The U.S. business scandals: perspectives on ethics and culture at home and abroad.

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Introduction

Many U.S. business leaders respect the highest standards of integrity and it is not my intent to associate them with the Enron quagmire. I agree with James F. Parker, CEO, Southwest Airlines, who told *Business Week* (June 24, 2002), "I think it's unfortunate that the misdeeds of a few have had the effect of creating questions and undermining confidence of business in general."

But this unfortunate truth must be weighed against another, which Paul Volcker voiced in the same magazine, "Corporate responsibility is mainly a matter of attitudes, and the attitudes got corrupted…in the 1990s. We went from 'greed is good' being said as a joke to people thinking 'greed is good' was a fundamental fact."

My presentation today is about U.S. corporate corruption – at home and abroad. It is a call by an American to American business to maximize efforts to pursue uniformly high ethical standards in all its dealings and to adopt new approaches, at home and abroad, that ensure that CEOs operate on the ethical high ground. This address is driven by concern over the extent of corporate corruption and by the failure, so far, by many U.S. business people to recognize the global implications of these scandals. My aim is to stimulate thinking about future reforms that assist in restoring domestic and foreign respect for corporate America. One timely reform, for example, would see the ending of the current corporate practice of making small bribes (so-called 'facilitating payments') to foreign government officials – a practice viewed as unlawful and unethical across the developing world.

The proposals made here are born of the twin convictions that, at this time of global insecurity, the United States needs friends across the globe and that its status and the respect it enjoys is influenced by the ways in which U.S. multinational corporations are perceived. The concern abroad about the impact of the U.S. scandals has economic dimensions, with the undermining of the nation's economic health and its financial markets negatively infecting all other economies and markets. Moreover, numerous U.S. corporations are global leviathans whose fortunes influence the fates of nations. Damage to the fabric of U.S. business ricochets across the globe and hits all economies, and the prospects for the people who live in those economies.[1]

Americans feel cheated….

Corporate recklessness has shattered confidence in U.S. business leadership at home and abroad. It has tarnished the image of U.S. business leadership among America's 80 million corporate shareholders, while damaging foreign respect for U.S. enterprises and indeed for the U.S. itself. Now, corporations need to put systems and approaches in place to ensure that all operations are driven by the highest ethical values. The starting point is with the CEO, whose example is crucial in building a corporate culture of integrity. Directors, shareholders and the media, need to be unrelenting in pressing CEOs to demonstrate the leadership that places integrity at the center of business activities, both here in the U.S. and across the world.

Americans feel cheated and outraged and yet many CEOs and board directors appear to be in denial and continue to operate as if it is just business as usual. This will change. The silence is due in part to arrogance and to risk aversion. But, the pressures are mounting for CEOs to stand up and be counted.

International focus on American scandals…

The U.S. scandals have been reported[2] in minute detail across the world and have inevitably strengthened perceptions that U.S. firms operate at lower ethical levels than they publicly claim to do. Foreign public trust in corporate America has been diminished, just as it has at home. However, the global aspects of corporate integrity reform have not yet entered the U.S. debate, perhaps because of ignorance of foreign perceptions, aloofness, and a conviction held by some U.S. business people that U.S. cultural standards, for example, with respect to the acceptance of bribery, are higher than those overseas.

Research for this presentation suggests that experts agree that there are no cultural differences when it comes to understanding the term business integrity. This may shock those in U.S. business who have long felt that this country alone possesses the golden key to corporate ethics. It may also shock U.S. business leaders to learn that corruption in many developing countries is seen by their citizens as a disease that has been brought to their nations by Western multinational corporations and is not a home-grown product.

U.S. business should make a greater effort to learn from discussions abroad on corporate governance. They should also assign priority to meeting the highest international standards of corporate social responsibility and fully participate in global dialogues to set standards, while publicly reporting performance against human rights, labor rights and environmental norms. They should increase transparency in their international operations. CEOs need to recognize the importance of the corruption issue to the broad publics in many countries and the negative perceptions that exist in these countries toward U.S. business behavior. As a symbol of a new ethic, U.S. corporations should make determined efforts to end the use of facilitating payments in foreign business.

Americans cannot have one set of ethics at home and a lower set abroad…

In today's globalization era values cannot be split between domestic and foreign interests. Every action by every division of a multinational firm impacts its global reputation, its effectiveness and ultimately its survival. This essay is not directed just at the firms that have become enmeshed in scandal. Rather, the vital lesson from the scandals is that just being at the margin of legal and regulatory compliance to boost stock prices is not acceptable. Ethical leadership requires a much higher standard. CEOs and boards of directors must do what is right, constantly strive for the high ground and be seen to be doing so. They must also recognize that it is untenable for corporations to pursue a high ethical standard at home and a lower ethical standard abroad.

American business leaders and the lawyers and consultants who advise them should be humble and introspective. They need to understand the weaknesses in ethical leadership that have enmeshed corporate America in scandal. They need to comprehend the wreckage that has been wrought. The challenge to CEOs is to set their sights on the inevitably long road to rebuild confidence in the honesty of their stewardship.

Seeking the ethical high ground…

Integrity got shunted aside by a booming stock market, mounting pressures for short-term profit improvements, and the lure of quick multi-million dollar personal gains. Now, integrity must be restored to its central place in business decision taking. This demands that many companies adopt new systems that enforce a strong corporate ethical culture. This means that boards of directors need to set clear and resolute approaches to make the corporate code of ethics a crucial leadership guideline. This means that CEOs need to demonstrate that they are constantly operating on the ethical high ground.

The high ground is reached when the CEO and the board of directors face exceptionally tough decisions where the corporation could lose business and earnings, but where they accept these as the costs for "doing the right thing." The high ground is reached when CEOs recognize that it is unacceptable to bless one set of values for domestic operations and another, lower set of values, for foreign operations. The high ground will not always be taken if based alone on ad hoc and haphazard decision taking by a handful of senior executives. Rather, it demands operating within a pre-determined framework of ethical approaches, based upon the corporate code of conduct and reinforced by systems of incentives tied to ethical performance that provide clear rewards, and equally clear sanctions.

Reputation matters...

At stake today is the reputation of all companies. Bronwyn Best, National Coordinator of TI-Canada, argues, "often all that differentiates a company from its competitors is its reputation." She adds that the core of a corporate reputation rests on its ethical approaches and that building a good reputation, "requires the complete buy-in of the CEO of a company to truly take these (ethical) issues to heart and for the company to walk the talk. Without that, the response to such issues is only verbiage and for show."

The current public mood is so distrusting of business that even corporations that consistently seek to demonstrate ethical leadership have found themselves vilified. Merck and Coca-Cola, for example, have been featured in prominent articles suggesting that their accounting practices have fallen foul of the Securities and Exchange Commission. In both cases the SEC approved their accounts, but the negative articles challenged their reputations.[3]

The lack of public respect for business is understandable given that our newspapers daily report more and more details about the unacceptable face of capitalism. Ethics has been left outside the boardroom and the executive suite. Many business leaders took risks on compliance with laws, rules and regulations when they thought U.S. enforcement was weak. They adopted an "it's just about in accord with compliance requirements" approach and aggressively exploited legal and regulatory loopholes. They allowed themselves to place short-term profit-opportunism above "doing the right thing."

The reputation of American business has been soiled at home and abroad by a catalogue of actions that forces the question: how wretched have corporate values become when:

- Boards of directors grant executives massive multi-million dollar loans that they know will never be repaid, while simultaneously agreeing to plans to lay-off thousands of employees?

- Securities firms advise customers to buy junk so that these firms can make quick profits at the expense of the customers who trust them?

- Firms pay foreign bribes because they see little risk of being prosecuted under the FCPA?

- Trusted American companies led by people who wear the U.S. flag in their lapels seek to dodge U.S. taxes by finding a legal loophole that enables them to place their corporate 'legal' headquarters in an offshore tax haven?

