Controlling Corruption Through Collective Means: Advocating the Inter-American Convention Against Corruption

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Abstract

This Note argues that the Convention offers the most effective approach to combating corruption and that all states should sign and ratify it. Part I discusses corruption, explains its history and its harmful effects, and describes international organizations whose purposes and principles are directly opposed to the harm corruption is capable of perpetrating. Part II presents existing approaches to combating corruption. Part III argues that all states should adopt the OAS approach. This Note concludes that states can best combat corruption through the OAS approach because it offers the most comprehensive and, therefore, the most effective of the existing solutions.
CONTROLLING CORRUPTION THROUGH COLLECTIVE MEANS: ADVOCATING THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Robert H. Sutton*

The servants of the nation are to render their services without any taking of presents . . . . To form your judgment and then abide by it is no easy task, and 'tis a man's surest course to give loyal obedience to the law which commands "do no service for a present."1

INTRODUCTION

Corruption2 of government officials has existed in multiple forms for centuries throughout the world.3 It is only within the last thirty years, however, that the public has begun to call for a systematic plan to eradicate governmental corruption.4 This outcry began in earnest in the post-Watergate era of the early 1970s5 and led to the passage, in 1977, of the U.S. Foreign Corrupt Practices Act ("FCPA").6 Since the emergence of this pub-

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2. See Joseph S. Nye, Corruption and Political Development: A Cost-Benefit Analysis, 51 AM. POL. SCI. Rrv. 417, 419 (1967) (defining corruption as "behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence").
3. See NEIL H. JACOBY ET AL., BRIBERY AND EXTORTION IN WORLD BUSINESS: A STUDY OF CORPORATE POLITICAL PAYMENTS ABROAD 7-43 (1977) (describing history of corruption of government officials in Middle East, Sub-Saharan Africa, India, Southeast Asia, Latin America, Western Europe, communist countries, and United States); ROBERT KLITGAARD, CONTROLLING CORRUPTION 7 (1988) (stating "corruption is as old as government itself" and citing example from 2300 years ago); JOHN T. NOONAN, JR., BRIBES xxii (1984) (stating that bribery has existed worldwide in multiple forms from approximately 3000 B.C. through present day).
5. Id.
lic movement, commentators have analyzed the effects of corruption from a commercial and economic standpoint, noting that corruption poses difficulties for all actors involved. Such difficulties can range from a decrease in the efficiency of market transactions to a general political destabilization of the corrupted state. The Organization of American States ("OAS") has recently proposed a solution to these problems in the Inter-American Convention Against Corruption ("Convention"), adopting many themes contained in other previously-advocated approaches.

7. See JACOBY ET AL., supra note 3, at 183-85 (discussing adverse effects of governmental corruption on local economies and on corporations transacting with corrupt governments); KLITGAARD, supra note 3, at 36-48 (discussing harmful effects of corruption on efficiency of market transactions, distribution of resources among market actors, motivations of government actors, and political stability of host state); Transnational Bribery, 117 Bus. Am. 112, 112-14 (discussing corrupt environments and their effects on businesses and economies); Mark B. Baker, Private Codes of Corporate Conduct: Should the Fox Guard the Henhouse?, 24 U. MIAI INTER-AM. L. REV. 399, 403-05 (1993) (discussing adverse effects of governmental corruption on local economies). Some of the problems corruption poses include distorting the natural functioning of market competition, increasing production costs for producers, posing barriers to trade, and creating an uneven distribution of wealth weighted to the upper classes. Baker, supra, at 403-04; JACOBY ET AL., supra note 3, at 183-85; Transnational Bribery, supra, at 112-13.

8. KLITGAARD, supra note 3, at 36-48.

9. OAS CHARTER arts. 1, 8. The Organization of American States ("OAS") is a regional agency within the United Nations and contains only Western Hemisphere independent states. Id. Article 52 of the U.N. Charter enables the creation of regional agencies. U.N. CHARTER art. 52, ¶ 1-4.

10. Inter-American Convention Against Corruption, Mar. 29, 1996, OEA/Ser.K/XXXIV.1 CICOR/doc.14/96 rev.2, 35 I.L.M. 724 (1996) [hereinafter Convention]. The Inter-American Convention Against Corruption ("Convention") is a treaty aimed at eradicating corruption among its signatories. Convention, supra, pmbl., at 727. It attacks individual acts of corruption and the systems which permit corrupt acts to flourish. Id. arts. VI-IX, XI, at 729-91. It also promotes cooperation among states in a collective effort to eradicate corruption. Id. art. XIII-XVI, at 731-32. The Convention is open for accession by OAS member-states as well as by non member-states. Id. art. XXIII, at 733. Additionally, signatories may make reservations as to any specific provision, provided that such reservations are not incompatible with the Convention's object and purpose. Id. art. XXIV, at 733.

Some of these previously-advocated approaches are capable of attacking corruption on a transnational level, striving for the eradication of corruption through agreements among states[12] or through private codes of corporate conduct[15]. Other approaches attack corruption on a purely state level, advocating the use of regulatory measures instead of criminalization[14] and targeting corrupt individuals instead of the corporations for which they work[15]. One state-level approach, the U.S. Foreign Corrupt Practices Act[16], adopts a combination of these other state-level measures[17].

This Note argues that the Convention offers the most effective approach to combating corruption and that all states should sign and ratify it. Part I discusses corruption, explains its history and its harmful effects, and describes international organizations whose purposes and principles are directly opposed to the harm corruption is capable of perpetrating. Part II presents existing approaches to combating corruption. Part III argues that all states should adopt the OAS approach. This Note concludes that states can best combat corruption through the OAS approach because it offers the most comprehensive and, therefore, the most effective of the existing solutions.

I. THE PROBLEMS CORRUPTION PRESENTS

To those taking part in international business transactions, corruption is, and historically has been, apparent at all levels of

and regulatory approaches to fighting corruption and targets both the individuals and the corporations involved. Convention, supra note 10, arts. III, VI-X, at 728-30; see Id. art. VI ¶ 1(e), at 729 (stating that Convention is applicable to "[p]articipation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit" any act of corruption that it lists).


15. Geis & DiMento, supra note 11, at 72-85.

16. 15 U.S.C. §§ 78a, 78m(b), 78m(d)(1), 78m(g), 78m(h), 78dd-1, 78dd-2, 78ff(a), 78ff(c) (1988).

17. Id.
government-producer relations. A free market economy requires equal access for all market actors, yet barriers to free trade, in the form of governmental corruption, exist in profusion.

18. Noonan, supra note 3, at xxii. Recipients of corrupt payments: [H]ave ranged from constables and sheriffs to the Speaker of the House (U.S., nineteenth century), the Speaker of the House of Commons (U.K., seventeenth century), the president of Honduras, the president of Italy, the prime minister of Japan, the prince-consort of the Netherlands, the Lord Chancellor of England (seventeenth century). Id. See Jacoby et al., supra note 3, at 4-7 (discussing pervasiveness of corruption in dealings with governments at all official levels); Klitgaard, supra note 3, at 41, 44 (stating that "[p]ossibilities for corruption create nefarious incentives throughout the society" and that these possibilities lead officials to "spend an increasing amount of their time looking for ways to secure bribes and exort payments").


[A] summary term for an array of exchanges that take place in society. Each exchange is undertaken as a voluntary agreement between two people or between groups of people represented by agents. These two individuals (or agents) exchange two economic goods, either tangible commodities or non-tangible services . . . .

Both parties undertake the exchange because each expects to gain from it. Also, each will repeat the exchange the next time (or refuse to) because his expectation has proved correct (or incorrect) in the recent past. Trade, or exchange, is engaged in precisely because both parties benefit; if they did not expect to gain, they would not agree to the exchange.

Id.

20. See Al Ehrbar, Supply, in The Fortune Encyclopedia of Economics, supra note 19, 86-87 (explaining how markets achieve balance between supply and demand); Rothbard, supra note 19, at 636-37 (explaining need for unhindered interaction in free markets). For a free market economy to function effectively, it must be free of barriers to transactions. Rothbard, supra note 19, at 636-37. All market actors must have equal access to each other in order to ensure that consumers and suppliers have achieved a balance in what one is willing to exchange for what the other possesses. Al Ehrbar, supra, at 86-87. Balance between consumers' and suppliers' willingness to exchange is analogous to intersecting supply and demand curves:

A demand curve traces the quantity of a good that consumers will buy at various prices. As the price rises, the number of units demanded declines. That is because everyone's resources are finite; as the price of one good rises, consumers buy less of that and more of other goods that now are relatively cheaper. Similarly, a supply curve traces the quantity of a good that sellers will produce at various prices. As the price falls, so does the number of units supplied. Equilibrium is the point at which the demand and supply curves intersect—the single price at which the quantity demanded and the quantity supplied are the same.

Id.

21. See Rothbard, supra note 19, at 637-38 (analogizing negative effects of coerced payments on individual market actors and on overall market to robbery at gunpoint). Barriers to free trade, which are financial disincentives to entry into the market, discourage market exchanges from taking place. Id. at 638. By protecting existing suppli-
sion in many parts of the world, preventing local markets from realizing their full potential. This has led to an environment in which secret payments, instead of quality and price, may influence purchase decisions. Ultimately, corruption has negative implications beyond a simple market analysis, hobbling the progress of developing nations' economies, eroding public confidence in the host governments, and destabilizing them. There are international organizations, however, including the OAS and the Organization for Economic Cooperation and Development ("OECD"), whose purposes and principles are directly opposed

22. Jacoby et al., supra note 3, at 443. Strong local ties to family and tribe, in addition to low levels of remuneration for those in government service, has led to corruption's profusion throughout the Middle East, Sub-Saharan Africa, India, Southeast Asia, Latin America, Western Europe, and the United States. Id.

23. See Klitgaard, supra note 3, at 39-41 (arguing that corruption of government officials promotes economic inefficiency and inequitable distribution of resources); Rothbard, supra note 19, at 638 (stating that coerced transactions ultimately lead to "reduced productivity and living standards for all"). As some commentators have noted, however, corruption can have beneficial results in certain limited circumstances. Klitgaard, supra note 3, at 30-36; Nye, supra note 2, at 427. In situations where goods or services are allocated by political ties, random selection, or some other criteria not related to the supply and demand for these goods or services, "corruption may instead allocate goods according to willingness and ability to pay." Klitgaard, supra note 3, at 31. Corruption may also enable the circumvention of constraining bureaucratic regulations, thereby speeding exchanges. Id. at 32. Despite such occasional benefits, commentators have on balance found that "the harmful effects of corruption greatly outweigh the (occasional) social benefits." Id. at 36; cf. Nye, supra note 2, at 427 (stating "it is probable that the costs of corruption in less developed countries will exceed its benefits except for top level corruption involving modern inducements and marginal deviations and except for situations where corruption provides the only solution to an important obstacle to development").


25. Jacoby et al., supra note 3, at 188-84.

26. See id. at 180-81 (stating that bribery of government officials causes such officials to place their own needs above those whom they serve); Klitgaard, supra note 3, at 44-46 (discussing adverse effects of corruption on public faith in and stability of political institutions).

27. OECD Charter arts. 1, 3. The Organization for Economic Cooperation and Development ("OECD") is an international body of states whose common goal is to further worldwide economic growth and stability through collective means. Id.
to the kinds of harm corruption poses.\textsuperscript{28}

A. Corruption in a Business and Historical Context

Corruption is an unavoidable element of many international business transactions, evident at all levels of producer-government relations from dealings with lower-level bureaucrats\textsuperscript{29} to upper-echelon political officials.\textsuperscript{30} The prevalence of corruption in international business transactions is not a recent phenomenon.\textsuperscript{31} Government actors' exploitation of their positions for their own personal gain has existed for centuries in many parts of the world.\textsuperscript{32}

1. Corruption in International Business Transactions

Corrupt payments occur as a result of producers' as well as government actors' impulses, occurring as much because of producers' desire for special treatment as because of government actors' desire for personal benefit.\textsuperscript{33} Corrupt payments also vary in their objectives.\textsuperscript{34} They may facilitate otherwise normal government functions, secure special treatment, or avoid hardship.\textsuperscript{35} One may define corrupt payments as transfers of objects of value, the purpose of which is to influence the behavior of public officials in their legislative, judicial, or administrative ac-


\textsuperscript{29} See Jacoby et al., supra note 3, at 93-94 (discussing payments to rank-and-file government employees).

\textsuperscript{30} See id. at 92-93 (discussing payments to major political leaders).

\textsuperscript{31} See id. at 4-43 (discussing history of corrupt payments worldwide); Klitgaard, supra note 3, at 7 (discussing corrupt payments in ancient India, China, and Greece); Noonan, supra note 3, at 3-424 (discussing instances of corruption worldwide from 3000 B.C. through 1800 A.D.).

\textsuperscript{32} Jacoby et al., supra note 3, at 4-43; Klitgaard, supra note 3, at 7; Noonan, supra note 3, at 3-424.

\textsuperscript{33} Jacoby et al., supra note 3, at 91; cf. Noonan, supra note 3, at 3 (stating "[r]eciprocity is in any society a rule of life, and in some societies at least it is the rule of life").

