Anti-Corruption Colonialism, A Policy Discourse Analysis of International Anti-Corruption Projects

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# TABLE OF CONTENTS

Introduction..................................................................................................................1

I. Corruption, Oil, and Colonialism..............................................................................3
   A. Colonial Foundations.........................................................................................5
   B. Development Discourses..................................................................................7
   C. Corruption and Power......................................................................................9
   D. Oil Industry and Corruption..........................................................................9
   E. The New Great Game: Imperialism in the Caspian Sea...............................10
   F. North and South Corruption..........................................................................12
   G. Anti-Corruption Biases..................................................................................14

II. Mobil in Kazakhstan: The Colonial Oil.................................................................15
   A. Oil and Corruption Symbiosis.......................................................................16
   B. Mobil in Kazakhstan: The Colonial Corruption...........................................17
   C. The Case and the Ideology..........................................................................22
   D. The Prosecution.............................................................................................23
   E. Money Laundering.........................................................................................25

III. The Deconstruction of Anti-Corruption Discourse............................................27
   A. Discourse and Reality.................................................................................28
   B. Deconstructing the Anti-Corruption Discourse...........................................29

Conclusion...............................................................................................................32
Introduction:

The development of the new strategies for combating corruption is the new great game in the international arena\(^1\). Some authors argue that corruption is a structural problem that should be worked with from a holistic perspective\(^2\). Others, the international organizations in general, assume that the problem is remediable working only with the public corruption and leaving the private corruption to be addressed by the industry using self regulation\(^3\).

This paper will explore the problem of corruption and anti-corruption policies from a different perspective. The goal is to reveal the intrinsic assumptions of the international anti-corruption programs and the ideological flaws present in them\(^4\). Revealing these assumptions and ideological flaws it will be possible to develop new approaches to the problem recognizing that the regulation of international trade is not the only alternative to

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\(^1\) Some commentators have been questioning why this new interest on the problem of corruption by the International System. Professor Padideh Ala’I argues that the international community assumed that corruption was an instrument to open markets in the war against socialism but after the defeat of socialism and the current globalization of the economy the need to conserve corruption is no longer present and the movement to fight corruption to promote flexibility and economic efficiency is needed. See Padideh Ala’I, The Legacy of Geographical Morality: A Historical Assessment of the Current Crusade Against Corruption, 33 Vanderbilt Journal of Transnational Law 877. Is interesting to note the connection between the language used by Professor Ala’I using the term crusade and the actual foreign policy of the United States based on a monotheistic assumption of democratic imperialism and the actions of the United States Government in Iraq that amounts to a crusade in its profound character of anti-muslin discourse.

\(^2\) Professor Keith Henderson argues in favor of this approach that includes the perception that the issues involving the business community are “inextricably linked” to the problems of global corruption. See Keith Henderson, Corruption: What can be Done About It?, Demokratizatsiya 6, No 4, Fall 1998.

\(^3\) The original pronouncements of the international community, the United Nations, in the seventies were directed to address corruption in the private sector and transnational corporations but the paradigm changed in the nineties when the emphasis was directed to the public sector and less to the private sector. See UN General Assembly, Measures Against Corruption Practices of transnational and other corporations, their intermediaries and others involved, Resolution 3514 of December 15, 1975. Compare that pronouncement with the Resolution 54/128 December 17, 1999.

remedy the problem of corruption in the South\textsuperscript{5}. To be able to resolve these problems a holistic approach requires the development of anti-corruption programs that address the problem in the North as in the South including structural changes in the international market and the development of new non-colonial relations between the North and the South\textsuperscript{6}. The first step is to abandon the discourse of development with its categories of developed and developing countries that are based on biased assumptions\textsuperscript{7}.

The first part of the paper will present a discussion of the principal elements of analysis in the context of corruption and anti-corruption strategies. The paper will present the ideological flaws of the development discourse and will explore the problems presented by the approaches based on political assumptions and racist discourses.

The second part will present a case study based on the actions of Mobil Corporation in Kazakhstan between 1995 and 1998. After a brief presentation of the facts of the case based on the indictments presented to a New York Banker and a Mobil Former Executive the paper will discuss the legal problems presented by the case, including an analysis of the alternatives available for the prosecution. The analysis will reveal the problems of the

\textsuperscript{5} Accordingly with the perspective of a holistic approach the problem of corruption should be addressed from multiple fronts and the development of alternatives should include considerations of local needs and not only the needs of the business community and the needs of the elites on the country. See De Soto, H, \textit{The Mystery of Capital}, at 178, New York: Basic Books, arguing for the strategy called “listening to the barking dogs”.

\textsuperscript{6} Talking about the problems of underdevelopment in Africa historian Paul Bairoch says that “there is no doubt that a large number of structural features of the process of economic underdevelopment have historical roots going back to the European colonization”. \textit{Economics and World History: Myths and Paradoxes}, at 88, Chicago: University of Chicago Press.

\textsuperscript{7} Development is defined as “advance, advancement, evolution, expansion, growth, increase, maturity…” Collins: Concise Dictionary and Thesaurus. All of those concepts are relative to another stage that existed before. One can be mature only in reference to immaturity, evolution can only be achieved from a stage of involution, and advancement is achieved from an inferior stage. Every description of reality on developed and developing countries is based on a binomial relation between who is and who is not developed, the relation that those terms impose is one of subjugation and assumes that there are natural stages of development that have to be achieved by every country. In this same context the idea of catch-up is based on the assumption of the inferiority of the South compared with the mature condition of the North. At the end the distinction does not recognize that the conditions of the North usually are based on the condition of the South and that the wealth the North enjoys today has been taken from the South.
Foreign Corrupt Practices Act and the limitations of the prosecution when dealing with cases that are tinted by national security biases\(^8\).

The third part of the paper will explore the anti-corruption discourse of the international community. The analysis will emphasize the colonial discourse underlying this legal structure and will reveal alternative constructions of the principles of anti-corruption policies more in harmony with the real needs of the international community.

The thesis of the paper is that the discourses of anti-corruption regulation are based on ideological and racists' assumptions that affect the legitimacy of the purposes of combating corruption and that the development of democratic inclusive approaches including the use of philosophy, ethics, and religion are necessary to have an effective anti-corruption strategy and system\(^9\).

\(^8\) The Deputy Secretary of Energy of the United States said in a hearing at the Senate that “Over the past century we have witnessed the power of energy to drive economic development and sustain progress.” The declaration announces the official policy of the North to achieve economic stability using securing their energy supply. It has been recognized by the international community that energy security is fundamental for the economic stability of the North. The discourse establishes the reasons for military interventions, when necessary to provide for that security.

