manner. In another country, recent press reports had estimated economic losses in the billions of dollars in only one project. In other examples presented for another country, the economic costs of corruption ranged between 20 and 80 per cent of total development projects. In many cases there was evidence that the money derived from corruption was invested outside the country in which corrupt activities occurred flowing towards complacent foreign banks. In addition, one should also consider the overall cost of maintaining the structure, mechanisms and personnel assigned to fighting corruption,as well as the staggering social costs which corruption exacts, which are impossible to assess in monetary terms.

The effects of corruption transcend the individual perpetrator and his victims and extend to general social perception and attitudes. It was agreed that continuing corruption could lead to perpetuation of social and economic inequalities and could jeopardize administrative reform and accountability. One of the most pervasive effects of generalized corruption is that it blocks improvements in social equity. However, in some deprived sectors of the population, instances of corruption could be seen as functional in situations of extreme inequality and scarcity -- in other cases, it was the result of systemic abuse of power. Many of the participants also expressed the opinion that restrictive access to justice, as well as an extremely long process of administrative and judicial sanctioning, have serious implications leading to demoralization of the public and widespread skepticism in relation to the role of the state and the law.

The seminar discussed at length the relationship of official corruption to organized crime. Some manifestations of organized criminality, such as contraband, sale and smuggling of drug trafficking, and money laundering were described. The interrelationship between organized criminality and extreme forms of corruption is well documented in the experience of several countries.

The seminar noted that countries have introduced numerous legal, administrative and other preventive measures to deal with the phenomenon. Some have introduced substantive and procedural penal legislation, financial disclosure legislation, and other specific anti-corruption mechanisms; others have taken administrative and legal measures, and have introduced national codes of ethics for public officials.

Some participants pointed out that legal measures per se are not adequate to deal with the multi-dimensional problem of corruption. The lack of enforcement of existing legal measures was a determining factor, rather than the normative availability of abundant legislation.

Several countries have set up independent institutional arrangements to deal with corruption such as ombudsmen, vigilance commissions, inspectors-general and independent auditors. These institutions have been effective to some extent in mitigating corrupt practices and behaviour, but have not always been in themselves sufficient to control corruption in government. While some assessment of the efficacy of these institutions has been attempted, it is not conclusive enough to provide strong evidence of their relevance to various social and cultural settings. A comparative study on institutional devices may be helpful.

In some legal traditions, administrative law (droit administratif) establishes a legal frame of reference for governmental functions and provides a resource mechanism (administrative courts) to citizens for control of the administrative process and misuse of public authority.

The seminar recognized that the various legal and administrative measures referred to above were important; that they had to be integrated, mutually reinforced, and, above all, effectively implemented. Several participants referred to the importance of public expectations and support for a code of public ethics in preventing corruption. The importance of positive social attitudes, improving educational processes, and supporting the role of the media were also stressed. Ensuring transparency and openness in government, and increasing the level of accountability of public officials would help to contain the abuse of state and private power.

The role of international co-operation in the prevention, detection, investigation, prosecution and sanctioning of corrupt practices and enforcement in the public management system, was highlighted. The need for better information and expertise, and facilitating technical co-operation and mutual assistance through TCDC (technical co-operation among developing countries) was emphasized. Finally, the possibility of an international convention to deal with transnational corruption and an international code of ethics for public service was mentioned.

III. EMERGING CONCERNS

Corruption in the public service is an ancient phenomenon. However, contemporary problems have changed the forms of corruption and added new types of pressures on government agencies and public administrations throughout the world.

A. Illicit drug traffic

In a world which is becoming increasingly independent, corrupt activities, often interlinked with organized crime and drug traffic, are increasingly transcending national borders.

The enormous sums (hundreds of billions of dollars) generated by the illicit drugs traffic trade have concentrated tremendous economic power in the hands of drug lords who can corrupt whole governments. The drug lords subvert the criminal justice system, and their nefarious influence corrodes the basic values of society. These criminals are ready to intimidate prosecutors, judges, politicians and their families to get their way. If bribery does not work against certain honest officials, they use violence against individuals who stand in their way. The targeted killing of law enforcement officers, journalists and witnesses, in addition to the indiscriminate violence associated with drug trafficking has created climates where basic law and order are threatened and public trust in government has been lost.

In some countries, the central government is under siege by the "drug barons"; in others, whole regions or parts of cities have become the traffickers' inviolable "turf" where law enforcement personnel dare not enter.

However, the economic subversion of financial institutions and legitimate economic enterprises is even more insidious. The financial systems of many countries, even those far away from the sources of production of illicit drugs, are now completely dependent on the narco-dollars. This money is reinvested in associated criminal enterprises (gambling, prostitution, slave trade, illegal arms), or in important businesses (tourism, hotels, banks) so that crime syndicates can exercise a decisive influence in key economic sectors. Because of the transnational linkages with international banks and companies, investigation and prosecution of the narcocrats are extremely difficult. They can move themselves and their assets into friendly jurisdictions, and in many countries their activities are protected by bank secrecy laws. In the absence of effective transnational investigation and law enforcement agreements, the leaders of the drug cartels remain beyond the law.

The fact that such lawlessness can go unchecked undermines basic government functions. Although in some countries, the

narco-dollars brought into the economy have staved off economic collapse, they have distorted economic development, ruined agricultural production and many legitimate enterprises, and caused great social problems. Crime, violence and drug abuse have been brought to segments of society which were previously unaffected.

The associated corruption of police, tax collectors, customs service and other public officials has led some policy-makers to try to keep their "services clean" by avoiding contact (or by not actively enforcing the narcotics laws or interdicting illicit trafficking); others openly advocate the decriminalization of drug abuse so that profits are reduced and it does not remain an underground activity.

The policy to actively pursue, arrest, prosecute and punish drug abusers and traffickers has led to a reallocation of scarce criminal justice resources and filled prisons with drug addicts. Social welfare institutions have also been affected by this epidemic. The increasing acceptance and use of certain drugs by professionals, community leaders and civil servants has led to contempt for public laws and affected public administration.

The growing drug menace will affect governments in direct and subtle ways. It is this new element which fosters corruption at all governmental levels and distorts economic and social institutions. New effective counter strategies -- legal, as well as political and administrative -- must be formulated to deal with the manifestation of the problem where it exists, but also institutions and mechanisms must be developed to foster international co-operation to combat more effectively this new threat to societies.

B. Debt and economic adjustment

The tremendous external debt burden that has saddled many developing countries has so weakened government institutions that law and order can no longer be maintained. The criminal justice system, tax collection, and customs service are so woefully under-resourced that they can not carry out their mandates. Because civil servants are so underpaid, they resort to second jobs and illegal activities. As a result corruption can become rampant throughout the public administration under these conditions.

In order to obtain new loans and external aid, countries have been required to adopt economic adjustment packages which involve cutting down the public service, policies more conducive to private initiative, and debureaucratization. Although these policies are painful for the individuals involved and lead to social problems, in general they can, for example, have a

positive effect on the economy and reduce corruption in government; by abolishing certain control boards, the possibility of corruption in connection with obtaining licences or the activities of these boards can be eliminated. However, the particular problem can also be transferred to other institutions, such as banks (in respect of import or export of funds, currency exchange rates, etc).

In order to stimulate economic development, a stable legal environment and basic conditions of law and order must be present. Rampant corruption discourages investors. Transparency and non-discrimination are favoured conditions for most businessmen. The stimulation of competition through the abolition of monopoly privileges and relaxation of controls are elements encouraged in structural adjustment programmes.

However, in order to monitor and promote sound economic development, there must be a restructuring of ministries/ departments, general management improvement, better pay, incentives and conditions of service, improved training, and higher professional standards. Along with administrative financial reforms with respect to procurement, tax and customs procedures, and auditing and expenditure control, corruption can be controlled. Ensuring strict accountability through criminal law and civil regulations, with greater possibilities for public access through ombudsmen, vigilance commissions or similar institutions, also have positive effects.

The realities of extreme general poverty, poorly paid civil servants and government institutions with limited resources, require macro-economic solutions which structured adjustment programmes may provide. However, in order for these to succeed, some form of debt relief is required.

At the same time, control measures over how the new financial resources are used must be established. Strict adherence to competitive bidding procedures, auditing, and expenditure control mechanisms must be implemented. Management systems with emphasis on performance criteria and accountability need to be implanted. Insuring that government officials do not directly benefit from public works projects requires conflict of interest and disclosure legislation. Moreover, there must be effective and fair law enforcement and criminal justice mechanisms, and a public commitment to see that prompt investigation and sanctions are carried out.

C. Abuse of state power

In many countries, the government can be so corrupt that individual citizens have no possibility to protest or have any redress against the abuse of power. Governmental authority is based on a monopoly of power and state violence. Any complaint

is quashed or ignored, and in the worst cases the complainant is arrested and punished. Such situations can exist under dictatorships as well as where one political party has kept power through force of arms.

In such situations, citizens are often compelled to bribe officials simply to survive, while governmental officials enjoy the advantages of power and are able to obtain homes, cars, and personal benefits from the state in a completely legal fashion.

In countries where there is no free market allocation of goods, raw material funds and issuance of documents authorizing their delivery are dependent upon the will of an official. This leads to centralization of power in the hands of a few government officials and the possibility of abuse. It may lead to mismanagement of the economy. Even when there are laws against officials obtaining unlawful remuneration from individuals by extortion, the entire distribution system is so corrupt that no one dares to protest. There is the danger of retaliation (denial of necessary goods), as well as the fear of antagonizing a state official and suffering personal harm (including imprisonment).

Where the police are used to prevent and suppress expression of public discontent with the régime, this implies that freedom of information and association is curtailed, and that basic human rights are not observed.

In order to make a transition from a dictatorship to pluralistic or more open forms of government, primary institutions must be reformed, including laws, administrative structures and personnel. This is often difficult, as the basic terms of reference of primary institutions must be completely changed.

This is the challenge facing countries where a fair, speedy and efficient system of administration of justice, establishment of an impartial and independent judiciary, and provision of guarantees for basic human rights must first be implemented.

Procedures must also be established to deal with deposed leaders who have misused their public positions. Often their conduct is not in violation of specific national laws; therefore, an international code of conduct and an international tribunal should be developed in order to ensure a fair trial of these violators of the public trust.

IV. ADMINISTRATIVE IMPLICATIONS OF GOVERNMENT CORRUPTION

The overwhelming view was that the effects of corruption on administrative efficiency and economic performance were negative. In some cases, because population growth far outstripped growth in economic activities, irresistible pressures built up on relatives in gainful employment in the public services to extend support to the unemployed among extended family members. This in turn induced irregular activities to supplement incomes. The general view was that the larger the public sector, the greater the scope for corruption. Because the major emphasis in government policy in respect of the sector tended to be redistributive rather than expansive, this further increased the potential for corruption.

Because of weak public management systems, corruption is pervasive and is apparently expanding. However, it was felt that the problem is even more serious at high political levels than in the bureaucracy. Corruption has become systemic and a way of life in many countries. Once it persists at the political level, it is difficult to control at the bureaucratic level. There are now international dimensions to corruption. This is due to the narcotics trade and multinational corporations which have transnationalized corruption. The continuing phenomenon of capital flight, particularly from the high indebted developing countries, has compounded the problem. There are few controls to prevent corrupt political leaders and some bureaucrats to transfer their ill-gotten gains abroad. It was noted that the combating of transnationalization of corruption would require a considerable degree of international co-operation, as well as a national commitment to prosecute senior government officials.

It was stressed that there are two basic ways of fighting corruption: administrative reforms and preventative structures and prosecuting techniques. These are not substitutes, but complements. In many countries the required legal instruments are in place to combat corruption; however, these have not been effective in combating corruption for a variety of reasons. As a result, greater emphasis should be placed on preventive mechanisms to combat corruption.

Arresting the spread of corruption in the bureaucracy as quickly as possible was considered highly desirable in most countries. However, it was emphasized that there is no quick fix to the problem, but that an attempt should be made to highlight some administrative measures which might be considered in the short term.

It was noted that combating corruption requires a long-term view. Moreover, it was acknowledged that a meaningful solution can only be found through administrative reforms at the policy, institutional and process levels. Further, it was contended that

the need for such reforms has become all the more pressing since insidious phenomena are threatening to undermine governments. Particularly, in the highly debt-ridden developing countries, governments are thwarted from effectively attaining their targets under the economic reform programmes, anti-narcotics plans and environmental protection pressures submitted as preconditions for further external assistance.

The first step to combat administrative corruption is the necessity to introduce administrative changes and internal reforms in the public service. New reforms should take into account a number of specific factors in order to deal effectively with bureaucratic corruption.

First, in respect of public service training, it is essential to incorporate an element of formal training in ethical standards and public responsibility.

Second, the rotation of office-holders should be accelerated wherever possible. Areas that suffer in terms of the incidence of corruption from extended occupation of office are the customs, revenue and tender agencies. Quick rotation of personnel in these bodies should be encouraged, as long as it does not adversely affect competence in dealing with routine responsibilities.

Third, it is important that the conditions of service of the occupants of public office be reviewed. Salaries and wages should keep up in real terms with other sectors of society; otherwise public service applicants are unlikely to be of the desired competence and integrity. This in turn can exacerbate the problem of corruption.

Fourth, public service codes of ethics should be strengthened where they exist and be introduced where they are non-existent. At the same time, disciplinary procedures should be reviewed, and more severe punishment should be meted out to corrupt officials who betray the public trust. The obligation to disclose income and assets should be incorporated in codes of conduct where this is not yet required.

Fifth, it may be useful to consider a "watchdog" department in government agencies. Such departments could report directly to the Minister, Permanent Secretary or Attorney General's office. This administrative device has proved to be a useful mechanism in combating corrupt practices in government in some countries.

Sixth, the experiences of a number of countries which have been relatively successful in combating corruption indicate that in designing reforms for the public service two aspects of the bureaucratic process should be taken into account:

(a) Formal administrative procedures, the way in which work is to be done (described in policies, legislation and instructions) should be compared with informal procedures, the way in which work actually gets done. The wider the divergence between them, the greater the scope for corruption. Hence this review should seek to narrow the gap between formal and informal procedures;

(b) Decision-making and work distribution should be better organized and controlled. This in turn should be supported by improved accountability in order to reduce corrupt practices and improve government services.

The foregoing mechanisms have the advantage of being simple devices and represent small modifications, all of which could be readily introduced at minimal cost in an effort to combat and control bureaucratic corruption.

Various mechanisms could be used to improve the performance of the public sector by reducing the scope and acts of corruption. The most costly, but perhaps the most effective is the establishment of a specific anti-corruption agency.

However, most important was the political will to stamp out corruption or bring it effectively under control. Given the cost of establishing and supporting anti-corruption agencies, this option should be reflected upon carefully before reaching a decision.

Special features of anti-corruption agencies tend to be the their extensive investigative powers, the high visibility, standing, and impeccable character of their chiefs, and recruiting of the best staff. The activities of staff must be extensively monitored to ensure that the highest ethical standards are maintained. Staff are normally deterred from becoming involved in commercial transactions.

In some situations, where the existing legal mechanisms prove ineffective for whatever reason, the possibility of organizing a special task force to investigate specific cases of corruption should be considered.

In some instances, provision may exist for such a task force to be established under existing legislation; in other cases it can be established by executive power. Legislative establishment is always the preferred basis on which to set up a task force if only because its authority is less likely to be challenged in a court of law.

Task forces have been used quite effectively in some situations to fight corruption. One merit of the task force is that it makes it possible to borrow personnel from other agencies for the duration of the exercise. The task force can be interagency or extra-agency depending on the requirements.

Task forces are used increasingly to investigate individual cases of corruption with a view to prosecution. They usually involve management specialists, lawyers, accountants and engineers working alongside investigators. By and large the task force tends to be a cost-effective mechanism and could be significant in producing results.

It was also recognized that public campaigns and educational programmes can play an important role in combating corruption. In designing campaign programmes it would make sense to involve civic groups and consult in advance with skilled professionals in the field.

It was felt by most that the appeal to moral rectitude may not be as effective as directing the campaign to self-interest. Campaigns should stress that every individual (except those involved in corrupt acts) stands to lose, because corruption results in queue-jumping and inefficiency.

In order for campaigns to be effective, they must be well thought out. It is necessary to define the target group carefully, bearing in mind that youth should always feature prominently. A special role should be assigned to the public to be on the alert for incidents of corruption and report any infractions in a simple, quick and easily accessible way. Further, since not all civil servants involved in corruption have "equal" or "fair" access to the spoils, the campaign should be so designed to get those not involved and others only marginally involved to be alert and report cases of corruption.

The point was made rather forcefully that the press could help immensely in the battle against corruption. The greater the freedom of the press and the stronger the nucleus of its investigative team of journalists, the more effective it can be. Often incidents of corruption are first brought to the attention of the informed public by the press. Innumerable cases of successful prosecution in corruption cases have begun with an initial report in the press.

It was recognized that the free press in developed countries has played a critical role in exposing and combating corruption. Although the press in the developing countries has been playing an increasingly important role, it needs to be protected and its investigative journalists need to be better trained and their numbers expanded. This would enable them to play a more active role in the anti-corruption drive.

As the judicial and administrative systems for the redress of corruption have been perceived to be ineffective and time consuming, concerned citizens in some instances have taken it upon themselves to establish watchdog bodies. Initially these private groups have organized monitoring teams to keep tabs on the operations of government agencies which have been particularly graft prone. In many countries this mechanism appears to be having the desired impact.

It should be recognized that non-governmental organizations have some advantages over government anti-corruption agencies. Drawn mainly from the ranks of the highly educated middle income group, these civic associations have the resources (financial, human and time) to work for a clean government. In one case, it was noted that the recent involvement of the unions in joint anti-corruption activities with non-governmental organizations and private civic groups was very successful.

Many felt that the mechanism of the ombudsman could be made to play a more effective role in combating corruption. It was recognized that the ombudsman system is rather generalized in its functions and should be maintained that way. The effectiveness of the ombudsman mechanism has been demonstrated in both developed and developing countries (see chapter V).

Another mechanism experimented within one country was the "Do Away with Red Tape"(DART) campaign launched by its Civil Service Commission in 1988. The principal objective of DART is to pressure the bureaucracy to respond to public needs in a less bureaucratic manner. Under DART the bureaucracy is obliged to streamline and simplify procedures and complete assignments within a specified time frame.

A strong point in the DART mechanism is its simplicity. Anyone with a grievance can write, call or personally go to one of many DART action centres. The complaint will be investigated, and, if verified, the perpetrator of the wrongdoing will be exposed via a press release, either in the news media or on the DART weekly radio programme. In the context of the DART programme, public agencies are ranked in terms of their ability to deal with complaints and are listed on the basis of performance in the hall of fame or hall of shame. Heads of agencies have been acting with great dispatch to avoid featuring in press releases and having their institutions being listed in

the hall of shame. To date the DART mechanism has proved to be most useful.

As mentioned above, short-term measures are unlikely to make a great impact on corruption in the public service. Only significant structural administrative reforms can have a significant impact on corruption.

As the developing countries restructure their economies and government apparatus by adopting measures to introduce structural adjustment programmes, particularly in the highly debt-ridden countries; as they embark on divestiture programmes, and encourage the private sector to start environmental protection programmes and adopt anti-narcotics campaigns, among others, opportunities will arise to introduce comprehensive administrative reforms.

Improved efficiency in government requires better training and selection of public officials; revision of career and salary structures; decentralization where appropriate; improvement of management information systems; improved personnel administrative systems; and tighter financial auditing and accountability programmes.

Administrative reforms to implement the above-mentioned programmes and plans would reduce considerably the scope for corruption. By limiting the role of the State, particularly in economic activities, bureaucratic functions would be circumscribed and opportunities for corruption would be limited. By contrast, as the private sector expands into previous areas of public monopolies, new state regulatory functions will be needed. This would in turn create new opportunities for corruption which bureaucrats could take advantage of. It is important that long-term reforms be so designed as to pre-empt infractions by bureaucrats in discharging their routine duties while expanding regulatory functions.