\textsuperscript{34} See Jacoby et al., supra note 3, at 101-17 (discussing purposes of corrupt payments); Klitgaard, supra note 3, at 19-20 (discussing various purposes of corrupt payments in Philippines' Bureau of Internal Revenue in mid 1970s).

\textsuperscript{35} Jacoby et al., supra note 3, at 101-17; Klitgaard, supra note 3, at 19-20.
tions. More specifically, the goal of corrupt payments includes influencing these government actors to fulfill their normal duties, to fulfill them at a faster-than-normal rate, to refrain from imposing hardships that the government actors have threatened the commercial actors with, or to bestow some other special treatment upon those individuals making the payments.

Commentators have typically categorized corrupt payments as bribery or extortion, depending on which party to the transaction is the source of the desire for payment. Most corrupt payments occur because of impulses from both parties to the transaction. Prior experience has taught the government actor and the commercial actor that they may both gain by a

36. Jacoby et al., supra note 3, at 86. But see Klitgaard, supra note 3, at 23 (noting that "[d]efinitions are not static" and that "[s]ocieties' understandings of what counts as 'corrupt' evolve").

37. See Jacoby et al., supra note 3, at 101-17 (describing purposes of foreign political in influencing conduct of government actors); Klitgaard, supra note 3, at 19-20 (describing purposes of bribes given to officials in Philippine Bureau of Internal Revenue in mid 1970s). Examples of hardships with which government actors may threaten commercial actors include onerous changes in agreements with the host government, artificially inflated, or extortionate, taxes, and a refusal to grant protection from an unstable or criminally-minded civilian population. Jacoby et al., supra note 3, at 102, 110-11, 112-13; Klitgaard, supra note 3, at 19. Examples of special treatment which government actors may bestow upon commercial actors includes obtaining or retaining business with the host government and approving a lower tax assessment than the commercial actor merits. Jacoby et al., supra note 3, at 114-15; Klitgaard, supra note 3, at 19-20.

38. American Distilling Co. v. Wisconsin Liquor Co., 104 F.2d 582, 585 (7th Cir. 1939); see Jacoby et al., supra note 3, at 90 (discussing definition of bribery as making of payments to others in hopes of influencing conduct). In 1939, the Seventh Circuit noted that the Federal Trade Commission had applied the term "commercial bribery" to sellers' practices "of secretly paying money or making gifts to employees or agents to induce them to promote purchases by their own employers from the sellers offering the secret inducements." American Distilling Co., 104 F.2d at 585.

39. 18 U.S.C. § 1951(b)(2) (1994); see Jacoby et al., supra note 3, at 90 (discussing definition of extortion as one person's inducing another to confer benefit which other person would not otherwise confer). Title 18, Chapter 95, of the U.S. Code defines extortion, as it uses the term in Section 1951, as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2) (1994).

40. 18 U.S.C. § 1951(b)(2) (1994); American Distilling Co., 104 F.2d at 585. The impetus for a bribe originates with the individual who confers the benefit, while the impetus for extortion originates with the individual who receives the benefit. 18 U.S.C. § 1951(b)(2) (1994); American Distilling Co., 104 F.2d at 588; see Jacoby et al., supra note 3, at 90 (discussing differing definitions of bribe and extortion).

41. See Jacoby et al., supra note 3, at 90-91 (stating that most corrupt payments "are hybrids of the two types" of payments).
surreptitious conferral of personal benefit.42

Corruption of government functionaries and officials is endemic to most, if not every part, of the world.43 While the United States and many of the more developed nations of the world permit the majority of corporate managers to function domestically with little day-to-day interference from government officials,44 overseas commercial transactions often require frequent contact with foreign bureaucracies.45 The potential influence that lower-level administrators possess creates tremendous discretionary power over potential and existing investors.46

International commercial enterprises are also concerned with other aspects of foreign business environments that can fundamentally affect the viability of the enterprises themselves.47 These factors include political risks that the instability or potential hostility of a host government pose,48 the local populace’s threats or harassment,49 intentionally extortionate taxes,50 and difficulty in competing with other suppliers in obtaining or re-

42. See id. at 91-92 (comparing combination of impulses in such situations to that which commonly occurs during “tipping” transactions, such as between travelers and hotel bell captains); cf. NOONAN, supra note 3, at S (discussing universality of reciprocity of exchanges).
43. See JACOBY ET AL., supra note 3, at 4-43 (describing history of corruption of government officials in Middle East, Sub-Saharan Africa, India, Southeast Asia, Latin America, Western Europe, communist countries, and United States); NOONAN, supra note 3, at xx (stating “[b]ribes are today universal; that is, every culture, with insignificant exceptions, treats certain reciprocities with officials as disapproved.”).
44. JACOBY ET AL., supra note 3, at 4.
45. Id.
46. See id. at 4-5 (discussing role of lower-level functionaries in overseas transactions). In the words of one commentator, these functionaries:

[P]rocess goods, machinery, and raw materials through customs. They issue visas and work permits for company personnel. They grant permits to build plants or additions to existing facilities. . . . They clear the papers that enable an investor to acquire foreign currency in order to pay an exporter in some other country for an air or sea shipment of raw materials or manufacturing equipment. . . . They can accelerate or retard the receipt of cash needed for the training of local workers. They can interpret an ancient law in ways that will cripple the operations of the business; or, in their discretion, in ways that facilitate operations. They can supply or withhold police or military units for plant protection in remote parts of a country. They can help clarify misunderstandings in the application of local labor, health, or sanitation codes.
47. Id. at 101-02; KLITGAARD, supra note 3, at 19-20.
48. JACOBY ET AL., supra note 3, at 102.
49. Id. at 110-11.
50. Id. at 112-13; KLITGAARD, supra note 3, at 20.
taining business with the government in question.\textsuperscript{51} Upper-level government actors exercise substantial control over these areas of concern, giving these government actors a correspondingly substantial influence over commercial actors.\textsuperscript{52}

2. History of Governmental Corruption

Corrupt payments have occurred for centuries in some regions.\textsuperscript{53} The specific causes vary from case to case.\textsuperscript{54} But where they occur, the participating government actors view their positions as resources for personal, familial, or tribal gain.\textsuperscript{55} Traditions of strong governmental control\textsuperscript{56} or histories of weak central control,\textsuperscript{57} the latter often coupled with a tradition of strong loyalties to family or tribe, can often produce corruption of government actors.\textsuperscript{58} Many corruption-ridden nations also suffer from a combination of a high degree of public officials' discretionary power over private commercial activities and a low level of compensation paid to those officials, making them particularly susceptible to the temptations of corruption.\textsuperscript{59} Finally,

\textsuperscript{51} JACOBY ET AL., supra note 3, at 114-15.
\textsuperscript{52} Id.
\textsuperscript{53} See 2 Fernand Braudel, The Mediterranean and the Mediterranean World in the Age of Philip II 693 (1973) (describing prevalence of corruption in Ottoman Empire in sixteenth century); JACOBY ET AL., supra note 3, at 7, 254 n.5 (describing history of corruption in Middle East); NOONAN, supra note 3, at 3-135 (discussing occurrence of bribery in European and Mediterranean societies from 3000 B.C. to 1000 A.D.). The Middle East has seen corrupt conduct by state officials since the sixteenth century and the days of the Ottoman Empire. Braudel, supra, at 693; JACOBY ET AL., supra note 3, at 7, 254 n.5. Southeast Asia likewise has a long history of corruption, stemming from its equally well-established smuggling trade. JACOBY ET AL., supra note 3, at 15-16.
\textsuperscript{54} JACOBY ET AL., supra note 3, at 7-11, 24-25.
\textsuperscript{55} Id.; NOONAN, supra note 3, at 704.
\textsuperscript{56} JACOBY ET AL., supra note 3, at 7. In the Middle East, for example, states were traditionally "the major source[s] and owner[s] of capital...the primary dispenser[s] of contracts, and the arbiter[s] of the rules of trade and investment." Id.
\textsuperscript{57} JACOBY ET AL., supra note 3, at 10, 24.
\textsuperscript{58} Id. Sub-Saharan societies, for example, suffer from internal divisions of loyalty along tribal lines. Id. at 10. Similarly, strong ties to family are characteristic of Latin American and Southeast Asian societies. Id. at 24. In such internally divided environments, the local government, and the positions of influence it offers, is a resource one may exploit for one's personal, tribal, and familial benefit. Id. at 10, 24.
\textsuperscript{59} Id. at 14; KLITGAARD, supra note 3, at 74; 3 Gunnar Myrdal, Asian Drama: An Inquiry into the Poverty of Nations 950-51 (1968). As Robert Klitgaard has noted, "[i]llicit activities will be greater when agents have monopoly power over clients, agents enjoy discretion, and accountability is poor." KLITGAARD, supra note 3, at 74. India in the late 1970s saw a high prevalence of corruption among its public officials, resulting
while the prevalence of corruption within a government tends to decline as the nation in question develops socioeconomically,\textsuperscript{60} corruption does not necessarily cease to exist at any given level of development.\textsuperscript{61} One may even find not-too-distant examples of corruption in 1970s Western Europe\textsuperscript{62} and the United

from a high degree of discretionary power among its public officials coupled with a low level of compensation paid to those officials. See \textit{Jacoby et al., supra} note 3, at 14 (citing \textit{Hindustan Times} correspondent who stated, "[n]ot a single file can move if the clerk's palm is not greased.").

\textsuperscript{60} \textit{Jacoby et al., supra} note 3, at 43. Corrupt payments by business organizations to government actors are likely to decrease in frequency as the following socioeconomic developments occur:

- The shifting of loyalties from family, clan, and tribe to nation-states.
- The opening of institutionalized channels to enable business enterprise to influence political decision making.
- The diffusion of education.
- The emergence of an economically strong and politically articulate middle class, which historically found corruption inefficient and morally repugnant.
- The transfer of wealth and power from a small circle of politicians or dictators to other social groups.
- Rising living standards.
- The growth of local industry, which will reduce the importance of contraband markets.
- The paying of adequate salaries to civil servants, thereby reducing their dependence on a private system of [corrupt] political payments.
- The development of strong, independent legal traditions in which uniform, impersonal rules and standards prevail instead of the arbitrary discretion of the civil servants.
- The growth of the professions—accounting, law, engineering, teaching, civil service—which infuse their members and eventually, widening circles of society, with strict canons of personal behavior.

\textit{Id.} at 43-44; cf. \textit{Klitgaard, supra} note 3, at 207 (stating that "the countries worst off on indices of 'quality of life' are... also the worst off in terms of the quantity and quality of data, information-processing skills, 'intelligence' in the psychologist's sense, and, consequently, ignorance and uncertainty" and that "[p]oor information leads... to greater corruption").

\textsuperscript{61} \textit{Jacoby et al., supra} note 3, at 43.

\textsuperscript{62} \textit{Id.} at 32-38. In two separate cases in 1976, Belgian authorities convicted the managing director of Belgium's state telephone system for corruption and receiving bribes, his sentences amounting to over four and a half years in prison. \textit{Id.} at 32-33; \textit{Belgium Ex-Aid Sentenced to Jail in Bribery Case: Telephone System's Former Director Took Presents from ITT Belgian Unit}, \textit{Wall St. J.}, Feb. 24, 1976, at 4. A British Government investigation in 1976 into the actions of the British Lonrho company revealed that it had made over \$1.6 million in illicit payments to politicians in several undisclosed African states. \textit{Jacoby et al., supra} note 3, at 33-34; Bernard. D. Nossiter, \textit{British Glimpse Goings-On at the Top in Juicy Government Report on Lonrho}, \textit{L.A. Times}, July 25, 1976, pt. VII, at 9. In Italy in the mid 1970s, the tradition of facilitating payments as a method of navigating the massive Italian bureaucracy combined with the discretion which Italian tax collectors possessed in the application of tax laws and regulations to create an arena
B. Harmful Effects of Corruption

While individual actors may benefit from the transfer of corrupt payments, the ultimate victims are numerous. The victims of corruption include the market actors of the nations involved, both consumers and producers. The development of the economy in question also suffers, with investments from outside sources decreasing in frequency and amount as corruption increases in prevalence. Corruption can also lead to political instability.
1. Harmful Economic Effects of Corruption

Transactional barriers play a harmful role in the international market, imposing additional costs on market actors and discouraging transactions from occurring. By forcing producers and consumers to pay higher costs in order to engage in the transaction, corruption functions as a transactional barrier. As such, corruption imposes additional costs on market actors with the effect of deterring market exchanges from ever taking place.

a. Transactional Barriers in the Marketplace

Market actors do not always have the liberty of freely participating in market exchanges. At times, they must make involuntary payments prior to entering into a given transaction. These additional costs have the effect of discouraging the transactions to which the costs are associated, preventing their occurrence. Any involuntary payment that a producer must make prior to participating in a market is a payment that acts as a barrier to market exchanges, discouraging them from taking place. Barriers to exchange can also discourage potential participants from entering the market in question, thereby protecting existing suppliers from additional competition. These barriers can cause substantial harm by leading to a decrease in the incentive to innovate and to a general stagnation among existing producers.

