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Corruption convention could impact on bank secrecy laws
Chibli Mallat takes a look at how international bribery might be curtailed

Fifteen years ago, American law professor and judge John Noonan published an 800-page masterpiece chronicling corruption through the ages from the Babylonian laws to the end of the twentieth century.

"Bribes," which appeared in 1984, concludes with these words: "Going beyond the data, I venture a prediction: As slavery was once a way of life and now, whatever analogs in economic duress remain, has become obsolete and incomprehensible, so the practice of bribery in the central form of the exchange of payment for official action will become obsolete."

Considering the shelving of the proposal for a new Lebanese law on corruption by the last minister of justice (cynics would say, as usual), Mr. Noonan's prediction might appear to be wrong.

On the other hand, the new era promised in Lebanon since Nov. 24 prides itself first and foremost on the "clean hands" it purports to have heralded.

One benefit of globalization, perhaps, is that our body politic need perhaps not exert itself too much with the fight against corruption, which is coming to it on the wings of foreign laws.

The latest in date is the Criminal Law Convention on Corruption which will be signed in Strasbourg Jan. 27. The Convention has been prepared under the aegis of the Council of Europe, and comes in the wake of a world-wide move in industrialized countries to fight any form of bribery that may affect international transactions.

The Council of Europe Convention also incorporates measures already available in other similar treaties and domestic statutes, starting with the U.S. Foreign Corrupt Practises Act of 1977, and, more recently, legislation of the OECD and the European Union. The new Convention Preamble, which mentions the need to pursue a common penal policy in order "to protect society against corruption," provides further acknowledgment of the tightening, world-wide, legal framework to combat corruption in all its forms.

The Convention starts out by criminalizing any corruption of domestic public officials, defined as civil servant, judge, mayor, minister, as well as parliamentarians. Nothing surprising so far.

Then the net widens. Both briber and bribed are the target of the legislation. This is underlined by the Convention consecrating an article to what it calls "active corruption," which occurs when the act has been intentionally committed with a view to giving or offering "an undue advantage" to a public official so that he accomplishes or refrains from accomplishing what he is supposed to do in his work capacity (Art.2).

The next article targets the recipient of bribery, and "passive corruption" is condemned in the event of the public official soliciting or receiving any such undue advantage.

So far, this sounds very much like domestic law in any civilized country. But the drafters didn't leave much to chance, and the Convention is designed to be applied internationally, irrespective of the country in which bribery is effected.

Nor should Middle Eastern countries think they are sheltered. Bakhshishs, commissions, cash envelopes and kickbacks will never be the same after the Convention. The whole world of exports comes under scrutiny, and the following dispositions show how the net was made to tighten.

The Convention covers the corruption of foreign officials (Art.5), including members of parliament (Art.6), international civil servants (Art.9), even international judges (Art.11) and members of international assemblies (for instance, European MPs), whether corruption takes place in the private sector or not, and whether it be, again, active or passive (Arts. 7 and 8).

Granted that most industrialised countries, in Western Europe and in the United States, have either laws or practises that discourage or condemn corruption. How does this affect the rest of the world, the Middle East and Lebanon in particular?

The answer is in Article 17, which forces parties to the Convention to adopt legislative measures punishing bribery both territorially and personally. Those measures will apply if the violation is committed "in whole or in part" on the territory of the state party to the Convention.

This means that sanctions will operate even if the transaction entailing the bribe is partly negotiated in a Council of Europe state party to the Convention, including conceivably a transaction-related fax emitted on its territory, or even a phone call. While the text mentions "infraction," and one could conceive this sort of evidence to be rather elusive, the next section in the article makes the universality of the Convention compelling.

It is sufficient for the Convention to apply if one of the citizens of that state party takes part in the violation. Whilst the text, here also, may suggest the necessity for the contravenor to be the author of the crime, complicity is, under Article 15, considered to be within the condemnable act.

Specifically for Lebanon, and other financial safe havens in the region, the drafters of the Convention have been attentive to design a section preventing "banking secrecy from constituting an obstacle" to the "investigative techniques" which ensure that the tightened net is not flouted by domestic legislation of the kind we have been used to for so long (Art. 23).

If the domestic statutes will naturally remain, one may wonder whether foreign corporations under the scrutiny of the Convention would not be able, or compelled, to expose, from without, transactions which transit through the Lebanese banking system and which may be tainted.

One is not talking any more about the bribes within Europe. Such eventualities have long been criminalized, even if loopholes remain, as apparent from the recent scandal threatening the resignation of the whole European Commission. With the new Convention expected to come into effect soon after it is signed, shadowy practises in Lebanon and the Arab world might be forced out into the open.
Who would disagree that they should?

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