The changes now under way require system-wide improvements in bureaucracy. Both the required reforms and the challenges facing governments call into question the assumptions underlying public policy in respect of public management, i.e., whether more government interference in economic affairs is beneficial or harmful.

V. INSTITUTIONAL MEASURES AGAINST CORRUPTION

To increase accountability in public administrations, the countries represented have used various administrative measures and institutions as important tools for creating an environment where a system of checks and balances will induce public officials to pursue the common good and public interest. A whole structure of political and administrative safeguards and remedies, along with a system of judicial safeguards through a review of administrative decisions, is necessary.

Ensuring the integrity, fairness, effectiveness and accountability of administrative decision-making through the democratic process and representative political institutions is the fundamental basis of good government, and, in many cases, an effective instrument in dealing with corruption. Special consideration should be given to the problems inherent to the mechanisms of parliamentary control of administrative discretion.

Representative bodies should have both time and resources to supervise the modern administrative state. Parliamentary scrutiny of administrative authorities should improve by making department heads and all policy-making and decision-making officials accountable directly to representative bodies. It was recognized that accountability is fundamental for preventing the abuse of delegated governmental authority and for ensuring that power is directed towards the achievement of broadly accepted national goals with efficiency, effectiveness and prudence. The requirement of public responsibility and accountability of ministers and public servants is essential. Any breakdown in the process of accountability is liable to lead to ineffective, corrupt, irresponsible and totalitarian rule. Mechanisms of parliamentary control over public administration by political executives, especially through investigative committees and parliamentary commissions, are an integral part of democratic government.

It was noted that parliamentary mechanisms of control are frequently criticized as inadequate. It is normally assumed that parliamentarians have neither the time and resources, nor the inclination to supervise all aspects of the enlarged bureaucracy.

The seminar recognized that administrative law can provide governmental action with the legal frame necessary for effective government. Administrative law helps to keep the actions of officials within their legal authority and to protect the citizen against their abuse. The existence of administrative courts or specialized jurisdictions within the judiciary, as is the case in several countries, plays an important role to ensure compliance with the law to protect individuals against unlawful violations of their rights. It was noted that in some cases administrative courts have helped to impose a genuine control upon the

executive. These devices have also helped to raise the standard of administration. In other cases administrative courts have prompted reforms, especially where they play a consultative role, have helped to strike a balance between the increasing need of extended administrative services in the economic and social areas and an accountable and responsible administration. If the system is followed properly, administrative courts can protect basic constitutional rights, reinforce procedural safeguards, and provide remedies in the event of administrative injustices. From this perspective, the seminar observed that it is imperative to guarantee the independence of the judiciary. It was also noted that administrative tribunals are by nature independent and in no way subject to administrative interference.

Some argued that administrative law is essentially a quest for balance between the need for effective administrative action and freedom from arbitrary decision-making. However, such a balance is not easy to attain in all circumstances. Recent changes in this field, particularly in some Commonwealth countries and in the continental legal system, have resulted in a body of special administrative laws and insights about a number of reforms.

With the increase in the decision-making powers of public officials, there is a need to keep under continuous review the accountability mechanisms, with the necessary guarantees, including expanded access to justice. This will allow better transparency of the administrative process. However, it was emphasized that preventive mechanisms have a major role in administrative systems. There is a need to identify and report corrupt practices of all public officials, particularly those who, because of their supervisory, auditing, or taxation powers, have the possibility to identify situations or instances where dishonest conduct could arise. The same situations may arise in connection with the use of authority and abuse of power by law enforcement officials.

The existence of independent institutions such as ombudsmen, vigilance commissions and specialized anti-corruption institutions (e.g., an independent commission against corruption), which are essential parts of a multi-dimensional approach to the problems of corruption, could serve as possible examples for the establishment of anti-corruption institutions.

The seminar noted the potential for use of the ombudsman institution. Some recalled that the office of ombudsman first appeared in Sweden in 1809 in a somewhat special form. It flourished there for over a century before it was adopted in other places, and another thirty years more before the rest of Scandinavia followed. Thereafter it captured the attention of other countries, which adopted the institution after World War II.

Many felt that the ombudsman mechanism could be made to play a more effective role in combating corruption. It was recognized that the scope of the ombudsman system exceeds strict corruption matters. It was noted that cases relating to corruption should be treated in a priority manner by the ombudsman in order to ensure that wrongdoers are dealt with by the authorities in an equitable manner. For the ombudsman mechanism to be most effective in dealing with corruption it should be headed by a person of unquestionable integrity, fully independent of executive intervention, conferred with investigative power, and accessible to all.

Accessibility to the ombudsman's office could be enhanced not only when it accepts telephone complaints, but also when it establishes well-publicized office hours, even beyond official office hours. Additionally accessibility is ensured where ombudsmen frequently visit the area of their jurisdiction.

The seminar noted that several mechanisms are in use with varied results. For example, in one country there is complete legislation to prevent, control and fight corruption; a technical body of the chamber of deputies is in charge of supervising the public accounts. A section of the federal executive office (namely the secretariat of the general controllership of the federation) is in charge of carrying out various activities, such as preventing corruption through control of the budget by means of audits to co-ordinate efforts to achieve administrative simplification and perform supervisory functions in the broadest sense.

In this same country, it was noted that a public service responsibility system has been devised. In some countries, other mechanisms have been developed to fight corruption; among them, the use of vigilance divisions in personnel departments, the appointment of chief vigilance units in operating ministries/departments, and a central vigilance commission to operate against corruption. The central vigilance commission's primary role is to assess the work of vigilance units at the operating and assessment levels. The vigilance division in the central personnel agency has an over-all responsibility for anti-corruption measures.

In several other countries, there are also special police establishments and central intelligence units assisting in conducting investigation of officials who misuse public authority. Some countries have set up the office of inspector-general in all executive departments. This office investigates the integrity and fairness of public officials.

The effective functioning of the various institutions examined above presupposes that the following criteria are met:

- Independence from undue intervention, through appointment and recruiting mechanisms that guarantee the designation of persons of high professional quality and integrity;

- Freedom to initiate investigations and to pursue them without distorting influences;

- Capacity to gather evidence, examine files and documents, and power to administer oaths, and to deal with obstruction and contempt;

- Wide publication of the results of investigations and recommendations; and

- Possibility of judicial review.

VI. CORRUPTION AND THE CRIMINAL JUSTICE SYSTEM

Although corruption is illegal in all countries and in all legal systems, efforts devoted to curb corruption may be ineffective if they are not conceived, planned and implemented in a wide and systemic perspective. The enactment of norms, the existence of sanctions and even the application of extreme penalties may not produce the expected results if they are not accompanied by a wide range of preventive measures, the required administrative procedures and appropriate checks and balances, as well as by adequate human resources, professionally trained and up to the task, with the necessary degree of impartiality, fairness and efficiency. In other words, the criminal law and criminal justice system should be seen as a last resort, to be used as a reinforcement for other measures.

It was recognized that the problem with the criminal justice system of many countries is not necessarily the lack of penal provisions dealing with corruption as an illegal activity or the lack of severe sanctions against offenders, but the fact that these provisions and sanctions are not always properly enforced, or only selectively applied by the criminal system.

The seminar noted that there is a need for periodic reviews of existing legislation, so as to ensure that it is:

(1) Systematic in a way which would reduce the possibilities advantage of ambiguities, loopholes and inconsistencies by potential perpetrators; and

(2) Absolutely clear with regard to certain behaviour, so that legislation can play an educational role and inform the public on how to react to the criminal conduct of officials.

In addition, the criminal justice system itself is not immune from corruption, and its effects are much more pernicious, since they represent a breach of the public expectations on which the entire system is based. In fact, the public may react to incidents of corruption in the police by subsequent distrust and lack of public confidence and by being reluctant to report crimes. When corruption involves the judiciary, the very principles of its independence, impartiality and integrity are questioned, while corrupt practices in prisons contribute to the deterioration of the correctional system, becoming schools for crime, rather than institutions for reintegration of the offenders.

One aspect of corruption which is controllable and deserves attention is the risk involved in undertaking corrupt activities. Corruption becomes more attractive in minimum risk situations and is less so as risk increases. It is therefore a necessary

element of any anti-corruption effort. Clear penalties for corrupt activities should be established by either enacting relevant legislation or amending existing laws. In addition, such penalties should be strictly implemented, regardless of the offender's public position, and action should be taken to repeal or amend laws which afford special protecuion and immunities to certain high officials. One of the primary obstacles encountered by investigating and prosecuting authorities in legislation protecting civil servants. However, it is illogical that laws enacted to permit civil servants to discharge their duties in an environment free of adverse influences and frivolous suits should be used to cover up corrupt activities.

Consistent national enforcement policies to implement existing statutes should be accompanied by broad-based strategies involving action at various levels, with wider public participation. Promotion of codes of ethics for public officials and a change in public expectations may be a necessary concomitant of such strategies. Since corruption is mainly a crime that involves significant economic benefits for perpetrators, sanctions against it will not be effective without measures to deprive offenders of such benefits. Therefore particular attention should be given to methods of forfeiture or confiscation of illicit proceeds.

Efforts must also be made to tackle the entire supportive network on which corruption thrives. This includes particularly the use of foreign banks, bank secrecy laws, and the "laundering" of funds (contributions to political campaigns by criminals and large financial institutions). It may be necessary to consider additional monetary sanctions involving the payment of substantially higher amounts than those involved in a particular crime.

Investigation of corruption cases are particularly difficult, since these cases are often very complicated and committed under the guise of legitimate transactions, so that little substantive evidence is available. Special units, with specialists in accounting and other technical areas, have been setup in some countries to deal with cases of corruption. Multi-disciplinary teams with a mix of the requisite expertise can play a useful role in this regard.

The establishment of independent agencies or entities with the function of detecting, investigating and prosecuting corrupt activities in the public sector helps to ensure proper, expedient, effective and reliable action, while at the same time making certain that influences which may corrupt governmental officials are removed. There are successful examples of such entities in many countries. There is great advantage to having some mechanism which receives complaints, evaluates them, and pursues those which appear to be well founded. The judiciary can

discharge these duties, since in many jurisdictions its independence is guaranteed and the integrity of its members is unquestioned. But the congestion in most courts may not allow it. A separate watchdog agency may therefore be the best option. Public disclosure of assets and independent audit procedures are also basic requirements. Such transparency should be broadly applied, including companies affecting the public interest.

Since the collection of evidence and evaluation of information are essential for the effective detection of corruption, investigative authorities must be fully empowered to conduct the necessary inquiries within the limits set by the legislation and without jeopardizing the rights of the allegedly corrupt official. Investigation of shady practices is usually a very arduous and complicated process; it may therefore be necessary to resort to indirect methods. The lifestyle of the person is often an indicator, since there are certain amenities and activities not obtainable on a public servant's salary. Deviations from certain objective standards can lead an investigating authority to secure enough concrete evidence to either prove the officials' misconduct or release them of suspicion.

Investigation organs and especially prosecuting agencies must be immune, both de jure and de facto, to political pressures. This means a special effort to "control the controllers". Approaches to root out corruption cannot be expected to succeed when the main focus is the "small fry" or even middle-level misconduct, while those at the top abuse their power with impunity.

In fact, it is impossible to deal with corruption when it reaches the most elevated positions in the state's organization of power. In such an organized system of corruption the legislature itself may be corrupt and the laws perverted, as they serve to perpetuate the tyranny of a corrupt system. In order to escape the dilemma of such legally ambiguous situations, there is a need to consider corruption not only as an abuse of public power, but also as a serious violation of basic human rights. Seen from such a perspective, corruption becomes an infringement of internationally protected human rights. Corruption in such situations is perpetrated at any level of government whether sanctioned in its national legislation, or as a transgression of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. As such, corruption becomes a matter of international interest and concern. When it victimizes large sectors of the population, it could also be claimed to be a crime against humanity for which government leaders should be held accountable, even if at present there is no international tribunal for rendering justice.

New procedures and agencies to deal with corruption ought to be established with the purpose of increasing the legal accountability of government officials before the people, and not in order to diffuse responsibility and limit liability for acts which are considered serious crimes.

The seminar stressed that the fair and efficient administration of justice in cases of corruption is in itself one of the fundamental elements of the social compact and the rule of law. The higher one goes up the hierarchy of power structure, the more important the consistent application of the rule of law becomes.

The relationship also holds another dimension. The criminal justice system cannot abuse the rule of law just in order to secure the postulates of efficiency; the ends do not justify the means. Various safeguards that the guaranteed in general to those accused of a criminal act cannot be waived in cases of corruption. The due process guarantees need to be preserved, and a just and fair trial is also expected in such cases.

VII. PRACTICAL MEASURES AGAINST CORRUPTION

The seminar considered also a draft manual on practical measures to combat corruption, prepared for submission to the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders. The preparatory meeting, which considered the topic "Crime and Development", made the following recommendation:

> "Because the corrupt activities of government officials can destroy the potential effectiveness of all forms of governmental programmes, hinder development, and thereby victimize individuals and groups, it is of crucial importance that all nations: (a) review the adequacy of their penal laws in order to respond to all forms of corruption, as well as of related actions, designed to assist or to facilitate corrupt activities, and provide sanctions that will achieve adequate deterrence; (b) adopt procedures to ensure the detection, investigation and conviction of corrupt officials, free of intimidating influence and unnecessary technical impediments; (c) make provision for the forfeiture of funds and property obtained by corrupt officials; and (d) devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power. The Crime Prevention and Criminal Justice Branch should co-ordinate the elaboration of materials to assist nations in such processes, including the development of a manual to combat corruption."

The drafter of the manual introduced the document by stressing its tentative nature and the desire for substantive suggestions, including concrete examples of problems, structures and programmes which would reflect the experience of countries facing the problem of corruption.

General comments were made that the draft's usefulness could be enhanced by emphasis on initial strategic planning to identify problems and resources before any of the other mechanisms mentioned in the manual were considered as a remedy. The availability of strategic planning services through the United Nations was endorsed. It was recommended that the manual topics end with specific suggestions on how to implement the discussed mechanisms, and that attention be devoted to explaining how the findings of public inquiry boards could be followed up. Measures to overcome public timidity in identifying and bearing witness in cases of corruption were also thought worthy of emphasis, as was professionalization of public service and public management.

Specific recommendations with respect to the adequacy of the penal law included the enactment of prohibitions against actual as well as potential conflicts of interest, granting immunity from prosecution, when appropriate, to secure witness testimony in cases of consensual corruption, and holding public officials to a standard of integrity consistent with the public trust reposed in them.

Other comments stressed the primacy of prevention over repression, and the necessity to carefully select and follow the 1988 Vienna Drug Convention and the other United Nations draft models on extradition and mutual legal assistance to make them applicable to political corruption; and the need to use more expeditious procedures of administrative due process to counteract corruption. The advantages of interdisciplinary investigative groups were emphasized; and problems such as applying the rule of law in one-party states, making false accusations, and the difficulty of gaining access to corporate records and tracing assets were discussed.

A response date of 15 January 1990 was set by the Secretariat for comments on the draft manual in view of the necessity of incorporating them into a text to be presented to the United Nations Committee on Crime Prevention and Control.

VIII. PRIORITIES AND RECOMMENDATIONS

The participants, representing 30 countries and professional agencies, noted that the problems of corruption in government at the administrative and political levels are universal, and that although they have particularly deleterious effects on nations with vulnerable economies, these effects are felt throughout the world.

A. Special considerations

In their discussions delegates recognized the importance of democratic institutions, a free press, the rule of law, the independence of the judiciary and the creation of a political, administrative and social-economic environment in which public and civil services can operate without improper interference. They also recognized the over-all importance of minimizing corruption in the process of social and economic development.

B. Recommendations

General

- Policies to tackle corruption should embrace economic and development strategies as well as general prevention, special administrative, investigative and legal measures.

- These measures should be a priority of government policies and should be planned, monitored and, where appropriate, implemented by a specialized body.

Preventive measures should include:

- Anti-corruption strategies as high priorities in economic and social development plans which incorporate anti-corruption elements as integral part of the programmes.

- Professionalization of the civil service (adequate remuneration, training, skilled management, objective recruitment/promotion, code of ethics, simplified procedures, abolishment of superfluous bureaucracy and improved definition of tasks and work performance standards).

- Restructuring of the civil service so as to make it more responsive to local needs!throughout the country.

- Increased public awareness of their rights to government services and programmes, and normative education of the public, where appropriate, through media campaigns.

- Provision of effective channels to the public for submission of complaints of inadequate public service, inequitable treatment and allegations of corruption (e.g., ombudsmen, independent commissions, and other means such as special postboxes).

- Obligatory disclosure of assets and investments above a certain threshold, including those of dependents, and disclosure of conflicts of interests by public servants, officials and politicians in such a manner as to ensure accountability.

- Effective auditing of government agencies and companies supplying goods and services to ensure best value for money, including provisions for supervision of performance.

- Effective and well-defined procedures for tendering and supervision of public works contracts.

- Improved banking and financial regulations and machinery to prevent capital flight, tax and customs evasion.

- Establishment of a general inspectorate, ombudsmen, vigilance committee or other specialized body that can give sufficient attention to all problems of corruption in government as required.

- Introduction of adequate internal management procedures within government agencies to deal with corruption, disciplinary measures and, in particular, easy access for complainants.

- Adoption of measures within government agencies to ensure accountability and effective disciplinary measures for public servants and remedial action (following up of complaints).

<u>Investigative and legal measures should include:</u>

- Review of the adequacy of legislation and sanctions to deal with corruption.

- Efficient, swift and just judicial processes.

- Strategic planning and setting of priorities for investigating bodies, as well as monitoring and evaluation.

- Use of interdisciplinary investigative task forces where appropriate.

- Measures to enhance co-operation by witnesses, such as physical and legal protection from retribution and provision of financial rewards.

- Forfeiture of corruptly gained assets.

- Reversal of the burden of proof, in appropriate cases, in accordance with national legislations.

- Effective measures to deal with money laundering in relation to corruption in government.

Regional international co-operation should include:

- Mutual assistance in criminal justice matters/extradition, as provided for by the draft United Nations Model Treaties for submission to the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders.

- Confiscation/forfeiture of illegally acquired assets, following provisions of the new United Nations Convention Against Illicit Drug Traffic and Psychotropic Substances.

- United Nations anti-corruption technical co-operation assistance (e.g., strategic planning of anti-corruption programmes, law reform, training).

- United Nations assistance in the tendering of international aid projects.

- Exchange and sharing of information about corruption techniques and laws, documentation produced by the seminar and other relevant materials, including research results.

- Regional action, including monitoring of data related to customs, immigration and labour.

- Facilitation of visits of experts, workshops, and advisory services provided on a multilateral and bilateral basis.

- An international model code of conduct for public officials, providing inter alia for declarations of conflict of interest, disclosure of assets and standards of performance of duty.

- A United Nations programme to monitor compliance with the code.

- Corruption in government to be included in the study being prepared by the Secretary-General of the United Nations for consideration by the General Assembly in relation to the proposal to create an international criminal tribunal.

The Seminar strongly recommended that appropriate follow-up activities in the legal and administrative fields, including management improvement of institutional arrangements and processes, be undertaken jointly by the Centre for Social Development and Humanitarian Affairs (CSDHA) of the United Nations Office at Vienna, and the United Nations Department of Technical Co-operation for Development in New York (UN/DTCD). The Seminar noted that the recommendations of the group could be brought to the attention of the Economic and Social Council, and taken into account in the next biennial work programmes of CSDHA and UN/DTCD.

In particular the Seminar recognized the importance of pursuing special activities by way of interregional seminars and expert groups dealing with such themes as management improvement of the justice process; data bases, including use of computers for improved decision making; and feasibility studies on a code of ethics for public officials.