Justice Oliver Wendell Holmes said, "Taxes are what we pay for a civilized society." Decency and business ethics, relative to taxes and every other aspect of corporate behavior are what a civilized society requires. But, so far there has largely been silence from America's corporate leaders on the critical issue of ethical leadership. There is scant visible evidence of individual top CEOs striving to convince the general public that it is patently false to view all corporations as villains. Few CEOs have come forward in public to encourage their peers to comprehensively review corporate ethical behavior from balance sheet honesty, to performing at the highest global social responsibility standards.[4]

The silence by CEOs may indicate caution prompted both by the advice of their lawyers to keep their heads down for fear of potential litigation and the advice of their public relations staff to avoid becoming embroiled in controversy. Then again, many CEOs may still be in denial.

Denial

Before even considering reforms it is vital that corporate leaders understand that this crisis will not go away and that far-reaching change is required. There are grounds to worry that numerous corporate leaders may still not have understood this. Do many CEOs still believe that being in compliance and having expensive legal counsel on hand is an adequate response to today's pressures? Do they believe that the reforms and the public outrage are overdone? Do they consider that these scandals are merely the loud bangs of burst bubbles and that when stability returns to the stock markets and the U.S. economy, then it will be back to business as usual?

These questions need to be raised and confronted. There is a broad sense, after all, that as *The Economist* magazine put it, "there is corruption without contrition."[5]

On May 1, 2002, *The New York Times* reported, "Bernard J. Ebbers, who spent 19 years building WorldCom into one of the biggest long-distance companies and Internet carriers in the world, has resigned as chief executive, president and director, the company said yesterday." The full scale of WorldCom balance sheet frauds – amounting to more than $7 billion - were not known to the public when Mr. Ebbers was forced to resign.

- Would Mr. Ebbers still be a corporate hero if Enron had not collapsed and the stock market bubble had not burst - would anyone have really made a noise about the fact that the WorldCom Board of Directors provided Mr. Ebbers with more than $366 million for loans and loan guarantees?

- Would anyone have raised questions at major companies that Board compensation committees needed to consider the ethical aspects of their decisions?

- Would corporate general counsels have become more assertive in determining that relationships between their corporations and outside consulting firms, including law firms, were undertaken at the highest levels of integrity?

- Would Enron's Board continue to waive aside the corporate code of ethics when top company executives and the firm's lawyers and auditors encouraged them to do so?

In sum, to what extent have views in the U.S. this year on corporate ethics been influenced by plunging stock prices in a market that started to dive well before the Enron scandal hit the headlines?

Is anything really changing?

There is evidence to suggest that many corporations have been slow, despite the scandals, to change their behavior over and above what the new laws and official regulations require. For example, the publicity over massive CEO pay at scandal-ridden companies does not appear to have influenced approaches at many firms that are not embroiled in bankruptcies.

- On the same day that Mr. Ebbers was fired, *Bloomberg News*[6] reported that the E*Trade Group, the online brokerage firm, which had a $241 million loss in 2001, had awarded its chief executive, Christos M. Cotsakos, $77 million in total compensation. It was business as usual.[7]

- In August 2002, a senior Citigroup executive facing multiple investigations by public authorities into his practices as an investment banker was let go by the financial services firm with a $32 million severance pay award. It was business as usual.

- In early August 2002, *The Financial Times* ran a series of articles under the title of the "Barron's of Bankruptcy," which noted that the 200 top executives of the 25 large corporations that went bankrupt in previous months in the U.S. had taken home compensation among them of at least $3.3 billion. As they prospered, tens of thousands of American workers lost their jobs and their retirement funds. It was business as usual.

- Prominent in many of the scandals that have emerged are the world's leading auditing firms. None of them has any reason to rejoice about performance. While Arthur Andersen has expired, the four remaining rivals face significant litigation. But, this has not deterred them from telling the public that they are tops when it comes to integrity and operating as if news stories about their actions did not exist. This is business as usual.

To amplify this point look at KPMG, which has been the external public auditor for Xerox that has had multiple problems with its accounts and has been forced several times to restate earnings. Xerox has been under various investigations including one by the Securities and Exchange Commission, whose Chairman, Harvey Pitt, used to be a legal advisor to KPMG. On May 6, 2002 *The Wall Street Journal* reported that the head of KPMG held a private discussion with Mr. Pitt where Xerox was discussed. At a minimum this was unethical and created considerable Congressional and media attention. But, there was no apology from KPMG or evidence of any sense of wrongdoing. Quite the contrary, KPMG on the next day and for some days thereafter ran full-page advertisements in *The Wall Street Journal*, and other newspapers, declaring, "We believe integrity is a constant. That the process of maintaining it is never ending. That getting there requires foresight and vigilance. And that with integrity and objectivity comes greater strength and freedom for our capital markets. Over the years we have committed ourselves to upholding integrity and objectivity…." (*see a summary copy of the advertisement in the first Endnote).*

Many CEOs may still believe that today's crises do not negatively impact their own corporations and they may be convinced that all that is required is legal compliance to new laws and rules and regulations and a continuation of business as usual.

The ethical challenge in U.S. business

But, the denial that may still abound in some corporate leadership quarters cannot last for long. Unquestionably, the scandals and all the press they are generating will force a new focus on business ethics. The media is reflecting the depth of public outrage and letters to editors from Americans across the country are being published that highlight the anger and frequently draw comparisons between corruption at home and corruption in such countries as Colombia, Russia and Mexico.[8]

The challenge to America's business leaders is to demonstrate that the beyond compliance integrity culture is the norm. The challenge starts at home, but it must embrace the full panoply of global operations of the modern multinational enterprise. Despite the recent actions by the Congress and the SEC, it is a challenge that will only be met by resolute leadership and visible demonstrations of sound judgement -- you cannot legislate ethical behavior.[9]

To be sure, there is much that regulatory authorities can do to guide corporate actions with regard to public disclosure of information and business transparency to stimulate greater ethical performance. To be sure, greater direct shareholder participation in the genuine election of directors to boards (today, most elections are uncontested and based on a slate of candidates determined by the directors) and in influencing decisions of companies through open debates in annual and special meetings of shareholders (it is often difficult for shareholders to secure such discussions if opposed by the CEO) can assist in guiding the ethical approaches of business leaders.

However, in the final analysis, "doing the right thing" often is a matter of judgment that may force business leaders to reject short-term legal schemes to maximize profits. Corporate lawyers may find legal loopholes and narrow interpretations of regulations that may enhance immediate profits, but involve significant negatives, such as job reductions or losses to innocent third parties. Improving America's corporate ethics will involve the combination of better systems, approaches and regulations, with enhanced pressures on business leaders to place integrity at the center of their compass. At heart, business leaders need to strive to consistently take decisions that serve the long-term interests of the corporation and all of its stakeholders.

Bad social policy and bad morals…

The American public hankers for assurance that it can rely on the integrity of the nation's CEOs and boards of directors. People seek examples of leaders reaching beyond compliance. They want evidence that leaders are making an ethical culture the central hub of the corporate governance wheel. They want to see CEOs building systems that guide managers at all levels to do the right thing when faced with tough decisions and, through clear incentives, encourage ethical behavior by all employees. They want to see greater transparency in many facets of corporate activity so as to be able to better monitor corporate ethical performance. For example, companies often shroud the details of CEO retirement and compensation packages in secrecy and, when revealed, they often smell of greed. They are widely seen, as New York Federal Reserve Bank President William McDonough has described them, as "terribly bad social policy and perhaps even bad morals."[10]

Trust has been broken and, as a result, CEO actions will now face more skeptical investigation than ever before. Thanks to the Internet and the rise of civil society organizations, companies – especially now that they are suspect – have nowhere to hide. As Walter van de Vijthe, a member of the Management Committee of Royal Dutch Shell noted in the 2001 Shell Report, "…the eyes of the world are on us."