\(^9\) Racism is presented in the form of general assumptions on the character and culture of certain groups and the generalization of certain practices as if constitutive of the cultural legacy of those countries.
I. Corruption, Oil, and Colonialism:

The new gospel of anti-corruption is running around the entire world. The armies of technocrats from the north are arriving to the south with new formulas, pharmakos, for the solution of all the problems of development. The first task of those is to convince everyone of the benevolence of their solutions. This approach is accompanied with the construction of a new discursive archetype of what is the “good society.” When the new

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10 The spectrum of communism is remembered here, as announced by Marx in the Communist Manifesto. The idea is that some principle or ideology is assuming the structure of official discourse in the sense of discourse as constitutive of reality and as construction of what is and what is not real. See Parker, supra, note 4.

11 Derrida talking about the concept Pharmakos in the discourses of Plato discovers that the idea includes the defeat of the oppositions because it includes alternative looks to the same phenomenon. “Pharmakos is enchanted poison, philtre; hence charm, spell, but also drug, whether healing or noxious.” The idea explained as medicine, anti-corruption as a medicine is presented by some authors including Professor Keith Henderson, “I advocate a holistic prescription of preventive and remedial anticorruption medicine…” Ibid. Supra, note 2. This approach is explained by Foucault as the medical look. It includes the power to decide who is sick and who is not and to decide the treatment to provide for the sickness. The doctor, the one that control the medical look, is in a position of power to which the sick has to be subjugated. The relationship of power is exemplified in the discourse of sick and health. The one that is sick, in this discourse the South has to assume the position of powerless and assume that the doctor, the technocrat in this case, has the power and the instruments to heal him. The same argument and discursive structures are present when the United States began its imperial endeavor in the Caribbean invading Puerto Rico and Cuba. The endeavor was accompanied by a medical discourse called tropical medicine. The tropical medicine discourse was “crucial to produce racial differences between colonizer and colonized. Tropical medicine constructed a singular, metonymic relationship among race, place and decease, albeit newly triangulated by microorganism: people were sick because they lived in the tropics…” Briggs, L. Reproducing Empire, at 35, California: University of California Press. In the same sense the people from the South are corrupt because they live in the South. The North has the medicine and the remedy is to accept that medicine if there is some hope for salvation.

12 “Poverty, Poor health, low life expectancy, and an unequal distribution of income and wealth are endemic through the world.” Rose-Ackerman, S. Corruption and Government, at 1, Cambridge: Cambridge University Press. This is an example of the apocalyptic discourse used to force the anticorruption ideology into the South. The assumption is that those countries are “…unable to use their human and material resources effectively.” Ibid at 1. The assumptions, under the Medical Look are an example of what has to be done. The South, those incapable of doing anything with their resources has to be educated and healed by the doctors of the North. For the concept of Medical Look See: Foucault, M. The Birth of the Clinic, Mexico: Siglo XXI, 1995.

13 The concept is based on the ideology of social natural selection. The stronger societies are more fitted to perform as needed in the global world and the others, those that are not the North, have to catch up with the North. See Polzer, T. Corruption: Deconstructing The World Bank Discourse, Development Studies Institute, Working Papers Series, No. 01-18, 2001.
colonizers of the North arrive the colonized of the South are illuminated by the good news of anti-corruption liberation and their natures of corrupt humanoids are revealed14. This description of the approach developed by the international community to work with the issues of corruption in the so called “developing” world is full of skepticism and distrust15. The idea is not to manifest a fundamental distrust of the general goals of the projects of anti-corruption but to express a general distrust of the foundations and assumptions of those projects. The basic problem is that the development of anti-corruption initiatives is based on a couple of assumptions that are not acceptable from a holistic perspective. If society is going to be explained as a whole then the development of these kinds of projects should be based on holistic approaches and not on general assumptions that reflect more of the biases of the technocrat and less of the needs of the South16.

A. Colonial Foundations:

The first issue that is important to highlight is the relationship between the so-called “developed” world and the so-called “developing” world17. The basic relation between both contexts is concreted on the phenomena of colonialism18. If colonialism is not

14 See Rose-Ackerman, supra, note 12.
15 To make it clear I do not share the idea of a good society that can teach any other what is good or bad. I do not believe that any country in the North has any moral position to educate any other country on ethical standards and policies, and never I will accept the assumption that the corporations are the victims of corrupt regimes and that those corporations need any advise on how to avoid those bad, corrupt regimes.
16 The approach developed by De Soto in developing the law from the laws actually accepted by the people of a country instead of imposing foreign systems on those peoples is the best way to avoid this problem. See De Soto, The Mystery of Capital, supra.
17 Both categories are based on stereotypes that do not help in the advancement of a real international policy because it assumes that some area or country is inferior to other area.
18 Colonialism is defined as “policy or practice of expanding control over weaker peoples or areas (also imperialism)”. Collins. The dictionary definition of the phenomenon is useful to see the problem of these kind of relations. If the definition of a country depends on the explanation of its relation to the development
recognized to be the foundation of the relations between the North and the South, then it will be impossible to understand why the reactions of certain sectors when the North comes with recipes, pharmakos\textsuperscript{19}, to resolve the complex problems that those societies have accordingly with the parameters of the North\textsuperscript{20}.

Recognition of the reality of historical relations in the actual situations is required to develop effective strategies to resolve social problems in the South\textsuperscript{21}. The idea is to reveal the links between colonialism and poverty, colonialism and structural problems, colonialism and administrative corruption, colonialism and development\textsuperscript{22}. Obviously the idea of development has to be explained from the perspective of the South to be adequate and effective\textsuperscript{23}. If the idea of development is imposed from the North arguing that their societies are best fitted to function in the actual world then the South will be forced to assume a role of inferiority in the development of economic programs\textsuperscript{24}. If the foundation for the work in the South is based on the assumption that their cultures are corrupt and of any other then it is colonialism because the country will be controlled, virtually or in reality by the other, usually perceived as a stronger country.

\textsuperscript{19} See commentary on Henderson, medicine and pharmakos, supra, note 11.
\textsuperscript{20} See De Soto, The Mystery of Capital, supra. P. 178 and 179. Discussing the technique of discovering the law. The argument favors the discovery of the very local customs as a way to develop property systems that can respond to the needs of those communities.
\textsuperscript{21} In former colonies where the colonizer’s focus was on extraction weak institutions of private property were established and these institutions are the link between African colonization and the actual structures of corruption and instability. See Acemoglu, et al, The Colonial Origins of Comparative Development, American Economic Review 91: 1369-1402. (2001)
\textsuperscript{23} See De Soto, supra.
\textsuperscript{24} See the comments on what is to be developed and the ideological issues involved in the use of the terms, supra note 7.
the people are incompetent it will be impossible to ask for an effective assistance from the population of the country\textsuperscript{25}.