Part Two

TECHNICAL PAPERS

I. MAJOR IMPLICATIONS FOR THE EXISTING ADMINISTRATIVE ORGANIZATION: PROCESS AND PROCEDURES IN MAINTAINING ETHICAL STANDARDS AND QUALITY IN GOVERNMENT*

President Julius Nyerere in his address to the first meeting of the Tanzanian National Assembly warned both the newly elected parliamentarians and the post-colonial civil servants to guard against great temptations:

> "Families, friends and even acquaintances will ask you to use your influence so that this man can get a job he wants, another a loan, and so on".[1]

The above words, spoken by the Mwalimu, mirror the concern felt by many in the third world, both inside and outside politics, about the pervasiveness and insidiousness of corruption in those societies.

Corruption in perspective

These words also echo the thoughts of many from other societies and other periods of history. In 1069, in China, Wang An-Shih was summoned to the court of the Emperor Shen-tsung and entrusted with the development of a sweeping policy of administrative reform which grappled with some of the urgent and fundamental issues facing modern-day administrators. Among these was the serious issue of corruption at all levels of the civil service.[2]

The experience of the Islamic scholar Ibn Khaldun (1332-1406) provides another interesting example. Apart from his scholarship, he was also a notable public figure; appointed as a judge, he tried actively to eliminate corruption and bribery, but failed to do so and was dismissed -- not for having failed but for having tried. His experience foreshadowed the fortune of many in contemporary times who have tried to combat corruption.

Machiavelli living in Florence, in Renaissance Italy, was living in a city riven by factionalism, where the notion of "liberty" almost always had some selfish connotation and where bribery and corruption were commonplace. Likewise, in eighteenth century England, the reformer Christopher Wyvill wrote of his fears for a society "disgraced by the most shameful corruption ... the intolerable evils of a profligate democracy".[3]

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So as our vision moves from ancient times through all the continents, to the present day -- to Watergate and beyond -- we find evidence of corruption in all its many varied forms. Lasswell has described corruption as:

> "one of the most recalcitrant characteristics of public and private life of yesterday or today, anywhere in the communities of man".[4]

Some have argued that corruption is rooted in human nature. This nature derives from Montesquieu's idea of the imperfection of human nature and the Simonian conception of bounded rationality. We shall return to this notion later.

Defining corruption

Having said that man has been the perpetrator of corruption and its victim throughout history, there is quite clearly no one universally accepted definition of corruption -- not among politicians. Former Jamaican Prime Minister Edward Seaga, whose party was recently accused of corruption, is quoted as saying "there was a difference between corruption, which was violation of the law, and general financial irregularities which were prevalent in the public services". Former British Prime Minister Harold Wilson at the time of the Poulson affair is quoted as saying in 1974:

> "The price of retaining confidence in British democracy is constant vigilance against any abuse, any individual weakness or dishonesty on the part of those who have been elected to positions of trust ... If only a very small minority give way to temptations which beset them for personal gain or other unworthy motive, then the whole of public life is sullied".[5]

Neither is there an accepted definition of corruption among bureaucrats dealing in or with it, as the case may be; nor among academics analysing it, but one assumes not personally involved in it.

Ultimately all would agree that corruption is a form of social relationship. It is an act or series of acts which are defined largely, normatively, and take place within a given culture under a specific set of circumstances. It has at its heart a peculiar relationship to the exercise of power in that society, or occasionally in more than one society at the same time. However, it remains that although specific instances and forms of corruption are culturally determined and therefore that a generalized definition of corrupt behaviour is difficult, there

is a central core element of corruption which is decried by most cultures, viz., most instances of bribery, fraud, extortion, embezzlement, and "significant" misuse or appropriation of public or organizational funds for private, personal use.

One of the major problems in producing a definition of bureaucratic corruption is that corruption is, of course, an undercover activity, which generates secrecy and usually fear. Thus, even major exposures of corruption reveal only a part of what is to be learnt and part of what needs to be known. Corruption is seldom carried out openly, except in what Alatas has described as the stage of rampant corruption, when there is scarcely anything that can be done without graft. It is reliant upon secrecy, collusion and a degree of certainty that the behaviour will not be disclosed to the relevant authorities.[6] Except in those cases where an individual is appropriating to his own ends public property, there exists what one might term a culture of corruption. A further difficulty in producing a workable definition is, as Hope points out:

> "Corruption alters its character in response to changing socio-economic, cultural and political factors. As these factors affect corruption, so does corruption affect them. Corruption therefore brings with it a certain dynamism, which allows it to perpetrate itself".[7]

Corruption is pervasive throughout all social institutions, from the political system to the administrative structure and into the private sphere. However, the main focus in this paper will be on corruption within the administrative system or on bureaucratic corruption, as it is more widely known.

Huntington,[8] examining corruption in the process of development, sees corruption as one measure of the absence of effective political institutionalization, which is prevalent during the most intense phase of modernization, in which case it is not so much the result of deviance of behaviour from accepted norms, but deviance of norms from established patterns of behaviour. Quite clearly, in societies which are undergoing periods of rapid normative change, there are bound to be increasing rates of perceived corruption. But as a definition designed to lead us along the path to be able to specify the various forms of corruption in a given society, with a view to taking administrative action to deal with these problems, it does not take us far.

Etzioni Halevy's[9] definition, although interesting in that it includes non-material transactions, is also not specific enough. The use of the resources of the governing elite, i.e., the symbolic devices, power devices and material devices, can be classified in accordance with the degree of overtness or

deviousness employed. Non-legitimate use of these resources is regarded as corruption.

Osterfeld in a recent essay defines corruption tentatively as:

> "(1) Activities by individuals outside government which bestow benefits on a public official in an attempt to induce him to permit them to (a) evade existing laws or policies and/or (b) obtain a change in the laws or policies, either enactment or repeal, which redound to them direct and immediate benefit;
>
> "(2) Activities of those inside government to obtain benefits for themselves, families and friends by using their positions to (a) solicit or accept benefit from private individuals in exchange for the bestowal of direct and immediate benefits upon those individuals; or (b) to enact or repeal laws or policies the immediate effect of which would be to directly benefit themselves".[10]

The advantage of this definition is that it avoids the imprecise and highly culture-specific problem of normative and moral condemnation, and from the administrator's point of view it focuses attention on the relationship between the government and the public.

Atlatas[11] continues this notion that corruption involves the subordination of public interests to private aims involving a violation of the norms of duty and welfare, and adds that this is always accompanied by secrecy and a callous disregard for any consequence suffered by the public. From this he derives a list of eight characteristics of corruption, viz.:

(a) Corruption always involves more than one person;

(b) Corruption on the whole involves secrecy;

(c) Corruption involves an element of mutual obligation and mutual benefit;

(d) Those involved in corruption normally camouflage their activities;

(e) It involves people who want definite decisions and those who are able to influence these decisions;

(f) It involves deception usually of a public body;

(g) Any form of corruption is a betrayal of trust;

(h) Any form of corruption involves a contradictory dual function of those who are committing the act, i.e. of their public and private roles;

(i) A corrupt act violates the norms of duty and responsibility.

He continues that should an act contain all eight elements, it could be considered to be corrupt. This type of corruption has been referred to as bilateral corruption, as it is indeed the most frequent occurring.

It will be noted that Atlatas' definition or characterization of corruption would exclude the act of an individual who appropriates alone public property for his own personal use. This act can then be redefined as theft, and dealt with appropriately. However, the issue of individual appropriating public property has recently been shown to be a rather complex issue; and recent literature has been refining this phenomenon as autocorruption. It is one in which no bribery is involved.

There is also the phenomenon of collective corruption by which large corporations get together at the local level and engage in corruption in order to bring benefit to a specific locality or community rather than to individuals. Third, there is the situation in which a whole state machine as a large section of the ruling elite becomes corrupt in the sense that it manifestly deviates from the values that the very elite is sworn to uphold and which it expects the citizens to adhere to.[12] Of course, the foregoing is meant to be illustrative. It is not intended to treat these cases in any detail in this presentation.

Corruption: beneficial or harmful

Let us now examine the notion that corruption per se is not always harmful to the further development of a society. Is it feasible that corruption may in some cases aid the attainment of national goals? Some economists argue that there is an optimal level to corruption and that level is not necessarily zero. The reasoning behind this is that there will come a point at which the costs of the remaining corruption will be exceeded by the public costs of fighting corruption. This is of course examining cost in a very specific way and ignoring other factors such as public opinion or morale.

Leys[13] takes issue with what he considers the moralist position taken by most Western social scientists on the subject, and argues that this type of approach which, by generally posing questions about corruption in the third world in terms of the failure of those societies to conform to some "superior" Western conception of public morality, implicitly draws the conclusion

that this may be one reason why the research to date has been so unempirical. Myrdal[14] gives a different explanation for the lack of substantive research on the topic by postulating that this is due to a reaction on the part of a new generation of social scientists, who, not wishing to be seen to take over the mantle of the moralists in relation to the third world and fearing to be labeled as imperialists etc., have adopted "diplomacy in research". "The taboo on research on corruption is indeed one of the flagrant examples of this general bias ... which is basically to be explained in terms of a certain condescending on the part of Westerners". Leys of course does not state that all corruption is good, he merely raises the question, "Is it all bad?".

Osterfeld[15] goes further and argues, taking as his initial position that it is now beyond dispute that the free market is an indispensable agent for economic development:

> "It follows that those corrupt acts that move the economy in a free market direction are economically beneficial, those that inhibit the operation of the market are economically detrimental".

The former type of corruption he terms expansive corruption. He argues that this form of corruption is morally defensible since its goal is to defend one's own property as well as one's right to engage in voluntary acts. In other words, corruption is normally a function of restrictions on freedom; as these restrictions are removed, corruption will no longer be necessary. This type of corruption is seen to beneficial relative to the situation.

Clearly, where government regulations are unduly restrictive or complex, say in the granting of licences, if the system acts more efficiently through a little corruption, there might be some benefits. This view is conveyed in Klitgaard's[16] formulation:

> "Only when corruption circumvents already existing distortions can it be economically, politically or organizationally useful".

The weakness of the above position is that there is no hard evidence to support the argument that corruption has been and could be useful.

By contrast, most observers take the view that corruption is harmful and obstructive of progress at all levels and in all spheres.

From an economic perspective, it would be contended that corruption as a rule has a sub-optimal effect on administrative performance and economic development. In the words of Gould:

> "The available data suggest that corruption has a deleterious effect on administrative efficiency and ... economic development. Even under circumstances of benign corruption, the costs incurred in administrative ... performance far exceed the benefits derived from relative gains in economic efficiency. Moreover, if general welfare is the standard for evaluating the benefits and costs of corruption, the social, political, and administrative trade-offs involved in attaining increased economic efficiency represent a loss to society in the long run. This is particularly so in developing countries, where its effects are deemed cumulative and circular. That is, government monopoly of economic activities -- when combined with conditions of political softness, poverty and widened socio-economic inequalities, ambivalence toward governmental organizations, and systematic maladministration -- contributes to high levels of corruption throughout society, undermining the legitimacy of the state, social equity considerations, and the effectiveness of development policies and strategies. There seems to be little doubt that under conditions of systematic or widespread corruption, economic efficiency, together with political and administrative performance, declines below optimal levels and thus lowers general welfare."[17]

In 1986 Carino analysed the effects of graft and corruption on the individual, the organization and society in seven Asian countries and came to the following conclusions:

> "Corruption clearly entails increased administrative costs through overpayment of supplies and materials and losses in government revenue ... Corruption makes administration difficult as it creates a second line of authority parallel to the formal one, in the process undermining and weakening it. It also results in goal displacement, replacing it with the personal economic interests of the individual employees or the syndicate ... In the society, the first set of harmful effects concerns the losses in the government treasury on both the revenue and expenditure sides. A second set of harmful effects sets in when corruption renders inutile the intent of policy and regulations. Corrupt civil servants may change target beneficiaries, impose

unauthorized controls or fees, or otherwise alter the allocation of values set by law ... The possibility that corruption may improve the economy also seems unlikely, since it does not really allow only efficient producers to enter the market ..."[18]

Causes of corruption

First and foremost the main cause of corruption is political. A tyranny, in a sense because it is itself corrupt, will always generate corruption, as corruption will be the only means the average individual has of overcoming the restrictions of the tyranny. Tolerance or even encouragement of corruption by the ruling elite will lend corruption a measure of validity which it does not deserve. As long as the political elite is not prepared to punish those who are corrupt within its own group, their corruption will spread. Tyrants themselves may of course in their own interests and in a specific context, act against corruption.

Second, there are those factors related to the economic situation. Where there is great poverty and great disparity between the poor and the rich, and especially where the public servant is generally lowly paid, there will be a tendency for corruption to develop. If there is a scarcity of basic items, and the government finds itself unable to regulate the supply, for whatever reason, there will be corruption.

Third, there are factors to do with the administration per se. The lack of a civil service work ethic, and above all the absence of any conception of public accountability and responsibility will all foster corruption.

The pre-conditions for corruption consist of combinations of these factors, but it cannot be overstressed that the primary causes are to be found in the attitude of the political elite to corruption and to public accountability and morality more generally.

We can also see some factors which can be said to predispose third world countries or at least some of them to corruption. In most third world societies, large numbers are employed in the public sector, and the public sector has a more pervasive influence upon the life of the society in so far as the distribution of goods and services is concerned.

The larger the relative size and scope of the public sector, the greater is the tendency towards corruption. This leads to a redistributive as against a productive orientation in the

bureaucracy. And in any situation in which bureaucrats plan instead of the market allocating, the scope for corrupt practices is significantly increased.

The size of the society, and more importantly the importance of personal relationships in social life, give rise to an ease of access to the administration, and prevent the emergence of the faceless bureaucrat typically associated with public administration in the West. "... Europeans view nepotism as part of corruption, but many in this country are not inclined to agree with this approach. How can a person belonging to a backward caste or community catch up with his better placed competitors unless he is given a lift by a relation or someone belonging to the same caste, it is asked".[19]

In addition, many third world societies have a number of ethnic and cultural minorities who may perceive themselves to be disadvantaged in relation to the various aspects of public administration and who may therefore resort to corruption as the only means of securing the services they require from the public administration.

Finally, there is the undoubted influence of the colonialist past. Corruption was neither imported by the colonialists, nor did they find it there to any greater extent than it existed elsewhere. But out of the clash of two or sometimes more cultures, one more powerful than the others, inevitable social tensions and dislocations occurred which gave rise to increased corruption. Singapore is perhaps the only known exception. Here it is recognized by all that corruption has declined in the post-colonial period relative to the pre-independence period.

Hans Shenk has shown in the case of India that corruption and informal practices can be related to some of the factors outlined in the previous three paragraphs. Specifically, he states that: (1) in Hinduism ritual inequality is accompanied by socio-economic inequality; (2) lower strata are dependent upon and are protected by upper strata; (3) extreme poverty and scarcity tend to reinforce the vertical relations of bondage, and mobility is blocked by daily dependence; and (4) Indian society is undergoing "modernization" and change in which dual norms exist,[20] to which, one might add, the multilingual nature of the society causes language affiliations to tend to encourage favouritism and nepotism.

Extent of corruption

The scale and pervasiveness of corruption in developing countries is explained by Hope.[21]

"In developing states bureaucratic administration has been transformed into an institution that emphasises the sovereignty of politics rather than the supremacy of administration ... The saliency of political dominance over bureaucratic values has created a style of administrative behaviour that is highly politicized despite the formal acceptance of a career system of administration promised in professional and formal adherence to ethical standards of conduct. The presence of widespread political corruption has largely been responsible for administrative corruption in these nations".

The effects of corruption vary depending on the scale and nature of corruption. Inevitably, corruption diverts the attention of those involved in it away from the real goals and objectives of the organization. As the norms of bureaucracy become subordinated to those of corruption, the administration fails more and more to respond to public need. As corruption takes root in one bureaucratic institution, other related institutions become involved, and so the spillover effect continues. Eventually, as the frequency of graft increases, it becomes a burden on the national exchequer, and waste and misallocation in terms of national public policy objectives occur. The prevailing ethos in the administration among those not directly involved in the corruption becomes one of cynicism and apathy, as indeed it will in the wider society. Negative externalities will include such things as poorly built roads and buildings not built to safety specifications because of the way in which contracts were handled.

Finally, as the corruption spreads the nation will begin to lose two of its most important resources. There will be a loss of professional skills as the more qualified and certainly the more dedicated of the public servants leave first the government service and later the country. At the same time, as the situation deteriorates and more fraudulent deeds are conducted over borders, there will be increased capital flight. Ultimately, a point beyond the level of tolerance of corruption in a society will be reached when the level of alienation in the population will be so great as to provoke major changes in the system, particularly in the political system.

Corruption then is pervasive, insidious and ultimately harmful, or even disastrous for the further development of a society, and in particular its economy. If this is true for all societies, it is even more true for third world States, particularly those which are small, or have a number of minorities within their boundaries, or whose economies are particularly vulnerable.

Combating corruption

The question then arises as to what if anything can be done by administrative means to prevent, control or eradicate corruption. Examples particularly from Singapore, Hong Kong, the Philippines[22] and elsewhere show that it is possible to remove at least the backbone of corruption even in the most unpromising situations.

As has been pointed out already, the form and causes of corruption are culture-specific. However, wherever and under whatever conditions corruption exists, it exists with the connivance, even if passive, of the political elite. Therefore, the corruption fighter must cultivate the support of that political elite or at least key members in it. Although, as the Philippines case shows,[23] even corrupt political leaders may sometimes move against corruption, the difficulty of which cannot be overstated.

> "Corruption can only be eradicated when both the politicians and the public make a concerted effort not to tolerate it anymore. But where softness of state exists, people are reluctant to uphold laws which get in the way of their personal or sectional interests. The burden therefore must fall on the political actors who are the only individuals with the power to bring about a stronger allegiance to the State and, hence, a commitment to the national interest."[24]

For the remainder of this section of the paper we shall assume that the corruption fighter has the support or otherwise of some element of the ruling elite.

Here it is important to be clear about precisely what we mean when we refer to "the administration" or "central administration". All societies have a bureaucracy, called variously civil service, public service etc., which provides the administrative and technical services for the various departments of government. In addition, and this is an increasing trend, there are semi- governmental agencies, which may be partially staffed by civil servants. In fact, a number of public sector corporations fall into this category, as do the project and programme execution units which governments are required to establish by external agencies.

The government allocates much of its resources, specifically directed to education, military, etc., through the bureaucracy. Conversely, many of the resources are collected by departments of the bureaucracy from other sectors of the economy. Again, a part of the state bureaucracy may mediate between different sectors of the economy -- e.g., building permits and many aspects of trade. The fundamental objective of this bureaucracy is therefore to

ensure that these transactions are performed efficiently, with integrity, and with the least possible cost to the government. In some instances senior bureaucrats act as legislators through the means of delegated powers, and in others, as judges through arbitration. It is or ought to be accountable and responsive to both government and to the wider public. The spectrum of public administration is wide, and therefore the scope for corruption once it gains hold tends to be equally extensive.

Let us now focus on administrative reform per se before moving on to look at specifically designed anti-corruption measures.

> "Administrative reform can be defined as specifically designed and deliberate efforts to induce fundamental changes both in the structure and procedures of the public bureaucracy, and the attitudes and behaviour of the administrators involved in order to promote organizational effectiveness and achieve national development goals."[25]

The key question to be asked prior to deciding upon a course for administrative reform revolves around the issue of the individual responsibility of the bureaucrat. To what extent can that responsibility be guaranteed by an appeal to a civic or ethical code?

The British Civil Service has for example often been cited as exemplifying the idea of public service. As the otherwise often critical Fulton Committee stated:

> "There is a strong sense of public service. Its impartiality and integrity are unquestioned. We believe that the country does not recognize enough how impressively conscientious many civil servants are in the personal service they give the public."[26]

If that sense of public service cannot, or at least not to a sufficient extent, be ruled upon, then what other systems or procedures can be put in place to ensure effective responsibility and accountability of the bureaucrat?