Building a strong ethical culture in a company is not a natural process. It demands work. It demands a combination of clear systems and approaches, substantial employee training programs, incentives, monitoring and example setting from the top. Today, corporations need to consider, at a minimum, the following kinds of corporate ethics:

- Ensuring regular review by the Board of Directors of the corporate code of ethics and how compliance with the code is being assured.
- Providing chief ethics officers (sometimes called chief compliance officers) with the authority to directly discuss key issues with corporate boards of directors.
- Ensuring that consideration be given in Board compensation committees to ethical perceptions and issues when setting compensation awards for top managers, including severance clauses in contracts.
- Relating compensation of senior managers to their performance in terms of implementing the corporate code of ethics.
- Reporting fully and publicly on global corporate social responsibility practices and ethics code performance.

These and many other recommendations[11] are being advocated widely and business needs to respond. The press has not only highlighted the hard facts of the scandals, but it has contributed to public education on leadership ethics. *Business Week*, for example, has emphasized, "Leadership must create an environment where honesty and fairness is paramount. If integrity is to be the foundation for competitiveness, it has to begin at the top…" And, it has asserted that the CEO must set the company's moral tone by being forthright and by taking responsibility for any shortcomings.

The magazine, which has devoted many cover stories to business ethics, has opined in sum that if the challenge for executives in the 1990s was to transform corporate behemoths into nimble competitors, then the challenge in coming years will be to create corporate cultures that encourage and reward integrity as much as creativity and entrepreneurship.

Slowing progress on reform…

It may be overly optimistic, however, to expect real change to come rapidly. Even now we find that some business organizations appear to assign higher priority to trying to check the reform stampede that has been rolling ahead in the Congress and governmental agencies, than in stimulating a substantive public discussion on governance and ethics. Then, despite the fact that lawyers play an influential role in every aspect of U.S. corporate governance, there has been little, if any, concern voiced so far in the legal profession in public about how lawyers should reform their practices. They, like CEOs, appear from afar to be still singing the legal compliance tune, rather than placing ethics codes at the center of reform approaches.[12]

The slow progress in placing integrity back at the center of the domestic corporate governance system compares, however, with scant evidence so far that U.S. business leaders recognize the global impact of the U.S. scandals and need to promote improvements in their global business ethics practices. For the most part, U.S. CEOs were absent from the intensive discussions in Johannesburg in late August at the Summit on Sustainable Development, where they would have had a chance to discuss corporate integrity within an international debate sharply focused on corporate global social responsibility. U.S. corporate representatives at the Summit tended, according to press reports, to focus on their particular work in some key social responsibility areas, such as healthcare and the environment. But, they appear to have steered clear of the complex issues that arise from diminished public trust, thanks to the U.S. scandals, in the rhetoric of multinational enterprises.

Scandal forces a global focus

While the media, shareholder groups and politicians explicitly challenge American CEOs to examine corporate governance through an ethics lens, there is an absence of a similarly loud demand on the international front. Like Admiral Lord Nelson at the battle of Trafalgar, American business is using its blind eye to look out to sea through a telescope. International corporate ethics is invisible on most of corporate America's map right now.

However, reform in the global domain will emerge in response to three key considerations:–

1. a gradual recognition here of the depth of outrage abroad over U.S. corporate behavior;
2. increasing awareness here that U.S. business leaders can learn from business ethics approaches that are being pursued abroad; and,
3. the realization among business leaders that it is no longer viable (even if it once was) to pursue a high ethical standard at home, while applying a lower ethical standard abroad.

For years representatives of U.S. business leadership have been promoted the U.S. system of corporate governance as the gold plate model. U.S. business leaders have worked tirelessly to ensure that other countries adopt the U.S. system.[13] What they have presented as the gold plate model, now may look to the general public, at home and abroad, more like a cheap nickel imitation in view of all the media reporting of abuse, the portraits of CEOs in handcuffs, the disclosures of lavish multi-million dollar lifetime retirement benefits for some CEOs, and other evidence of greed at the top of corporate America. Indeed, American excellence in corporate governance is widely perceived to be a fraud just like the WorldCom balance sheet (and many U.S. politicians are seeking to secure maximum mileage from this in election campaigns, so strengthening negative public perceptions). Because each day brings new front-page newspaper stories of corporate abuse, it is no wonder that U.S. business ethics may sound to many American and foreign ears like an oxymoron.

While in many respects the U.S. system of corporate governance, with its myriad rules designed to make officers accountable to shareholders and to protect the rights of shareholders, are superior to those that exist in most other countries, the scandals have shown that there is scope for improvement. Until the scandals, however, public advocates of improvement have been in a distinct minority. While brushing aside domestic critics, leading U.S. business organizations and prominent corporate governance lawyers have frequently appeared arrogant to foreign counterparts as they sought to convince the rest of the world to adopt U.S. approaches. Thus, the advocates of the U.S. model have implied that their approaches involve high ethical standards. For example, there has long been foreign resentment to the suggestion that U.S. enterprises are less corrupt than their foreign rivals. While U.S. business leaders may continue to make such assertions, they are likely to be greeted with guffaws of ridicule in light of the revelations concerning Enron, WorldCom, Global Crossing, Adelphia, Merrill Lynch, Arthur Andersen, Tyco, and AOL Time-Warner. These scandals may well have compounded anti-American sentiments abroad.

Critical corporate social responsibility concerns…

Foreign negative perceptions of U.S. corporate values easily spill into social responsibility areas. Many U.S. corporations have long taken pride in their global environmental approaches, their policies on workforce diversity, workplace health and safety conditions, and their philanthropic contributions to multiple communities. Numerous American companies believe that they are leading the world on social responsibility issues and they have tended to view specific actions by coalitions of activists – against such enterprises as Texaco or Nike – as remote exceptions. Now, however, foreign public trust of U.S. corporations has probably been so tarnished that it may be more difficult for U.S. enterprises to win international support for claims that they are acting as model global corporate citizens.

So far, however, it is difficult to determine whether U.S. business leaders have started to assess the overseas damage caused to their credibility and reputations by the scandals at home. There are no indications yet that the U.S. media, U.S. government officials and agencies, have weighed the foreign impact on U.S. corporations of the diminution of foreign public confidence in their integrity.

Values and cultural perspectives

One of the reasons why the international implications of the U.S. corporate scandals may not have fully registered here at home may rest in the continuing belief in some business leadership circles that U.S. corporate governance standards and ethics are superior to those abroad. This view embraces the notion often suggested by U.S. business people that many foreign cultures are more accepting of practices that we in the U.S. view as unethical. The implication of such reasoning is that business in America operates at higher standards. But, is this valid?

There are no easy answers. Numerous peoples involved with Transparency International in a range of countries were asked for their views on this matter for the preparation of this essay. None of these individuals (who are quoted in this paper and/or in the endnotes) accepted the suggestion, for example, that their national cultures were more accepting of bribery of government officials than the United States or Western Europe.

The question of whether some cultures approve of lower or higher ethical standards than others has concerned Transparency International as it publishes an annual Corruption Perceptions Index. There has been interest in determining whether respondents to a broad range of surveys around the world on corruption have similar perspectives and attitudes with regard to the bribery of public officials. Dr. Johann Graf Lambsdorff of Göttingen University, who serves as a senior advisor to Transparency International and originated the index, has researched[14] these issues.

Lambsdorff concludes that, "Some societies are characterized by a high level of trust among their peoples, while others may lack this and investigations suggest this has an impact on levels of corruption. However…, on exploring cultural roots for perceptions of corruption we find, at least from the data for the CPI that there is convergence, irrespective of whether locals or expatriates have been surveyed. We take this as an indicator that cultural factors do not seem to be crucial to the outcome. To put it more cautiously, up to now there is no evidence that cultural factors as they relate to samples of local or expatriate business people play an important role when it comes to assessing 'levels of corruption.'"