Consider the case of Iraq, the United States invaded the country in violation of international law\textsuperscript{26}, arrested the male youth of the country, detained hundred of people, tortured them\textsuperscript{27}, violated basic human rights with the acquiescence of the international community, and did all of this with the supposed purpose of “liberating” the people of Iraq from a cruel dictator\textsuperscript{28}, and when the people of Iraq refuses to help them they say that it is not understandable. It is laughable to hear senators of the United States questioning, why the people of Iraq are attacking the soldiers-liberators of the United States. It is unconceivable the idea of another outcome in this situation. The people of any country will react in this same manner if an outsider comes to their country and call them incapable, corrupt, and undeveloped\textsuperscript{29}.

B. Development Discourses:

The idea of development is one of the obstacles in this project\textsuperscript{30}. What is development and what are the real alternatives of development are basic questions that have to be

\textsuperscript{25} It is no possible to assist in economic recovery if the plans are made in the North and imposed on the populations without “hearing the dogs bark”. See De Soto, The Mystery of Capital, supra.

\textsuperscript{26} There is no doubt that the actions of the United States in this context are illegal. See UN Charter Chapter VII where it is established that war is only permitted under the Charter if authorized by the Security Council or when the State has to defend it self from a direct aggression that is characterized as “ an armed attack” that occurs against the member of the UN. The actions of the United States, lying to the International Community on the issue of arms or mass destruction and launching a war of aggression are a violation of international law and of Humanitarian International Law.

\textsuperscript{27} Ibid.

\textsuperscript{28} It is now that Sadam is a cruel dictator because in the eighties, when the mass graves were made by Sadam, he was a good ally of the United States and the same people that launched a war against him now where visiting him and making deals whit his government.

\textsuperscript{29} See Rose-Ackerman, supra.

\textsuperscript{30} As discussed before the concept of development will be constructed from the perspective of the one that has the power to develop concepts and discourses. The poor countries usually do not have any word on the construction of the concepts that define their situations and this reality impedes the development of programs that could be coherent.
addressed by the international community. On the other side it is important to note that the basic principles of the anti-corruption strategy are based on political assumptions that are not universal. It is not universal the conception of the State as a mere provider of services, as the World Bank pretends to impose in the South. Is it not universal the idea of a solution for corruption based on free market strategies as is proposed by the international community. The basic question in this context is if the North used free market strategies to achieve the level of development that they enjoy today. A brief revision of the history of the United States or any other country of the North reveals that the strategies used by those countries are far from free market based.

C. Corruption and Power:

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31 Some arguments are directed at the elaboration of conceptions of development centered on the economic issues but other alternatives are the use of development in the context of sustainable development and construct definitions that respond to the principles of that approach based on the acceptance of diversity, self-determination, and environmental protection. The problem with this approach is that it does not respond to the needs of the business community as is the wish of the international community.

32 The new discourse against rent seeking and corruption have been used on the Bank to promote the distrust against the state that is reflected in the policies calling for deregulation and privatization as panaceas for the resolution of the social problems of the South. See. Ranis, G, 1997, “The World Bank Near the Turn of The Century”, in Culpeper, et al, eds. Global Development Fifty Years After Bretton Woods, London: Macmillan Press.

33 The argument is made for the elimination of programs, if there is corruption eliminate the program, fire the civil service and privatize. It is a realistic approach for our economies? See Rose-Ackerman, supra. At 41. “Program elimination removes the corrupt incentives that accompanied it…” I do not want to imagine that the ultimate proposal of the priests of anticorruption is the development of states without government where no permit or regulatory agency exists. I know it would be paradise for the business sector, not having to deal with EPA or any other agency, but it will be the same for the citizens?

34 The original strategies for economic development were not free market strategies but highly regulated markets to promote economic development. It is only hypocrite to require other countries to accept free trade when they have all to loose and nothing to gain. Well it is true that the priests of apocalypses and free market will say that everybody wins with free trade, obviously not showing evidence of real impact on the population. The principal argument will be that there is evidence of GDP increase, but in reality everybody knows GDP increase do not imply anything for the population of a poor country. See Howard Zinn, The Peoples History of the United States, Chapter 15, from the Spanish version of the Book, La Otra Historia de los Estados Unidos, New York: Siete Cuentos.

35 The same is true today for Intellectual Property. The North that controls intellectual property because controls technology is not able to promote real free trade on IP. IP is treated as a sacred thing that can not be used without a license, they do not care if some of the thinks considered to be IP for them is common property in any other culture. See. Drahos, P. Information Feudalism, 2002 New York: New Press.
The last issue that is important to note is that corruption is an issue of power. Asymmetries on power are the cause of corruption. The question that has to be asked is who has power in the relation and who benefits from the transaction. In the case of a market economy where every country, including the North, is struggling to attract foreign direct investment the corporations are the ones with negotiation power. A small country with vast natural resources but without the technical instruments to develop those resources is not in a position of equality with a big multinational corporation with power, not only to develop those resources, but to control prices, transportation, and the market.

**D. Oil Industry and Corruption:**

The nature and structure of the international oil industry provides for the asymmetry of power between the corporations and the producing countries. The same phenomenon was the cause for the constitution of the Organization of Petroleum Exporting.

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37 Malem explains that the existence of asymmetries between the players in international trade makes more possible the existence of corruption. Corruption is a manner to achieve balance but also to provide for a competitive advantage. In theory it is not possible to differentiate between an act of corruption to receive a contract or concession and the theories of comparative advantage where everything being equal to break the balance, the Nash balance in the context of game theory, a firm is forced to offer something extra. But the argument can work to the other direction. Everything being equal without an offer of a bribe the state can get the better offer but the bribe offered by the corporation breaks the balance, the Nash balance and creates a zero-sum game where if one wins the other lose.
38 See comments on game theory supra note 37.
41 “In 1938 the world’s oil was largely controlled by seven international companies. Known as the seven sisters., these vertically integrated companies dominated not only transportation, refining, and marketing of petroleum, but also a considerable extent of world’s oil reserves.” Smith, E. 1989, A Fifty-Year Perspective on World Petroleum Arrangements, 24 Texas International Law Journal 13.
Countries. These countries were subjugated by the corporations, the great seven, and forced to deal with them in a situation of competition between them for a market that is not the traditional market. The situation of the producing countries was powerless in front of those corporations that controlled not only production, but transportation, refining, and marketing of the products. In reality those countries had no alternatives but to deal with the corporations from that situation until they realized that the integrated nature of the industry could be useful for them and founded OPEC to deal with the corporations in a situation of equality.