Here, it is important at least to suggest that morality and civic virtue are not synonymous. In a bureaucracy in which corruption has at least become part of reality, it is possible for an individual to apply a double standard to himself. He may, for example, regard one of the perquisites of being promoted as now being able to receive the graft of his predecessor, while he would not accept his neighbour's brief to help cover up some criminal act. In this sense no doubt, he compromises what we may call his moral integrity, although the corrupt bureaucrat will not perceive this. On the other hand, his colleague whose

compliance or silence is called upon, if!not his own involvement, may be very appreciative of this moral dilemma. We can assume that in administrations where corruption exists, the balance between those who perceive the moral dilemma and those who do not has been tipped in favour of the latter and that will also be true of the political elite. Isolated corrupt institutions within the bureaucracy tend to be rare because linkages with other non-corrupt agencies help spread corruption.

The task of the administrator in charge of designing and administering the reform package must therefore be to try in some measure to tilt the balance back in the other direction. The conventional elements of reform normally revolve around (1) the training and selection of bureaucrats; (2) revision of the career structure within the administration; (3) adjustment of the salary structure; (4) decentralization (where appropriate); (5) improvement of management information systems; and (6) improved systems of personnel and financial auditing. It should be noted that the above are no different from the normal types of reform which might be attempted in order to revitalize a moribund, but not necessarily corrupt administration, or one which was being increasingly faced with new challenges.

Of the above measures, some can be seen as being designed to improve the morale and confidence of those bureaucrats who are not corrupt, and this should not be overlooked as an important element in the fight against corruption. For by increasing the morale and confidence of these people, it can be expected that the tolerance level for corruption within the organization will be reduced. Of particular relevance to this would be factors 1, 2 and 3 above. Civil servants, especially in the third world, although they may have very significant, even onerous, responsibilities in relation to over-all national development, are generally very low paid by comparison with their peers in other sectors of the economy. Although at the time of independence many enjoyed a status "inherited" from the colonial administration, for a variety of reasons their status has declined. Through training, proper systems of personnel selection, and of course where possible by adjustments of the salary structure, some of this loss of morale and status can be repaired.

What of the corrupt bureaucrat? It is scarcely feasible to envisage that he will not also benefit from the above reforms at least materially, but it is to be hoped that the reforms would diminish his opportunities for graft rather than increase them. In this respect (1), (5) and (6) above (next to last paragraph) are crucial. The establishment of an efficient management information system should enable any pattern of persistent corruption to be identified, e.g., an inordinate number of licences granted to a particular individual, discrepancies in stock or in finance, etc. An appropriate personnel auditing and

selection system should at the minimum be able to prevent such persons from being promoted, perhaps result in disciplinary proceedings, or at the extreme, result in the involvement of the police in an inquiry into the misdemeanours.

As was stated earlier, this type of reform could equally take place in a non-corrupt system. The difference, and there must be a difference if it is to be applied to a corrupt system, lies in the person designated to carry out the reform, in his strategy for implementation,and above all his relationship with the political elite. One may assume that in a normal bureaucracy, as opposed to one exhibiting deviant tendencies, the person implementing the reform would have the backing of the political elite, and further that, while individuals may disagree about elements of the proposed reform, the package and its implications whatever they may be will be approved and largely non-controversial. His main characteristics, therefore, are likely to be in the realms of technical competence, seniority, and acceptability to the bureaucracy itself. He may come from within or outside the administration.

In the deviant bureaucracy, the question of who is to implement the reform is much more difficult. The element of the reform aimed at rooting out corruption may be played down publicly, or it may be given full publicity, but with no real political backing. Whatever the case, it will certainly not have the backing of the political elite as a whole. Moreover, undoubtedly, if successful in significantly diminishing corruption, it will be contrary to the interests of a significant portion of the elite. It is therefore essential that the reformer gains the full support and backing of at least one significant part of the elite. The reformer himself must be honest and must be seen to be so. If he is coming from outside the administration, then he will quickly have to identify a number of non-corrupt bureaucrats whom he can trust and can utilize in the more difficult aspects of his task. By utilizing such people as agents, the reformer is more likely to be able to identify the sources and beneficiaries of the corruption. Most important, he must institute a realistic time frame for his actions and plan his strategy carefully. When faced with ostensible corruption, he must have a clear idea of what actions he intends to take and act swiftly. The lessons of the Shabir case outlined by Klitgaard are instructive.[27]

> "... Shabir did a creditable job uncovering the sources of the many kinds of corruption he encountered ... he did a good job of analysing ostensible problems of corruption and suggesting policy measures. But he failed because he seemed to overlook his strategic problems of implementation. He moved on too many fronts at once, without garnering political and bureaucratic backing.

"In his own words:

> I know I could not annihilate corruption totally, but I was committed to mitigating it as far as possible. I did not know and could not tell as to how long it would take me to clean up. In fact, even cleaning up was some ethereal concept whose level I had to determine myself.
>
> Now when I think back, I realize that I did not have a predetermined plan to tackle the issue of corruption. I acted on the spur of the moment, always remembering that the system must not break down".

Shabir, of course, was not successful since the political forces moved against him and had him removed from his post. The other case quoted extensively in Klitgaard relates to the successful cleaning up of the Philippines Bureau of Internal Revenue during the Marcos régime. The person appointed to do this clean-up exercise was a member of the judiciary, Justice Plana. "Plana himself had a spotless name and a distinguished record of public service. The Justice also enjoyed excellent connections with the corridors of power".[28]

The central elements of Plana's strategy were:

(a) Establish a new performance evaluation system;

(b) Collect information about corruption; and

(c) Punish high-level officials quickly.

These key factors were supplemented by:

(i) Professionalization;

(ii) Identifying potentially corrupt taxpayers;

(iii) Toughening up control systems;

(iv) Changing tax laws;

(v) Tightening central supervision over the regions;

(vi) Rotating agents;

(vii) Involving outside auditors; and

(viii) Changing attitudes towards corruption.

Successful, although Plana's efforts apparently were, shortly after he left the BIR, corruption was reported to be on the rise again. Significantly, one of the criticisms, with hindsight, of Plana was that he did not adequately prepare a successor. Indeed, this is a frequent omission where the person in charge of the reform is brought in from outside the organization and is so concerned to complete his task, while enabling the organization to continue to function, that he overlooks the need to prepare someone to take over from him.

So far, we have looked at reforms aiming to reduce the level of bureaucratic corruption from within an organization. Now let us look at more comprehensive attacks on corruption.

Until 1959 Singapore was a society characterized by corruption as way of life. In that year the PAP government took over from the colonial administration and was determined to eradicate corruption. Its strategy for eradicating corruption generally, but particularly in the civil service, emphasized the necessity for eliminating both the opportunities for corruption and the need for corruption, while simultaneously increasing the individual cost of corruption . Two of the main planks for this strategy were the Prevention of Corruption Act and the Corrupt Practices Investigation Bureau. These were brought into being alongside a policy of constantly increasing the salaries of the public servants and improving their conditions of service. The assumption was that the previously low salaries and unequal distribution of wealth had been casual factors in the development of the culture of corruption. Prime Minister Lee Kuan Yew explained the success of the anti-corruption battle in Singapore thus:

> "The effectiveness of our system to check or punish corruption rests: first, on the law against corruption contained in the Prevention Corporation Act; second, on a vigilant public to give information on all suspected corruption; and third, on a CPIB which is scrupulous, thorough and fearless in its investigations.
>
> "For this to be so, the CPIB has to have the full backing of the Prime Minister under whose portfolio it comes. The strongest deterrent is in a public opinion which censures and condemns corrupt persons, in other words, in attitudes which make corruption so unacceptable that the stigma of corruption cannot be washed away by serving a prison sentence".[29]

The Singapore approach then was comprehensive, clearly thought out, and had the full commitment of the political leadership; and this approach has shown that even where corruption is in effect a way of life, correct measures can reduce it to a very minimal level.

In Hong Kong in 1973, three elements were combined in the fight against rampant corruption . These were public education, corruption prevention (the Corruption Prevention Department - CPD), and an Independent Commission Against Corruption (ICAC).

The experience of the CPD in Hong Kong shows that any effective strategy to fight corruption must take account of three aspects of the bureaucratic process (which provide different opportunities for corruption). Firstly, the formal procedures of the bureaucracy, the way in which it is intended that work should be done, are of course generally laid down in policy. Policy, if it is not clear, well defined, up to date, and known to the administrators and the public, will assist those predisposed to be corrupt.

Legislation underpins the policy. However, legislation is only effective if it is up to date and if it is enforced uniformly and rigorously. Failure to comply with legislation can be a punishable offence, but sometimes lack of staff or resources or the absence of political will means that breaches of the law are unpunished. Policy and legislation alone do not ensure that the formal procedures of bureaucracy are adhered to; these must be complemented with instructions. Instructions may be written or unwritten. Here experience has shown that too many instructions may stifle initiative and give rise to deliberate obstruction and delay. On the other hand, inadequate instructions allow too much discretion on the part of staff and more opportunities for corruption. Instructions should be open, available to all staff, consistent, and in line with current policy.

Secondly, the informal practices of the organization, how the work is actually being done, give rise to opportunities for corruption. Hence, there is a need for adequate supervisory practices, routine and spontaneous.

Thirdly, there is the control and organization of the work, i.e. management, or effective management to counter or prevent corruption requires spot checks, good decision making, trained managers and structured management involvement. It also requires good public relations -- the possibility for the public to ascertain their rights speedily and clearly and to be able to insist upon their rights as necessary.

Finally, this must be backed up by a system of accountability. This means that there is effective communication within the structure of the organization, that duties and responsibilities are well defined, that realistic objectives are set, and further that the exercise of delegated authority at all levels is effectively monitored.

The ICAC was set up because corruption was so rampant that, as the Governor stated:

> "Clearly, the public would have more confidence in a unit that was entirely independent and separate from any department, including the police".[30]

Staffing was of course an urgent problem. The police were notoriously corrupt, with the exception of a few senior officers who were recruited, others were brought in from the United Kingdom; but one of the important decisions was to employ young Chinese -- after thorough vetting -- and give them formal and on-the-job training. They were well paid, but subject to constant and intense surveillance. Contracts were only for 2 and 1/2 years, and renewal was based on performance appraisal. The ICAC had three functions: (1) to investigate, arrest and help prosecute corrupt individuals; (2) to carry out assessments of organisations' breakpoints, or where corruption would be most likely to occur, with the power to secure changes in working procedures in government departments in order to reduce the risks of corruption; (3) to gather support and information from the public and to change public attitudes towards corruption. This arrangement had a reasonable measure of success, but two factors should be borne in mind. First, the scale of corruption in Hong Kong was enormous -- it ranged through every public organization, including the police. Second, Hong Kong is by no means poor. Its citizens enjoy one of the highest standards of living in Asia.

These two points are important, because setting up an anti-corruption agency as such is an extreme measure along the continuum of measures to be taken against corruption. It is also very expensive. It amounts in effect to setting up a new bureaucratic structure, staffed with personnel of the highest integrity who are paid salaries well above the norm.

Conclusion

The above brief analysis has attempted to show that corruption has always been present throughout the history of mankind. It has discussed the problem of defining corruption, so that the definition can be useful as a tool for analysis in real situations. It has illustrated, albeit briefly, the causes and consequences, particularly in relation to the third world, and finally, it has suggested some possible strategies for countering corruption in the administration. The salient point which should emerge is that corruption is largely derived from and its continued existence is connived at by members of the ruling elite.

Corruption has enormous and varied implications for society, and in particular for the central bureaucracy, which is the key link between the government, as allocator of crucial and scarce resources and services, and the public and the ruling elite. Here we have been particularly concerned to look at the implications of corruption for the central bureaucracy. By this we mean not just the loss of revenue to the government and the misallocation of public funds, but also the problem of securing the loyalty and service of non-corrupt bureaucrats. This latter aspect has been long overlooked. In the process of containing or eliminating corruption, the first tools the anti-corruption administrator has to have are the non-corrupt personnel within the administration. Through these people an organization with a new type of civic allegiance can be built; without them any anti-corruption activities will fail. Hence, the emphasis on restructuring, especially in third world countries, of the bureaucracy, particularly with regard to status, career paths, personnel selection and remuneration.

With respect to corrupt personnel, it is proposed that vigilant systems of internal personnel auditing, financial auditing, and internal disciplinary measures be utilized at an early stage, before the establishment of the inevitably costly independent anti-corruption agency.

Both the Hong Kong and the Singapore cases outlined earlier, show a very effective combination of what can be termed the preventative and the persecutive approaches to the elimination of corruption. The matter of balance within the over-all strategies important. The persecutive approach is more acceptable politically because at much less expense it can be shown to have an immediate effect, and even if it is only a very small number of arrests, and hence it is more likely to win the attention and support of voters. The preventative approach, which is more costly in the short term, does not satisfy social demands for retribution -- but in the long term is likely to be more effective.

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II. INSTITUTIONAL DEVICES IN DEALING WITH CORRUPTION IN GOVERNMENT*

Introduction

The complexity and diversity of the modern State have resulted in a large increase in the powers available to government in pursuit of the collective interests of society. Governments continue to acquire more functions, as the public keeps calling for governmental intervention to cure social ills and promote common endeavours, resulting in more power for the State in the name of satisfying the collective needs of society. Thus, in nearly all aspects of society's life, we witness the expansion of governmental action. The expansion in the scope of activities assigned to public servants has given the State an awesome power base. It is obvious that the more society is administered, the more power is concentrated in the hands of public servants. Public servants not only fulfil traditional functions of government, such as maintaining law and order, education, health, transportation, etc., but also play the roles of policy-makers, social change agents, programmed managers, regulators of the economy, and crisis managers.[1]

This exercise of power by public officials has created a feeling that these officials, having become too powerful, are in need of restraint and control.

As the discretionary power of decision given to public servants increases, instances of misuse of power and unethical activities are on the rise. Public officials, realizing the potential for abuse of power and authority, have devised ways and means to exploit them. This has resulted in the rise of unethical activities in the public sector of many countries. Almost every issue in the daily press brings fresh examples of allegedly corrupt behaviour on the part of public figures. The more cases relating to the misuse of power and authority for private gain are brought to public attention, the more worried the public becomes. The State is considered too powerful and imposing.

Consequently, there is a growing demand for "cleaner" administration, improved moral fibre in public officials, and responsible use of power and authority and administrative accountability.

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The purpose of this paper is to provide an overview of existing institutional devices set up in various countries to control governmental action, and examine what their contribution is in reducing corruption.

Before we enter into an examination of those institutions which are given the task to control government, it is important to clarify certain aspects of the term "corruption". It is true that there are several definitions of the term because of the different views taken of this phenomenon during the years.[2] If there is something in common among them, however, it is the harm of public resources or violation of existing rules which protect the public interest or common good.

The traditional approach for those interested in corruption has been a moralistic one.[3] Corruption was condemned a priori, was vaguely defined, and was thought of in individual terms. Its cause was seen as the gaining of positions of power and trust by unscrupulous and dishonest people. The solution was to get rid of these individuals.

Progressively these moralistic and individualistic explanations of corruption were rejected. Corruption was not viewed as incidental, but as structural. During the 1960s corruption was associated with the progress of modernization. The focus was placed on developing countries, and corruption was seen as the effect of divergence between norms of politics and administration prevalent in the West and those prevalent in developing countries[4].

Corruption was even regarded as beneficial and was legitimized in terms of its prevalence and functionality. Given the inappropriateness of Western norms and the inadequacy of Western institutions, it was thought that corruption does not really exist at all. It was simply a different way of doing things and was classified as a "functional dysfunction".[5] It was also believed that corruption was self-destructive.[6]

The functionalist view of the 1960s was challenged in the 1970s by the so-called post-functionalists.[7] Attention was drawn to the fact that corruption feeds on a variety of causes and that it is self-perpetuating. The belief that corruption is a variable of development and modernization was proven false. Corruption is universal.[8] It can flourish and expand in any level of political and bureaucratic development. Corruption is also self-perpetuating. As organizational changes and social reform are obstructed, the cost of change becomes too heavy, and more corruption is encouraged as a remedy to already existing corruption.

Corruption is not only individual; it has become systemic. In this situation, corruption has become so regulated and institutionalized that the standard behaviour necessary to accomplish goals according to the notions of public responsibility and trust has become the exception rather than the rule. "In contemporary public administration, the issue is not so much individual misconduct in public office, serious as that is, as the institutionalized subversion of the public interest through systemic corruption".[9]

Among the many definitions given to the term corruption, we can discern a certain type of behaviour which can be described as "corruption-type behaviour". In this paper, we will not be concerned with corruption as a socially harmful phenomenon in general terms, but rather with specific practices which can be considered basically unlawful and unacceptable, practices that cannot be condoned on a common basis despite differences in attitudes and standards prevalent in different societies; practices, for example, such as patronage, nepotism, influence peddling and criminal acts of bribery, extortion, theft, violation of procedures to advance personal interests, overlooking illegal activities, use of public resources for private gain, and similar abuses of public office.

Unethical administration is the opposite of accountable administration.[10] Whenever the notions of public responsibility and trusteeship are abdicated in favour of the exploitation of public office for private gain, a condition for institutionalized corruption exists.

Supervision and control of administrative procedure

Current concepts of corruption date from the ideas of the French Revolution, which swept away private monarchical government and replaced it with representative government.[11] Public and private office were separated because a public trust and officials servants of the community. Privileges and hereditary rights were replaced by qualifications for office. Venality and nepotism were abolished and office-holders ceased to have private rights in their offices. Officials started working full time, and were paid a salary, not from private profits gained from conducting the government's business.

Throughout the late nineteenth and early twentieth centuries, reforms were introduced in countries such as France, Great Britain, Canada, the United States and Australia to reduce patronage, nepotism and use of political power for private gain. Thus an elaborate system of controls of governmental action was developed to reduce the abuse of power in public administration. A whole structure of political safeguards and remedies through the doctrine of ministerial responsibility emerged and was soon strengthened by the introduction of judicial safeguards and

remedies through judicial review of administrative decisions.

A whole new system of law emerged, the droit administratif, complete and autonomous, distinct from common law applied to individuals. This system extends to all developed societies, even those of the so-called common-law countries, where public administration is essentially under the same law applied to individuals through the proliferation of administrative tribunals.

Apart from the traditional mechanisms of parliamentary and juridical control the introduction of new institutions, such as the ombudsman office, in many countries contributed to further enhancing the control of public administration. We shall examine these institutions separately.

Political responsibility/parliamentary control

One of the central issues involved in modern government is whether accountability will be sought mainly through the democratic process and representative political institutions or whether answers lie with experts learned in the law.

Ensuring the accuracy, integrity, fairness, effectiveness and accountability of administrative decision-making represents an enormous challenge when the scope and complexity of government have expanded so greatly.

The traditional doctrine in Western democracies holds that one aspect of the supremacy of Parliament is that ministers are responsible to it, both individually and collectively, through the Cabinet. Parliament is the body before which ministers are called to account and without the confidence of which they cannot continue.[12] However, traditional parliamentary devices, such as ministerial responsibility, questions, debates and committee investigations are said to no longer provide adequate checks upon the numerous dispersed discretions to administrative entities.

Of course, ministerial responsibility still exists as a convention in all parliamentary governments. Most decisions made within regular departments fall in theory within the scope of ministerial responsibility. The fiction continues that a minister can acquaint himself with every detail of the administration of this department and can be held personally responsible for every act of his civil servants. However, Governments have found it politically convenient to employ in an area of restrained resources a wide range of new policy instruments, such as mixed enterprises, government corporations, and public utility agencies.

Moreover, the complexity of modern government and the amount of work processed by each department are so great, that no

minister can possibly supervise all the administrative acts of even a small department.

It is nowadays unrealistic to expect a minister to be accountable for every act of his civil servants. While civil servants are protected under the convention of "civil service anonymity" and "political neutrality", a minister could face harsh consequences as a result of the continuation of the convention of ministerial responsibility. Therefore ministers often disclaim personal knowledge and responsibility. It would be politically suicidal for a minister to admit a mistake.