Lambsdorff's findings are bolstered by the perspectives of a variety of other experts. For example, Jacques Dinan, President of the International Public Relations Association and a Board member of Transparency International–Mauritius, stresses, "I do not believe that there are cultural differences when it comes to defining integrity." Then for example, Professor Laura Hartman of DePaul University says, "Absolutely not. I don't believe that people have a different understanding of integrity. I just believe that people prioritize it differently in different cultures, as compared to other values and pressures… It is critical that we learn to better understand the cultural implications of our judgments."

The views of Lambsdorff, Dinan and Hartman fail to provide any support to suggestions that U.S. business ethics may be superior to business ethics in other cultures. Research would be useful and I believe it would support the opinions stated above. Substantive understanding of the foreign perspectives, as reflected by Lambsdorf and Dinan, is often absent from the top echelons of corporate America. This both narrows the discussion of optimal corporate governance approaches in the U.S., while leading to approaches that sometimes assign a higher level of ethics to domestic business practices than to ones performed beyond U.S. borders.

U.S. business ignores key foreign debates

The key corporate governance reforms that have been discussed so far in the U.S. since the scandals emerged have largely been based on established U.S. practices. There has been little evident interest in work in this area abroad and the important reform discussions of corporate governance that are now proceeding, for example, in Germany[15] and in Japan.[16] It is possible, however, that slowly, but surely, this will change and U.S. corporate leaders will start to pay more attention to what is happening, for example, in Western Europe.

Recent years have seen substantial corporate governance discussions in Europe and the growing impact of shareholder groups who have set their sights on curbing "American-style" compensation.[17] American governance experts have, so far, dismissed European arrangements designed to curb the powers of the CEO and management by, for example, having a non-executive chairman in place above the CEO and by the establishment of two-tier board systems. However, it is of interest that in recent months Paul Volcker has started to try and draw attention to the merits of such European-style arrangements.

The broad lack of interest, indeed awareness, of the European developments reflects a conviction, now found so wanting, that the U.S. corporate governance system is beyond reproach. It may reflect a lack of understanding of why Europeans and Japanese CEOs, who run companies the equal to U.S. enterprises, are paid so much less on average than their U.S. rivals. It reflects greed by some leaders of U.S. business who brush aside issues of ethics when vast multi-million dollar paychecks are on offer.

Adapting to the global landscape…

Most large American corporations that have entered the global business arena have devoted little top management time to considering how to adapt their ethical practices and social responsibility approaches to the complexities of today's global political and economic landscape. Rather, the prevailing attitude has been that the world should learn from America and adapt to the superior U.S. system of business ethics. In the past, this arrogance was tolerated to a greater degree than is likely to be the case in the post-Enron era. The scandals may, in time, force a profound change in U.S. corporate attitudes.

European firms, for example, have shown far more interest than their U.S. competitors in participating in and learning from the U.N. Global Compact, established by U.N. Secretary-General Kofi Annan to strengthen global corporate social responsibility. European CEOs provided the leadership in seeking business involvement and promoting business positions at the Summit on Sustainable Development in late August. European firms have been at the forefront in pushing for an upgrading of systematic business reporting on environmental actions. Some U.S. firms have developed important corporate social responsibility approaches, such as Ford, Pfizer, General Motors, DuPont and Merck. There has been growing interest by U.S. firms in the work of Business for Social Responsibility and the Global Reporting Initiative and these are positive trends. However, overall, most large U.S. firms have been less engaged than large European enterprises. In a survey of 140 U.S. firms published on the eve of the Summit it was found that 25% reported that they have not adopted meaningful sustainable practices largely because of "the lack of a compelling business case".[18]

Most U.S. business leaders have so far failed to publicly demonstrate understanding that it is in their self-interest to start listening to foreign perspectives, to pay attention to the social responsibility pressures abroad and to participate directly in shaping global integrity standards.

Anti-Americansm…

In part this blind spot on the radar screens of many U.S. CEOs reflects the reality that many non-governmental organizations have been more politically influential in Europe on global social responsibility issues than they have been here. But, today's public perceptions of inadequate ethics in corporate America and the new sharp focus of politicians on business practices provide opportunities for the activists. They are likely to take them, encouraged by the mounting outrage of their counterparts across the globe with U.S. attitudes. For example, in France, the publication *Le Monde Diplomatique* now regularly articulates a strongly anti-American, anti-globalization view and uses the U.S. scandals to support its opinions. Similar examples are numerous in other countries.

For a long time, many multinational corporations, notably American ones, have been seen by foreign civil society participants of many kinds as acting as imperial powers determined to exploit foreign assets for the enrichment of Americans. The anti-globalization movements have gained strength in part by mounting campaigns that depict U.S. multinational corporations as unethical. At the same time, there have been more focused and less dogmatic charges, such as:-

- U.S. apparel, shoe and toy manufacturers have been accused by non-governmental organizations of exploiting cheap labor in the poorest Asian countries;
- similar organizations have charged numerous natural resource companies with wrecking the environment in developing countries;
- civil society groups have asserted that major U.S. companies have paid minimal attention to the human rights of the communities in very poor countries where they operate; and,
- from Argentina (the IBM case) to India (the Enron case) there have been allegations by politicians and the media that giant U.S. enterprises have bribed public officials and that the U.S. authorities have just turned a blind eye to such activities.

The charges are rarely made in a balanced manner. The general public in many foreign countries has often been inadequately educated about the benefits to their economies of the growth in investment by multinational corporations. However, many U.S. executives have been deaf to the foreign charges, dismissive of the civil society monitoring organizations and ignorant of the degree to which the ethics of U.S. business leadership is questioned abroad. It is questioned, after all, by groups in Europe and in many developing countries that include middle-of-the-road civil society organizations, influential academics and major media, as well as prominent politicians.

The corruption example

Corruption is the starting point in many countries for discussions about corporate behavior. It is the key concern of people in developing countries and in Central and Eastern Europe in relation to business integrity.[19] The broad publics in these countries understand that bribe-taking by their government officials undermines social welfare systems, increases poverty, destabilizes the economy and can wreck hopes for building democracy and an efficient economy. Corruption plays a far larger role in most countries in debates, especially around elections, than such other social responsibility issues as the environment and labor rights.[20]

This is not adequately understood in the U.S., where the most vigorous social responsibility organizations are primarily concerned with green and human rights issues. It is not well understood in business where the issue of corruption is seen more in terms of the FCPA and securing a level playing field among competing multinational corporations. Thus, many in U.S. business may well underestimate the reputational damage done abroad by perceptions of the willingness of U.S. firms to bribe officials.

The approach of many U.S. firms to foreign bribery illustrates prevailing misunderstandings. To start with, many American business leaders believe their corporations are cleaner than foreign rivals are because they assert U.S. business complies with the FCPA and thus does not pay bribes. But, recent data evident in the Transparency International Bribe Payers Index[21] (*see second Endnote for the 2002 table*) challenges this perception.

Misunderstanding facilitating payments…

Many U.S. firms see the use of facilitating payments abroad – direct payments to officials to accelerate a lawful process - as legal because it is allowed under the FCPA, so they routinely make these payments. But, across the globe, facilitating payments are seen as bribes.

Payments under the table, of any amount, to a government official are bribes. Officials may extort such payments. The demands may be made in ways and at times that make refusal by foreign business people very difficult, but they are still abuses of public office for personal gain. Many U.S. business executives seek to split hairs and convince themselves that somehow these payments are not bribes. This is a real blind spot. Across the developing world there is a uniform view on this, as expressed, for example, by Claudio Weber Abramo, Managing Director of TI-Brazil, who states, "There's no country in the world (or so I hope!) that accepts bribery ("facilitating payments") in its laws. Here the matter is reinforcing the state in order to guarantee the rule of law."