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69. Rothbard, supra note 19, at 637-38.
70. See Jacoby et al., supra note 9, at 142, 183-84 (discussing harm corruption inflicts on producers and consumers).
71. Id.
72. Rothbard, supra note 19, at 637-38.
73. Id.
74. Id. at 638.
75. Id.
77. Douglas A. Irwin, Free Trade Agreements and Customs Unions, in The Fortune Encyclopedia of Economics, supra note 19, at 530. Tariffs, for example, by relieving domestic producers from foreign competition, are capable of posing sizable costs to local economies. Id.
78. Id.
b. Corruption as a Source of Transactional Barriers

Corruption imposes additional costs on consumers and producers alike. Consumers, the citizens of the purchasing government, pay these costs through the use of public resources beyond that which is necessary for the purchase of the good. Producers measure the cost to themselves in the amount of the payment itself as well as in the time necessary for negotiating the amount of the payment. The consumers of a corruptly-acquired good or service pay a higher cost than they would have paid in a market without these unsanctioned barriers to trade. This cost may take the form of resources wasted on goods or services purchased not because of a rational cost-benefit analysis on the citizens' part or on their behalf, but rather because of personal inducements given to their agent, the government actor. The citizens may also suffer as a result of subsequent damage inflicted on life, limb, or property by the inferior products. Harm flows to producers as well through the persistence of corrupt transactions. The uncertainty that producers face regarding the amount they must pay and the payment's potential effect on a given transaction, the added time and expense producers face in negotiating with the recipients of the payment, and the expenditure of an otherwise-unnecessary payment are all additional transaction costs which act as barriers to any invest-

79. JACOBY ET AL., supra note 3, at 142, 183-84.
80. Id. at 184-85.
81. Id. at 142.
82. See JACOBY ET AL., supra note 3, at 183 (stating that "the price of the [corruptly acquired] equipment is raised [by the producer] to cover the cost of the bribe").
83. See Paul R. Portney, Benefit-Cost Analysis, in THE FORTUNE ENCYCLOPEDIA OF ECONOMICS, supra note 19, 5-6 (explaining cost-benefit analyses). A cost-benefit analysis occurs "[w]henever people decide whether the advantages of a particular action are likely to outweigh its drawbacks." Id. at 3.
84. JACOBY ET AL., supra note 3, at 183-84; see KLITGAARD, supra note 3, at 39-40 (stating that corruption imposes costs "in terms of the waste and misallocation that often accompany it", citing "a typical finding . . . that because of corrupt procurement policies, governments in developing countries pay from 20 to 100 percent more than the price they would pay under noncorrupt conditions").
85. See JACOBY ET AL., supra note 3, at 183 (noting "extra costs" associated with corruptly acquired goods stemming from "lesser efficiency"); KLITGAARD, supra note 3, at 40 (noting harm to public that can result from corruption).
86. JACOBY ET AL., supra note 3, at 142; see KLITGAARD, supra note 3, at 42-43 (stating that existence of corruption "may enhance people's uncertainties about the likely benefits of their productive activities" which, in turn, "may create incentives for inefficient risk-avoiding behavior").
2. Harmful Political Effects of Corruption

Corrupt transactions may also result in the political instability of the host state. The mere existence of corruption among government actors engenders mistrust of public institutions, destabilizing the political regime. Corruption’s harmful economic effects may further upset a state’s political stability by hindering local infrastructure development and, therefore, the functioning of the state itself. Corruption hinders local infrastructure development by discouraging producers from investing in those markets. This initial lack of investment further discourages producers from investing locally. As producers move their resources from these local markets to areas in which they may produce more efficiently, they also move further away

87. JACOBY ET AL., supra note 3, at 142; KLITGAARD, supra note 3, at 42-43.
89. KLITGAARD, supra note 3, at 44-46; Boswell, supra note 88, at 184-85. Corruption erodes “public trust in public institutions and leaders, the foundation of democracy.” Id. at 184.
90. Kasper, supra note 88, at 82-86; KLITGAARD, supra note 3, at 43-44.
91. See Kasper, supra note 88, at 82-86 (describing movement of mobile resources to areas in which market actors may use them more efficiently); KLITGAARD, supra note 3, at 43-44. The theory of spatial economics divides production input factors into mobile and immobile elements. Kasper, supra note 88, at 83. The theory holds that mobile factors of production, such as capital and expertise, will locate themselves close to the world’s economic centers, areas in which it is possible to achieve higher returns per unit of input than elsewhere. Id. at 83-84. As corruption’s barriers to trade increase the cost of transacting between the corrupt nation in question and an economic center, this increases the economic distance of the corrupt nation from the economic center, leading to an exodus of private-sector resources from the corrupt nation, which in turn leads to a necessarily adverse effect on infrastructure. See id. (discussing gravitation of resources to economic centers); Clive Crook, Third World Economic Development, in THE FORTUNE ENCYCLOPEDIA OF ECONOMICS, supra note 19, 755, 763 (stating that private businesses are most effective entities for developing infrastructure, such as transportation networks and educational institutions). Empirical analyses also indicate that there is an inverse correlation between the prevalence of corruption and the frequency and amount of investment. See Mauro, supra note 67, at 695-700 (discussing how investments from outside sources decrease in frequency and amount as corruption increases in prevalence).
92. Kasper, supra note 88, at 84. Without a well-developed infrastructure, producers will bear high costs in producing their products and getting them to a market which will give them the highest return on their investment. Id. These increased production and distribution costs lead producers and mobile factors of production to locate in areas where the cost of reaching the economic center is minimized. Id.
93. Id. at 82. “Businesses locate their plants so as to economize on transport and
from markets neighboring the abandoned market. This is more likely to occur if neighboring markets are also corrupt.

C. International Organizations with Recent Proposals for Combating Corruption

In the past three years, two prominent international organizations, the OAS and the OECD, have offered solutions to the problems corruption poses. Each organization holds the promotion of economic development as a primary objective. Each is also committed to collective action to achieve this end.

1. The Organization of American States

The OAS has organized itself with a view to promoting co-
operation among its members.\textsuperscript{99} It has also dedicated itself to the furtherance of specific principles.\textsuperscript{100} Among the most prominent of these principles are those of non-intervention\textsuperscript{101} and collective economic development.\textsuperscript{102}

a. Organization

The OAS is a regional organization serving Western Hemisphere states.\textsuperscript{103} The nations of North and South America formed the OAS in 1951 as a regional agency within the United Nations\textsuperscript{104} under Article 52 of the U.N. Charter.\textsuperscript{105} The OAS is comprised exclusively of Western Hemisphere independent states\textsuperscript{106} and currently has thirty-four participating members.\textsuperscript{107} The OAS accomplishes its purposes through the General Assem-

\textsuperscript{99. OAS Charter} art. 2 \textsuperscript{1}\textsuperscript{f.}
\textsuperscript{100. Id.} art. 2.
\textsuperscript{101. Id.} art. 2 \textsuperscript{2.} b. Article 2, paragraph b, lists as an essential purpose the promotion and consolidation of representative democracy "with due respect for the principle of nonintervention". Id.
\textsuperscript{102. Id.} art. 2 \textsuperscript{1.} f.
\textsuperscript{104. OAS Charter} art. 1. The Charter was opened for signature in 1948 and entered into force in 1951 pursuant to its provisions on ratification and entry into force. Id. arts. 144-45; Carter \& Trimble, supra note 103, at 583. The OAS formed in order to allow Western Hemisphere nations collectively to pursue socioeconomic development and regional security. OAS Charter art. 2; Carter \& Trimble, supra, at 583.
\textsuperscript{105. U.N. Charter} art. 52, \textsuperscript{1.} 1-4. Article 52 states:
1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35. Id. Articles 34 and 35 govern the general pacific settlement of disputes among U.N. members. Id. arts. 34-35.
\textsuperscript{106. OAS Charter} art. 8.
\textsuperscript{107. Carter \& Trimble, supra note 103, at 583; Organization of American States, Member States,} (visited on 2/19/97) \textsuperscript{http://www.oas.org/EN/MSTATES/bckgrdme.htm} (also on file with the Fordham International Law Journal).
bly, the Meeting of Consultation of Ministers of Foreign Affairs, the Permanent Council, the Inter-American Council for Integral Development, the Inter-American Council for Ed-

108. OAS Charter arts. 53-59. The General Assembly is the supreme organ of the OAS. *Id.* art. 53. Article 53 provides that the General Assembly possesses the power:

a) To decide the general action and policy of the Organization, determine the structure and functions of its organs, and consider any matter relating to friendly relations among the American States;

b) To establish measures for coordinating the activities of the organs, agencies, and entities of the Organization among themselves, and such activities with those of the other institutions of the inter-American system;

c) To strengthen and coordinate cooperation with the United Nations and its specialized agencies;

d) To promote collaboration, especially in the economic, social, and cultural fields, with other international organizations whose purposes are similar to those of the Organization of American States.

*Id.* art. 53 ¶¶ a-d.

109. *Id.* arts. 60-68. Article 60 states that the Meeting of Consultation of Ministers of Foreign Affairs "shall be held in order to consider problems of an urgent nature and of common interest to the American States, and to serve as the Organ of Consultation." *Id.* art. 60.

110. *Id.* arts. 79-91. The OAS Charter provides that the Permanent Council "shall keep vigilance over the maintenance of friendly relations among the Member States, and for that purpose shall effectively assist them in the peaceful settlement of their disputes". *Id.* art. 83. The Permanent Council is "directly responsible to the General Assembly" and derives its authority from "the [OAS] Charter and other inter-American instruments". *Id.* art. 69, amended by Protocol of Amendments to the Charter of the OAS, June 10, 1993 [hereinafter Protocol of Managua], reprinted in Integrated Text, supra note 28, at 1011. The Permanent Council is also responsible for performing functions "assigned to it by the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs." *Id.* As the OAS Charter states:

The Permanent Council of the Organization and the Inter-American Council for Integral Development are directly responsible to the General Assembly, and each has the authority granted to it in the Charter and other inter-American instruments, as well as the functions assigned to it by the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs.

*Id.*

111. *Id.* arts. 92-97, amended by Protocol of Managua, *supra* note 110, at 1010-12. The OAS Charter states that the purpose of the Inter-American Council for Integral Development is "to promote cooperation among the American States for the purpose of achieving integral development and, in particular, helping to eliminate extreme poverty, in accordance with the standards of the Charter, especially those set forth in Chapter VII with respect to the economic, social, educational, cultural, scientific, and technological fields." *Id.* art. 93, amended by Protocol of Managua, *supra* note 110, at 1011. The Inter-American Council for Integral Development is responsible for performing functions that the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs have assigned to it. *Id.* art. 69, amended by Protocol of Managua, *supra* note 110, at 1011. The Inter-American Council for Integral Development derives its authority from "the [OAS] Charter and other inter-American instruments" and is "directly responsible to the General Assembly." *Id.*
ucation, Science, and Culture, the Inter-American Juridical Committee, the Inter-American Commission on Human Rights, the General Secretariat, various Specialized Conferences, and various Specialized Organizations.

b. Goals

The OAS' goals, as manifested through the OAS Charter, are primarily maintaining the territorial and political integrity of its member-states and collectively fostering regional socioeco-

112. Id. arts. 98-103. The OAS Charter provides that the purpose of the Inter-American Council for Education, Science, and Culture is:

[T]o promote friendly relations and mutual understanding between the peoples of the Americas through educational, scientific, and cultural cooperation and exchange between Member States, in order to raise the cultural level of the peoples, reaffirm their dignity as individuals, prepare them fully for the tasks of progress, and strengthen the devotion to peace, democracy, and social justice that has characterized their evolution.

Id. art. 99.

113. Id. arts. 104-110. The purpose of the Inter-American Juridical Committee is:

[T]o serve the Organization as an advisory body on juridical matters; to promote the progressive development and the codification of international law; and to study juridical problems related to the integration of the developing countries of the Hemisphere and, insofar as may appear desirable, the possibility of attaining uniformity in their legislation.

Id. art. 104.

114. Id. art. 111. The principal function of the Inter-American Commission on Human Rights is "to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters." Id.

115. Id. arts. 112-15, 117-21, 123-26; id. art. 116, amended by Protocol of Washington, supra note 28, at 1008; id., art. 122, amended by Protocol of Managua, supra note 110, at 1011. The OAS Charter provides that the General Secretariat:

[S]hall promote economic, social, juridical, educational, scientific, and cultural relations among all the Member States of the Organization, with special emphasis on cooperation for the elimination of extreme poverty, in keeping with the actions and policies decided upon by the General Assembly and with the pertinent decisions of the Councils.

OAS CHARTER art. 116, amended by Protocol of Washington, supra note 28, at 1008.

116. Id. art. 127-28. The OAS Charter states that the Specialized Conferences are: intergovernmental meetings to deal with special technical matters or to develop specific aspects of inter-American cooperation. They shall be held when either the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs so decides, on its own initiative or at the request of one of the Councils or Specialized Organizations.

Id. art. 127.

117. Id. arts. 112-29. The OAS charter provides that the Inter-American Specialized Organizations "are the intergovernmental organizations established by multilateral agreements and having specific functions with respect to technical matters of common interest to the American States." Id. art. 129.