On the other hand, parliamentary mechanisms of control are frequently criticized as inadequate. It is normally assumed that today's parliamentarians have neither the time and resources nor the inclination to supervise all aspects of the enlarged bureaucracy. Most of Parliament's time is taken up with wider political controversies. This "decline of Parliament" is a common lament. Parliament has been criticized for failing to adapt to the expansion of the modern administrative state. This is particularly evident in the process of legislation. Bills are drafted by government departments themselves and they are often driven through Parliament with inadequate time for many of their clauses to be properly considered. Consequently, control through legislation has been considerably decreased.

Remedies have been sought to improve parliamentary scrutiny of administrative authorities. In Canada and the United Kingdom of Great Britain and Northern Ireland, for example, the issue of ministerial responsibility and accountability has been the subject of various inquiries.

In the United Kingdom, the Fulton Committee stressed the importance of "holding individuals and units responsible for performance measured as objectively as possible".[13]

In Canada, the Royal Commission on Financial Management and Accountability expressed a similar concern. The Commission found that department heads were not regularly held accountable in a systematic or coherent way for programmed management and departmental administration.[14]

Recommendations were made by the Commission that department heads should be called to account directly for their assigned and delegated responsibilities before Parliament's public accounts committee, and that each department should establish separate and accountable management units with clearly defined objectives.

Accountability is the fundamental prerequisite for preventing the abuse of delegated power and for ensuring instead that power is directed towards the achievement of broadly accepted national goals, with the greatest possible degree of

efficiency, effectiveness, probity and prudence. The requirement for public responsibility and accountability of ministers and public servants is essential. Any breakdown in the process of accountability is liable to lead to ineffective, corrupt, irresponsible, and totalitarian rule.

The mechanisms of parliamentary control over public administrators, particularly ministers, deputy ministers and chief executive officers of agencies, especially through investigative committees and parliamentary commissions, can be effective in dealing with corruption. The recent example of Greece is indicative of this, as well as of the problems posed by governmental control of Parliament. During 1988, journals and newspapers unveiled over 200 scandals of corruption. These allegations prompted the opposition to demand investigation by parliamentary commissions. The majority party instead insisted that no action could be taken by parliament and no committee should investigate any scandal before the courts could decide on each individual case. Finally, after the legislative elections of 5 June 1989, a new parliamentary majority formed by the coalition of the conservative "New Democracy" and "Coalition of the Left" parties was able to conduct a parliamentary investigation and enact a law on the criminal responsibility of ministers.[15]

Administrative law and judicial control

The primary purpose of administrative law is to keep the powers of government within legal bounds and protect the citizen against their abuse. Government must have a legal warrant for what it does, and administrative courts are given the task to provide an effective legal remedy to the individual when government acts unlawfully.

Administrative law is a relatively new and open field of practice and study. It is primarily concerned with the control of government, and judicial review of administrative action is the primary mechanism of control. The end sought by judicial control of administrative acts is to ensure their legality and to protect citizens against unlawful trespass on their rights.

In the area of administrative law, two great traditions exist: the "continental" and the "Anglo-American".

The continental system of administrative law: "droit administratif"

In countries of the European Continent, mainly France, Italy, the Federal Republic of Germany and a number of others, there is a separate system of administrative courts which deal exclusively with administrative cases. As a natural consequence, administrative law develops its own independent lines and is not

enmeshed with ordinary private law, as it is in the Anglo-American system.[16]

In France, the droit administratif is a highly specialized science, administered by the judicial wing of the Conseil d'Etat, which is staffed by judges of great professional expertise and by a network of local tribunals of first instance (tribunaux administratifs).[17]

French administrative law has been viewed as a system for placing the executive above the law.[18] On the contrary, the droit adminsitratif is a remarkable edifice and has largely contributed to checking government power.

The originality of the French systems lies in its development from within. The administration has succeeded in elaborating its own machinery of self-discipline, administrative in its origins, yet fully reliable. The French administrative courts have succeeded in imposing a genuinely judicial control upon the executive and raising the standards of administration. They are impartial and objective courts of law in the fullest sense. The appeal of the French system of droit administratif has been so powerful that in the United Kingdom, the Law Commission proposed in 1969 an inquiry covering the organization and personnel of the courts dealing with proceedings against the administration, thus questioning the whole basis of the Anglo-American system and envisaging the possibility of replacing it with a hierarchy of special administrative courts of the continental type.[19]

The Anglo-American system

The development of administrative law has been different in the English-speaking world. Although in the United States of America it has naturally followed its own line of evolution, it is recognizably the same system. The difference of the Anglo-American system is that ordinary courts, and not special administrative courts, decide on cases involving the validity of governmental action. There is no formal distinction between public and private law. The advantages of this system are that the individual can turn to courts of high standing in the public esteem whose independence is beyond question; that highly efficient remedies are available; and that there are none of the demarcation problems of division of jurisdictions. However, the system is not without disadvantages.

Common judges are not experts in administration law. Its principles have sometimes been submerged in the mass of miscellaneous law which the ordinary courts administer. These disadvantages have been addressed by the suggestion, in the case of the United Kingdom, that all administrative cases be dealt with by one division of the High Court so that judges would

acquire expertise in the field of administrative law.[20]

In 1977, procedural reforms were introduced which concentrated cases concerned with administrative law in the Queen's Bench Divisional Court, so that the Court, in effect, became an administrative division of the High Court.[21] These reforms were pioneered by legislation in Ontario and New Zealand and adopted in England as the result of a report of the Law Commission made in 1976. New Zealand had already established an administrative division of the High Court in 1968.[22]

Administrative courts

Over the past years the emphasis on judicial review as an essential accountability mechanism has gained ground, and action has been taken to refine and expand the role of courts in supervising the administration.

Courts can protect basic constitutional values, reinforce procedural safeguards, and provide remedies in the event of administrative injustices.

In the French droit administratif the most effective control of administrative actions is the judicial review of administrative decisions and their subsequent invalidation on the grounds of excess of power or excès de pouvoir.[23]

The doctrine of "excess of power" was elaborated by the jurisprudence of the Conseil d'Etat[24] and is based on the principle of legality.[25] The notion of "excess of power"exists in many other European countries such as Italy (eccesso di potere). Germany (Ermessensmissbrauch), Austria, Belgium (détournement de pouvoir), the Nordic countries, and Greece (abuse of power).

The main objective of the notion of excess of power is to control the legality of an administrative decision and sanction its illegality.

In the French law, judicial review for excess of power is open to:

(a) Individuals who have an important private, material, or moral interest in obtaining annulment; and

(b) Legal entities properly constituted, even associations who are not legal entities.

Occasions for annulment: There are different types of illegality which can lead to the annulment of an administrative act. Their traditional classification is the following:[26]

(1) Lack of jurisdiction. There are several degrees of lack of jurisdiction. The person from whom an administrative act emanated may not have the quality of public official. The official may have acted beyond his specified powers or outside the geographical limits of his jurisdiction or may even have refused to act within his jurisdiction.[27]

(2) Omission of substantial procedural formality laid down in law as a prerequisite to action. Judicial control of the lack of jurisdiction or omission of a substantial procedural formality pertains to the external legality of an administrative decision.

The internal legality of an administrative decision is controlled through cases of abuse of power (détournement de pouvoir) and violation of the law (violation de la loi).

(3) Abuse of power. Abuse of power is illustrated in cases where a public official uses his power to pursue an objective other than the public interest. This is for example the case where an official uses his authority vindictively to harm another for private, political and ideological reasons, or to promote private interests.[28]

There is also abuse of power where the objective of public interest is not the exact one assigned by law to the act, as for example when a mayor uses his police powers not to maintain order, but to increase the financial benefits of his commune.[29]

Abuse of power can take the form of abuse of procedure. An administrative authority may use a legal procedure different from the one which should be followed for practical reasons.[30]

The doctrine of abuse of power (détournement de pouvoir) is one of the most original creations of the jurisprudence of the Conseil d'Etat and the most widely known outside France. But recently its utilization on the part of administrative courts has declined when it comes to annulling decisions of the administration.

The difficulty of proof, the absence of precision in economic legislation, the large powers of discretion given to administrative authorities in economic matters, along with the growing technical character of

the discretionary decisions which the administrative judge is not well equipped to control without risking to substitute his decision for the one made by the administration, have led to a progressive decline of the use of this method for judicial intervention. The notion of "abuse of power" in current jurisprudence plays a subsidiary role, and for this reason decisions of annulment are rare.[31]

Abuse of power as a ground for review of administrative decisions is nevertheless essential in controlling corruption. It is regrettable that it has been rarely used by the courts since it would undoubtedly contribute to better control the expanding field of administrative intervention, and it is through its application that blatant cases of administrative corruption have been dealt with effectively.

(4) Violation of the law. Violation of the law (violation de la loi) is considered as any violation by an administrative authority of a legal rule, be it constitutional, international treaty or convention, parliamentary law, legal principle, or even the violation of res judicata.

The administrative courts do not sanction only the direct violation of law, but also the misinterpretation of a legal text by the administration. In applying this ground of review to the control of administrative decisions, the administrative judge was progressively led to control the material exactitude of the facts upon which the administrative authority based its decision.[32]

Judicial review on the grounds of "error of fact" contains also the evaluation of these facts by the judge. It is not sufficient for the administrative authority to base its decision on facts that really exist. It is further required that these facts are of such a nature as to justify in law the decision taken.

The control exercised in French law by administrative courts falls within these categories:[33]

- Normal control - The court reviews both the external and internal legality of the act.
- Maximum control - The court, in reviewing the act on the grounds of "error of fact", controls in reality the suitability (opportunité) of the decision itself and the appreciation of facts by the administration.

- Minimum control - The court reviews the external and internal legality of administrative decisions, but as far as the internal legality of the act is concerned, the courts go as far as the error in the material exactitude of facts and not their appreciation by the public authority.

  The courts, in operating minimum control, use the cost-benefit technique. They control the cost of the operation decided by the administration against its benefits. They also use the device of "manifest error of appreciation", by which they mean to control misinterpretation of evidence and facts so manifest that they can be seen even by a non-expert.[35]

Administrative tribunals

Administrative tribunals are mainly a twentieth century phenomenon in the Anglo-American legal tradition because, under the "rule of law" doctrine, the determination of questions of law -- that is questions that require the application of definite rules of principles -- belonged exclusively to them courts..

Nowadays administrative tribunals are a very prominent feature in modern public administration.[36]

Tribunals exist in order to provide simpler, speedier, cheaper and more accessible justice than do the ordinary courts. These statutory tribunals are an integral part of the machinery of justice, and not merely administrative devices for disposing of claims and arguments. Each of them has limited jurisdiction, and its errors in law are subject to judicial review.

The basic idea behind the creation and proliferation of administrative tribunals is that less judicial review will be required if these tribunals are more satisfactory.

The advantages of the tribunal system are many. Under the welfare state they could dispose of disputes quickly and cheaply for the benefit of the public administration and the claimant. Administrative tribunals offer expertise. For instance, qualified surveyors sit as the Lands Tribunal, and experts in tax law sit as special Commissioners of Income Tax. Since they deal with specific areas of public administration, they quickly build up expertise and, by the continuous flow of claims of a particular class, they become specialized jurisdictions.

Administrative tribunals have grown up side by side with the traditional courts. Tribunals are under ordinary law and also by their own statutes subject to the control of courts.

Their decisions are in truth judicial rather than administrative, in the sense that the tribunal has to find facts and apply legal rules impartially. They have the quality of courts even though they are enmeshed in the state administrative machinery.

Administrative tribunals are independent. They are in no way subject to administrative interference as to how they decide any particular case. Nor are they composed by people who owe obedience to the administration. This is an essential feature of tribunals. They make their decisions independently and are free from political influence. There are of course cases where appeal lies only to a minister. For example, in the United Kingdom the case of the Civil Aviation Authority appeal lies with the Secretary of State.

In this instance the minister's policy may influence the tribunal through his appellate decisions. In most other cases, however, tribunal members are completely free from political control. In order to make this independence a reality, tribunal members are in most cases independent persons and not public officials. Chairmen and members are appointed by the executive, but people outside the government service are chosen. In many cases, members are selected through a panel system by the Chairman, who is in turn appointed from a panel.

Administrative tribunals are part of the executive branch, but their duty is to deliver administrative justice.[37]

The reasons for their creation are essentially the following:

(1) Departmental structure is incapable of fulfilling certain regulatory duties. The existing structure was deemed incapable to exercise a new function of regulating the economic and social aspects of administrative intervention. The legislator preferred to create independent institutions, relying upon them to elaborate new policies within a framework that would guarantee efficacy, speed, absence of hierarchical control and the possibility to consult more freely the administered.

The creation of an independent organism permits recruitment, outside the regular frames of the civil service, not only of experts, but also of persons who represent different interests.

(2) Neutrality -- By confiding to an organism distinct from the ministry the control of a sector of economic life, the legislator wanted to neutralize this intervention and prevent the risk of politicization.

(3) The quest for quasi-judicial objectiveness. The legislator seems to believe that the application of certain laws requires a lot more objectivity and impartiality. This is why he confided this application to collegial institutions which are independent from government intervention and operate like courts. Quasi-judicial objectiveness is necessary when the imperatives of the public interest are to be considered.

Administrative law reform

Administrative law is a quest for balance between the need of effective administrative action and the need to protect the administrated against arbitrary action. Such a balance is difficult to reach. Power is a temptation for every administrative authority, and when this power is enlarged, as is the case in modern times, it becomes more difficult to control it. With the increase of the decision-making powers of public officials, the need to change the supervision and control of administrative procedure has been urgent.

Recent changes in this field have been extensive, particularly in the developed Commonwealth countries, and constitute the "New Administrative Law". Even in countries such as France, which has developed a special administrative law, a number of reforms were inevitably adopted. French scholars have called them "the third generation of human rights".

The measures include the reform and expansion of the administrative courts system in 1953. France adopted a law in 1979 requiring administrative authorities to give reasons for their decisions, especially unfavourable individual decisions and decisions derogatory to a general legal rule. The Conseil d'Etat has sanctioned "standard reasons by which certain administrative authorities tried to avoid effective application of the law".[40] Also, France and several other European countries have recently passed laws providing for the protection of personal data, and for a citizen's right of access to the correction of personal files held by the Government.[41]

Similar privacy laws have also been adopted at the national level in the Commonwealth countries and the United States, where the Freedom of Information Act was passed in 1966, organizing the citizen's right to information at the federal level. The American citizen interested in the government of his country is thus given a legal right to a great deal of information.

While the United States adopted a law on administrative procedure, the Administrative Procedure Act, as early as 1946, the New Administrative Law movement has probably gone further in Australia, where a new administrative appeals tribunal, a new

federal court and a new administrative review council have been created to hear administrative appeals and review the decision-making procedures of administrative bodies.

In Canada, the institution of a new federal court and privacy law in 1977, the adoption of a Charter of Rights in its revised constitution of 1981, and the approval of access laws by the federal and Quebec governments in 1982 may be considered part of the New Administrative Law.

In the United Kingdom, discontent with administrative procedures led to the Tribunals and Inquiries Act of 1958 and to programme of procedural improvements, all to be supervised by a new body, the Council on Tribunals.

The ombudsman system

An ombudsman is an a office provided for by the constitution or by the action of the legislature of Parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees, or who acts on his own motion and who has the power to investigate, recommend corrective action and issue reports.

Although this is a narrow definition, most ombudsman offices around the world meet it. "Ombudsman" is a Scandinavian word meaning officer or commissioner.

The office of ombudsman first appeared in Sweden in 1809 in a somewhat special form and has flourished there for over a century before it was copied anywhere else, and another thirty more years before the rest of Scandinavia followed. Thereafter it captured the attention of other countries, largely as a result of the actions of the Danish ombudsman professor Stephan Hurwitz, after the office of Ombudsman was established in Denmark in 1954. As a result of the zealous efforts of the Danish ombudsman, the idea of an ombudsman office was much publicized during the 1960s. Several developed countries such as New Zealand and the United Kingdom adopted the institution, along with several developing countries which after the Second World War were newly independent nations and were searching for new democratic institutions.

Consequently they took an early interest in the ombudsman office. The first adoptions among the developing countries were in Guyana, Mauritius and Fiji.

Thus from its origin in Sweden, this institution has spread rapidly to other countries as an important new device for making t he administration accountable to the legislature for its actions. It has been adopted by small and large countries, by central state and local governments for general or, specific

areas of administration, and in the form of a simple ombudsman or a commission of ombudsman by both developed and developing democracies.

The establishment of the office of ombudsman outside the Scandinavian nations was not however without problems. There was considerable doubt whether the institution was exportable outside its Scandinavian boundaries.[42]

A typical reaction to the establishment of an ombudsman office is illustrated by the British example:

Months before the office of the Parliamentary Commissioner for Administration(PCA) was first opened, a cloud of adverse publicity had already spread. Epithets like "toothless tiger", "swordless crusader", "ombudsmouse", etc. were common the in the press. Conservative members of Parliament were describing the PCA bill as a lamentably weak version of the Scandinavian Ombudsman.[43]

When the success of the New Zealand ombudsman established as early as 1962 led to the proposition of a similar institution for Britain (JUSTICE report, 1961 -- the Whyatt Report), the recommendation was rejected by the Conservative Government on the grounds of incompatibility with ministerial responsibility and undue interference with public administration. It was argued that since the Minister was responsible to Parliament for his department, it would be wrong for an ombudsman to go behind the Minister's back and pry into the workings of his department.

On the other hand, in developing countries it was argued that the institution of ombudsman was only suitable for developed democracies. For example, the establishment of the ombudsman office was refused in Singapore when it was first proposed in 1966 on the grounds of insufficient experience with the institution in Commonwealth countries.[44]

Political controversy has also been an obstacle to the establishment of the ombudsman institution. In Argentina, for example, the left is not interested in the creation of the office because it fears that it will decompress public pressure for "profound change". The right is not interested either because it fears it will imperil the existing order. Political parties are not deeply interested because they are uncertain as to how it will affect their political lives and fortunes.[45]

Discussion and controversy on the ombudsman and ombudsman-like institutions around the world has centred mainly on the following aspects of the institution: independence, investigatory powers, accessibility, flexibility, personality, speed, and jurisdiction.

(a) Independence

Independence from executive intervention is considered the most important quality of the ombudsman system. This independence is said to be guaranteed only in countries where ombudsman appointments are made through the legislature.[46]

The International Ombudsman Institute (IOI) makes a distinction in the ombudsman institutions in terms of whether they are appointed by the executive or legislature. This classification reflects the value that executive ombudsmen are inferior to legislative ombudsmen because they are not free from executive interference.

This classification of the ombudsman where appointment by the legislature guarantees his independence from executive interference is based on an ideal notion of the ombudsman system. However, it is not a clear one. It is significant, for example, that the French médiateur is classified by the IOI as a legislative ombudsman, but is also classified as an executive ombudsman by the French Conseil d'Etat, the supreme authority on the classification of French political and administrative institutions. This is mainly because the French ombudsman has both legislative and executive features.

Nevertheless, whether the ombudsman is selected by Parliament or the executive makes some difference to his in dependence. In the German-speaking jurisdictions, for example, both the executive ombudsmen in Tyrol, Austria, and in Liechtenstein have much more intimate relations with the administrative bodies which they investigate, than do the legislative ombudsmen. When the legislative ombudsman is elected by a three-fourths majority, as he is in South Tyrol, Italy, or Vorarlberg, Austria, his independence from both partisan conflicts and administrative coziness becomes quite evident. Where he is elected by a simple parliamentary majority, as in the Rhineland-Palatinate, suspicions may arise about his independence.[47]

We can therefore conclude that it is not only a question of executive versus legislative appointment, but also a question of the modalities of the legislative appointment.

One very important aspect of the ombudsman's independence is the guarantee of complete freedom as to which cases he can take up or refuse, and whether he can initiate his own investigations.

In Sweden, the ombudsman legislation forbids Parliament to impose an investigation on the ombudsman or order him to stop once he has already taken up (stop-order).[48] Given the importance of political parties in Parliament and in government, this is a most valuable guarantee since it prevents the imposition on the ombudsman of an investigation for purely political reasons, or the interruption of an already initiated one because it causes political embarrassment to the establishment.