The allowance of facilitating payments under the FCPA, and under the OECD Anti-Bribery Convention, supports foreign bribery by multinational enterprises. It encourages U.S. corporate representatives abroad to grease the palms of foreign officials without seeking alternative ways to pursue their business. These companies do not make facilitating payments in the U.S., despite facing long delays from the U.S. authorities to secure work permits for non-residents, to build new factories and shopping centers, let alone open land for mining. In the U.S., the corporations hire specialist lawyers and lobbyists to assist their quests for permits, in emerging market economies where they may also face delays in permitting, they swiftly resort to "grease" and "speed" payments to attain their goals. In such instances, how they behave in the U.S. is legal, but how they behave abroad is illegal.

It is legal under the FCPA for U.S. firms to use facilitating payments in Canada and in the U.K., France, Germany and Australia, but U.S. executives will note that they do not routinely make such payments in these countries because it is not culturally acceptable there. Even though in some of these countries the bureaucracy can be just as slow in granting environmental permits, or work visas, if not slower, than in many developing nations. The implication is that it is culturally acceptable to make facilitating payments in countries like Brazil, Bangladesh, South Korea and South Africa!

U.S. advocates of the current system often suggest that it is unrealistic to call on U.S. firms not to use facilitating payments so long as many foreign cultures are as immature as is currently the case and view as normal the use of such payments. Such statements ignore perceptions abroad, underestimate the damage done to the reputations of U.S. corporations, and reflect insensitivity to widely perceived linkages between facilitating payments and bribery.

The advocates of current U.S. practice suggest that there is no real harm in making facilitating payments. They fail to see what is obvious that there is no such thing as a victimless crime and under the laws of all countries it is a crime to pay bribes to government officials. Alexandra Wrage, President of TRACE: Transparent Agents and Contracting Entities, which is a new U.S. and U.K. headquartered organization to strengthen ethical practices among business agents across the globe, makes this point in noting, "No form of corruption is victimless. Widespread petty bribes set a permissive tone, which breeds more and greater demands. It is difficult to evaluate the individual cost of each tainted transaction and so it is difficult to rally support for action against these facilitation payments."[22]

<u>Corruption "is imported from abroad"</u>

"Bribery and corruption in all their forms are as repugnant to ordinary Batswana as they are in Western Europe and North America," notes H.L.C. (Quill) Hermans, Chairman of Transparency International-Botswana.[23] He adds, "You must remember that there has been relatively little 'grand corruption' in Botswana since Independence in 1966. Whereas corruption is demonstrably most prevalent at the sub-national level and involves transactions between Batswana, most Batswana tend to regard corruption as something which 'foreigners' initiate, if reports and editorials in the newspapers are any indication of local sentiment."

This latter suggestion is widespread abroad, yet treated with derision by many U.S. business people. Why is there such a stark contrast?

In part the answer rests in the myopia of some in U.S. business who underestimate the intensity with which some multinational firms press major bribes on foreign government officials. It may stem from perceptions in some countries that U.S. corporations use exceptional political and diplomatic pressure, taking full advantage of the U.S. status as the sole super-power, to convince foreign governments to "buy American" and that this is a form of corruption and unfair business practice.[24] It may stem from an inadequate understanding in the U.S. of the intensity of foreign attitudes on this issue.

Admiral Ram Tahiliani, chairman of Transparency International-India (a country where he is the first to admit there are major corruption problems today) states, "There is nothing in our culture which condones bribery-grand larceny or petty facilitating payments. Old customs in India during the days of Maharajas or Moghuls dictated that you took a gift when you went to see the monarch. This was offered publicly and an enlightened monarch ensured that you went back with a bigger gift."

Perceptions of Speed Money…

Shaukat Omari, who heads TI-Pakistan, argued that the FCPA suggests that U.S. business needs to use facilitating payments abroad, but inevitably this fosters greed on the part of those who take these payments. He suggests many U.S. corporations have come to depend on using "Speed Money" to obtain all kinds of permits from officials (licenses, adjustments in tariffs, the processing of papers) and that the amounts paid can be very substantial. He stresses, "Facilitating payments may be OK for the "civilized world" where standard procedures normally do not allow for the above. The multinationals are probably a cause for most of the corruption or the 'culture of corruption' that now exists in Pakistan. It seems harsh and this is not to deny that the Pakistani companies do not indulge in bribery, I am sure that they do, but the culture of 'Baksheesh' has been definitely supported on its way by the multinational corporations."

The confusion between what U.S. business people see as a "legitimate" (*sic*) facilitating payment and what observers in developing countries see as a bribe may provide some insight into why the U.S. ranks so poorly in the Transparency International Bribe Payers Index – it scores just 5.3 out of a clean maximum of 10.0 and trails a variety of European countries.

Another explanation, of course, is that U.S. firms do a great deal more foreign bribery, irrespective of the existence of the FCPA, than leaders of U.S. business are willing to acknowledge. (The number of Justice Department successful FCPA prosecutions is very small, but not necessarily because of few instances of U.S. corporate bribery abroad. Explanations include the small staff resources of the Justice Department in this area, the complexity of proving corruption allegations, and the lack of cooperation from foreign official agencies that is vital in prosecuting bribery cases.)

The U.S. score in the 2002 BPI at 5.3 is worse than 6.2 in the first 1999 BPI. In both surveys the U.S. performed worse than a number of countries that until recently provided tax rebates for firms that paid bribes abroad. The U.S. score compares poorly to countries, which, in contrast to the U.S., have not made visible efforts to enforce the OECD Anti-Bribery Convention. Some U.S. business observers feel the BPI, which is based on a detailed survey undertaken by Gallup International for Transparency International, is wrong. Some suggest that TI's methodology has an anti-American prejudice. Others assert that the U.S. score reflects irrational anti-Americanism in many developing countries.

However, for some observers overseas the Enron and other U.S. scandals, as well as the prominent debates in the U.S. over campaign finance reform, provide confirmation of what is reflected in the BPI: that is, that U.S. corporations have a high propensity to bribe foreign government officials.

Walking the ethics talk

The differences in view between U.S. business's image of itself as being clean on the global corruption stage and the opposite view of U.S. business held abroad is exacerbated by a lack of transparency in U.S. business practices.

In many countries, U.S. multinational corporations are seen to be publicly advocating one policy and privately doing the opposite. They are seen to be:

- publicly embracing the FCPA, yet they are perceived to be paying bribes;
- proclaiming the importance of sound business ethics, yet it is their dollars that are perceived to be greasing the palms of local government officials and then depositing the cash in secret Swiss and other foreign banks;
- advocating open and honest dealings, yet they are seen to be seeking exceptional access to political power in America by making lavish contributions to politicians, political parties and partisan advocacy organizations - in most countries this looks like corruption.

Dr. Sini'a Petroviæ, President of TI-Croatia, is concerned about perceptions of multinational firms applying a double standards and illustrates this by noting, "It is well known that corporations from some countries are ready and others are not to 'ease' their investments by, as you say, 'facilitate payments'. Naturally, I do not believe that the world is perfect or could be perfect and that corruption could be easily or at all fully overcome. Nevertheless, I also do not think that the solution is in stating simply that many cultures and nations consider it normal or usual or common to accept money to 'facilitate payments'. If the countries and stakeholders in the countries of Western civilization really want to change things, they should themselves follow the procedures they stand for."

Inese Voika, Chairperson of Transparency International Latvia, shares this skepticism, “Companies that have developed certain anti-corruption standards should speak it up on the local level. Companies should be able to talk about their examples of their behavior and their sacrifices. We have tried to encourage oil companies, for example, in Latvia to tell about their nice standards, but we have not received a very positive response. They do not want to show off, they are afraid of being inspected and attacked by other companies and the state. So it starts to look like: you can try to be honest within your own company, but it is not good behavior to talk about it. Or in other words it means: yes, we have all these standards, but still the most important thing for us is profit, and we will never risk profit to ethics standards…. Western businesses in many cases talk about integrity, but in so general terms, that it shows they are ready for compromises if needed for their profits.”