118. Id. arts. 2, 3, 27-28. Articles 2, 3, 27, and 28 list the strengthening of peace and security and respecting the principle of non-intervention as among the OAS's es-
nomic development. Maintaining and respecting the independence of OAS members is a recurring tenet of the OAS Charter. The OAS Charter, however, repeatedly requires extensive collective action in the area of economic development.

As a regional agent of the United Nations, the OAS must ensure
that its actions are consistent with the United Nations' purposes and principles. One of the United Nations' principles is that of non-intervention in the domestic affairs of other states. Although this provision is already binding on the OAS members, given their independent status as U.N. members, the provision also appears throughout the OAS Charter, including in its preamble. In listing the promotion and consolidation of representative democracy as an essential purpose of the OAS, the OAS Charter states that its members should accomplish this purpose with respect for the principle of non-intervention.

The OAS Charter also enumerates several principles related to non-intervention that it seeks to affirm. It establishes that respect for the personality, sovereignty, and independence of states is central to international order. It also declares that each state possesses the right to organize its own social, political,

122. U.N. CHARTER art. 52 ¶ 1. Article 52 allows for the formation of regional agencies, "provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations." Id. This caveat does not prevent a regional agency from providing more stringent restrictions on members' actions than those contained in the U.N. Charter. Id. See Hugo Caminos et al., The OAS Charter After Forty Years, 82 AM. SOC'Y INT'L L. PROC. 101, 102-03 (1988) (discussing how OAS Charter's non-intervention provisions are more restrictive than U.N. Charter's). As one commentator notes, the OAS Charter's provisions regarding non-intervention make the U.N. Charter's corresponding provisions "seem modest and restrained in contrast." Caminos et al., supra, at 102.

123. See U.N. CHARTER art. 2 ¶ 7 (stating that no member state may "intervene in matters which are essentially within the domestic jurisdiction of any state"). The International Court of Justice discussed the extent of states' individual jurisdictions and how the principle of non-intervention affects these jurisdictions in Case Concerning Military & Paramilitary Activities In & Against Nicaragua (Nicaragua v. United States of America), 1986 I.C.J. 14 (June 27, 1986). The Court stated that, although the U.N. Charter does not define the principle of non-intervention, this principle is "part and parcel of customary international law." Id. at 106. As to states' individual jurisdictions, the Court held that the principle of non-intervention prevents states from intervening in "matters in which [other] State[s] [are] permitted, by the principle of State sovereignty, to decide freely." Id. at 108. Although the Court did not enumerate all matters on which states may decide freely, it did state that one such matter is "the choice of a political, economic, social and cultural system, and the formulation of foreign policy." Id.


125. See OAS CHARTER pmbl. ("Resolved to persevere in the noble undertaking that humanity has conferred upon the United Nations, whose principles and purposes they solemnly reaffirm").

126. Id. art. 2 ¶ b.

127. Id. art. 3 ¶ b, e, arts. 16, 18-21.

128. Id. art. 3 ¶ b. In article 3, paragraph b, the OAS reaffirms the principle that "[i]nternational order consists essentially of respect for the personality, sovereignty,
and economic affairs and that each state must also refrain from interfering in the affairs of other states.\textsuperscript{129} It treats non-intervention as bound to other fundamental rights and duties as well, such as the right of a state to develop its cultural, political, and economic life.\textsuperscript{130}

The OAS Charter also contains several explicit prohibitions on intervention and the use of force.\textsuperscript{131} It explicitly denies any member the right to intervene in any way, for any reason, in any other state's internal or external affairs.\textsuperscript{132} By its terms, this prohibition applies to any interference or attempted interference against a state's political, economic, or cultural elements.\textsuperscript{133} The

\textsuperscript{129} Id. art. 3 f. e. In article 3, paragraph e, the OAS reaffirms the principle that "[e]very state has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State." \textit{Id.} Paragraph f further holds that, subject to that principle, "the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems." \textit{Id.} The International Court of Justice has held that this principle is also a fundamental principle of customary international law and, thus, applies to all states, even if it did not appear in any separate international agreement. \textit{Nicaragua v. United States of America,} 1986 I.C.J. at 106. The Court also noted, however, that "examples of trespass against this principle are not infrequent". \textit{Id.}

\textsuperscript{130} OAS CHARTER art. 16. Article 16 lists as a fundamental right of each member the right "to develop its cultural, political, and economic life freely and naturally." \textit{Id.} Article 16 further states that, "[i]n this free development, the State shall respect the rights of the individual and the principles of universal morality." \textit{Id.}

\textsuperscript{131} Id. arts. 18-21. On the other hand, at least one critic has noted that the sentiments of these prohibitions "have far out run the capacities of the OAS to manage the real world conflicts among states within the hemisphere." Caminos et al., supra note 122, at 103. As one scholar commented:

\textit{Witness the U.S. effort in Guatemala in 1954; Venezuelan and Panamanian material aid to the anti-Somoza forces in Nicaragua in the 1970s; the American invasion of Grenada; and the admitted Sandinista support for the anti-government guerrillas in El Salvador in the 1980s. The intractable conflict of our age is Central America. Yet, in spite of articles 18 through 21 of the 1948 Charter, the OAS has been essentially irrelevant to the Central American conflicts. It has not become, in the 40 years of its history under the Charter, a viable means of resolving conflicts involving the use of force in the Americas.} \textit{Id.}

\textsuperscript{132} OAS CHARTER art. 18. Article 18 states that "[n]o State or any group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State." \textit{Id.}

\textsuperscript{133} Id. Article 18 declares that the prohibition on interference in a state's internal or external affairs applies "not only [to] armed force but also [to] any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements." \textit{Id.}
OAS Charter further prohibits the use of economically or politically coercive measures as a means to force a state's will in obtaining an advantage for that state.\textsuperscript{134} It also forbids the military occupation of any state by another\textsuperscript{135} and declares that the members of the OAS will use force only in self-defense and in accordance with existing treaties.\textsuperscript{136}

Despite a strict policy of non-intervention, the U.N. Charter permits and encourages international regional cooperation in economic, social, cultural, and humanitarian matters.\textsuperscript{137} International regional cooperation is one of the overriding aims of the OAS Charter.\textsuperscript{138} International cooperation features in the OAS Charter's preamble.\textsuperscript{139} The OAS Charter lists the promotion of cooperation among its members, specifically cooperation relating to socioeconomic development, as one of its essential

\textsuperscript{134} Id. art. 19. Article 19 forbids any member to "use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind." Id.

\textsuperscript{135} Id. art. 20. Article 20 establishes that:

The territory of a state is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

\textsuperscript{136} Id. art. 21. Article 21 states that the members of the OAS "bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof." Id. At least one invocation of this exception has proved controversial. CARTER & TRIMBLE, supra note 103, at 1420. Some question whether the OAS recommendation of action against Cuba during the 1962 missile crisis complied with U.N. Charter provisions regarding advisement of the Security Council. Id.

\textsuperscript{137} U.N. CHARTER art. 52 \(1 \text{;} \) see U.N. CHARTER art. 1 \(1 \text{;} \) (stating that one purpose of United Nations is "[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character"). Despite the prominence which the U.N. Charter gives to cooperative efforts, the importance of maintaining the principle of non-intervention supercedes the importance of cooperative efforts. See OAS CHARTER art. 3 \(e\) (noting that command to members to "cooperate fully among themselves" is itself subject to "the duty to abstain from interfering in the affairs of another State"). See also id. art. 30 (stating that "cooperation for integral development . . . should . . . respect the priorities established by each country in its developmental plans"); cf. id. art. 34 (forbidding members to adopt measures that adversely affect development of other states).

\textsuperscript{138} OAS CHARTER pmbl., art. 2 \(\text{e} \text{;} \) e, f; art. 3 \(e\), arts. 29-32, 34-51; id. art. 3 \(k\), art. 33, amended by Protocol of Washington, supra note 28, at 1007-08.

\textsuperscript{139} See id. pmbl. (stating that OAS members are "[p]ersuaded that their welfare and their contribution to the progress and the civilization of the world will increasingly require intensive continental cooperation").
purposes.\textsuperscript{140} It also specifies the full cooperation among all American states as an important principle.\textsuperscript{141} A recent amendment to the OAS Charter also places specific emphasis on economic cooperation among American states and establishes that such cooperation is essential to the region's well-being and development.\textsuperscript{142}

Finally, the OAS Charter devotes an entire chapter to integral development.\textsuperscript{143} Chapter VII commands OAS members to unite in their efforts to develop their economies, societies, cultures, educational systems, and scientific and technological fields, holding such development essential to peace and security.\textsuperscript{144} Chapter VII also places specific emphasis on the need for cooperating to further economic development by mandating cooperation in the resolution of critical problems threatening the economic development or stability of a particular nation,\textsuperscript{145} the development of improved conditions for trade in basic commodities,\textsuperscript{146} the development of measures designed to result in de-

\begin{enumerate}
\item See id. art. 2 \textsuperscript{f} (declaring as an essential purpose "[t]o promote, by cooperative action, their economic, social, and cultural development"); see also id. art. 2 \textsuperscript{e} (establishing search for "the solution of political, juridical, and economic problems that may arise among them" as essential purpose).
\item Id. art. 3 \textsuperscript{e}.
\item See id. art. 3 \textsuperscript{f} k, amended by Protocol of Washington, supra note 28, at 1007.
\item Id. arts. 29-32, 34-51; id. art. 33 amended by Protocol of Washington, supra note 28, at 1007-08. Article 29 defines integral development, stating that it "encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved." Id. art. 29.
\item Id. arts. 29-32, 34-51; id. art. 33 amended by Protocol of Washington, supra note 28, at 1007-08.
\item Id. art. 36. Article 36 provides that "[t]he Member States agree to join together in seeking a solution to urgent or critical problems that may arise whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State." Id.
\item Id. art. 38 \textsuperscript{b}(i). Article 38 declares that:
\begin{quote}
The Member States, recognizing the close interdependence between foreign trade and economic and social development, should make individual and united efforts to bring about the following: . . . b) Continuity in their economic and social development by means of: i) Improved conditions for trade in basic commodities through international agreements, where appropriate; orderly marketing procedures that avoid the disruption of markets, and other measures designed to promote the expansion of markets and to obtain dependable incomes for producers, adequate and dependable supplies for consumers, and stable prices that are both remunerative to producers and fair to consumers.
\end{quote}
\item Id.
\end{enumerate}
pendable incomes for suppliers and dependable supplies for consumers, 147 and the development of conditions to promote members' export earnings, especially among the developing nations. 148

2. The Organization for Economic Cooperation and Development

The OECD is an international association of states whose common goal is to pursue worldwide economic growth and stability. 149 All OECD members have pledged to achieve this goal through collective measures. 150 The primary source for implementing these collective measures is the OECD Council. 151

a. Organization

The OECD is an international organization whose membership is not restricted by geographical location. 152 It formed in 1960 153 and currently has twenty-nine members. 154 Its original members were the members of the Organization for European Economic Cooperation, 155 whose function was to administer

147. Id.
148. Id. art. 38 ¶ b(iv). Article 38 declares that: The Member States, recognizing the close interdependence between foreign trade and economic and social development, should make individual and united efforts to bring about the following: . . . b) Continuity in their economic and social development by means of: . . . iv) Conditions conducive to increasing the real export earnings of the Member States, particularly the developing countries of the region, and to increasing their participation in international trade.

149. OECD CHARTER art. 1.
150. Id. art. 3.
151. Id. art. 7.
152. Cf. id., pmbl. (stating that OECD members are convinced that cooperation to extent broader than among United States, Canada, Turkey, and nations of Western Europe "will make a vital contribution to peaceful harmonious relations among the peoples of the world").
153. Id. pmbl.
155. OECD CHARTER pmbl. In the Preamble to the OECD Charter, the original OECD members recognize "that the economic recovery and progress of Europe to which their participation in the Organisation for European Economic Co-operation has
U.S. aid in reconstructing Europe after the Second World War.158 Representatives or Ministers from all OECD members comprise the OECD Council, which is the source of all OECD actions.157 Unless members agree unanimously in special circumstances, all OECD members must unanimously agree before they may take any decisions binding on members or make any recommendations to members.158

b. Goals

The aims of the OECD are economic in nature.159 The purpose of these aims is to promote economic growth among OECD members and non-members.160 OECD members also agree to pursue cooperative measures in accomplishing these aims.161 Through the OECD Charter, OECD members agree to promote policies whose purposes are to achieve a high level of economic

made a major contribution, have opened new perspectives for strengthening that tradition and applying it to new tasks and broader objectives.” Id.


157. OECD CHARTER art. 7. Article seven states that “[a] Council composed of all the Members shall be the body from which all acts of the Organisation derive. The Council may meet in sessions of Ministers or of Permanent Representatives.” Id.

158. Id. arts. 5-6. Article 5 provides that the OECD may “(a) take decisions which, except as otherwise provided, shall be binding on all the Members; (b) make recommendations to Members; and (c) enter into agreements with Members, non-member States and international organisations.” Id. art. 5. Article 6 states that

1. Unless the Organisation otherwise agrees unanimously for special cases, decisions shall be taken and recommendations shall be made by mutual agreement of all the Members.