E. The New Great Game: Imperialism in the Caspian Sea.

Today the new great game is played in the region of the Caspian Sea. The region has been described as the new oil Dorado. This description tries to explain the rich reservoirs of oil and natural gas that are on their ground. But the new great game

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42 OPEC’s principal aims are “the co-ordination and unification of petroleum policies of Member Countries and the determination of the best means for safeguarding their interests, individually and collectively.” OPEC’s statement on a brochure called General Information, 2002. Available at www.opec.org.

43 Oil does not react to offer and demand in the same manner as any other commodity reacts. Usually an increase in demand will increase the price and reduce offer and any increase in offer will reduce the price and reduce demand. If the price of oil increases, contrary to the typical case of offer and demand, the demand will be constant and at time will increase because the public is a captive consumer in the area of oil and derivatives. See. Leeb, S. The Oil Factor, at 9, 2004, New York: Warner Business Books.


45 Id., supra note 42.

46 “Now more than a hundred years later, great empires once again position themselves to control the heart of the Eurasian landmass….”, Kleveman, L. The New Great Game, 2003, at 3, New York: Athletic Monthly.


48 The Energy Information Administration informs that the proven reserves on the ground of Kazakhstan are between 10 to 17 Billion Barrels and the estimated reserves are between 90 to 92 bbl. EIA “Caspian Sea Region”, June 2000.
includes the movement of the new colonizers\textsuperscript{49}. Now the colonizers enter the region, as before, motivated by the presence of cheap markets and rich natural resources and based on the ideology of energy security that is the argument used to conquest these regions\textsuperscript{50}. Obviously the colonization of the region is not achieved as it was before in the 20’s\textsuperscript{51}. Today the goal is not to install new colonial regimes governed by Europeans proconsuls\textsuperscript{52}. Now the idea is to provide for new governance\textsuperscript{53}. The governance ideology imposes on those regions projects of privatization, decentralization, and state shrinking that plays the role of colonialism\textsuperscript{54}. The new colonialism uses the discourses of development and transparency to open new markets for the corporations based on the North\textsuperscript{55}.

\textsuperscript{49} “Among the hundred companies that have flocked to the region in search of the new oil Dorado, are many of the world’s leading energy corporations including Amoco, Chevron, Exxon, Mobil, British Petroleum, Shell, Elf, and Lukoil.” Klare, M. Id. At 82.

\textsuperscript{50} “Conflict over valuable resources—and the power and wealth they confer—has become an increasingly prominent feature of the global landscape.” M. Klare at Introduction, Id. Supra.

\textsuperscript{51} Kleveman, L. Id, supra. At 3. In those days the conflict to control the region was between Russia and England.

\textsuperscript{52} The goal is today to achieve the control over the resources receiving a concession from the country that owns the resources. See Klare, at 3.

\textsuperscript{53} Governance is defined as “the sum of the many ways individuals and institutions, public and private, manage their common affairs.” Kahler, M, et al. Governance in a Global Economy, at 3, 2003 New Jersey: Princeton University Press. Under globalization the term acquired a new definition including the movement for a new market economy.


\textsuperscript{55} It is my contention that corruption was an instrument to open markets before the constitution of the World Trade Organization and in the middle of the battle against socialism. When the WTO is constituted the corporation does not need any more corruption to open markets because the organization has as its main goal forcing the countries to open their markets for investment from abroad. This change in the structure of international trade motivated the development of anticorruption discourses because the corporation did not need any more corruption to force the penetration of a market.
F. North and South Corruption:

Frequently is overlooked that the corporations that enter in corrupt transactions with the governments of the South are based on the North. In some instances those corporations are backed by their home countries and their strategies are coordinated with the foreign policies of the North. These facts contribute to the development of a greater skepticism in the population of the South. It is not common that the corruption is performed by low level officials of those countries but by the elites, usually the partners of the North in those countries. The corruption in the South is not performed in general, by the population of the country, and they are no beneficed by it, but by foreign corporations in alliance with high governmental officials that play the role of proconsuls for the interests of those corporations. In reality corporations from the North do not seek protection from the corrupt regime but from revolutionary and popular movements that could jeopardize their economic interests in the regions. This same goal is served by the anti-corruption programs of the international community.

56 The reports of Transparency International do not include reports on the activities of specific corporations and actually the information that they use to prepare the reports on the countries is obtained from the industry and corporate managers. See Transparency International Bribe Payers Index, Notes and Tables, available at the TI website. “A total of 835 interviews were carried out…with senior executives of domestic and foreign companies…” Explaining the methodology to prepare the index.

57 See Multinational Oil Corporations and Foreign Policy, Report to the Committee on Foreign Relations, US Senate, by the Sub-Committee on Multinational Corporations, Washington DC, January 27, 1975.


59 “…some companies have played a willing role in facilitating off-the-books-payments, misappropriation of the state assets, and other nefarious activities…” Global Witness, Time for Transparency, Report on the Oil and Gas Sector, March 2004. The report presents the cases of certain countries and explains the relationship between the elites of the countries and the oil corporations. In these cases the corporations are not presented as victims of corrupt governments but as allies and co-conspirators with those governments in the corrupt practices.

60 See Okona, id. For an explanation of the relationship between Shell and the political opposition in Nigeria and the role of Shell on the repression of the dissidence. It is not new to see a corporations assuming reactionary positions the most recent case is Venezuela and the coup de stat promoted by the “free” media that is not other think but a representative of the political opposition controlled by the corporations. The same happened in Chile when Pinochet was the leader of a coup against a democratically
An example of this are the projects of judicial reform. The projects, well intentioned, are based on a fallacy. The idea, as explained by a World Bank Official, is to provide protection for the interests of the banks that could not recoup the loans given to the population of the country. This is interesting because the banks should be held liable for lending money to people that could not pay. It is easy to assume that the people from Indonesia are so stupid as to think that they can take money from the bank and do not have to pay it back. Another perspective is possible; banks counting on the help from the international community to recoup irresponsibly approved loans that they knew the people were incapable of paying. This problem presents the issue of moral hazard, why does the international community has to help those banks when there are a lot of another issues more important for economic development as the protection of the environment and human rights? Where are the projects to promote human rights protection in lieu of providing protection for the banks? Who is protected by those judicial reform programs?

elected leader with the help of the United States, Anaconda, a cooper extractive corporation, ITT, and other corporations. In Haiti it happened too when the actual leaders of the country forced President Aristide to left Haiti with the help of foreign countries, including international “Non-governmental organizations”, USAID, and others.