Whether the view is expressed in the North or the South there is a familiar ring. Jacques Dinan in Mauritius states, “The most important issues with regard to corporate social responsibility is the ability for a corporation to be trusted by all its stakeholders, internally and externally. This implies that the corporation must behave as perfectly as possible making sure that everything it does helps to build up its credibility and reputation. Corruption, influence peddling, half-truths, distorted facts and made-up stories have almost become a way of life and corporations have to be really daring to avoid being identified with such malpractices. Their irreproachable behavior must single them out.”

Conclusion

For a long time America’s 80 million shareowners believed they could trust the U.S. corporate brand. They believed U.S. corporations pursued irreproachable behavior that singled them out in the world. Now, their confidence is in tatters.

To be sure, there have been many scandals in the past that have shaken public confidence in business ethical leadership, most notably in recent years the Savings & Loans crisis. But, rarely before in recent decades have reported scandals appeared to cast such a wide net across huge U.S. corporations, revealing conflicts of interest within the nation’s most powerful financial institutions, and involving the pocketing by top CEOs, in several cases, not of tens of millions of dollars, but of hundreds of millions of dollars. Now, a fundamental imperative is for all associated with U.S. business leadership to recognize that the crisis impacts everyone and that just being in compliance with the newest strictures and rules set by the U.S. Congress and the Securities and Exchange Commission is not enough to restore public trust.

American business cannot compromise on ethics. If it does, then it risks its own survival and it places the nation’s welfare at risk. CEOs and boards of directors need to do far more to place the corporate culture on the moral high ground. They need to establish transparent reporting systems that demonstrate that doing the right thing in their operations, at all levels of management, is not a matter of choice, but a fundamental requirement. CEOs should understand that they will start to win respect when they hurl the caution of their legal and PR advisers to the wind and speak forcefully about the need for ethical business reform. They will garner trust when they declare to the lawyers and the auditors that, while they see the technical merits of the latest miniscule legal loopholes and tax avoidance opportunities that have been discovered, these are not opportunities that the firm’s ethical culture can embrace.

Securing respect for the law…

The propensity of some U.S. firms to take advantage of legal loopholes to evade U.S. taxes in the extreme is an apt symbol of the attitudes that should be changed. How can companies, which proudly display the U.S. flag and actively endorse the best of U.S. values, even contemplate establishing their “legal” corporate head-office in an offshore tax haven? New York District Attorney Robert M. Morgethau has noted that the pursuit of such practices by business, above all, “Undermines respect for government and the rule of law.”[25]

Just as America's CEOs must open their eyes to the breadth of criticism at home, so they should use this opportunity to attain a new sense of reality of how they are seen abroad. They need to accept that others are far from convinced that U.S. business values and practices are more ethical than their own.

CEOs will foster greater public understanding when they demonstrate that corporate social responsibility, which demands respecting human and labor rights and the globe's delicate environment, is not a course one pursues only when there is a short-term compelling business imperative to act. They will also enhance their image by addressing the ethical issues associated with facilitating payments in foreign business and introducing programs to end this practice.

Greed and the constant willingness to sacrifice ethical standards to increase profits, at home and abroad, by numerous U.S. corporations damages our society and endangers the substantial progress in recent years to establish an open, liberal global economic system that can foster development and cross-border investment. Importantly, the lack of ethics has done, and is doing, immense damage to the prime asset of corporate America - its reputation.

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ENDNOTES:

The Wall Street Journal **May 6, 2002**

SEC's Pitt Met With Head of KPMG Raising New Questions About Ethics

By SCOT J. PALTROW
Staff Reporter of THE WALL STREET JOURNAL

A private meeting 10 days ago by Securities and Exchange Commission Chairman Harvey Pitt with the head of **KPMG** LLP, which for years was his law client and now is under SEC investigation, has triggered new concern about whether he is abiding by ethics rules requiring him to stay out of matters directly affecting former clients.

Mr. Pitt already has drawn criticism in recent months from investor groups, members of Congress and others for meetings with other former clients on issues pending before the SEC that could have major financial impact on them. Ethics rules generally ban SEC officials from participating in matters that relate specifically to recent former clients, and generally require officials to avoid giving even the appearance of a conflict….

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and on the following day…. **The Wall Street Journal May 7, 2002** ADVERTISEMENT

Leadership Standards Vision =

We believe integrity is a constant. That the process of maintaining it is never ending. That getting there requires foresight and vigilance. And that with integrity and objectivity comes greater strength and freedom for our capital markets. Over the years we have committed ourselves to upholding integrity and objectivity….

KPMG

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Endnotes

[1] The United Nations Conference on Trade and Development released a study on August 12, 2002, that compared the size of national economies with the size of sales of the world's largest multinational corporations. It found that 29 of the largest corporations rank among the world 100 largest economic entities. Exxon ranks 45th, just behind Chile and ahead of Pakistan; General Motors ranks 47 ahead of Peru, Algeria, New Zealand, the Czech Republic, United Arab Emirates, Bangladesh and Hungary; then comes Ford at 55, just above Daimler-Chrysler, which is larger than Nigeria's economy.

[2] The vast amount of media coverage in the U.S. in recent months of the corporate scandals here has been matched abroad and has shaped perceptions everywhere. London-based publications *The Financial Times* and *The Economist*, as well as Paris-based *The International Herald Tribune* and *Les Echos* have provided their readers with daily coverage of the U.S. scandals. Newspapers and business magazines published across the globe have increased their coverage after a slow start early this year and now seem to report on every major new development.

[3] In early July, *The Wall Street Journal* published a lead front-page article that implied unethical auditing practices by Merck. The article suggested that there may be problems with the SEC over a registration statement concerning Merck's Medco affiliate. Merck secured a partial correction and on July 9, 2002, Merck stated in part in a press release, "The Securities and Exchange Commission declared Medco Health Solutions' registration statement effective today after a thorough review, including a review of Medco Health Solutions' recognition of retail co-payments as revenue. Merck has strongly maintained that its accounting practices are appropriate and in accordance with generally accepted accounting principles."

In a letter to the editor of *Business Week*, published on June 3, 2002, Sonya H. Soutus, Director of Coca-Cola Corporate Communications, wrote, "We were surprised by the headline for your story about Coca-Cola and its bottling partners ("Has Coke been playing accounting games?" Finance, May 13). Both we and Coca-Cola Enterprises have been open and transparent in all of our financial reporting. You reference a change in how marketing payments are made to Coca-Cola Enterprises by Coca-Cola Co. As CCE disclosed several weeks ago, the Securities and Exchange Commission agreed that the way CCE had been doing it was acceptable. At their recommendation, CCE changed to an accounting method that the SEC felt was preferable.

"Further, you (mischaracterize) Coca-Cola's 'marketing support' payments to its bottling partners as subsidies. These payments are agreed-upon contributions that the company makes for joint marketing programs. They support activities that increase sales of Coca-Cola products and so directly benefit our company and our bottling partners."

[4] In a June 10, 2002 editorial *Business Week* stressed, "Time for CEOs To Speak Up" and noted, "There are plenty of talented, articulate CEOs who run companies well and are compensated within reason. It would help at this critical time if they would take the public stage to urge reform in accounting, restraint in executive compensation, honesty in financial analysis, and integrity in corporate governance. The problem is increasingly urgent. Those who have embraced reform need to say so. Those who haven't need to do so."

[5] On July 6, 2002, *The Economist* published an article on Xerox under the headline "Corruption without contrition" that suggested that the company repeatedly restated its earnings without ever admitting to any wrongdoing and that, as the saga continues, its share price has slumped below book value. The article talks about Xerox's "fiddles" and noted, "The restated accounts which the company filed on June 28th, show that this 'misapplication of GAAP,' as Xerox calls it, overstated profits by $`1.4 billion between 1997 and 2001."