2. Each Member shall have one vote. If a Member abstains from voting on a decision or recommendation, such abstention shall not invalidate the decision or recommendation, which shall be applicable to the other Members but not to the abstaining Member.

3. No decision shall be binding on any Member until it has complied with the requirements of its own constitutional procedures. The other Members may agree that such a decision shall apply provisionally to them.

Id. art. 6.

159. See id. art. 1 (stating that OECD's aims are to promote policies for achieving "the highest sustainable economic growth and employment and a rising standard of living, while maintaining financial stability," policies for contributing to "sound economic expansion" in OECD and non OECD countries, and policies for contributing to "the expansion of world trade on a multilateral, non-discriminatory basis").

160. Id.

161. Id. art. 3.
growth for OECD members,\textsuperscript{162} to contribute to economic expansion among OECD members and non-members alike,\textsuperscript{163} and to contribute to the general expansion of world trade.\textsuperscript{164} In pursuit of these aims, OECD members agree to promote effective use of their resources,\textsuperscript{165} pursue policies to encourage economic growth and stability,\textsuperscript{166} engage in efforts to reduce barriers to trade and investment,\textsuperscript{167} and to contribute to the economic development of both OECD members and non-members by encouraging the flow of capital.\textsuperscript{168} The OECD Charter also declares that OECD members will use collective efforts to pursue these aims, keeping each other informed as to their progress,\textsuperscript{169} consulting with one another,\textsuperscript{170} and taking joint action.\textsuperscript{171}

\begin{thebibliography}{9}
\bibitem{162} Id. art. 1 \textsuperscript{\textdagger} a. Article 1, paragraph a, states that OECD members agree to promote policies whose purpose is "to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy." \textit{Id.}
\bibitem{163} Id. art. 1 \textsuperscript{\textdagger} b. Article 1, paragraph b, declares that OECD members agree to promote policies that "contribute to sound economic expansion in Member as well as non-member countries in the process of economic development." \textit{Id.}
\bibitem{164} Id. art. 1 \textsuperscript{\textdagger} c. Article 1, paragraph c, expresses OECD members' commitment to promote policies with the goal of contributing "to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations." \textit{Id.}
\bibitem{165} Id. art. 2 \textsuperscript{\textdagger\textdagger} a, b. Article 2, paragraphs a and b, state that OECD members agree to "(a) promote the efficient use of their economic resources; [and] (b) in the scientific and technological field, promote the development of their resources, encourage research and promote vocational training." \textit{Id.}
\bibitem{166} Id. art. 2 \textsuperscript{\textdagger} c. Article 2, paragraph c states that OECD members agree that they will "pursue policies designed to achieve economic growth and internal and external financial stability and to avoid developments which might endanger their economies or those of other countries." \textit{Id.}
\bibitem{167} Id. art. 2 \textsuperscript{\textdagger} d. Article 2, paragraph d states that OECD members agree that they will "pursue their efforts to reduce or abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalisation of capital movements." \textit{Id.}
\bibitem{168} Id. art. 2 \textsuperscript{\textdagger} e. Article 2, paragraph e states that OECD members agree to "contribute to the economic development of both Member and non-member countries in the process of economic development by appropriate means and, in particular, by the flow of capital to those countries, having regard to the importance to their economies of receiving technical assistance and of securing expanding export markets." \textit{Id.}
\bibitem{169} Id. art. 3 \textsuperscript{\textdagger} a. Article 3, paragraph a, states that OECD members agree that they will "keep each other informed and furnish the Organisation [sic] with the information necessary for the accomplishment of its tasks." \textit{Id.}
\bibitem{170} Id. art. 3 \textsuperscript{\textdagger} b. Article 3, paragraph b, states that OECD members agree to "consult together on a continuing basis, carry out studies and participate in agreed projects." \textit{Id.}
\bibitem{171} Id. art. 3 \textsuperscript{\textdagger} c. Article 3, paragraph c, states that OECD members agree that they will "co-operate closely and where appropriate take co-ordinated action." \textit{Id.}
\end{thebibliography}
II. PROPOSALS FOR COMBATING CORRUPTION

Several organizations and commentators have made proposals for combating corruption.\textsuperscript{172} Some of these proposals attack corruption on a transnational level, which makes these approaches capable of directing efforts across state borders.\textsuperscript{173} Other proposals would attack corruption on a state level, focusing on corruption's effects within a state.\textsuperscript{174}

A. Transnational Approaches

Several proposed solutions for combating corruption focus on approaches that are not confined to any one state or its citizens.\textsuperscript{175} The OAS has proposed one solution to corruption's problems that involves coordination among governments.\textsuperscript{176} Another example comes from the OECD that, like the Convention, offers an approach to combating corruption that requires intergovernmental cooperation.\textsuperscript{177} Finally, at least one commentator has suggested abandoning governments' role in combating corruption and entrusting the task to corporations who are better equipped to determine the effects of corrective measures on markets.\textsuperscript{178}

1. The Inter-American Convention Against Corruption

The OAS publicly recognized the need to combat corrup-
tion on December 11, 1994 at the Summit of the Americas in Miami, Florida.179 Finding that corruption of government officials posed a direct threat to its aims, the OAS expressed its intent to take action against corruption in a document entitled Summit of the Americas Declaration of Principles ("Summit Declaration").180 In the Summit Declaration, the OAS reaffirmed its adherence to the principles of international law and the principles and purposes that both itself and the United Nations espouse.181 The Summit Declaration lists non-intervention among these principles182 and reiterates the conviction that the OAS may advance these principles through coordinated efforts.183 The Summit Declaration also specifically addresses corruption as a factor affecting the principles and convictions of the OAS,184 declaring that corruption is a factor of social disintegration that distorts markets and undermines governments' legitimacy.185

In an accompanying document entitled Summit of the Americas Plan of Action ("Summit Plan of Action"),186 the OAS sets forth a separate series of proposals devoted to attacking corruption.187 The Summit Plan of Action suggests establishing

179. Summit of the Americas: Declaration of Principles and Plan of Action, 34 I.L.M. 808, 808-38 (1994) [hereinafter Summit Declaration & Plan]. At the Summit of the Americas, "[t]he elected heads of state and government of the Americas" gathered to express their commitment "to advance the prosperity, democratic values and institutions, and security" of the hemisphere. Id. at 810.
180. Id. at 810-14.
181. Id. at 810. At the 1994 Summit of the Americas, participants reiterated their "firm adherence to the principles of international law and the purposes and principles enshrined in the United Nations Charter and in the Charter of the Organization of American States." Id.
182. Id. at 810. In Summit of the Americas Declaration of Principles ("Summit Declaration"), the OAS reaffirms "the principles of the sovereign equality of states, non-intervention, self-determination, and the peaceful resolution of disputes." Id.
183. Id. The Summit Declaration states that the OAS recognizes "the heterogeneity and diversity of our resources and cultures, just as we are convinced that we can advance our shared interests and values by building strong partnerships." Id.
184. Id. at 811.
185. Id.; see id. at 818 (stating that "[c]orruption in both the public and private sectors weakens democracy and undermines the legitimacy of governments and institutions").
186. Id. at 815-35. The Summit of the Americas Plan of Action ("Summit Plan of Action") is a statement of the OAS's intent to adopt the measures which it outlines. Id. at 815.
187. Id. at 818-19. Although the Summit Plan of Action does not specifically detail how to achieve the anti-corruption measures it advocates, the Appendix to it does state that the OAS, as well as public and private sector partnerships, play important roles in
general transparency of public administration\textsuperscript{188} and developing priorities for achieving such transparency.\textsuperscript{189} It also calls for measures regarding public employees by advocating that states ensure proper oversight of governmental functions,\textsuperscript{190} that states establish standards for addressing conflicts of interest among public employees,\textsuperscript{191} and that states establish standards for addressing illicit enrichment of public employees.\textsuperscript{192} It also proposes strengthening government regulations and the administration of justice.\textsuperscript{193} Finally, the Summit Plan of Action proposes several cooperative measures that promote the adoption of similar measures by other non-Western Hemisphere states with citizens transacting in the Western Hemisphere,\textsuperscript{194} the development of a liaison with the OECD,\textsuperscript{195} the development of methods of cooperation to enable rapid investigations,\textsuperscript{196} and the connection with combating corruption. \textit{Id.} at 818-19, 835-36, 838. The Appendix also states that the Summit Plan of Action envisages roles for the Inter-American Development Bank and its affiliates in combating corruption. \textit{Id.} at 837.

\textsuperscript{188} \textit{Id.} at 818. Although the Summit Plan of Action does not define transparency, it does expand on this term by stating that “[a]ll aspects of public administration in a democracy must be transparent and open to public scrutiny,” and by calling for governments to “develop priorities for reforms needed to make government operations transparent and accountable” and to “[e]nsure proper oversight of government functions by . . . facilitating public access to information necessary for meaningful outside review.” \textit{Id.}

\textsuperscript{189} \textit{See id.} (stating that governments should “develop priorities for reforms needed to make government operations transparent and accountable”).

\textsuperscript{190} \textit{Id.} The Summit Plan of Action calls for governments to “[e]nsure proper oversight of governmental functions by strengthening internal mechanisms, including investigative and enforcement capacity with respect to acts of corruption, and facilitating public access to information necessary for meaningful outside review.” \textit{Id.}

\textsuperscript{191} \textit{See id.} (calling for governments to “[e]stablish conflict of interest standards for public employees”).

\textsuperscript{192} \textit{Id.} The Summit Plan of Action calls for governments to establish “effective measures against illicit enrichment, including stiff penalties for those who utilize their public position to benefit private interests.”

\textsuperscript{193} \textit{See id.} (requesting governments to “[g]ive priority to strengthening government relations and procurement, tax collection, the administration of justice and the electoral and legislative process, utilizing the support of the IDB [the Inter-American Development Bank] and other international financial institutions where appropriate”).

\textsuperscript{194} \textit{Id.} The Summit Plan of Action calls on the governments of the world “to adopt and enforce measures against bribery in all financial or commercial transactions with the Hemisphere.” \textit{Id.}

\textsuperscript{195} \textit{See id.} (inviting the OAS “to establish a liaison with the OECD Working Group on Bribery in International Business Transactions”).

\textsuperscript{196} \textit{Id.} The Summit Plan of Action calls on governments to “[d]evelop mechanisms of cooperation in the judicial and banking areas to make possible rapid and effective response in the international investigation of corruption cases.” \textit{Id.}. 
development of a regional, coordinated approach to combating corruption in the form of an international agreement that would allow for extradition and prosecution for violations.\textsuperscript{197}

The OAS gave effect to the anti-corruption measures of its Summit Plan of Action on March 29, 1996 in Caracas, Venezuela, when it opened the Inter-American Convention Against Corruption for signature.\textsuperscript{198} Twenty-three members had signed the Convention as of March 18, 1997.\textsuperscript{199} The Convention is also open for non-OAS member accession.\textsuperscript{200} Any signatory may make reservations\textsuperscript{201} as to any specific provision of the Convention, provided that such reservations are not incompatible with the Convention’s object and purpose.\textsuperscript{202} As of March 18, 1997, only Paraguay and Bolivia had ratified the Convention.\textsuperscript{203} Con-

\textsuperscript{197} See id. at 818-19 (calling for the development within the OAS, “with due regard to applicable treaties and national legislation, a hemispheric approach to acts of corruption in both the public and private sectors that would include extradition and prosecution of individuals so charged, through negotiation of a new hemispheric agreement or new arrangements within existing frameworks for international cooperation”).

\textsuperscript{198} Convention, supra note 10.

\textsuperscript{199} Letter from Edwin Choy, Secretary, Department of International Law of the Secretariat for Legal Affairs, Organization of American States, to Robert H. Sutton, Staff Member, Fordham International Law Journal 3 (Mar. 18, 1997) (on file with the Fordham International Law Journal).

\textsuperscript{200} Convention, supra note 10, art. XXIII, at 733.

\textsuperscript{201} Restatement of Foreign Relations Law § 313 (1986); see Carter & Trimble, supra note 103, at 139-41 (discussing reservations to treaties, generally). If a party to a treaty wishes to accept most, but not all, of the treaty’s obligations, it may seek to enter a reservation to the treaty. Carter & Trimble, supra note 103, at 139. The party may wish to do so:

\textquote{Either because it does not agree with a particular provision, or because it does not wish to accept a dispute settlement provision (such as reference of disputes to the ICJ [the International Court of Justice]), or because it does not have constitutional power to accept a particular provision (e.g., a federal state may not be able to bind its constituent states or provinces).}

Id. Once a party enters a reservation to a treaty, the reservation “modifies the relevant provisions of the agreement as to the relations between the reserving and accepting state parties but does not modify those provisions” as to the relations between the non-reserving parties. Restatement of Foreign Relations Law § 313(3) (1986).

\textsuperscript{202} Convention, supra note 10, art. XXIV, at 733.