This is not always the case. In Zambia, the President has the power both to stop an investigation and to order the Commission to conduct one. In the United Republic of Tanzania, the Commission may be ordered to conduct an investigation by the President, but he has no power to stop one.

Both countries are one-party states so that the question of executive or legislative ombudsman is irrelevant; however, the officer is regarded as an arm of the executive rather than as an independent institution. Because the office has considerable utility, mainly for the executive who would not wish to be accused of prejudicing the outcome of investigations, the ombudsman in practice often plays an independent and impartial role.[49]

(b) Investigatory power

The establishment of the ombudsman system can be effective only in a situation where an ombudsman is given untrammelled access to the necessary information, evidence and documents in order to reach a decision.

A characteristic example is that of the British Parliamentary Commissioner for Administration (PCA). The Commissioner's statutes, the Parliamentary Commissioner Act provides him with remarkable investigatory powers. The PCA can examine both the department's files and public officials personally. He can call for information and documents from anyone, including ministers and officials, save only where they relate to the cabinet.

In order to obtain evidence, he has all the compulsory powers of the High Court, including the power to administer oaths, and he can call upon the High Court to deal with obstruction or contempt. He is subject to the Officials Secrets Acts, and no plea of secrecy or Crown privilege can be put in his way, although he can be prevented from disclosing secret information in his reports if a Minister certifies that this would be contrary to the public interest. The Commissioner may also determine his own procedure.[50]

Similarly the Rhineland-Palatinate ombudsman was granted the power to request written or oral reports from the administrative decision-maker, to make on-site inspections of any agency within the provincial jurisdiction, and ask directly for files. Although some administrators have been slow to respond to the Bugerbeauftrage requests, they know that he can ask the petitions committee to demand the necessary governmental files. This power, while rarely invoked, is most effective in securing administrative co-operation.[51]

It is also important that an ombudsman have freedom in recruiting his staff. For example, in Denmark and Sweden the office's personnel are subject to the same rules as the Parliament's personnel, and the ombudsman has a free hand in their engagement and discharge.[52]

Another guarantee for the ombudsman's office is his immunity from prosecution for his actions and opinions during the exercise of his powers.

(c) Accessibility

In most countries where the ombudsman system has been implemented, the procedure of lodging a complaint with the ombudsman is very simple. In most cases, it consists of a simple written exposé of the facts of the case. This helps considerably to reinforce the ombudsman's position in the eyes of the public. Subsequently, procedural simplicity is further enhanced by allowing complaints to be received orally or by telephone. This has been the case not only with ombudsmen in developed countries such as the Liechtenstein, Zurich and the Rhineland-Palatinate ombudsmen, but also with ombudsmen in developing countries, such as Zambia, where the Investigator-General and his Commission have investigated even anonymous allegations.

This procedural simplicity, on the other hand, presents a very real danger: The encumbering of the institution with too many complaints. From this point of view, the system of an "MP filter" seems efficient, but is not satisfactory.

In the United Kingdom and France complaints cannot be directly lodged with the PCA or the Médiateur, but have to be brought to a member of Parliament who decides whether the complaint is sugficiently justified to be presented to the ombudsman. The justification forwarded for the MP filter is that if direct access is given to the public, the ombudsman's office will be submerged by the sheer number of complaints brought to it.

British MP's were so prejudiced against the PCA that they might discourage constituents from having complaints investigated by him. Some complaints which the Commissio might help were not getting through to him. According to JUSTICE, the MP filter was a major reason for the public's underutilization of the Commissioner.[53]

Similarly, in France, where the office of the Médiateur was largely based on the British model, the existence of the MP filter was much criticized. It is possible, however, to provide arrangements to allow a large case load. Such arrangements could be:

(1) Multiple ombudsmen (New Zealand and Sweden, for example, have three). Or the creation of one chief ombudsman at the national level, co-ordinating the work of ombudsmen at the state or provincial levels, particularly in countries with a federal system and in countries with large populations.

(2) The existence of district offices.

(3) A requirement that a complaint must first be lodged with a superior administrative authority before being brought to the ombudsman. In Denmark, for example, 30 per cent of complaints are rejected each year for failure to reach such a requirement.

(4) Less time-consuming investigations for many cases (particularly simpler ones).

(5) A requirement that a complaint must be raised within a certain deadline.

(6) Increase for the ombudsman's staff. For example, the Rhineland-Palatinate ombudsman is expected to receive 4,000 complaints a year by 1990 if present trends continue. His 13-person staff will need major additions if such an increased caseload is to be effectively dealt with.[54]

Accessibility to the ombudsman's office is further enhanced not only where they accept telephoned complaints, but also when they have established publicized office hours, even beyond official office hours. Additionally, accessibility is enlarged where ombudsmen visit frequently the area of their jurisdiction to hold office hours.

The Austrian ombudsman or "Volksnwalt" schedules days to hear complaints in various cities outside Vienna, and the office is always open in the capital as well, with appointments possible even outside business hours.[55]

The openness of the Austrian complaint process is enhanced by the public information service especially, through radio and TV. The Austrian ombudsman has also arranged to have an attorney available wherever he goes to provide legal advice to any person requiring it, and the Construction Engineers Association provides an adviser for those requiring help relating to building and planning processes in three provinces.

Accessibility is further augmented where a specialist for telephone information and referral is employed because an ever-increasing number of calls do not require further research.

Reaching out is only one aspect of accessibility. Reaching down is also important. The information on who complains to the ombudsman is scanty. Dr. Rosler, the Rhineland-Palatinate ombudsman, as published in his 1984 annual report, has kept a careful record of the more visible characteristics of individuals who personally presented their complaints.

The report clearly shows he was not "reaching down". The problem is more acute in developing countries. It seems that there is a major problem of lack of public knowledge of the institution outside the capital where the office is located. As a result, the ombudsman tends to serve the community. In Fiji, for example, the complaints from the population in the capital area in 1980 were proportionally greater in terms of population than in areas outside the capital. In the capital area, awareness of the ombudsman's functions and power was much more accurate.[56]

This case offers an example of the public's awareness. It may be that the image of the ombudsman outside the capital is of a "remote friend from whom assistance can be sought on a wide range of matters".

In Zambia, civil servants complain to the Commission in numbers out of proportion to their number in the population.

In general, it seems that ombudsmen have not "reached down". Instead, they spend much of their time investigating complaints from special interest groups. There is need for more civic education about the institution.

(d) <u>Flexibility</u>

The administration of so many services under the bureaucratic machinery of the government inevitably causes many grievances and complaints. If something illegal is done, administrative law can supply a remedy. But justified

grievances may equally arise from action which is legal, or at any rate not clearly illegal. Sometimes an administrative tribunal will be able to provide help; nevertheless, there is a large residue of grievances which fit into none of the regular legal moulds.

The need to create an institution capable of assuaging personal grievances while providing an impartial assessment and investigation has led to the adoption of the ombudsman institution. His task is seen as the redress of individual grievances of alleged maladministration. Under this term lie allegations of bias, neglect, inattention, delay, incompetence, ineptitude, arbitrariness, and so on.

Flexibility is one of the most prominent features of the institution. It can be adapted to a variety of different circumstances. The case is more pronounced in third world countries, where ombudsmen appear to perform a multiplicity of functions, of which the traditional mission of redress of grievances and protection of individual rights may be one and not necessarily the most important one.

Ombudsmen in developing democracies have undertaken a wider range of tasks than their counterparts in the developed democracies. These tasks!range from investigation of corruption and electoral fraud and malpractices to general problems of bureaucratic organization. This is due mainly to the fact that

(1) Ombudsmen in developing democracies are often asked to undertake a variety of functions.

(2) Ombudsmen in all countries, developed or not, enjoy a considerable amount of administrative discretion. The Ombudsman is using his administrative discretion to answer to imperatives from the society and the political culture.

The personal values of an ombudsman, the way in which he interprets his role and mission, may lead to a definition of his office and powers much wider than the redress of grievances in sensu stricto.

Prof. Ian Scott has given the example of Zambia, where the commission for investigations has taken up complaints alleging corruption in government appointments, expenditures or distribution of benefits. The reason is that corruption has been a major issue in that country, so the commission decided to investigate cases of that nature which affect the administration but which cannot b e considered to redress the grievances of the citizen on the individual level.

(e) Personality

The personality of the ombudsman is crucial. The personal qualities of the individual appointed to the office can make all the difference. Ombudsmen can be energetic or lazy, bold or meek.[57] They can expose or suppress wrongdoing. Given their large power of administrative discretion, they play a major role, in interpreting their mission and functions within a nation.

In Great Britain, for example, Sir Edmund Crompton, the first Commissioner recruited from the civil service displayed characteristics of secretiveness, caution and rigidity that are often associated with the idea of bureaucratic behaviour. He retired from the office in 1971, praising and defending the MP filter and the limits on his jurisdiction. Crompton's first two successors, although recruited from the civil service, showed fewer bureaucratic tendencies, making considerably greater efforts to publicize the office and strived to expand its jurisdiction.

It is therefore imperative that the persons appointed to the office should know how the public bureaucracy works and should have a deep interest in people, a patient and understanding temperament and above all a realistic concern for justice. Men of integrity and outstanding merit should be appointed.

The way an ombudsman sees and interprets his mission can make the difference between success and failure of the institution. Public complaints commissioners in Nigeria for example, take the view that the Commission is an instrument that would be used to fight social ills, especially the widespread cankerworm of political and bureaucratic corruption and the endemic inefficiency and indiscipline in many public organizations.

(f) Speed

Another issue is how much time should be allocated to an investigation. In the United Kingdom the PCA was deemed a qualified success[58] mainly because of the office's time-consuming methods of investigation. The Commissioner did indeed develop an investigative process lengthier and more complex than that of any other ombudsman.

Although his statutes do not require him to go beyond obtaining a statement about a complaint from the department complained against, the Commissioner's investigators examine departmental files, interview complaints, and question the officials involved personally.

Thus the chances of an investigator's failure to reveal evidence are less in the United Kingdom than Sweden, Denmark, and especially New Zealand. Still, the tendency of the Commissioner's office to employ full-scale efforts in the large majority of investigations, has undesirable consequences of delay which are avoided by ombudsmen more inclined to vary the thoroughness of their investigations according to the uncertainty, complexity and significance of complaints.

(g) Jurisdiction

The creation in the United Kingdom of Commissioner to receive complaints about the national health hospital service and local government was weakened by compromises with institutions that already existed and were opposing reform.

As a concession to the medical profession, the legislation (the National Health Service Scotland Act, 1972 and the National Health Service Reorganisation Act, 1973) forbids the Commissioners to investigate complaints against clinical judgements by medical personnel, a prohibition which excludes them from investigating about 10 per cent of complaints (Parliamentary debates, 1976, 429-59).

In the case of the local government commissioners, similar considerations led to citizens being denied direct access and the Commissioner's being excluded from investigating complaints about government activity of a commercial or contractual nature, as well as complaints by local government personnel.

In 1970, when asked to state which aspects of the PCA they considered inadequate, 72 per cent of the MP's in a survey gave as their first response restrictions on the Commissioner's jurisdiction.

The arguments forwarded for such restrictions are that it would not be in the general interest to extend the Commissioner's jurisdiction to transactions where the relationship is of an essentially commercial nature, such as the buying of goods and services, or that the commercial activities of departments should be open to examination by the Commissioner, while other acting parties are free from such investigation.

In view of the considerable expansion of government activities, especially in contractual and commercial matters where a large part is given to administrative freedom of decision and discretionary power, it is imperative that they be subject to control.

Government personnel should also be allowed access to the ombudsman as in the case of the Scandinavian ombudsman whose jurisdiction extends over such cases. In Northern Ireland, in particular, because of fears of discrimination in the Northern Ireland public service, personnel complaints come within the jurisdiction of the two ombudsmen, the Northern Ireland's parliamentary Commissioner for Administration and the Commissioner for Complaints.

All areas of Government administration should be investigable by the Commissioner, unless in a particular case a compelling argument can be made for their exclusion.

The experience of the institution of ombudsman undoubtedly has certain merits. The inquiry into the basis on which the administration was founded, its decision, the access to every document, the inquiry, and the publication of official documents all have incontestable significance.

The publication of the ombudsman's findings is the main source of his popularity. The publication of an annual report allows the ombudsman to have direct contact with the public. It has a preventive influence. Although ombudsmen are not the authors of any reforms, they cause some administrative reforms, and their investigations have an influence beyond the single case.

The complexity of the procedures connected with an administrative jurisdiction require in most cases the assistance of a lawyer. In this respect the procedural simplicity of a complaint brought to the ombudsman reinforces his position.

The confidence of the public is further strengthened by the personal character of the institution. This aspect of the institution deals with the problem of administrative anonymity. For the public, an ombudsman is a person, not an institution, to whom anyone can complain knowing that someone will take up, his case. This is very reassuring for the citizen.

Most of the ombudsman's interventions have an educative character. They depend therefore on the public's reactions. It is certain that he has important prerogatives of investigation. But if society itself does not want to see the difference between justice and injustice, between right and wrong, any institution will be powerless, no matter how well it is provided with prerogatives.

In spite of his success, the ombudsman, like the welfare which provides the institution with its raison d'être, has also come upon hard times. A conspicuous example of the institution's difficulties, even in the ombudsman's birthplace, Sweden, is the retirement in 1987 of the Swedish ombudsman because of a conflict of interest scandal.

Conclusion

The fight against corruption is a major issue in both developed and developing countries. Every effort should be made to ensure that elected representatives and public servants are held accountable.

In this respect, stricter parliamentary supervision of administrative authorities, especially independent agencies, is needed. Organizational accountability should increase.

Judicial review should also be extended and reinforced.

Administrative control should be enhanced through citizen involvement with the administrative process. Better communication, with the public should be encouraged, procedures simplified, and different interests represented within agency hearings.

Ombudsman offices should be given more powers to induce reforms.

To cure corruption a multi-dimensional approach is needed. it is nevertheless important to keep in mind that:

When corruption of state and society reflects the privatization of morality and a loss of loyalty to communal institutions, reducing opportunities and incentives will not change the motive for corruption. It will force instead the corrupted to adapt and improve their techniques for bypassing administrative and legal barriers by making them more sophisticated. They will benefit from the "mistakes" of predecessors.

When corruption is institutionalized, systemic, or an intrinsic part of everyday life, the traditional wisdom that corruption can be effectively dealt with or eliminated only by legal measures is disproved.

What is needed is a change in the attitudes and behaviour of the public. Unethical conduct in government is shaped and conditioned by such behaviour in society. Attempts to reform public bureaucracies as independent systems are necessary but not sufficient.

Formal legal systems have been proved inadequate in dealing with contemporary corruption. People, not laws, make things work. It is not the police and the law which prevent crime; it is the community.

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III. CORRUPTION IN GOVERNMENT: LEGAL PROBLEMS IN SOCIAL CONTEXT*

The difficulty involved in investigating corruption in government manifests itself best in the context of top official positions. On the one hand, top public officials are usually vested with various privileges that correspond to their particular tasks, such as involvement in secrets of the nation and running the business of national policy. It is sometimes assumed that the public good is best served by keeping current affairs as well as some past matters away from public inspection. In general, the attitude prevails that such an inspection is harmful to the interests of the public and the country. The vestiges of an ancient sacrosanctity of power also come into play in the sense that it is felt that the incumbents of the highest public offices cannot be treated in the same manner as the average man in the street or the average public official, especially if the office in question symbolizes national sovereignty. At least two major factors within public opinion counteract routine ways of monitoring the functioning of public officials in the government. A third factor is the technical insulation of the business of government conducted in such positions from routine scrutiny by the public. In brief, the higher the office held, the more restricted the circle of people who are in direct touch with the incumbent of an office in its everyday conduct; this makes the monitoring by the "clients" themselves - a classical case of petty bureaucracy - unrealistic for practical purposes. The very elevation of the office above the routine channels of social communication is relevant here. This is why in many countries attempts have been made, and the trend is increasing, to develop a special approach to this specific class of public officials. Special obligations may have been imposed on this class in order to overcome the aforesaid impediments to public monitoring, and the development of special procedures and of particular concepts of responsibility exceeding the ones elaborated for minor officials acting under different conditions.

Due consideration should be given to the procedure of impeachment as developed in English law and related jurisdictions, with American law as a special case. Impeachment was developed as a special criminal procedure out of common criminal procedures, in which the House of Commons stood for prosecution of Crown officials who transgressed the criminal law, while the trial itself was conducted and judgement was made by the House of Lords. The development of this procedure was the direct manifestation of the changing role of Parliament in the political life of the country. Under the procedure of impeachment, Crown officials as well as judges, deputies, lords and other subjects of the Crown would be prosecuted if such was the opinion of the House of Commons. At the beginning, impeachment meant an assurance against possible bias in favour of the accused, if the case was to be settled by the common courts

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of the country. The danger of such bias was felt to be imminent in some particular casesk, and so the decision to impeach somebody was made according to the circumstances. In effect, the scope of the procedure was not defined, while with the passing of time it was extended beyond the criminal law so much that in effect even lawful actions by Crown officials were included if considered to be detrimental to the interests of the country. This extension of the scope of application of the procedure of impeachment led to acknowledgement of the freedom of the House of Lords both in decisions on matters of law as well as on the punishment to be inflicted. Since its beginnings at the end of the 14th century, the procedure of impeachment evolved into a clearly political instrument of maintaining checks and balances. The complexity of the procedure resulting from the necessity of proving the transgression of law or the harm done by an action to the interests of the country led to the renewed assumption of its primarily political role in the 18th century, when the principle of political responsibility of cabinet members before Parliament emerged. However, impeachment remained the instrument of the rule of law, as well as the paradigm of the constitutional responsibility of top public officials, which was adopted explicitly in the United States Constitution and introduced under various forms in other jurisdictions as well.

The constitutional responsibility of ministers, members of government, was introduced in France in 1789 by the revolutionary National Assembly. Ministers as well as other civil and military officials were responsible for all actions against the Constitution, decrees of the Assembly, abuse of freedom and property of the citizens, infringements of the State's security and the illicit use of public funds. It was up to the National Assembly to decide whether to accuse an official, and the case itself was to be decided by the Supreme National Tribunal. Constitutional responsibility was retained in subsequent constitutions in France, including that of 1814. It was introduced in the constitutions of Poland (1791), Sweden (1809), Norway (1814), Belgium (1831), Italy (1860), the German states after 1848, Serbia (1858), Greece (1876) and has since spread throughout the world. As a kind of countermovement, the decision of the socialist states established after 1917 needs to be mentioned here. The socialist doctrine holds that ministers already have political responsibility and there is no room left for abuse of the law by the government. This may also be related to the socialist doctrine of the unitary state, in which the superficial divisions of government are abolished.

The constitutional responsibility of a country's top public officials is subject to an amazing variety of arrangements in various jurisdictions. Although the violation of the constitution remains the conceptual core around which this responsibility developed, the concept remains unclear, ambiguous and subject to creative interpretation in the practice of public life. Some jurisdictions rationalized much of this concept in the form of special statutes that define and determine the scope of the acts to be covered by this type of responsibility, while

others prefer to leave the matter to be decided by the body that is expected to deal with it. Moreover, bodies differ. In some jurisdictions the original model of sovereign representation of the nation -- the legislature, dealing with the violation of constitutional duties, remained. In others, the tendency of the 19th century to create special tribunals to deal with cases involving the highest officials of the country survived (the most recent example being the reintroduction of the Tribunal of State in 1982 in Poland), while in more numerous other cases, the idea of democratizing public life was expressed by moving the jurisdiction over such cases to the supreme tribunals in the general system of justice.