" Writing in *Newsweek* in mid-July columnist Allan Sloan's article was headed "After a wave of scandals, corporate America is under pressure to clean up its act. But will anything really change?" His verdict is negative, at least for the moment, because "You usually don't get reform until the people who need to be reformed recognize there is a problem." President Bush has talked about fraud and putting handcuffs on the rogues, but he has not addressed issues that reach above and beyond legal corporate compliance and the essential need to restore sound values to corporate leadership. It is this lack of leadership that disturbs Mr. Sloan. He also notes that, with the exception of Henry Paulson Jr. of Goldman, Sachs and Richard Grasso of the New York Stock Exchange, CEOs have been largely silent on the integrity crisis.

[6] *Bloomberg News* **$77 MILLION FOR E*TRADE CHIEF**
May 1, 2002. The E*Trade Group, the online brokerage firm, paid its chief executive, Christos M. Cotsakos $77 million in 2001. The compensation included $29 million in restricted stock, a forgiven $15 million loan and $15 million for taxes after the loan was reclassified as compensation, according to a Securities and Exchange Commission filing. E*Trade had a $241 million loss in 2001. Mr. Cotsakos received $797,880 in salary and a bonus of $4.1 million, compared with $756,346 in salary and a $1.4 million bonus in 2000. The company paid $2.4 million in taxes on stock that he vested, and $279,678 in taxes on retirement contributions. He also gained $11 million by exercising stock options.

[7] For numerous similar additional examples *see Business Week* September 9, 2002, article: "Look Who's Still At the Trough – Bonuses, loans, free BMWs – boards are up to their old games."

[8] Typical of the indignation, for example, are the following letters from the August 12, 2002, edition of *Business Week* magazine:

From Joseph Pugliese, Macungie, Pennsylvania: *"…We complain about corruption in Argentina, China, Colombia, Mexico, Nicaragua, Russia, etc., but the level of corruption in those countries pales when compared with what we have here in the U.S. We just happen to do it in a business suit with lawyers, accountants, bankers, and Wall Street analysts."*

From Diane E. Shepherd, Kihei, Hawaii: *"…How can we expect politicians to crack down on corporate fraud when most have been bought and paid for with campaign donations. Corporate crime and political contributions are two sides of the same coin."*

[9] See article by Stuart Gilman, President, Ethics Resource Center
http://www.ethics.org/resources/article_detail.cfm?ID=728

[10] Speech at Trinity Church, Manhattan, New York on September 11, 2002.

[11] **The Ethics Resource Center**

On July 22, 2002, the Ethics Resource Center (www.ethics.org) reported on a meeting that it had convened, under the auspices of its ERC Fellows Program. This brought together business ethics experts from the corporate, non-profit, government and academic sectors twice yearly to discuss and respond to current and cutting-edge ethics issues. In view of the scandals, the Fellows reached a consensus on the following:

1. Rules and regulations will not yield change without corporate leaders who shape a company culture that has an unwavering commitment to ethical behavior in all aspects of the business;

2. ethics officers must be significant members of a corporation's governance process. Boards of directors should demand that the ethics officers have direct access to them as well as senior management. This would include regular meetings with the audit committee of the board;

3. under no circumstances should a company's code of conduct be waived;

4. leadership's commitment to ethical behavior must be backed by a solid ethics program with appropriate communication and training mechanisms to build a foundation of integrity; and,

5. business leaders must set a clear example of ethical behavior and establish "doing right" as a business priority, not merely meeting the minimum required standards.

[12] Writing in The New York Times on January 17, 2002, former SEC Chairman Arthur Levitt stated, " Lawyers, who can play crucial roles in revealing or obscuring financial problems, should review their own ethics codes. Under the American Bar Association's ethical standards, lawyers who uncover wrongdoing by clients cannot report it to the SEC or local authorities. This inherent conflict needs to be addressed."

[13] In recent years, U.S. business leaders have been forceful in promoting their approaches to the rest of the world with declarations that the U.S. system is the best. Thus, the leadership of the U.S., business establishment has successfully pressed for new codes of conduct, treaties and policy declarations through such organizations as the World Bank, the Organization for Economic Cooperation and Development and the International Chamber of Commerce. U.S. experts, reflecting U.S. model standards, have taken the lead in drafting the corporate governance, anti-corruption and other business ethics approaches that these organizations have announced.

[14] See research by Dr. Lambsdorff. For example, an article in the International Journal of Comparative Criminology entitled "Exporters' Ethics - Some Diverging Evidence" (http://www.gwdg.de/~jlambsd/Papers/Trade_BPI.pdf); also Lambsdorff, J. Graf and P. Cornelius (2000) Corruption, Foreign Investment and Growth. In: The Africa Competitiveness Report 2000/2001, World Economic Forum, Oxford University Press: New York, Oxford; in addition, Dr. Lambsdorff (2002), "How Confidence Facilitates Illegal Transactions." American Journal of Economics and Sociology, Vol. 61, forthcoming.

[15] *The Financial Times* reported on September 3, 2002, “Hans Eichel, Germany's finance minister, will today announce the creation of a new financial taskforce to combat balance sheet manipulation by corrupt managers and auditors. In a speech at the Frankfurt stock exchange, Mr Eichel will propose significant new powers for the Bundesanstalt für Finanzdienstleistungsaufsicht, the recently formed watchdog for financial markets. The package of measures will be crowned by plans to create an accounting taskforce empowered to conduct snap audits at companies suspected of manipulating financial information…. The move represents an attempt to rebuild investor confidence in Germany's capital markets in the light of the Enron and other scandals in the US. Investor confidence in Germany has also been rocked in recent months by a series of high profile domestic scandals, often involving start-ups quoted on the technology-oriented Neuer Markt for high-technology companies.”

[16] *The Financial Times* reported on September 3, 2002, “The Japan Business Federation, the most powerful gathering of companies in the country, has decided to review its corporate governance guidelines following a series of scandals that has undermined further the public's already shattered faith in Japanese companies…Norio Nakamura, director of the social affairs bureau, said in an interview that it had decided to reassess its 10-point Charter for Good Corporate Behaviour for the first time since 1996. The need for the review was highlighted yesterday after it emerged that Hiroshi Araki, vice-chairman of the federation - and head of its corporate behaviour committee - had been forced to resign after a cover-up at Tokyo Electric Power.”

[17] The Cadbury Commission and a series of other high-profile reviews in the U.K. of corporate governance have stimulated considerable debate. Activist shareholder groups in Germany have mounted strong and effective programs against major stock option allocations to CEOs. For example, on June 20, 2002, *The Wall Street Journal* carried an article that noted how boards of directors had sharply cut the pay of CEOs at Vodafone in the U.K., Deutsche Telekom in Germany, Alacatel in France. The opening paragraphs of the article read, “Vodafone Group PLC’s cut its chief executive’s pay by nearly two-thirds amid growing protests from European investors about what they see as overly generous, American-style, rewards for bosses. Earlier this week, Deutsche Telekom AG bowed to shareholder and political pressure by scrapping an options plan for top executives. Last month, British insurer Prudential PLC was forced to withdraw a compensation plan after severe criticism from shareholders.”

[18] An article in the August 19, 2002 *Wall Street Journal* reported on a survey of 140 U.S. companies by PricewaterhouseCoopers LLC that found that 75 percent had made significant improvements in their environmental policies, although, “Nearly as many -- 72% -- indicated they hadn't followed through in making sure their sustainability programs are carried out in a more systematic manner.” Moreover, the article went on to report, “Of the 25% of survey respondents who reported having adopted no sustainable practices, the vast majority indicated one of their main reasons for not doing so was the lack of a compelling business case.”