\textsuperscript{203} Letter from Edwin Choy, supra note 199, at 3. Paraguay and Bolivia ratified the Convention on November 29, 1996 and January 23, 1997, respectively. Id. Pursuant to Article XXII of the Convention, Paraguay and Bolivia deposited their instruments of ratification with the General Secretariat of the OAS on January 28 and February 4, 1997, respectively. Convention, supra note 10, art. XXII, at 733; letter from Edwin Choy, supra note 199, at 3. Given that Article XXV of the Convention states that the Convention “shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification,” the Convention has been in force between Para-
subsequently, it is only binding as to those two states.\footnote{204} Taken as a whole, the Convention involves both state-level and transnational approaches, attacking individual acts of corruption and the systems which permit such acts to flourish,\footnote{205} as well as promoting cooperation among states in a collective effort to eradicate corruption.\footnote{206}

The Convention opens with a reiteration of the harmful effects of corruption.\footnote{207} These were effects that the OAS had recognized in the Summit Declaration and the Summit Plan of Action.\footnote{208} The Preamble to the Convention states that corruption undermines the legitimacy of public institutions.\footnote{209} It also declares that the proper functioning of representative democracy, which is itself essential to the region’s stability and development, requires an absence of corruption.\footnote{210} Finally, the preamble notes that corruption has international dimensions, requiring coordinated regional efforts.\footnote{211}

On the individual party level, the Convention primarily mandates active measures for its parties.\footnote{212} It mandates criminal-
izing certain specific corruption-related offenses including extortion by, or bribery of, government officials or functionaries as well as acts related to bribery and extortion. It also criminalizes transnational bribery. Finally, the Convention criminalizes any significant increase in the assets of a government official that he cannot explain in relation to his lawful earnings and any use of government resource by a government official or functionary for non-official purposes. The Convention also commands its parties to enact sufficient jurisdictional measures to give effect to these criminalization provisions. Parties also may enact broader measures than the Convention specifically enumerates.

The Convention calls for signatories to adopt certain regulatory schemes. Some of these measures contemplate an active role for the respective governments, mandating the establishment of standards of conduct for their officials and functionaries, mechanisms for enforcing these standards, and systems of administrative enforcement.

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for instructing their officials and functionaries regarding these standards.\footnote{225} The Convention also calls for its parties to adopt various passive regulatory measures to promote transparency both in the actions of business investors and in those of the participating government officials and functionaries.\footnote{224} Such measures include the public registration of functionaries' income,\footnote{222} the promotion of openness, equity, and efficiency in government hiring and procurement,\footnote{226} the use of tax collection systems in ways that discourage and even actively deter corruption,\footnote{227} and the adoption of other deterrents to the bribery of domestic and foreign government officials.\footnote{228} To take full advantage of the transparency these passive measures create, the Convention calls for the protection of those who report acts of corruption,\footnote{229} the creation of official oversight bodies,\footnote{230} and that these standards should "establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions." \textit{Id.} art. III \S 1, at 728. The Convention also calls for parties to undertake a "study of further preventive measures that take into account the relationship between equitable compensation and probity in public service." \textit{Id.} art. III \S 12, at 729.

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\textit{Id.} art. III \S 2, at 728. The Convention gives no examples of mechanisms for enforcing standards of conduct. \textit{Id.}

\textit{Id.} art. III \S 3, at 728. The Convention provides no illustrations of systems of instruction. \textit{Id.} A working document which the Office of the Secretary General of the OAS has prepared, however, entitled A Plan of Action Against Corruption ("Working Plan"), calls for "the organization of workshops, seminars, and conferences with participation of experts that can help the governments train officials responsible for preventing and punishing crimes of corruption." Office of the Secretary General of the Organization of American States, A Plan of Action Against Corruption 24 (May 1996) (working document, on file with Fordham International Law Journal) [hereinafter Working Plan].

\textit{Id.} art. III \S 4-11, at 728-29.

\textit{Id.} art. III \S 4, at 728.

\textit{Id.} art. III \S 5, at 728.

\textit{Id.} art. III \S 6-7, at 728.

\textit{Id.} art. III \S 10, at 728. By way of illustration, the Convention provides that these deterrents may include "mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts." \textit{Id.} art. III \S 10, at 728.

\textit{Id.} art. III \S 8, at 728. This paragraph calls for the protection of "public servants and private citizens who, in good faith, report acts of corruption". \textit{Id.} art. III \S 8, at 728.

\textit{Id.} art. III \S 9, at 728. Although the Convention does not provide details as to the structure and powers of the oversight bodies which Article III, paragraph nine, calls for, it does state that parties should create these bodies "with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts." \textit{Id.} art. III \S 9, at 728. The Working Plan also discusses this provision, calling for
the encouragement of oversight by civil society.\textsuperscript{231}

The Convention also takes a transnational approach to combating corruption.\textsuperscript{232} The Convention provides that all offenses criminalized under the Convention's enacting legislation are extraditable.\textsuperscript{233} Parties must, upon another party's request, extradite persons within their boundaries who have committed such offenses.\textsuperscript{234} The Convention's mutual assistance provisions call for mutual assistance and cooperation among parties not only in investigating and prosecuting specific acts of corruption\textsuperscript{235} but also in developing general methods of preventing, detecting, investigating, and punishing acts of corruption.\textsuperscript{236} These provisions also call for mutual assistance in identifying, tracing, freezing, seizing, and forfeiting the proceeds obtained from or used in the offenses described in the Convention.\textsuperscript{237} As an additional incentive for mutual cooperation, the Convention bars the invocation of bank secrecy as grounds for refusing assistance to a requesting state.\textsuperscript{238}

The Office of the Secretary General of the OAS has prepared a working document, entitled A Plan of Action Against Corruption ("Working Plan"), in an effort to develop further its collective measures approach.\textsuperscript{239} The Working Plan calls for the OAS to establish information services, in the form of databases

the OAS to maintain a database on measures which parties to the Convention have taken in the creation of these bodies. Working Plan, supra note 223, at 15-17.

231. Convention, supra note 10, art. III 11, at 729. In addition, the Working Plan calls for the OAS "together with other organizations and institutions . . . [to] move ahead in the definition of programs for strengthening the role of civil society in the prevention and control of corruption, in accordance with the provisions of the Convention and other instruments of the inter-American system that are in force." Working Plan, supra note 223, at 30.

232. Convention, supra note 10, art. XIII-XVI, at 731-32. The Convention also emphasizes the need for collective measures in its Preamble, stating that OAS members recognize that "in some cases, corruption has international dimensions, which requires coordinated action by States to fight it effectively." Id. pmbl., at 727.

233. Id. art. XIII 1-4, 7, at 731. The extradition mandate is also subject to "the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition." Id. art. XIII 1, at 731.

234. Id. art. XIII 1-4, 7, at 731.

235. Id. art. XIV 1, at 732. The mutual assistance and cooperation mandate is subject to parties' domestic laws. Id. art. XIV 1, at 732.

236. Id. art. XIV 2, at 732.

237. Id. art. XV 1, at 732.

238. Id. art. XVI 1, at 732.

239. Working Plan, supra note 223, at 1-33.
of measures that parties have taken in furtherance of the Conventions’ mandates, in order to facilitate a coordinated approach to combating corruption. These services would monitor and provide information to parties on such topics as effective means for giving effect to the preventive regulatory measures in Article III of the Convention, legislative measures effective both in generally combating corruption and in giving effect to specific mandates of the Convention, and current projects and research on matters related to the fight against corruption. The Working Plan also advocates proposing model laws to serve as guidelines for parties. These model laws would aid in creating an approach to combating corruption that is unified across the region. Finally, the Working Plan advocates cooperation with other international organizations, such as the OECD, the World Bank, the Inter-American Development Bank, the United Nations, and other international organizations and agencies, noting that there may be much to gain from their shared and complementary interests in the anti-cor-

240. Id. at 15-19.
241. Id. at 16-17. Measures for giving effect to the preventive regulatory measures in Article III of the Convention include establishing standards of conduct, establishing systems for registering income, and establishing systems of government hiring and procurement. Id.
242. Id. at 17-19.
243. Id. at 19.
244. Id. at 19-20. The Working Plan notes that “model laws have proved useful” in the past and that OAS members have recognized their value. Id. at 19. It suggests that “model laws could serve as a guideline and source of support and information for the countries to make the corresponding elections within the framework of their constitutional system and their individual circumstances.” Id. at 20.
245. Id. at 19-20.
246. Id. at 26-29.
247. Id. at 25-26. The World Bank is an organization which, through loaning operations, strives for the promotion of “economic and social progress in developing nations, bringing poor nations to a point of self-sustaining development.” CARTER & TRIMBLE, supra note 103, at 550. The World Bank will only loan to governments or to entities whose governments guarantee the loan. Id.
248. Working Plan, supra note 223, at 25-26. The Inter-American Development Bank is a regional development bank for Latin America modeled on the World Bank, although the Inter-American Development Bank’s assets amount to substantially less than the World Bank’s. CARTER & TRIMBLE, supra note 103, at 547. The Inter-American Development Bank functions to increase the availability of development funds, targeting them on the nations of the Americas. Id. at 498.
250. Id. at 29. Such organizations include the Council of Europe and the European Union. Id.
ruption arena.251

2. Recommendations of the Council of the Organization for Economic Cooperation and Development

On May 27, 1994, the OECD Council passed the Recommendation on Bribery in International Business Transactions ("Bribery Recommendation").252 The Bribery Recommendation is primarily a collection of admonitions and recommendations as to general areas in which to take action rather than an articulation of specific measures.258 The Bribery Recommendation recognizes the pervasive nature of corruption and the problems corruption poses for both governments and commercial markets.254 It also advocates that its members adopt various deterrent, preventive, and combative measures in the fight against transnational bribery.255 These measures include domestic actions such as enacting legislative prohibitions,256 reformulating tax regulations in a manner that does not indirectly encourage bribery,257 establishing business accounting procedures that ensure the adequate recording of relevant payments,258 and ensuring that banks make records available for investigative purposes.259 Other measures include cooperative action, such as mutually aiding the investigations of other member-states by sharing information,260 extraditing suspects,261 and promoting

251. Id. at 25.
253. See id. ¶ I, at 1390 (recommending that members “take effective measures to deter, prevent and combat bribery”); id. ¶ II, at 1391 (recommending that members examine certain areas of legislation and regulation and take “concrete and meaningful steps” to combat bribery, providing an open-ended list of suggestions of what such steps may include); id. ¶ IV(ii)-(iii), at 1391 (recommending that members “make full use of existing agreements” for mutual legal assistance or enter into new ones where necessary and ensure “that their national laws afford an adequate basis for this cooperation”).
254. Id. pmbl., at 1990. The OECD Council Recommendation on Bribery in International Business Transactions ("Bribery Recommendation") observes that bribery in international business transactions raises "serious moral and political concerns" and is responsible for "distorting international competitive conditions". Id. pmbl., at 1990.
255. Id. ¶ I, at 1390-91.
256. Id. ¶ III(i)-(ii), at 1391.
257. Id. ¶ III(iii), at 1391. The indirect encouragement of bribery, which the Bribery Recommendation seeks to eliminate, includes classification of bribes as tax deductible. Id. ¶ III(iii), at 1391.
258. Id. ¶ III(iv), at 1391.
259. Id. ¶ III(v), at 1391.
260. Id. ¶ IV(i), at 1391.
261. Id. ¶ IV(i), at 1391.
the Bribery Recommendation's goals among non-members. The Bribery Recommendation also specifically advocates the withholding of subsidies, licenses, government procurement contracts, and other public advantages as sanctions for infractions. Finally, the OECD Council's recent passage on April 11, 1996 of the Recommendation On the Tax Deductibility of Bribes To Foreign Public Officials ("Tax Recommendation") demonstrates its commitment to eradicate corruption, attacking as it does an institution that indirectly favors it, the tax system. To this end, the Tax Recommendation calls for members to re-examine their tax laws with a view to denying to corporations the possible deductibility of bribes to foreign public officials. The Tax Recommendation also calls for its promotion among non-members and for a monitoring of its implementation.

3. Corporate Self-Regulation

At least one commentator has suggested that commercial entities may be best-suited to regulating corruption in international markets. This suggestion holds that codes of corporate conduct bring predictability and certainty to government-corporation relationships. It further asserts that private codes also may accomplish many of the goals that government anti-corrupt-

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262. Id. ¶¶ V-VII, at 1392.
263. Id. ¶ III(vi), at 1991.
265. Id. at 1311-12.
266. Id. at 1312. The OECD Council Recommendation On the Tax Deductibility of Bribes to Foreign Public Officials ("Tax Recommendation") recommends "that those Member countries which do not disallow the deductibility of bribes to foreign public officials re-examine such treatment with the intention of denying such deductibility. Such action may be facilitated by the trend to treat bribes to foreign officials as illegal." Id. at 1312.
267. Id. at 1312. The Tax Recommendation instructs the Committee on Fiscal Affairs, in cooperation with the Committee on International Investment and Multinational Enterprises, "to monitor the implementation of this Recommendation, to promote the Recommendation in the context of contacts with non-member countries and to report to the Council as appropriate." Id. at 1312.
268. See Baker, supra note 7, at 599-433 (arguing that corporate self-regulation offers most effective method for controlling corruption).
269. Id. at 414-15. Private codes:

[E]nsure that MNEs [multi-national entities] are in harmony with the national policies of the countries where they operate and also strengthen the mutual confidence between the MNE and the government of the host country. Private codes increase political stability in developing nations by increasing the host country's negotiating power with the MNE. Voluntary codes of conduct
tion schemes attain, such as stimulating economic development in certain areas, redistributing wealth to the labor class, and discouraging anti-competitive and illegal behavior. This argument notes that self-imposed codes also provide producers a certain flexibility in their operations, allowing producers to address their individual concerns and realize higher profits. Finally, this argument states that these codes promote goodwill between corporations, foreign governments, and foreign nationals instead of establishing an adversarial relationship.