61 The programs will secure the investment of the corporations and the goal is not to protect the population of the country but to prepare the environment for foreign investment.

62 This information was recollected from a presentation by a World Bank Official in April, 2004.

63 A fallacy is defined in Collins as a flaw in logic and as a incorrect, misleading opinion or argument. The nature of the fallacy is the appearance of truth but when the argument is deconstructed the real nature of the fallacy is revealed. The argument in this case can be used to promote a series of incorrect consequences only because initial information was offered to act on it. This is common in the case of international organization because the majority act on information received from local organizations that have their own internal goals. Political biases are common when the organization works in the context of development where the players are people from the North trying to tell the South how they are supposed to act or to be.

64 Banks that were in risk of going broke because of bad decisions on the administration of the money. It is a fiduciary duty of a bank to act as a prudent a reasonable man when lending money.

65 The bank official said that the people of the country received the money and didn’t paid because the acted as if the loan was not supposed to be repaid.

66 “If banks officials know that the authorities will always bail them out because of a bank failure will inflict intolerable damage on the economy, then bankers will take risks they never would contemplate if bail-outs were unknown.” Eatwell, J. Global Finance Risk, 17, 2000. New York: The New Press.

67 Obviously this will be truth only if the approach to development is from the perspective of sustainable development and not only from corporate-economic development.
The relation between those local banks and the international banks should be reviewed. The judicial reform programs are not designed to provide for the citizens of Indonesia or any other country but to provide for the stability of the international financial system and corporate interests\(^{68}\).

G. Anti-Corruption Biases:

The basic problem with any of these anti-corruption programs is the ideological biases that are present in every aspect of them\(^{69}\). Some authors recommend privatization as a solution for corruption\(^{70}\). The problem is that in private corporations corruption is major and more costly than in the public sector affecting more people directly. For example in the case of Kazakhstan that will be discussed later in this paper, the revenues illegally obtained by the president are close to 3 million dollars\(^ {71}\). It is not a ridicule sum of money but compared to the money lost in the case of Enron, which amounted to billions, the money deviated in Kazakhstan is nothing. In the case of Enron thousand of working people were affected by the actions of a couple of corrupt managers, as in the case of Kazakhstan, but in Enron those people were affected directly in their deposits and savings for their retirement\(^{72}\). Which scandal is worst for the international community? Where

\(^{68}\) See Eatwell, J. Id. At 46. “Moral hazard tends to increase dangerous risk-taking in the private sector.”

\(^{69}\) “Ideology- the set of perceptions, assumptions, ideas, beliefs, explanations, and values dominant at a given time and place or within a particular social groups or movements.” Rivera-Ramos, Efren. The Legal Construction of Identity, at 35, Washington DC: American Psychological Association. This is the main issue that I want to comment on this paper the presence of ideological assumptions on the anticorruption discourse and the development of programs based on those assumptions.

\(^{70}\) See Henderson, Keith, supra, note 2.

\(^{71}\) It will be disclosed later in the paper how I arrived to this sum. The important issue to this part of the paper is to see the amount compared to that amount involved in the cases of Enron, WorldCom, and others.

\(^{72}\) “Recent accountings write offs totaling 148 billions erased all the profits purportedly reported by NASDAQ companies in 1995-2000”. Lerach, W. The Chikens have come Home to Roost, Internet published material on the Milberg Weiss Bershad Hynes & Lerach LLP website.
should be put the emphasis of the anti-corruption strategies? It is my contention that the response is very easy and worth to be mentioned.  

II. Mobil in Kazakhstan: The Colonial Oil.

The Caspian Sea petroleum reservoir has been called the new oil Dorado. The general impression is that the area is full of petroleum and that the development of the resources should be cheap, fast, and easy. Multinational corporations from the North moved to the area in the nineties to gain some control over the resources. The government of Kazakhstan did not lose time to make a profit from the opportunity and the President of the nation commenced to use his position, and the position of the oil minister, to receive some private gain from the transactions.

Oil and corruption have been linked for a long time. The history of corrupt acts and petroleum development is linked principally to the game of war. Military intervention have been used to gain control on petroleum regions for decades, indeed in World War II the control of petroleum resources played an important part in the development of the

74 See Klare, supra. Resource Wars.  
75 Energy Information Administration, see supra.  
76 See supra note 47.  
77 “The scheme was based around Kazakh President Nazarbayev and oil minister Baitubayev demanding that international oil companies such as Chevron and Mobil pay a series of unusual fees to middleman James Giffen on behalf of the republic of Kazakhstan.” Global Witness, Report, supra, Time for Transparency.  
78 Only as an example the case of Rockefeller in the United States and the Standard Oil Company prosecuted as a monopoly and forced to be divided in various small corporations. The company was in the business of forcing rivals out of business and controlling in a vertically integrated market, the price and transportation of oil. See. Daniel Yerguin, The Prize, supra.  
strategies of the allies and Germany. In the Middle East the control of oil reserves have been done using political instruments, war, intervention, and ultimately transnational corporations. Control of the petroleum regions in the East is the great game played by the imperial powers: United Kingdom, France, United States, and Germany since the early 30’s. Today the new great game is played by those powers and the race to control the new Dorado is on track.

A. Oil and Corruption Symbiosis:

Oil and corruption have a symbiotic relationship. Corrupt regimes need capital intensive; white elephants projects to hide the mismanagement of the national resources, oil corporations need stable regimes to secure their investments. The use of stabilization clauses in petroleum agreements is a common instrument to provide for the assurance of the investment of those corporations. Because corporations need that stability usually are allied to the elites of the countries in order to secure the continuance of unpopular regimes.