[19] For example, *The Economist* magazine highlighted corruption in a report on August 17, 2002, on a political poll by Latinobarometro covering 17 Latin American countries. The article started, “Despite the economic turmoil gripping many of their countries, Latin Americans are becoming somewhat more supportive of democracy, but they have little trust in political parties and believe that corruption is widespread and worsening.”

[20] **Differing perspectives of social responsibility issues**

The list of issues arising on the agendas of corporate social responsibility for multinational corporations is growing. Civil society organizations in North America and Western Europe monitor performance of these corporations across the globe through a Western lens – this seems to be the claim of some observers in developing countries. This is not revealed to the general public in North America or Western Europe, or always understood by the media that readily reports critical statements by NGOs.

Moreover, stimulated by activist organizations, the media sometimes oversimplifies the charges against Western corporations when it comes to their actions on the environment, human rights, labor conditions and many other social responsibility agenda items. For their part, multinational corporations are often defensive in the face of such charges, or strive to stand aloof. Few pursue active dialogues with their civil society critics in the productive ways undertaken, for example, by Shell, BP and Reebok.

Too few U.S. multinational corporations engage in dialogues through such organizations as the Global Reporting Initiative, the U.N. Global Compact and Business for Social Accountability, to learn more about diverse approaches, understand emerging issues and share their own experiences.

International expert views on many social responsibility issues tend to be less uniform than on the topic of corruption. Claudio Abramo Weber in Brazil states, "It is very clear that at least some of the environmental issues that originate in the North are commercially-driven. The fact that preserving the environment is not such an unmixed blessing is made totally clear by the US Government (and the present one in particular -- re the Kyoto convention) unwillingness in reducing the US's level of CO_2 emission (25% of the world total). And on labor rights, one cannot expect to find European labor standards in Brazil. Which is not to say that anything should go. In this case there is clearly the need to accommodate expectations vis a vis economic development."

Quill Hermans in Botswana has praise for some of the social responsibility approaches of foreign companies active in his country. However, he notes that these same companies are often "unwilling to become engaged in the more politically sensitive issues, such as access to information, human rights, declarations of interest by politicians, minority rights, the independence of the judiciary, etc. In mitigation, if they did take a stance on these issues, they would be strongly criticized for political interference and trying to impose Western values."

Too often, the subtle aspects of cultural clashes and serious differences of priorities and views on global corporate social responsibility lead to inordinate criticism of corporate behavior and risk corporations responding with facile and negative actions. Laura Hartman at DePaul University sees dangers here and states, "In part this is because the popular press creates scandals on the basis of Northern concepts of fairness, or quality of life. The most obvious example is found in discussions of wages. Assume that a firm pays a decent wage. Actually, consider the circumstance of Nike's suppliers in Vietnam, with which I have intimate knowledge. The suppliers pay a very good wage, compared to the going rate and the minimum wage in that country. However, they found that they were detracting professionals from necessary occupations in order to serve as workers in the suppliers' factories. As a country, Vietnam needs those individuals to remain in their professional roles (whether it's serving as doctors or as postal workers). However, it cannot compete with what seems like high wages from these multinational enterprises.

"Now, the press gets a hold of that and it creates a scandal, highlighting the low wages (comparing it to US wages) that these suppliers pay ….. The conflict is three-way: Popular pressure from consumers, NGO's and so on, host country pressure not to upset the economic balance it maintains and corporate pressure to show a profit or leave that country."

There are no easy answers to these issues. In a study of labor conditions in poor countries, Hartman has looked at conditions in sub-contracting factories of Nike and Adidas that have introduced sensitive labor programs. These are complex and cannot be described briefly. Firms in such industries as apparel, shoes and toys, which make large use of low cost labor in very poor countries, have an enormous task in explaining their practices to skeptical NGOs, media and consumers. They have become used to the pressures and have become increasingly forthcoming in the ways they respond. They tend to be well ahead of most U.S. corporations when reflecting upon the most ethical and sensitive approaches to complex social responsibility issues overseas.

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[21] # Transparency International Bribe Payers Index 2002

In the business sectors with which you are most familiar, please indicate how likely companies from the following countries are to pay or offer bribes to win or retain business in this country [respondent's country of residence]?

2002 Rank		2002	1999	2002 Rank		2002	1999
1	**Australia**	**8.5**	**8.1**	11	**Spain**	**5.8**	**5.3**
2	**Sweden**	**8.4**	**8.3**	12	**France**	**5.5**	**5.2**
3	**Switzerland**	**8.4**	**7.7**	13	**USA**	**5.3**	**6.2**
4	**Austria**	**8.2**	**7.8**	14	**Japan**	**5.3**	**5.1**
5	**Canada**	**8.1**	**8.1**	15	**Malaysia**	**4.3**	**3.9**
6	**Netherlands**	**7.8**	**7.4**	16	**Hong Kong**	**4.3**	**n.a.**
7	**Belgium**	**7.8**	**6.8**	17	**Italy**	**4.1**	**3.7**
8	**UK**	**6.9**	**7.2**	18	**South Korea**	**3.9**	**3.4**
9	**Singapore**	**6.3**	**5.7**	19	**Taiwan**	**3.8**	**3.5**
10	**Germany**	**6.3**	**6.2**	20	**China People's Rep.**	**3.5**	**3.1**
				21	**Russia**	**3.2**	**n.a.**
Domestic companies		***1.9***	***n.a.***				

The question related to the propensity of companies from leading exporting countries to pay bribes to senior public officials in the surveyed emerging market countries. A perfect score, indicating zero perceived propensity to pay bribes, is 10.0, and thus the ranking starts with companies from countries that are seen to have a low propensity for foreign bribe paying. In the 2002 survey, all the data indicated that domestically owned companies in the 15 countries surveyed have a very high propensity to pay bribes – higher than that of foreign firms. *(The scores are mean averages from all the responses on a 0 to 10 basis where 0 represents very high perceived levels of corruption, and 10 represents zero perceived levels of corruption. Precise comparisons between the 1999 and 2002 figures are not possible, as the categories have been modified significantly.)*

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[22] Ms. Wrage adds: "I understand the fear that this issue might become an impossible distraction to the bigger issues, but I believe that we must stop distinguishing between great and petty corruption if we are to make progress on either front. We need to ensure that education on the hidden costs of petty corruption -- inefficiency, cynicism, the 'too hard to do business here' argument -- is given the same priority as corruption more generally. People of integrity will reject bribery on any scale if they understand bribes large and small to be equally undermining of their economy and their institutions. People of integrity will not bother to haggle over the price of shoddy goods."

[23] Mr. Hermans is also the co-author of the book, "Combating Corruption in Botswana." He is a former senior executive of the World Bank and former Governor of the Central Bank of Botswana. Botswana has an enviable record for establishing democracy, securing development and wisely using its mineral wealth.

[24] See the full 2002 Transparency International Bribe Payers Index surveys at www.Transparency.org

[25] New York District Attorney Robert M. Morgethau spoke eloquently about offshore tax havens at a seminar at the Brookings Institution on June 5, 2002. He noted that quite apart from the criminal use of offshore tax havens, there were disturbing moves by U.S. companies to evade U.S. taxation by taking advantage of legal loopholes that opened the door to offshore havens. He recalled that Justice Oliver Wendell Holmes said, "Taxes are what we pay for a civilized society." He noted that "In a democracy such as ours, where we rely largely on voluntary compliance with the tax laws, the tax system must not only be seen to be fair, it must be perceived to be fair. The unfairness of allowing citizens to avoid paying their fair share of taxes erodes confidence in the tax system and the voluntary compliance on which the system is based. In addition, permitting some businesses to gain unfair tax advantages in offshore venues destroys the level playing field on which our system of free enterprise depends." Mr. Morgenthau

added, "Finally, and perhaps most important, the obvious inequity of a system that allows certain individuals and companies to hide their financial affairs in offshore havens undermines respect for government and the rule of law."

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