One criticism of the use of private codes of corporate conduct to combat corruption is that corporations may often circumvent these private codes quite easily. In the United States, for example, most courts will not hold private codes to be legally binding instruments. Another criticism is that the often high can increase public trust in the business sector and bring multinational activity in line with public expectations.

Id. 270. Id. at 406.
271. Id. These private codes may accomplish such redistribution through an increase in wages to the corporations' laborers. Id.
272. Id.
273. Id. at 415-16. One commentator observes that, "[b]y developing individualized codes of conduct, MNEs [multi-national entities] can tailor a code to their own needs and to the needs of their customers." Id. at 415; see id. at 415-16 (noting varying concerns one corporation may face in its operations in different parts of "a diverse and ever-changing world").
274. Id. at 421.
275. Id. at 422. As one commentator notes, adherence to these codes of conduct "develops trust in the relationship between the MNE [multi-national entity] and its suppliers, host government, and customers. Suspicion historically surrounds the activities of MNEs abroad. Alleviation of this suspicion is the chief benefit of writing and adhering to an internal code." Id.
276. Id. at 416-17.
277. Id. at 416-17 & n.106. See Harvey L. Pitt & Karl A. Groskaufmanis, Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct, 78 GEO. L.J. 1559, 1605-14 (1990) (discussing low level of protection that private codes provide corporations against civil and criminal liability). Fundamental agency principles play a large part in this lack of protection. See United States v. Basic Constr. Co., 711 F.2d 570, 573 (4th Cir.) (stating that corporations may be held criminally liable for acts of their employees if those employees "were acting within the scope of their authority, or apparent authority, and for the benefit of the corporation, even if such acts were against corporate policy or express instructions."), cert. denied, 464 U.S. 956 (1983); see also United States v. Twentieth Century Fox Film Corp., 882 F.2d 656, 660 (2d Cir. 1989) (holding "[w]e agree with the District Court that Fox's compliance program, however extensive, does not immunize the corporation from liability when its employees, acting within the scope of their authority, fail to comply with the law and the consent decree."), cert. denied, 493 U.S. 1021 (1990).
cost of negotiating private codes, even if such codes pertain to only one corporation, decrease profits for shareholders. This high cost acts as a disincentive to forming comprehensive policies.

B. State-Level Approaches

A different set of proposals attacks corruption on a local level. Some of these proposals target individual components of the commercial system, advocating regulatory measures instead of criminal sanctions and focusing on the acts of individuals instead of the acts of corporations. One proposal, the FCPA, adopts both regulatory and criminalization measures and targets both individuals and corporations.

1. Criminalization Versus Regulation

At least one commentator has suggested that controlling any aspect of corporate conduct through the criminal justice system may not be the best available approach, suggesting instead the use of regulatory measures. This school of thought argues that governments' concerns in any arena relating to regulation of conduct is to maximize the government's effect on the populace's behavior with the minimum expenditure. In this regard, the argument states, a criminalizing approach may not make the most effective use of governments' resources. This argument holds that regulatory agencies are usually able to pursue violations more economically and are usually less encumbered with burden-of-proof and motive issues. It also states that regulatory agencies often possess significant investigative powers and are able to investigate the facts of a transaction with-
out the constraints that hinder other law-enforcement agencies.\textsuperscript{288}

A counterargument to the use of regulatory measures to combat corruption states that the scope of prosecutorial investigative powers tends to be broader than that which regulatory agencies typically possess.\textsuperscript{289} According to this counterargument, a criminalizing approach would allow for more thorough examinations of the alleged transactions in question.\textsuperscript{290} An additional counterargument states that the adverse publicity arising through a criminal prosecution does not exist to the same extent in a purely regulatory investigation.\textsuperscript{291} The social stigma that accompanies action society defines as criminal is often absent, or at least much weaker, with actions society deems to be mere regulatory infractions.\textsuperscript{292} Other commentators disagree with this assertion, however, noting that the adverse effects to a corporation flowing from publicity of criminal prosecutions are short-lived and the resulting deterrent effect minimal.\textsuperscript{293}

2. Targeting Individuals versus Targeting Corporations

Other commentators suggest that governments may control corporate actions more effectively by attacking the individuals involved in the transactions in question as opposed to attacking the corporations for which these individuals work.\textsuperscript{294} These commentators suggest that, although a corporation's actions are an amalgam of numerous individual decisions and contributions, it is often possible, albeit time-consuming, to identify individual acts and isolate the blame.\textsuperscript{295} They argue that pursuing

\textsuperscript{288}. Id. Professor Levi notes that, in recent years, courts have manifested an "increasingly critical approach to the use of powers by the police". Id. at 187.

\textsuperscript{289}. See id. at 186-88 (discussing powers available to prosecutorial investigators of white-collar crime in England, such as absence of bank secrecy and right to silence as bars to inquiry).

\textsuperscript{290}. Id.

\textsuperscript{291}. Id. at 181, 188-89. Publicity in a criminal investigation often draws public scrutiny and shame upon the corrupt individual or entity currently under investigation, thereby providing a cost-effective means of deterring future corrupt transactions. Id.

\textsuperscript{292}. Id.

\textsuperscript{293}. See JACOBY et al., supra note 3, at 51-57 (concluding from 30-day studies of five companies' stock prices that investors do not make "any significant disposal of their stocks on learning of the overseas political payments by the managements" of companies studied).

\textsuperscript{294}. Geis & DiMento, supra note 11, at 72-86.

\textsuperscript{295}. Id. at 77.
individuals instead of corporations may increase deterrence to illicit behavior. They note that individuals are more likely to take steps to protect themselves by avoiding the breaking of laws than they are to protect the corporations for which they work, taking advantage of the individuals' inclination to self-interest.

These commentators also suggest that common prosecutorial practices in pursuing corporations and individuals' awareness of these practices generally reduce pressures on employees to obey the law, thereby perpetuating the system that allows such acts to persist. They note that, even if prosecutors have the option to pursue an individual as opposed to the corporation he or she works for, it is often less complicated for the prosecutor to establish general corporate guilt than it is to identify responsible individuals. This effect removes some of the fear that prosecutors may target them in their individual capacities. For example, investigators can usually uncover the paper trail more easily when corporations are the target of the investigation because corporations, unlike individuals, have no privilege against self-incrimination in the United States. These commentators recognize that individuals are often more willing to sacrifice their corporation than themselves. They also observe that the common practice in the United States of offering immunity to individuals who testify against the corporation further erodes the fears an individual may have of being pursued in his personal capacity. Finally, they remark that a corporation is more likely than an individual to have the funds available to repair the harm flowing from the criminal transaction in question, making them the natural deep pocket in the eyes of the prosecutor.

A critique of this approach notes that court sanctions are

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296. Id. at 79-80.
297. Id.
298. Id. at 79.
299. Id.
300. Id.
301. Id.
303. Geis & DiMento, supra note 11, at 81-82.
304. Id.
305. Id. at 82-83.
capable of redesigning corporations with relative ease, given that corporations are artificially created entities existing largely in paper form. Individuals, by contrast, are much less amenable to rehabilitation. In addition, there are fewer complications in establishing corporate, as opposed to individual, guilt. Finally, this critique notes that there may be a greater potential for correcting the harm flowing from criminal transactions if investigators pursue corporations as opposed to individuals, because a corporation’s vast collective assets make it the deep pocket of choice when compared to an individual’s relatively meager holdings.

3. The U.S. Foreign Corrupt Practices Act

The FCPA adopts a combination of approaches to combating corruption by taking criminalizing as well as regulatory approaches and by targeting individuals as well as corporations. The FCPA criminalizes corrupt payments that any agent of a publicly-held U.S. corporation may make to any foreign official, foreign political party, or candidate for foreign office. This provision applies if the agent makes the payment

306. Id. at 80-81.
307. Id.
308. Id. at 81-82; see supra notes 298-305 and accompanying text (discussing prosecutors’ incentives to pursue corporations in lieu of individuals).
309. Geis & DiMento, supra note 11, at 82-83; see supra notes 298-305 and accompanying text (discussing inclination of prosecutors to focus efforts on corporations not individuals).
310. 15 U.S.C. §§ 78a, 78m(b), 78m(d)(1), 78m(g), 78m(h), 78dd-1, 78dd-2, 78ff(a), 78ff(c) (1988).
(a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—(1) any foreign official . . . (2) any foreign political party or official thereof or any candidate for foreign political office . . . (3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office.
directly or through an intermediary. Additionally, the FCPA criminalizes any payments that individual citizens, nationals, or residents of the United States who are not publicly-held entities may make to these same foreign persons. The FCPA also adopts some regulatory measures, mandating accurate book-keeping practices that adequately disclose the nature of an entity's expenditures. Finally, the FCPA deliberately exempts from its coverage the most pervasive form of corrupt payments, the facilitating payment. The statute lists as an affirmative de-

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Id.

313. Id.

314. Id. These Sections provide:

(a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—(1) any foreign official . . . (2) any foreign political party or official thereof or any candidate for foreign political office . . . (3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office.

Id.

315. 15 U.S.C. § 78m(b)(2) (1988). This Section provides:

Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and (B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—(i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.


316. 15 U.S.C. §§ 78dd-1(b), 78dd-2(b) (1988); see Jacoby et al., supra note 3, at 113 (stating that facilitating payments are most common form of corrupt payment). Both Section 78dd-1(b) and Section 78dd-2(b) exempt facilitating or expediting payments from prohibition. 15 U.S.C. §§ 78dd-1(b), 78dd-2(b) (1988). These Sections each exempt any payment "to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official." 15 U.S.C. §§ 78dd-1(b),
fense the fact that the payment in question was to secure performance of a routine governmental action such as obtaining a permit, processing a visa, or providing mail service.317

III. ADVOCATING THE OAS APPROACH

The Convention clearly poses the most effective of existing solutions to the problems that corruption poses.318 Given corruption's pervasive and universally harmful nature, combating corruption requires a collective approach.319 As such, the Convention provides an effective means for combating corruption.320 Although other approaches to combating corruption do possess some advantages, they are less effective than the Convention.321 In addition, the OAS approach combines the advantages that these other existing approaches possess.322 Finally, the OAS approach is more specific in its provisions than other existing approaches, allowing for the necessary coordination of efforts among states.323

78dd-2(b) (1988). Sections 78dd-1(f)(3) and 78dd-2(h)(4) each define “routine governmental action” as:

[A]n action which is ordinarily and commonly performed by a foreign official in—(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country; (ii) processing governmental papers, such as visas and work orders; (iii) providing police protection, mail pick-up, and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country; (iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or (v) actions of a similar nature.

318. See supra notes 198-238 and accompanying text (examining provisions of Convention).
319. See supra notes 53-63, 88-95 and accompanying text (explaining pervasiveness and political effects of corruption).
320. See supra notes 118-48 and accompanying text (examining purposes of OAS which corruption adversely affects); see supra notes 198-238 and accompanying text (discussing measures Convention proposes for combating corruption).
321. See supra notes 252-317 and accompanying text (reviewing OECD Council Recommendations, corporate self-regulation, regulatory measures, and targeting individuals who engage in corrupt practices as alternate approaches capable of combating corruption).
322. See supra notes 212-38 and accompanying text (discussing Convention’s anticorruption measures, including criminalization and regulation of corrupt activities and international cooperative provisions).
323. See supra notes 212-38 and accompanying text (commenting on measures
A. Combating Corruption Requires a Collective Approach

The prevalence of corruption necessitates a collective approach to combating it.\textsuperscript{324} Corruption's often long existence and its reinforcement by local social structures has led to its entrenchment in the practices of both commercial and government actors the world over.\textsuperscript{325} Consequently, the entity seeking to eradicate corruption from a given location must have a certain degree of independence from the location in question.\textsuperscript{326} Such independence allows the correcting entity the necessary separation from the corrupt influences, influences that would perhaps corrupt the correcting entity itself.\textsuperscript{327} A collective approach thus fulfills this need for separation from the source of the corruption.\textsuperscript{328}

The kinds of problems corruption poses also requires a collective approach.\textsuperscript{329} As commentators have noted, a prevalence of corrupt payments poses additional and numerous costs on participants in corrupt markets.\textsuperscript{330} Although corruption hinders the efficient functioning of individual markets,\textsuperscript{331} the ultimate damage is not limited to the individual markets in question.\textsuperscript{332} The resulting slowdown in economic development and political destabilization affects the host state and neighboring states

\begin{itemize}
\item Convention proposes for combating corruption, such as criminalization and regulation of corrupt activities and international cooperative provisions).
\item See supra notes 53-63 and accompanying text (explaining corruption's existence throughout history and throughout world).
\item See supra notes 53-63 and accompanying text (discussing pervasive and lengthy existence of corruption).
\item See supra notes 33-52 and accompanying text (referring to prevalence of corruption in international business transactions).
\item See supra notes 33-52 and accompanying text (explaining corruption's pervasive existence in international business transactions).
\item See supra notes 198-251 (discussing Convention's anti-corruption measures); see supra notes 252-67 (presenting OECD Council recommendations' measures for combating corruption); see supra notes 268-79 and accompanying text (reviewing combating corruption through private codes of corporate conduct).
\item See supra notes 88-95 and accompanying text (discussing political effects of corruption including discouraging infrastructure development and engendering political instability).
\item See supra notes 79-87 and accompanying text (explaining corruption's harmful economic effects such as wasted resources and increased transaction costs).
\item See supra notes 79-87 and accompanying text (discussing corruption as type of transactional barrier).
\item See supra notes 88-95 and accompanying text (discussing corruption's political effects including political destabilization and decrease in development of infrastructure).
\end{itemize}
Given corruption's universally harmful nature, the need for collective action to combat it is clearly apparent.