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81 See Report, Multinational Corporations, Senate, note 57.
82 “…the oil companies themselves were moving quickly to work out, in the word used by an executive of Anglo-Iranian, their own salvation in the Middle East and for the post-war world.” Danien Yerguin, The Prize, supra at 408.
83 “The new great game focuses on the Caspian energy reserves, principally oil and gas. On its shores, and at the bottom of the Caspian Sea, lie world’s biggest untapped fossil fuel resources.” Kleveman, supra.
84 “Exploration and exploitation of petroleum resources places the international oil company in a uniquely complex business arrangement with a foreign country. This arrangement links the government, who owns the resources, with the companies, who have the technology, capital, and equipment.” Coale, M. Stabilization Clauses in International Petroleum Transactions, 30 Denver Journal of International Law and Policy 217, 2002.
85 “Rulers seek and sign oil contracts that produce income for them-selves- even if these policies lower the overall social welfare of a country. They support overly large public sectors with excessive regulations that enhance the opportunity to make personal fortunes- at the expense of economic efficiency. They favor capital intensive mega-projects in infrastructure and defense, in which payoffs are more easily hidden…” Terry Lynn Karl, The Oil Trap, Transparency International Quarterly Newsletter, September 2003. p. 1.
86 “Stabilization clauses address one specific type of risk that a contract can affect: political risk.” Coale, M. Supra note 84.
regimes that are able to sell them the national resources against the popular will. Securing continuance imply the use of corporate resources to fix elections, finance political campaigns, and/or to bribe public officials. These procedures secure the investment of the corporation securing the continuity of the politicians, the party, or the allied elites in power. The regime on the other side needs the presence of the corporation because the development of the resources could be costly and technically complex. Regimes need the technical abilities of the corporations; the corporations need the political will and power of the regimes. In this way a relationship of mutual dependence is developed and time makes it stronger.

B. Mobil in Kazakhstan: The Colonial Corruption.

Between 1995 and the year 2000 Mobil and the Government of Kazakhstan were involved in a scheme of bribes, money laundering, and illicit payments that caused the indictment of James H Giffen a small banker of New York. Mr. Giffen worked as a consultant of the Kazak Government in the development of the Tengiz project. The project involved the concession of a large oil reservoir that was shared by a conglomerate of corporations including Chevron/Texaco, Mobil/Exxon, and BP. The corporations

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87 “…companies want protection from changes on labor laws that could result in increased employment costs…” Id. This is a classical case of protection against the popular will. Labor laws are not modified in those countries, usually thanks to the intervention of the corporations looking for protection to keep the costs of doing business lower; this has the effect of creating a labor market at low artificial costs.


89 See indictment filed against Mr. Giffen on March 28, 2003 at the New York Southern District Court.

90 “In December 1994, Mercator and the Oil and Gas Ministry executed a comprehensive advisory agreement pursuant to which Mercator was to advise the Ministry on strategic planning, the development of foreign investment, and the negotiation of priority investment projects relating to the exploration, development, production, and processing of oil and gas.” Indictment, P.4.

91 “Tengizchevroil was established in 1993 to develop the onshore Tengiz field…with 50% of Tengizchevroil Chevron-Texaco is the operator. Kazakhstan State Oil and Gas Company have 20%, Exxon-Mobil has 25% and BP has 5%.” Kistaouva, Z, Tengizchevroil Oil Output Seen Flat in 03, Report. Dow Jones News Wires.
entered in a series of negotiations to receive a concession in the area with the Oil Minister of the Kazakh Government and sometimes with the President. These negotiations included an agreement between Mobil and the Kazak Government where the corporation agreed to pay the fees of Mr. Giffen that was working as the consultant and broker for the Government.\textsuperscript{92}

The transactions included payments to Mr. Giffen in a bank account in New York in the name of Mercator. After receiving the payments in his bank account Mr. Giffen wired the money to other accounts in Switzerland in the name of Nichem Energy Ltd. Nichem is a corporation that entered in a fee sharing agreement with Mercator but that did not played any role in the transaction.\textsuperscript{93} From that account the money was transferred to another account in the name of Orel Capital. Orel is a British Virgin Islands Corporation owned by Semrek Foundation. Semrek is organized under the laws of Lichtenstein. The beneficiaries of the foundation are a senior Kazakh Official and his heirs.\textsuperscript{94} Nichem also wired money to another account in the name of Hovelon Trading Inc. Hovelon is a British Virgin Islands Corporation whose beneficiary is Mr. Giffen.

In relation with the actions of Mr. Giffen another person was indicted. This time it was not under the Foreign Corrupt Practices Act, as is in the case of Mr. Giffen, but under

\textsuperscript{92} Mobil signed a side agreement where “agreed to pay Mercator, on behalf of the Republic, Mercator’s fees for consulting services to the government.” Indictment page 5.

\textsuperscript{93} Here is important to note the character of the transaction because the creation of the corporation, Nichem had the intention of concealing the proceeds of the money received by Giffen. This elements is important at the time of prosecuting anyone under the anti-money laundering legislation.

\textsuperscript{94} In these actions the elements of Money Laundering are present. “Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States to a place in the United States from or through a place outside the United States- with the intent to promote the carrying on of specific unlawful activity; or- knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part – to conceal or disguise the nature, the location, the ownership, or the control of the proceeds of specified unlawful activity; or- to avoid a transaction reporting requirement under State or Federal law.” 18 USC 1956 (a)(2).
violations to the tax code of the United States. The indicted is Mr. J.Bryan Williams. Mr. Williams was a senior executive of Mobil and was involved in the negotiations of the Tengiz reservoir. In the indictment Mr. Giffen is not mentioned by name but as Co-Conspirator I (CCI) and his corporation Mercator is identified as Merchant Bank.

The indictment reveals a scheme of money transfers between American and Swedish Banks. The indictment mentions that Mercator wired 4 million dollars from its account in New York to the account in Switzerland in the name of Hovelon Trading. Hovelon is identified as a British Virgin Islands Corporation controlled by CCI. Later 2 million were transferred to an account in the name of Alqui Holdings Ltd. Alqui is also a British Virgin Islands Corporation that is owned by Mr. Williams. The indictment mentions that the transaction was made as a kickback to Mr. Williams from Mr. Giffen for his role in the Tengiz negotiations.

The total amount of money transferred by Mobil to Mr. Giffen’s account in New York is 51 million dollars paid between August 1995 and May, 1996. From that money Mr. Giffen transferred 2 millions to Alqui Corporation, for Mr. Williams; Nichem transferred 1.8 million to Orel on November 1995. On that same month Nichem wired 3.2 million to Hovelon, and 5 million on August, September, October, and November 1996 for a total of 20 millions. On December 1995 450,000 dollars were wired from the Nichem account to an account in the name of Dundy Trading. This corporation was controlled by a Kazakh High Official with power to influence the determinations on the Tengiz transaction.