It seems extremely improbable to expect clean and honest government in a country where the lower levels of bureaucracy are corrupt. Monitoring of the top levels seems to be inevitably linked to control over the lower ones. History provides a characteristic example in the traditional concept of the one man rule. Even an honest and sincere ruler could not trust the honesty of the administration unless other measures were introduced. The reason was that under one man rule the division between the public and individual good at the top of society became negligible that people assume they have a right to follow this example also in their own activities. This could explain why even the humanistic teachings of Confucius, who was himself so concerned with the idea of good and honest government, were accompanied by permanent complaints by the ruled against the abuses of the imperial administration.

To speak about corruption in government in some countries means abuse of power by top officials, while in others it refers to the daily conduct of business by low-level clerks and other public employees who are in direct touch with the general public trying to settle its affairs. Even when both foci of interest coincide in some countries, it is hard to escape the conviction that the same term is used simultaneously to cover those two different although inescapably related types of phenomena. This makes the very concept of corruption unclear. But the reality of corruption is heterogeneous, not only in terms of the various political, economic and cultural contexts mentioned earlier, but also in terms of the changing sociological meaning of crime, various social meanings, and various social types of perpetrators, witnesses and victims.

It is important at this point to mention the concept of white collar crime in order to distinguish it from other types of criminality. If putting together various "white collar" crimes into one common category sounds reasonable, it is because it is believed that those within the category have common characteristics that distinguish it from traditional forms of criminality. Penal policy, criminology and law in action have been permeated by this distinction between "white collar" crime and "traditional" crime, even if for various reasons the terms were not to be used and remained implicit. But still this distinction is just the surface of a deeper ideological one

between those perpetrators of crime who are uncontrollable and those who are educated, mild, cultural and rational.

The distinction between white collar crime and traditional crime lies behind the different procedures that have been elaborated in relation to each of those two types of crime. Criminal law was designed first to punish symbolically and painfully those who were thought to be irrational. Various measures such as pre-trial detention, arrest, physical punishment, and in general, the threat of and real limitation of freedom of the body accompanying the whole procedure that develops around the "crime by a criminal" have been linked to such the image of the perpetrator. On the other hand, the perpetrator of a white collar crime was submitted to a much more elaborate procedure, best exemplified by the case of various top officials who remain in power even if their conduct is already under investigation by a special body of specifically chosen individuals. The tribunals that deal with white collar crime of officials are the most spectacular example, even if the word "crime" is not used in such circumstances, but the concept of "constitutional responsibility" is developed instead. Also the legal procedures to be followed in some cases of white collar crime are different from the ordinary ones, offering many more safeguards of individual rights than in the case of "criminals". Mention need not be made here of the various degrees of immunity offered to some specific types of public officials, or of the special treatment usually guaranteed in practice to them, once the persons belonging to this category are detained before, during, and after trial. Perhaps the most symbolic was the treatment offered to those leaders of Nazi Germany who escaped the gallows and spent years in special prisons.

Our understanding of corruption in government as a case of white collar crime conceptually opposed to traditional crime, such as "real crime" or "crime in the streets" would not be adequate without taking into consideration a third type of criminality, namely "organized crime", of which in our day the drug cartels are the most notorious example.

Once a private criminal organization enters in competition with a lawful social organization, its basic instrument in the struggle for power remains the direct corruption of public officials, be they police, judiciary, prosecution, legislature, local self-government or executive branch at all levels, not to mention other lawful private organizations such as trade unions and business associations.

Instead of describing the complex web of relationships that could exist, it may suffice to mention here a classical study on corruption in a supposedly typical city of one million inhabitants conducted in the 1960s by William J. Chambliss ("Vice, Corruption, Bureaucracy and Power", Wisconsin Law Review, vol. 1971, No. 4, pp. 1130- 1155). The context for corruption was created by the fact that several laws prohibiting gambling, prostitution, pornography, drug use, and high interest rates on

personal loans were not accepted as morally valid by large groups of people, some of them with considerable political influence. The law enforcement agencies found themselves in an uneasy position and forced to maneuver between conflicting demands. The outcome was a very selective law enforcement.

"Using the discretion inherent in their positions, they resolve the problem by establishing procedures which minimize organizational strains and which provide the greatest promise of rewards for the organization and the individuals involved. Typically, this means that law enforcers adopt a tolerance policy towards the vices, selectively enforcing these laws only when it is to their advantage to do so", and this in turn means that the vices in question are ecologically restricted to some areas of minimized visibility, restricting complaints while simultaneously maintaining access for those interested. But by putting prostitution, gambling and other such vices under this kind of control, law enforcement agencies find themselves in the next stage of development of corruption. Since prostitution and gambling are profitable, there is competition among people desiring to provide those services. From competition arises the need for government, and the question of the order of the day (or night) is who is to govern the vices? It could be done by the law enforcement agency itself - and this sometimes happens too. But less risky and more efficient is a complex in which, as Chambliss writes "a syndicate emerges -- composed of politicians, law enforcers, and citizens -- capable of supplying and controlling the vices in the city. The most efficient cabal is invariably one that contains the representatives of all the leading centers of power".

What Chambliss suggests in his study is the reinterpretation of the image of organized crime that had been construed by the press, politicians and social scientists as being an organization independent of government and acting apart from it. According to this view, this is unrealistic and results from the type of sources typically used in studying corruption, namely those provided by government agencies; unrealistic because "corruption of political-legal organization is a critical part of the life-blood of the crime cabal" (Chambliss, op.cit.). This means a lot of very practical things, such as the manipulation of the allocation of work of law enforcement officials so that those uncorrupted -- because you need not corrupt everybody in order to corrupt the emergent whole of government -- are in no position to investigate the things that are not to be investigated.

The case referred to above involves two basic elements from which the third, corruption of government, evolves. Those elements are, first, the legal ambiguity in some areas, creating a tension between demands for suppressing an illicit activity and demands for this type of activity to be continued; and, second, the development of an organization of the market for illicit goods and services. The history of crime in socialist countries offers another version of the story, though it has been better described by journalists than by legal or social scientists. In

those countries the position of power exempted from democratic control by elections and by a free press serves as a starting point for the development of an organization that acts independently of the law. Chief officials in some countries have been prosecuted for a gigantic chain of corruption ending in closed labor camps where people were exploited for the personal profit of a political élite.

A democracy, with its tolerance of private associations, privacy, individual entrepreneurship and procedural safeguards for individual rights, may be too weak to defend itself against aggression by or on behalf of internal, external or supranational criminal organizations. In addition, lawful organizations sometimes attempt to change public decisions according to their wishes and interests, not through regular lobbying, but through active and aggressive corruption of government officials. Organized criminal action usually relies on a combination of financial inducement and physical threat. The prevention of corruption of government by organized crime has some peculiar features resulting mostly from the secrecy of its actions and its very existence, in contrast to lawful private organizations.

In modern times the process of bureaucratization of social life led to the steady growth of "white collar" criminality in various forms exceeding the scope of classical bribery. Bureaucrati-zation was accompanied by democratization: the outcome of those two tendencies being also the change in the level of tolerance towards the various acts of public officials. The trial of city officials was a common event in ancient Greece, while in the Middle Ages in Europe full control was exercised by lords against their vassals and vice versa under the monitoring of the Church. The absolutist state that emerged from earlier forms on the eve of contemporary times was still rather far from submitting itself to controls, either from outside or from below. However, the twentieth century marks an important progress in this direction; rulers were neither sacrosanct nor exempt from democratic controls. The financial situation of legislators is made public, the conduct of elected heads of state is examined, and political crimes against human rights, even if justified in terms of domestic legal regulations, as well as in terms of the political expediency, are investigated, prosecuted and judged by international tribunals. As the scope of public inquiry into the conduct of government affairs widened, acts that had until then felt normal for a politician, even if judged morally reprehensible, were included in "white collar crime" in general, and the corrupt government in particular. Even such sovereign acts of government as declaring war were finally subject to international justice.

The growth of "white collar crime" coincided with the development of "organized crime". The latter is by no means a new phenomenon. However the role and social characteristics did change to the degree in which, for instance, the modern Italian mafia differs from the system of mutual self-help of the "criminal classes" in the Kingdom of Naples from which it

developed; or the degree in which the modern organized crime syndicate in the United States differs from the mutual self-help in illicit occupations performed by thousands of newly arrived immigrants from non-English speaking countries of the old world; or the degree in which the contemporary criminal organization in a Soviet republic differs from traditional co-operation in the underworld of professional "urki" thugs. The old organized crime was the higher level of criminal organization among the criminal sectors of the lower classes, while modern organized crime cuts across the social structure from top to bottom, corrupting both government and the masses of society. Contemporary organized crime recruits its officers from the top of society, that is the same pool from which the government recruits its members, while rank and file members come from the lower strata. Whereas in the old society crime was something prevalent in the dark streets of a poor district, modern society with its high mobility, and relative values encourages the coexistence of three types of crime: traditional crime, white collar crime, and organized crime. This triangle forms the backbone of the subversive order of society. The existence of such a counterorder must be considered whenever we deal with corruption.

The changes the twentieth century witnessed were twofold. On the one hand, social processes changed criminality in its organizational and sociological aspects. There was an increase in aspirations, as the hope of immediate satisfaction of dreams of welfare in this life became widespread. On the other hand, there was a great change in the manner of evaluating individual and social life. This becomes an almost definitional aspect of corruption -- there is more of it as the level of evaluation of performance of the growing bureaucracy become higher. A public officer today in some countries risks his or her career with acts that were totally out of public inspection a hundred or even fifty years ago. This is evident if political scandals in major democracies of the world today are compared with what has occurred during the last two hundred years.

Whatever the meaning of corruption, at least two elements are needed: a public official and victims. Corruption is an interactive state of affairs, and the developed system of preventing and combating it typically applies various measures addressed to those who act as accomplices. In fact, the conceptual category that best serves our task of understanding corruption is that of the market; and corrupted officials are those who either sell their services on the already existing and autonomous market, or create the illegal market themselves by exploiting their monopoly in a given area. The customers for those services appear in two morally different situations: some are buying services that they are not entitled to receive, while others pay extra for services that normally belong to the scope of their valid entitlements. Whenever the policy is to punish the customers of the corrupted bureaucracy, there is also a need to make this distinction clear in a criminal code or statute. The first class of customers is treated as exploiters of the corrupted bureaucracy; the second is seen as the exploited public

even if the acts are identical in substance. The aim of anti-corruption campaigns is often exactly that of alleviating the situation of those exploited by the corrupted bureaucracy. It is worthwhile, though, to point out also the second possibility, as the goal of some anti-corruption campaigns could be to eliminate the specific category of an outside influence on governmental decisions. Here it seems extremely difficult if not impossible to distinguish between lawful and unlawful influences if the acts and motives of those outside the administration are taken into consideration.

Adherents of class theories of society will often stress that in a society ridden by class conflicts there is no way to eliminate corruption because there is no way for a powerless class of citizens to influence officials into a specific line of action according to their collective interests. Paradoxically, however, the same view is tacit in the opinion of those who think of class conflict as something so natural in social life that is to be neglected as something that belongs to the constitutive elements of civilization. The inevitability of group conflicts of interests makes it necessary to shape the direction of administrative or other decision-making to some degree. However, the degree can be slight, and research on judicial decision-making in modern democracies has rather disappointed those looking for substantial and systematic social bias. The situation may be different in the case of legislative behaviour, but there the research is bound to be overwhelmed by difficulties due to the complex nature of social interests that enter the political forum of modern legislature and the complexity of modern party politics.

Whatever are and will be the results of investigation in this area, it is certain that society needs to accept the influence of individuals (if not, why should experts be consulted?), groups (what else is a political party if not organized group pressure on public decision-making?) and the public in general (this is exactly what democracy is all about). The question remains, however, whether it is possible to distinguish clearly between an unlawful influence and a lawful one. The idea of an uninfluenced government remains hidden behind the philosophy of anti-corruption laws and policies, and it should be remembered that this is the very undemocratic idea cherished by absolute rulers throughout history. Seen from this perspective, a clean government is the one that follows only the interests and directions of the ruler, while corruption is exemplified by any attempt to change the course of official action, actual or predicted, so as to be in line with the wishes and interests of those subject to the ruled. The recent history of totalitarian states provides many examples of this kind. In those societies corruption is seen by officials as well as by the public as sometimes the only available method to soften the hardships of life under the regime, and all attempts in this direction are seen by the rulers as corruption. One feels entitled to ask again whether in such social circumstances the very idea of clean and uninfluenced government is not corrupted

many more times than the unlawful pressures and incitements on the part of the humiliated, exploited and debased citizens upon the officials of the regime in force. Even the most extreme cases of actual corruption, i.e., the pecuniary gains offered to public functionaries in order to influence their decisions, will be in some social context morally better than the uninfluenced course of official action, and should therefore be subsumed under the good old clause of legitimate defense.

The legislative, judicial and investigative aspects of preventing and combating corruption are necessarily colored by all the problems raised above. Corruption seems to be one of the eternal plagues that mankind must learn to live with. We are inclined to say that we will surrender to the unnecessary practical pessimism that results precisely from not taking into account all the complexities alluded to above. In fact, it is quite different to live in a regime where the government has evolved into a criminally corrupt organization than in a democratic regime in which the organizations ceaselessly attempt to exert unlawful control over the government. The right to have a good government is one of the basic human rights; we cannot therefore, desist from aspiring to this perhaps unattainable but perfectly clear ideal.

All this leads us to various practical steps that could be taken in the area of legal control of corruption. The history of English regulations concerning corruption as a crime is revealing in this respect. Phil Fennell and Philip A. Thomas in their historical analysis ("Corruption in England and Wales: An Historical Analysis", Int. J. of the Soc. of Law, 1983, 11, 167-189) stress that contemporary legal and social definitions of corruption are "blurred, confused, and imprecise". Three statutes shaped the criminal law on corruption: the Public Bodies Corrupt Practices Act of 1889; the Prevention of Corruption Act of 1906; and the Prevention of Corruption Act of 1916. The provisions of the first were limited to "local public bodies", with reference to which two classes of corrupt transactions were declared to be misdemeanors: (1) the giving of a bribe; and (2) the receipt of a bribe by any person ... to induce a member, officer, or servant to do anything in relation to his public duties". The 1906 Act (1) made the giving or receiving of a secret commission a criminal offence; and (2) extended the scope of the 1889 Act by including crown servants and people serving under local authorities as agents. The 1916 Act was restricted to cases involving contracts with government departments or other public bodies, with the burden of proof reversed and the maximum sentence increased to 7 years imprisonment. Each of these statutes was preceded by a public scandal. The scandals might have appeared to be typically immoral to an unbiased mind coming fresh to their consideration, but to a large class of merchants "they seem fair and legitimate", as one journalist observed in the Westminster Review of July 1877, during the debate on the commissions, which did not end before 1889. Scandals, debates and piecemeal legislation led in effect to a situation described by British authors as follows:

"The fact that those charged with corruption relating to government contracts face almost certain conviction and severe sentences is due to a series of decisions about controlling strategy by government officials that, in view of the contentiousness of legislating against "commercial crimes", the best strategy was to be cautious. The resultant body of criminal law, with all its complications, is the result of a conscious attempt to provide a legal framework which is largely symbolic in its impact. By this we mean that it relies upon the deterrent effect of the few cases which are severely punished, rather than upon any strategy designed vigourously to unearth corruption on any broad scale. A further complication is added by the fact that the three pieces of legislation involved were all designed to deal with different scandals, and in the case of the last two Acts, there was some quite protracted negotiation over the questions both of a definition of corruption and of the preliminary control to be exercised over the legal process by the Attorney-General. The result is that imbedded in contemporary criminal law and procedure regarding corrupt practices are the products of negotiations between the state and commercial interest groups, and it is this fact above all else which places severe constraints on the potential of the law as an instrument for the control of corruption".

Although there is no doubt that the legislation in question was in fact a result of the negotiations in which the opinions of various interest groups were taken into consideration, one might nevertheless question whether this is a necessary condition of the state of legal controls as described by the authors. The piecemeal approach so characteristic of English tradition does not seem to produce results radically different from the systematic approach so cherished in the Continental legal tradition. A good illustration of how systematically the subject can be dealt with in this tradition under conditions of non-intrusion of commercial interest groups is offered by the Criminal Code of the Romanian Socialist Republic (1969), articles 246 to 258 of which are devoted to the subject of misuse and misdeeds in public office.

Article 246 of this code makes criminal all deeds of persons in office who in their functions deliberately do not perform appropriate actions or perform such actions improperly, thus causing harm to somebody else's legal interests. Criminal is also the limitation by an official of a citizen's rights due to nationality, gender or religion (art. 257); abuse of power harming social interests (art. 248); negligent fulfilment of an official duty (art. 249); using obscene words against someone and beating or other violent action while performing official duties (art. 250); disclosure of official secrets (art. 251); negligence in keeping official secrets (art. 252); refusal by a Romanian citizen to come home from a service trip abroad (art. 253); "personal or indirect acceptance or requesting by an official of money or other illicit gains, or accepting the promise of gain in exchange for accomplishment, relinquishment or delay in execution of an act within the scope of service duties of the official, or

to issue a decision different than the one following from the duties" (i.e., corruption - punishable by 3 to 10 years imprisonment - art. 254); offering a bribe (art. 255); accepting undue gains by an official (art. 256); favouritism (art. 257); and extension of those provisions to include all other employees if the misdeeds result in harm to social property (art. 258).

Elaboration of various aspects of actions of an official on duty could have been developed further, but it is doubtful whether this systematic construction of various types of crimes by an official makes for real progress in combating corruption and other forms of abuse of power. In fact, those who have direct experience with the Continental, "civil law" type of tradition will agree that the apparently exhaustive and unambiguous character of such legislation does not exclude, (1) the need to interpret the letter of law when applying it to a particular case, and (2) negotiation of the various interests which occur during the process of the application of legislation in the practice of justice and crime control.

This is well exemplified by the ambiguity concerning the meaning of the very term "public official" that appears for example in Polish law. In the articles of the Criminal Code (1970) that deal with protection of the official, the wording is in terms of the "public functionary" to be protected against attacks on his person and other abuses. In articles concerning bribery, however, "whoever performs a public function" (art. 239) emerges. Art. 120, para. 11, of the Code also defines "public functionary" as:

> "Someone employed in the state's administration;
>
> - A judge, lay judge, or prosecutor;
> - Someone who is occupying a senior position or performing a particularly responsible function related to another state organizational unit, cooperative organization or other social organization of working people;
> - Someone particularly responsible for the defence of public order, public security or social property;
> - Someone in the military service; and
> - Other persons enjoying the legal protection due to public functionaries thanks to special provisions of the law. The Code also defines representatives to Parliament and members of the (people's) council as public functionaries. However, in connection with bribery, as defined by art. 239 of the Code, it was observed that the scope of those who "perform public functions" is to be interpreted narrowly in order to exempt those who occupy senior positions in other state organizational units, such as a factory or commercial firm. Those who are accustomed to life in a market economy need to take into account that in the socialist economy most if not all citizens are employed in state organizational units, cooperatives, or social organizations of working people. This may mean that almost everybody is performing a public function. The Polish Supreme Court in

7 judgements of the Criminal Branch therefore decided that in each case it is necessary for the court to decide whether a person who is not a public functionary is really performing a public function (OSNKW 98/70). This summarizes the comparison between two legal approaches and two social contexts in which cases against corruption are to be decided.

Conclusions

Let us examine the strategic importance of counteracting corruption in government, a phenomenon that may occur in the most reputable public administration systems and in countries esteemed for their long tradition in the rule of law as well as in countries that strongly proclaim the opposite ideal of revolutionary justice. Any discussion of this subject must take into account the basic fact that no system is exempt from the danger of corruption in government.

A corrupt administration is a direct abuse of the natural foundation of government, which according to even the most pessimistic philosophers was to create a better state of affairs than direct struggle among individuals. Let us consider the experience of societies that have survived well into the 20th century without a government, honest or corrupt. Some areas of the world have had substantial experience living without a government. Peoples, in those areas usually meet with enthusiasm, the prospect of a strong and independent government. Societies like that of the Nuer first described by the British anthropologist E. Evans-Pritchard, and then by the Ethiopian anthropologist Aster Akalu, were able to settle their disputes among themselves. The state of government must be better than the state of pre- or non-state organization of communal affairs. Corrupt government is worse than no government at all, as it abuses the nature of government and the rights of the people.