B. The OAS Approach Provides an Effective Means for Combating Corruption

The organization and goals of the OAS make the OAS well-suited to addressing corruption and its effects on the states of the Western Hemisphere. The OAS has pledged to further the region's socioeconomic development and ensure its stability, the very things corruption endangers. The OAS also places heavy emphasis on the importance of cooperative action, especially as such action relates to furthering regional economic development and stability. The OAS is, therefore, an appropriate source to turn to in seeking a solution to the problems corruption poses.

The Convention is an effective means of putting the OAS's anti-corruption measures into effect. Given that corruption poses state-level problems with transnational effects, it is fitting that the Convention should apply its state-level provisions in a transnational approach, thereby allowing for comprehensive treatment. The Convention's state-level provisions actively attack specifically-enumerated occurrences of corruption and regulate specific, corruption-prone aspects of commercial mar-

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333. See supra notes 88-95 and accompanying text (reviewing political effects of corruption).
334. See supra notes 53-95 and accompanying text (discussing corruption's history and harmful effects).
335. See supra notes 99-148 and accompanying text (discussing OAS's organization and goals).
336. See supra notes 137-148 and accompanying text (addressing OAS's commitment to fostering regional socioeconomic development through cooperative efforts).
337. See supra notes 137-148 and accompanying text (explaining OAS's developmental goals including collective promotion of socioeconomic development).
338. See supra notes 99-148 and accompanying text (examining organization and goals of OAS).
339. See supra notes 198-238 and accompanying text (commenting on Convention's anti-corruption measures).
340. See supra notes 64-95 and accompanying text (explaining state-level and transnational problems corruption poses, such as discouraging development and engendering political instability).
341. See supra notes 212-38 and accompanying text (describing Convention's state-level and transnational approaches to combating corruption).
The Convention's state-level provisions also establish measures by which states may passively monitor corrupt activity. The Convention's transnational provisions provide a harmonizing effect by calling for cooperation in investigation, prosecution, and extradition, transforming a series of specific but independent efforts by individual states into a regional movement. Finally, the Convention's transnational cooperative measures do not violate the OAS's or United Nations' tenets of non-intervention. Accession to the Convention is voluntary and any party may make reservations as to any specific provision, meaning that any measures that a state takes in furtherance of its obligations are self-imposed. Through the Convention, the OAS thus proposes an effective vehicle for implementing the reforms necessary to eradicate corruption in North and South America.

C. Other Approaches Are Less Effective

Other approaches to combating corruption possess shortcomings that make them less viable options for combating corruption. A purely criminalizing approach does not usually use resources as effectively as a purely regulatory approach, but the former is able to achieve deterrence more effectively than the latter. An approach that focuses purely on pursuing corporations does not always achieve the same degree of deterrence that an approach focusing purely on pursuing individuals achieves, but the former can often be a more efficient use of resources.

342. See supra notes 212-31 and accompanying text (reviewing Convention's state-level approach).
343. See supra notes 212-31 and accompanying text (discussing state-level efforts of Convention).
344. See supra notes 252-38 and accompanying text (describing Convention's transnational provisions).
345. See supra notes 201-02 and accompanying text (explaining Convention's Reservation provisions).
346. See supra notes 201-02 and accompanying text (addressing Convention's provisions regarding entry of reservations).
347. See supra notes 198-238 and accompanying text (discussing anti-corruption measures of Convention).
348. See supra notes 252-317 and accompanying text (discussing alternate approaches to combating corruption).
349. See supra notes 284-93 and accompanying text (discussing criminalization versus regulation).
than the latter.\textsuperscript{350} Even the FCPA, a hybrid approach that combines both criminalization and regulatory approaches and targets both individuals and corporations, has its drawbacks.\textsuperscript{351} The affirmative defense which the FCPA provides for facilitating payments allows the persistence of increased barriers to trade that such additional payments create.\textsuperscript{352} The existence of these barriers to trade blocks potential suppliers from the market,\textsuperscript{353} prevents foreign consumers from obtaining a better product for a better price,\textsuperscript{354} hampers infrastructure development,\textsuperscript{355} and adds to the region's general instability.\textsuperscript{356}

In the end, any purely state-level approach will prove ineffective in combating corruption because it will not be able to coordinate measures across a region.\textsuperscript{357} This inability to coordinate measures may allow corruption to persist, even flourish, in a neighboring state.\textsuperscript{358} Existence of corruption in a state encourages an outflow of capital and other mobile resources from the corrupted state, making these resources less accessible to neighboring states as well.\textsuperscript{359} As resources flow out of a region, fewer resources are available to aid the region's socioeconomic development.\textsuperscript{360} In addition, the rehabilitative efforts necessary to correct the injuries corruption inflicts on a state will drain national resources, diverting them from other, more valuable de-

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\item \textsuperscript{350} See supra notes 294-309 and accompanying text (addressing pursuing corporations versus pursuing individuals).
\item \textsuperscript{351} See supra notes 310-17 and accompanying text (reviewing FCPA's anti-corruption measures).
\item \textsuperscript{352} See supra notes 316-17 and accompanying text (explaining FCPA's affirmative defense for facilitating payments).
\item \textsuperscript{353} See supra notes 72-78 and accompanying text (addressing bribery and other barriers to trade).
\item \textsuperscript{354} See supra notes 82-85 and accompanying text (reviewing economically inefficient effects of bribery).
\item \textsuperscript{355} See supra notes 91-95 and accompanying text (explaining problems bribery poses to infrastructure development).
\item \textsuperscript{356} See supra notes 88-95 and accompanying text (describing political destabilizing effects that bribery causes).
\item \textsuperscript{357} See supra notes 137-148, 169-71 and accompanying text (discussing OAS and OECD Charters' collective provisions).
\item \textsuperscript{358} See supra notes 29-52 and accompanying text (explaining why corruption occurs in international business transactions).
\item \textsuperscript{359} See supra notes 90-95 and accompanying text (addressing corruption's inducement of outflow of resources from regions).
\item \textsuperscript{360} See supra notes 90-95 and accompanying text (describing how corruption existence in region leads to resources' exodus from that region).
\end{itemize}
This acts as a further retardant to local and regional development. Finally, the mere existence of such corruption often erodes public confidence, both domestically and abroad, in the integrity of the government whose actors receive these payments. Such a loss of faith and public support may lead to a general instability of the corrupted state, which may also affect the stability of neighboring states. It is thus apparent that a purely state-level approach will not prove effective in combating corruption.

Not all transnational approaches to combating corruption offer effective solutions either. Although the Bribery Recommendation calls for OECD members to adopt a variety of measures, its provisions are little more than general admonitions with little specific direction. This permits adherents to the Bribery Recommendation to follow its words while enacting vastly different measures, preventing a harmonized approach and permitting corruption to persist in certain forms and in certain areas. The Bribery Recommendation’s advocation of the withholding of certain public advantages as sanctions for infractions is somewhat more specific, and is thus less likely to lead to an uneven application, than its other provisions. It is insufficient, however, to ensure a uniform application of the document as a whole. The Tax Recommendation is also specific in the
measures it advocates and is a step in the right direction, but it only addresses one area of governmental administration that allows corruption to flourish.\textsuperscript{371} The eradication of corruption requires more.\textsuperscript{372} Finally, private codes of corporate conduct, although potentially capable of combating corruption through transnational efforts, pose problems in terms of compliance.\textsuperscript{373} The cost of establishing them may also make it unlikely that corporations will spend the time and resources necessary to create codes comprehensive enough to be effective.\textsuperscript{374} The other existing transnational approaches to combating corruption are, therefore, unsatisfactory.\textsuperscript{375}

D. The OAS Approach Combines Advantages of Other Existing Approaches

The Convention draws considerable strength from the combination of measures that it adopts, incorporating many of the more effective elements of the various state-level and transnational approaches that others have advocated.\textsuperscript{376} The Convention recognizes the benefits of a regulatory approach to combating corruption by presenting a cost-effective and expedient means of regulatory control.\textsuperscript{377} The Convention also relies heavily on criminalization measures with their attendant broadened investigatory powers and stigmatizing effects.\textsuperscript{378} Additionally, the Convention seizes on the advantages inherent in pursuing individuals for their roles in corrupt transactions, taking advantage of their natural inclinations to self-interest, while simultane-
ously pursuing corporations, thereby allowing for less complicated investigations and deeper pockets. The combination of measures that the Convention adopts thus allows for a broad and efficient treatment.

E. The OAS Approach is More Specific than Other Existing Approaches

It is the Convention's specificity that is its greatest strength. The Convention's principles are well-delineated, listing specific acts to criminalize, regulations to enact, and measures to pursue, not merely general categories in which to act. For a transnational approach to be effective, it must be specific in its provisions, allowing for the approach's adherents to harmonize their actions. The ability of parties to follow closely this specific plan will permit the region to attack corruption in a forceful and coordinated manner, while minimizing the possibility that full compliance could still lead to uneven results. Finally, the possibility of uneven results is further minimized by the fact that the parties involved may fully enact all the measures it proposes, subject only to provisions of their constitutions and the fundamental principles of their legal systems.

379. See supra notes 212-31, 294-309 and accompanying text (describing Convention's provisions targeting individuals). While there is the possibility that prosecutors may continue to be drawn to pursue a corporation as opposed to an individual for a given transaction, the individual may still be prosecuted for his participation. See supra note 214 and accompanying text (addressing Convention's provisions regarding prosecution of individuals for participation as "principal, coprinciple, instigator, accomplice or accessory after the fact"). This result thereby preserves some of the deterrent effect. See supra note 214 and accompanying text (discussing provisions of Convention calling for prosecution of individuals for participation in any capacity).

380. See supra notes 212-38 and accompanying text (discussing Convention's anti-corruption measures).

381. See supra notes 212-38 and accompanying text (describing measures Convention proposes for combating corruption).

382. See supra notes 212-38 and accompanying text (describing Convention's anti-corruption provisions); see also supra notes 252-67 and accompanying text (referring to Bribery and Tax Recommendations' anti-corruption provisions).

383. See supra notes 198-238 and accompanying text (discussing Convention's anti-corruption provisions).

384. See supra notes 212-38 and accompanying text (discussing Convention's anti-corruption provisions).

385. See supra notes 215-16, 235 and accompanying text (addressing Convention's caveats regarding parties' legal principles and constitutional provisions).
suggestion.\textsuperscript{386} It is a comprehensive and coordinated attack that attempts to level the playing field for all commercial actors, putting no one at a competitive disadvantage.\textsuperscript{387}

**CONCLUSION**

The members of the OAS should ratify the Convention and give full effect to the measures it proposes. The OAS approach to combating corruption clearly offers more benefits to more people than does any of the existing alternative approaches. Active government involvement in corruption-related regulations and criminal prosecutions is more likely to open markets to more investors than any less-involved approach. Although this increased regulation and interference may initially seem to pose barriers to investment, these measures will actually create more investment opportunities than previously existed by eliminating the existing corruption-related barriers to entry and allowing markets to develop. These results will become more noticeable as they in turn effect an increase in the strength of regional infrastructure and stability. The well-articulated transnational approach that the Convention embodies will do much to protect the inhabitants of the Americas from the ravages of corruption. Such a dramatic effect in this hemisphere may even have repercussions elsewhere in the world, perhaps acting as a catalyst for change in other regions. The Convention thus presents a tremendous opportunity, one that states cannot afford to miss.

\textsuperscript{386} See supra notes 212-38 and accompanying text (enumerating provisions Convention calls for in eradication of corruption); see also supra notes 252-67 and accompanying text (explaining anti-corruption provisions of Bribery and Tax Recommendations).

\textsuperscript{387} See supra notes 212-38 and accompanying text (discussing measures Convention calls for in eradication of corruption); see also supra notes 252-267 and accompanying text (describing measures Bribery and Tax Recommendations advocate).