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95 The indictment mentions: 18 USC 371; 18 USC 7201; 26 USC 7206. Tax evasion and filling false tax return are the charges against Mr. Williams.
96 See note 95 for a description of the requirements of Money Laundering Charges to see that the intention of Mr. Williams and Giffen was always to conceal the unlawful nature of the transactions.
97 Under US Federal Law Kickbacks are prohibited only on contracts involving Federal Projects. In this case the action as it is can not be prosecuted by the United States but the fraud committed by the transactions can be prosecuted. See 41 USC Sec. 53.
The summary of the transactions can be represented as this:

Mr. Giffen receives 51 millions from Mobil in 1995.

From those 51 millions Mr. Giffen transfers:

* 23.2 millions to the Hovelon Corporation.
* 450,000 to Dundy Trading Inc.
* 1.8 to Orel Corporation.
* 2 millions to Alqui Corporation.

Accordingly to the indictment:

- Dundy is controlled by KO-I or Kazakh Official One: Probably the President.
- Alqui is controlled by Mr. Williams the former Mobil Executive.
- Orel is controlled by Semrek whose beneficiary is KO-2, probably the Oil Minister.
- Hovelon is controlled by Giffen.

Looking to these facts the reality is that Mr. Giffen received 23.2 millions on the Hovelon account. The Kazakh Officials received 1.8 million and 450,000 respectively, and Williams received 2 millions from Nichem. Mr. Giffen is by far the real beneficiary of the corrupt scheme mounted around the Tengiz transaction counting that he received
51 millions minus 4.25 millions that were wired to accounts controlled by the Kazakh Officials or the Former Mobil Executive. These facts questions the reality of the arguments in favor of a major control on public officials involved on international transaction and the basic assumption of the formula to describe the phenomenon of corruption. The mainstream thinking in the issue of corruption assumes the validity of the formula: \[ C = (M + D) - A \] (Corruption equals monopoly plus discretion minus accountability). This formula can explain, may be, some kind of petite corruption but the case of Mobil and Mr. Giffen refutes the assumption that is derived from ideological biases against public officials and in favor of the private sector.

C. The Case and The Ideology:

The new anti-corruption movement is based on the assumptions of the ideology of governance. Governance is a discourse mounted on the principles of new liberalism. The ideas present under the discourse are explained as an instrument to develop the stability of the democratic system assuming that the presence of the state is damaging for

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98 This case presents one of the ideological assumptions of the anticorruption initiatives that assume the active role of the public sector in the commission of corrupt acts and the innocence of the private sector. In this case is the private the one that gets the major portion of the funds deviated for corrupt purposes.

99 “The temptation to engage in corrupt behavior may arise whenever a public official has control over something valued by the private sector and the discretion to determine how it will be allocated.” Elliot, K. Corruption as an International Policy Problem, at Elliot, K. Corruption and the Global Economy, at 181. Washington DC: Institute for International Economics, 1997. There are others interpretations and it is interesting that the approach to international corruption from the perspective of Spanish speaking authors is focused more on the corporate responsibility than in the public sector responsibility. I think that a balance is needed but that the Anglo position dominates the discussion because the arguments of the Spanish speaking authors is not heard in Washington, that custom of not learning anything else than English that they have. This problem reduces the focus of the problem and presents an approach that is biased and limited by cultural and social assumptions. See. Malem, J. Globalizacion, Comercio Internacional, y Corrupcion, Spain: Guedisa, 2000.

100 See Elliot, supra note 99. And Rose-Ackerman, S. Corruption and Government, supra.

101 In reality governance is nothing, under the name anything goes if it is referred to the issues of how to organize the common goods, economy, or politics. The real issue is that today certain sectors appropriated the name of governance to adopt a pro-free market ideology that tries to explain the reality from the perspective of the ideal market place. The issues of corruption, under this approach, reduce the problem to a market problem and the arguments are that corruption is bad because it is a distortion of the marketplace.
the economic system. In this context the shrinking of the state and deregulation are seen as the principal instrument to achieve productivity and flexibility\textsuperscript{102}. The ultimate meaning of the state, in this context, is limited to the role of a facilitator of the economic activity and any other role, national identity, moral authority, and community sense formation are denied. The articulation of this approach is present in the development of an anti-corruption discourse based on economic efficiency and scientific analysis\textsuperscript{103}. The official discourse is constructed in order to satisfy the need of a new technology, the homos-economicus of the neo-liberal world.

The homos-economicus is characterized by the ethos of efficiency. Economic development in this context consists of the possibility of a strategy to promote free trade and privatization. The ideology argues that the possibility of development depends on pro-free market structures that can be used as a foundation for the construction of an efficient economy. The priests of the ideology preach the benefits of free trade, deregulation, and private property as holy solutions for a world in trouble\textsuperscript{104}. The principles underlying the discourse are presented as magic transformations. The need for a quasi-religious conversion is preached on this context as the possibility of a change in cultural norms to adopt principles of good governance and ethical behavior based on the

\textsuperscript{102} Because corruption is explained as the result of weak institutions and economic policies that “distort the market place”, Henderson, K. Halfway Home and a Long Way to Go: Russian and Kazakh Roads to Sectoral and Political Corruption. Background Paper for World Bank 2000 Annual Conference. At 483.

\textsuperscript{103} See Rose-Ackerman, S. supra. “Cross-country empirical work has confirmed the negative impact of corruption on growth and productivity.” At 3. It is questionable that any empirical work can prove the effects of corruption on society and productivity. The only thing that is possible in this context is the elaboration of certain self-serving premises that can be demonstrated by certain methods elected specifically to demonstrate what the investigator wants to demonstrate. It has been explained before that the only alternative for a scientific approach is trying to demonstrate that a theory is false because there is no way to show the truth of any theory. In this context social scientists have to demonstrate that the theory is false, or try to demonstrate that the theory is false in order to prove that it is not absolutely false, but it can not be truth anyway. See Karl Popper proposals on falsifiability of scientific theories. The Logic of Scientific Discovery, (translation of Logik der Forschung). Hutchinson, London, 1959.

\textsuperscript{104} “Depending on circumstances, however, corruption may either increase or decrease impediments to trade and investment.” Elliot, supra, at 199.
principles of deregulation. The principal argument of the discourse is that the presence of public officials cause corrupt acts and that the principal task is to reduce the presence of those officials if ethical structures are desired. The problem with the argument is that it did not counted with Mr. Giffen, a private party, the most loved by all anti-corruption priests, a banker, that plays the game of corruption, in a conspiracy with public officials where he gets the majority of the economic benefits. In this case public officials, the demonized characters of the new discourse, are not the main beneficiaries of the scheme. In this case the private party is the one that gets beneficiated by the scheme and at the end the one prosecuted by the government.