There are two aspects to the issue of corrupt governments. The first is political. One needs to accept the fact that even though the absolute ruler may be personally honest and democratic rule may be full of corrupt officials, in general democracy - the ideal cherished by the United Nations Charter - guards government from corruption and so helps to limit individual corruption. The basic element of this counteracting potential implicit in the democratic form of government is the responsibility of government before the people. This responsibility must be real, and the better the mechanisms of actualization of this responsibility, such as elections, function the less likely is government in general and officials in particular to be corrupted. The greater the involvelement of citizens in public matters, the better this responsibility is actualized; and it is worth noting that in some institutionalized democracies, of 19th century Europe, for example, the government was rife with corruption because political participation was limited to the well born, the well educated and the well-to-do. In such an atmosphere the spirit of complicity dominates, making the members of the political class united above all ideological and other differences, and this unity can develop into a tacit agreement to exploit the situation at the expense of the majority of uninformed citizens who remain outside public life. Finally, the responsibility of government before the people cannot be actualized without the visibility of government and its business. The democratic state inherited from its absolutist predecessors a love for state secrets. The idea of the sacred sphere of state activities surrenders very slowly

to the modern democratic exigencies of internal and international openness of the State and public affairs. International intelligence may serve as a useful reminder of how absurd it could be in the days of high-tech space surveillance to preserve notions inherited from the days of physically impenetrable borders. The transparency of government is the best preventive measure against corruption.

The second point is more technical. From time to time, international public opinion witnesses the dissolution of a corrupt government. Those responsible for past misdeeds, often persons of indisputable national and international achievements, are sometimes offered hospitality by other countries under the terms of political asylum. There is no need to subvert the principle of the right to political asylum, and the right of people to move freely across borders. What is disturbing, however, is the undue international tension that grows around individuals who are hosted by one country, while the majority of the population of another wants to hold such individuals responsible for corruption of the offices they formerly held. Since the typical course of development is that in such controversial matters the creation of new instruments is more efficient than attempts to use the already existing ones, one can perhaps see the need to establish a special international tribunal under the auspices of the United Nations to deal with matters of this kind. The jurisdiction of such a tribunal could be universal and the cases of senior public officials of the particular States members of the United Nations could be dealt with in order to secure due process as well as the fulfilment of the basic right of people to good government. The new International Tribunal of Public Affairs would have the power to issue an order of extradition of the accused if responsibility were proved. Apart from serving the cause of settling international disputes related to former heads of corrupt governments, the Tribunal could be involved in other types of situations. As is well known, in some cases the dissolution of a previous corrupt government is carried out in an orderly and peaceful manner. An unintended consequence, however - though often a negotiated precondition - is the immunity granted to the previous senior officials by the new government. This leads to the undermining of the rule of law and is conducive to further acts of corruption by disseminating the spirit of factual impunity of the government and its officials in the country. The new international procedure could also settle such cases of responsibility for corruption, creating a new spirit of legal security in the world; it would also help to establish international standards. The new international instrument of deterrence of government corruption is seen as necessary by many in the international community; indirectly, it would also serve as a deterrent in the case of national and local governments.

While the old way of dealing with corruption in government was to prevent it through the detection and investigation of individual cases, the new one is directed towards general prevention through making the operations of government open to

public control.

The old way may in general be judged not efficient enough. This does not mean that it does not work. However, whenever there is need for a really intensified fight against widespread corruption in a country, reliance on internal or external routine and extraordinary administrative controls of the administration and on spontaneous information provided by the public does not work, for at least three reasons. First, the administration itself forms the specific world of bureaucracy in which loyalty and mutual checking are considerably developed so as to prevent the effectiveness of administrative controls. Second, the public is often interested in corruption because - as observed earlier - this is the only way to circumvent the inconvenient laws. Third, the public may not be sufficiently informed on the functioning of the administration to exert control in its own interest.

The legislator is sometimes tempted to introduce extraordinary measures to overcome this inability of the system, composed of corrupt officials and their customers, to clean itself automatically through controls from above and complaints from the outside. As an example, the clause that appears in socialist criminal legislations may be cited which exempts the accomplice to the corruption of an official from criminal liability if the facts and details of the act are reported to the appropriate state agencies before the latter have acquired knowledge of the crime on their own. The aim of such a provision is simple: to offer a legal opportunity for a deal to be made between the investigating agency and the one of the interacting group who arranges corruption of the official actions. The scope of this clause could be extended so as to cover a whole array of relationships. In the criminal code of Soviet republics of the 1920s it was already stipulated that both the person giving a bribe and the one receiving it could be exempted by the court from criminal responsibility, either because "on their own will and immediately informed about the bribery" or "if through confessions and evidence provided in time they contribute to the disclosing of the bribery" (art. 114). In the Polish Criminal Code of 1970, this clause reads as follows: "Whoever has given a bribe is exempted from criminal responsibility if giving the bribe was extorted, or if after giving the bribe he freely and willingly reported the fact" (art.174)

The other, much more promising road out of corruption is through establishing various transparency rules. Such rules have been established in various countries today, and in accordance with the general tenor of this paper that the improvement of government needs to begin at the top. We will refer to the legislation that establishes the public transparency of the financial situation of top public officials.

The new French regulation ("loi organique no 88-226 du 11 mars 1988" and "loi no. 88-227 du 11 mars 1988") may serve as a good example. The law imposed on candidates to the office of the President the declaration of their personal property and filling

in such a declaration after completion of the term of office in case of election. These declarations are to be made before the Conseil constitutionnel and are published in the Journal Officiel of the country. The law also obliges all senators and deputies to the National Assembly, and members of government, i.e., the prime minister, ministers and secretaries of State, presidents of the territorial assemblies and mayors of communities of more than 50,000 inhabitants, presidents of regional councils, president of the Corsican Assembly and presidents of the general assemblies, as well as presidents of some representative assemblies in the French overseas territories, to declare their financial situation at the beginning and at the end of the term or of the office. The law specifies the information to be provided, as well as the deadlines for the declaration. In case of elected officials, the sanctions are the nullity of the election if the declaration at the beginning of the term is concerned, and the loss of eligibility for five years in both cases. The declaration of property by the member of government is subject only to political sanctions. The legislator underlines that the interest is not so much in learning the financial situation of the officials but in preventing unjustified enrichment, so the stress is put on the variation that occurs between two declarations. A special commission of judges was introduced in order to evaluate the change in the financial situation of members of government, presidents of territorial assemblies and mayors. This time it is the commission that decides whether the declaration shall remain confidential, but the Commission publishes its observations whenever it finds it useful in the Journal Officiel. In the case of senators and deputies, the assessment is made by the Bureau of the National Assembly and its President. An important move has thus been made in the direction of public transparency of private property of top officials of the country, even if one could also envisage further development of the system into full public visibility of the officials' financial situation. The Italian "legge del 5 luglio 1982, no. 441" seems to be more radical, instituting directly the right of all citizens registered in the electoral lists to know the content of declarations made by representatives through a special bulletin published by the office of the President of the Chamber (articles 8 and 9). For the representatives to the various territorial elective bodies the same obligation and manner of executing the citizens' right to know the declarations are also in force. Moreover, the declarations are obligatory in the case of "presidents, deputy presidents, delegate administrators and general directors of public institutions and offices; also economic officials who are nominated, proposed, designated or approved by the prime minister, council of ministers or a single minister". The same applies to companies in which the State or other public capital participates by more than 20 percent, private bodies in which the public interest exceeds 50 percent, and autonomous state enterprises (art.12). This road is advisable in order to overcome the problem of corruption within the democratic context of public life.

Then comes the level at which it all started. Corruption became the matter of interest to rulers in the old days, when it was seen as a misappropriation of funds belonging to the ruler, a theft of what was due to the legitimate treasury, a kind of illicit competition. The historical background has been evident in this paper, as well as in the tension behind the concept of corruption. The ruler - servants opposition evolved into the concept of government as servants of the people, but this new concept needs to coexist with the oppositions between central and local power and between senior and lower officials. The "scandals" and "affairs" at the senior level are equivalent to the classical "bribery" at the lower and local levels. The apparent permanence of corruption results from the increasingly transparent character of public life. It is therefore important to stop focusing interest on the classical type of low-level "white collar crime", such as bribery, and develop instead a new philosophy of public service to the people. A change of ethos must precede the concentration of social and organizational energy on eradicating corruption, and discussion of legal instruments to support the creation of such an ethos is required; then perhaps the classical provisions of criminal law will suffice.

The modern economy that cuts across the traditional divisions between national, local and international interests, as well as the borders between public and private property, makes a situation that was already unclear even more ambiguous. It is impossible to escape the controversies and interpretative decisions that will be found controversial by the general public. This is why it is important to embue officials with the guidelines of proper conduct of public affairs. One relevant instrument in this respect is the British National Code of Local Government Conduct, first recommended by the Redcliffe-Maud Committee on Local Government Rules of Conduct in 1974. The code reminds councillors that their overriding duty is to the entire local community. The Code alerts councillors to the danger of biased decision-making that would not fulfil this basic duty. The Code twice refers to the issue of corruption. It seems appropriate to cite the relevant clauses:

"3. Disclosure of pecuniary and other interest

(i) The law makes specific provision requiring you to disclose pecuniary interests, direct and indirect. But interests which are not pecuniary can be just as important. Kinship, friendship, membership of an association, society, or trade union, trusteeship and many other kinds of relationships can sometimes influence your judgement and give the impression that you might be acting for personal motives. A good test is to ask yourself whether others would think that the interest is of a kind to make this possible. If you think they would, or if you are in doubt, disclose the interest and withdraw from the meeting, unless under standing orders you are specifically invited to stay...

7. Gifts and hospitality

Treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organization making the offer may be doing or seeking to do business with the council, or may be applying to the council for planning permission or some other kind of decision..."

This quotation may serve as a final statement because it again underlines the basic problem. The classical concept of corruption defined in terms of financial profit and gain and immortalized in the "bribery" does not wither away with the modern economy, but inevitably becomes only a marginal case of corruption meant as making public decisions not in the interest of the public and not in the way the public would wish them to be made. International bodies should urgently promote something similar to an International Code of Conduct for Public Officials to be accepted throughout the world.

Annex I

OPENING STATEMENT BY PROF. ERNST M. H. HIRSCH BALLIN, MINISTER OF JUSTICE, GOVERNMENT OF THE NETHERLANDS

Although I have been in office for only a few weeks, after the recent change of government in this country, I am happy to have been invited to perform one of my first international duties at the opening of this important Seminar.

In the first place I consider it an honour to my country to be in a position to host a meeting of this nature. This indeed confirms the tradition of close relationships which my country wishes to entertain with the United Nations and its support for its programmes and initiatives, in a particular in the areas of development co-operation and crime prevention and criminal justice.

Secondly, I happen to take a great personal and professional interest in the subject on the agenda of this Seminar, which, considering the themes addressed in the main introductory papers, corresponds closely with themes which I have studied closely in my former career as professor of constitutional and administrative law at the University of Tilburg.

One has to commend the United Nations, in a particular its Centre for Social Development and Humanitarian Affairs and its Department of Technical Co-operation for Development, for having ventured to take the initiative for convening this Seminar. Although nobody would deny the seriousness of corruptive government practices and their negative effects on society as a whole, one has to realize the difficulties facing the United Nations to open the subject to discussion at a universal level. As appears from the joint initiative from two different sources within the United Nations system, the only chance for conducting fruitful and substantially relevant discussions on this subject is by approaching it from!various angles.

One cannot reasonably analyse corruptive phenomena without addressing the question of how to counteract them, and for that purpose one has eventually to rely on the criminal justice system. On the other hand, not all distortions in government management and bureaucratic ethics are matters of crime prevention policies or justifying interference with the criminal justice system.

Where Governments are facing problems in this respect, they may find structural causes in rigid bureaucratic traditions, underdeveloped management, or simply a lack of financial or personal resources to provide for sufficient systems of checks and balances. It is important to stress the need for further development in this respect, and the role some countries can play to assist others in their efforts.

It seems to me that such development co-operation should not necessarily be considered only in the context of crime prevention and control. It covers wider areas, in particular the creation of basic conditions for the maintenance of a stable legal order as a prerequisite for a peaceful society.

No country, no society can claim to be immune from corruption, irrespective of its stage of development. I do not have to refer to any specific instances here; the newspapers tell their daily stories. Exchanging national experiences and devising strategies to curb this phenomenon are therefore matters of common concern and interest. That, I take it, is the spirit in which the United Nations has called upon you to assemble and discuss in a professional, scientific and candid fashion the various aspects related to the problem.

It is a great pleasure for me to note that such high-ranking officials and experts from all regions of the world are present. This must offer a unique opportunity and a guarantee for successful and productive work.

I wish you all good luck, and do not forget to take sufficient leisure time to enjoy the pleasures which this city has to offer.

Thank you for your attention.

Annex II

OPENING REMARKS BY MR. HAMDAN BENAISSA, DIRECTOR, DEVELOPMENT ADMINISTRATION DIVISION, DEPARTMENT OF TECHNICAL CO-OPERATION FOR DEVELOPMENT, UNITED NATIONS

It is with great pleasure that I welcome you all to this highly significant interregional seminar on corruption in government. First of all, on behalf of the United Nations, permit me to convey our gratitude to the Government of the Netherlands for kindly agreeing to provide host facilities for this interregional meeting. Our deep appreciation goes to the officials in the Ministry of Foreign Affairs, Ministry of Justice, and the faculty of the University of Leiden for the logistical preparations to enable this distinguished group to assemble in this historic capital city. We would also like to convey our thanks to the United Nations Centre for Social Development and Humanitarian Affairs, especially its Crime Prevention and Criminal Justice Branch, for jointly sharing the responsibility with the United Nations Development Administration Division in conceptualizing the issues of the seminar, and in preparing the documentation of the conference.

I am impressed by the number of developing and developed countries, specialized agencies of the United Nations system, and international non-governmental organizations represented in this seminar and the high level of participants from them. We are grateful to you for taking time from your busy schedule to come to The Hague to be with us. This signifies a growing interest at national and international levels in improving the institutional arrangements and processes of public management, particularly to assess the cause and effect of distortions that are taking place through bureaucratic corruption in public affairs, and what can be done to mitigate the problem. I am confident that your deliberations will help to generate new thinking and insights through an interactive process so that improved institutional measures, codes of ethics, and standards of accountability are developed in the public service.

The present interregional seminar is part of a global effort of the United Nations programme in public administration and the United Nations Centre for Social Development and Humanitarian Affairs to provide assistance, on request, to developing countries among others, in management development, crime prevention and the criminal justice system by studying important and urgent issues, and developing alternative ways to accelerate the process of economic development and improvement in institutional strengthening.

While the problem of corruption in government, mostly in the form of unethical use of public authority for personal and private advantage, is not limited to any one set of countries -

developing or developed - North or South - its over-all impact on the efficacy of public management, in particular on the socio-economic development process has been debilitating. It would not be incorrect to state that such an assumption is almost universally valid in all economies. However, the degree to which bureaucratic corruption might impair an administrative system could vary, depending on national realities, social and ethical modes, and the strength of administrative processes. Also, what form it takes, who indulges, and the social consequences are important considerations.

The problems of corruption are essentially multi-disciplinary in nature. At one level, it could be viewed as a waste of scarce public resources which are for use to improve the living conditions of the poor through economic growth, equity, and provisions of public services. At another level, the problem hits hard on the quality and ethics of administration and personal integrity of public service personnel. From another dimension, the continuing distortions in behavior through public corruption could affect the foundations of public management systems. To be realistic, however, I feel that there is a degree of lack of clarity in the perceptions of individuals when gross generalizations are attributed to bureaucratic corruption and inefficiency in public administration. In the same vein, political systems and media do not always fully recognize the creditable achievements in the socio-economic fields that public management systems have helped to bring about in the developing countries. We have to review our experience on the subject with a sense of realism, objectivity and positiveness.

From the public management perspective, an important structural issue that most developing countries have faced is the enlarged role of government with new functions to cope with the challenges of nation-building and development. The government is at once a regulator, promoter, arbitrator, and entrepreneur, as well as a customer. Today, government, in most cases, controls all vital aspects of public life through a network of departments and agencies with a large bureaucracy. The power and authority exercised by public officials, for example, in revenue, police, taxation, public works, commerce and trade departments is indeed formidable. Unquestionable authority and the accompanying aura of government legitimacy have added complexity to policy, management and decision-making in enhancing the potentiality for abuse and misuse of public office that we are concerned about. In addition, there is the problem of multiplicity of administrative and financial controls, rules and regulations with a centralized system, and ineffective supervision of the administrative state, at times functioning for their own sake. In some cases, the inflexible and dilatory procedures are outside the ambit of civil and criminal procedures, leading to arbitrary decision-making. The issues of administrative delays in settling claims and enabling access to public services as a routine matter cause undue hardship at the cutting-edge level of administration.

As you know, a large number of developing countries have launched administrative reform programmes to streamline their public management structures, and have established management development and training institutions. Some countries are also attempting to curb the growth of the civil service for economic stabilization and structural adjustment. The questions of service conditions, pay, and incentives are engaging attention in several instances. Administratively, however, if bureaucratic corruption is not mitigated, and if the public is not fairly and impartially treated by officials, systems will increasingly become vulnerable to political instability. The process of change could also get impeded.

We know that during the past decade, several countries have introduced new institutional measures in the form of vigilance committees, ombudsmen, and administrative tribunals, including the process of droit administratif to reduce incidents of corruption and to inquire into cases of abuse of authority. A review of the lessons of experience of these institutions would be helpful in seeing how much efforts could be strengthened. Here the experience of the developed countries will be useful.

We have noticed that some developing countries have recently improved their crime prevention policies, programmes and the criminal justice system with appropriate mechanisms for the prevention of corruption in government. A review of the procedures to detect, investigate and convict officials with an improved management information system and data base could be highly significant.

I believe that in order to seize the opportunity of the momentous changes that we are witnessing globally, a prerequisite to the process should be the improvement of public management by encouraging openness, transparency and greater responsiveness of the administrative system. The new order of public administration must combine qualities of entrepreneurship and effectiveness on the one hand, and political responsiveness and legal sensitivity on the other. Public office is a public trust; it should work for the general interest, and not for the benefit of particular interests. We have to continue to strive to bring this ideal to the level of reality.

Finally, I should like to mention that we in the United Nations are very concerned about re-orienting our activities and programmes to meet the changing needs and priorities of developing countries. For this reason we joined hands with the United Nations Centre for Social Development and Humanitarian Affairs at Vienna to convene this meeting to see what concrete practical measures may be initiated to ameliorate the problems of corruption in public affairs. The recommendations of this seminar will hopefully be reflected in the work programme.

I am pleased to participate in this conference. As I said earlier, you are all engaged in a challenging task, and I do hope your report will lead to meaningful initiatives, at both the national and international levels. Thank you.

Annex III

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Annex IV

LIST OF DOCUMENTS

I. **Consultants' and other papers**

1. "Major implications for the existing administrative organization: process and procedures in maintaining ethical standards and quality in government", by Cecil Rajana.

2. "Corruption in government: Legal problems in social context", by Jacek Kurczewski.

3. "Institutional devices in dealing with corruption in Government", by Anthony Antoniou.

4. Draft manual to combat corruption, CSDHA.

5. Aide-mémoire on the seminar, UNDTCD/CSDHA.

II. **Country papers on corruption in government were submitted by the following:**

1. Argentina

2. Brazil

3. Burundi

4. Cameroon

5. Egypt

6. Ghana

7. India

8. Indonesia*

9. Jamaica

10. Mexico

11. Nigeria

12. Philippines

13. Thailand

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*Indonesia submitted a paper entitled "Graft and how to fight it" in addition to a country paper.

14.Uganda

15.United Arab Emirates

16.Union of Soviet Socialist Republics

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