D. The Prosecution:

It is interesting to see the limitations of the FCPA in this case. In the first place the prosecution can not indict Mr. Williams, former Mobil executive, for violations of the FCPA because he did not paid any money to foreign officials. The consequence is an indictment based on tax laws and fraud but not in the enforcement of the FCPA. One alternative could be to prosecute Mr. Williams as a co-conspirator in the transference of money from Mr. Giffen’s accounts to the accounts of KO-I and KO-2. The only issue is to prove that Mr. Williams knew of the agreements between Mr. Giffen and those officials. Proving this can not be so complex if there is some record of the meetings between Mr. Williams, the KO’s and Mr. Giffen in the course of the negotiations. If there is a record and a mention of those agreements to transfer the money from Giffen’s

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105 Some authors argue that there are cultural and historical elements on the corrupt reality of the countries, it can be acceptable if the assumption is that the historical roots are on the colonial past of those nations but if the argument is rooted in the assumption of the existence of certain cultures that are corrupt because they are corrupt the argument amounts to a racist assumption.
accounts to the KO’s then the basis for conspiracy can be established to prosecute Mr. Williams under the FCPA. This approach can imply a problem for the prosecution because if there is some charge of conspiracy against Mr. Williams under the FCPA then the same charges can be presented against Mobil Corporation. Being the Corporation the only American corporation with a role in the development of the Tengiz reservoir it is difficult that those charges could be presented. Consider for example that an argument for national security\(^{106}\) could be presented to avoid such charges against Mobil that could affect negatively the foreign relations of the United States.

The easiest resource is to present charges against Mr. Williams under a statute that provides for a personal responsibility and not for an institutional responsibility\(^{107}\). If charges under the FCPA are presented against Mr. Williams corporate liability could be present assuming that Mr. Williams was acting on behalf of Mobil Corporation\(^{108}\). Mobil can argue that Mr. Williams was not representing the corporation when he was negotiating a deal that was beneficial for him but not for the corporation because at the end the costs of the investment were increased because of his actions. This argument, although a strong one, is not permissible in this kind of cases because the responsibility of the corporation can be derived from actions of its employees notwithstanding that

\(^{106}\) See the note on Energy security and the role that it plays in the development of defense plans in the United States and other states of the North. Klare, M. Resource Wars. Supra.

\(^{107}\) Tax crimes are crimes that imply a conduct related to the personal actions and not the corporate actions of Mobil. Williams can be prosecuted for the commission of such acts and Mobil will not be liable.

\(^{108}\) “In its simplest terms respondeat superior imposes liability on corporations for acts committed by corporate agents acting: (1) on behalf of the corporation, (2) to benefit the corporation, and (3) within the scope of the agents authority.” Kelly-Starder, J. Understanding With Collar Crimes, at 17. 2002. New Jersey: Lexis Nexis.
those actions could harm the corporation, as a specific act, but in general it benefited the corporation achieving the concession of the 25% of the reservoir.\textsuperscript{109}

E. Money Laundering:

Another perspective is to proceed with charges for money laundering. Money laundering is defined as a financial transaction made to conceal or disguise the nature, location, ownership or control of proceeds from an unlawful activity.\textsuperscript{110} Other form of defining the crime is when the person makes a transaction with the intent to promote the carrying on of specified unlawful activity.\textsuperscript{111} In general the crime can be explained as a financial transactions made to conceal the proceeds of certain money or when the transaction is made to promote certain unlawful activity.

In the case of Mobil any of the actors could be prosecuted for the crime of money laundering. Giffen could be prosecuted because he opened bank accounts in Switzerland with the specific intent of concealing or disguising the proceeds of an unlawful activity.\textsuperscript{112} Williams could be prosecuted because of the mere fact that he opened an account in Switzerland to conceal the money that he received is money laundering. The creation of the accounts in the same bank is a sign of conspiracy between Giffen and Williams.\textsuperscript{113} Mobil could be prosecuted, with more reason because the transaction of money with Mr. Giffen and the amounts of money involved in those transactions were designed to conceal the nature of the transaction. Why Mobil did design the transactions

\textsuperscript{109} “The presence of additional motives, such as an agent’s intent to gain personal gains from the illegal acts, will not relieve the corporation of responsibility.” Id. At 24. Steere Tanks Lines v. The United States, 330 F.2d 719 (5th Cir. 1964).
\textsuperscript{110} 18 USC 1956(a)(1). See note 94 for international money laundering crimes.
\textsuperscript{111} 18 USC 1956(a)(1)(B).
\textsuperscript{112} See note 94.
\textsuperscript{113} See 18 USC 371.
in a couple of payments instead of paying to Giffen the total amount? The only reason is that it was to conceal the unlawful nature of the transactions. Mobil’s actions could be characterized as money laundering because the intention to conceal is reflected on the public announcements that the corporation made on the Tengiz transaction. The corporation never mentioned the side agreement with Giffen notwithstanding that the agreement was a material fact that could affect the shareholders of the corporation. If certain legal actions are taken against Mobil it is obvious that the information hided from the shareholders will affect them and that Mobil acted in violation of the Securities Regulations of the United States. Acting in violation of the securities regulations is a sign of the intention of Mobil of concealing the nature of the transaction and the relation with Mr. Giffen and of the intent of committing a fraud knowingly being a part of a corrupt scheme that involved high officials of the Kazakh Government.

III. The deconstruction of Anti-Corruption Discourse:

The anti-corruption discourse is biased, colonialist, and racist, at least, accordingly to what has been explained in this paper. In this part I will explore the rationalities that are used to argue this against the anti-corruption movement assumptions. There are not absolute assumptions in this process and the development of the argument will depend

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114 On May 17, 1996 Mobil filed with the SEC a 8-K form. In the form the corporations informed to the shareholders of the Tengiz agreement and mentioned that “Mobil Corporation had acquired its 25% interest in the Tengiz oil field in the Republic of Kazakhstan for 1.1 billion dollars”. See Report 8-K file at the SEC on May 17, 1996 available at www.sec.gov. SEC file number 001-07555.

115 The Supreme Court defined materiality under the securities laws and regulations saying that the fact will be material if “there is substantial likelihood a reasonable investor would consider it important” in making a securities decision. TSC Industries v. Northway, Inc. 426 U.S. 438 (1976). Under this approach the filing of Mobil could be considered as fraudulent because they disguise a material fact that can be of interest for a prospective investor at the moment of making an investment decision.
more on the structure of the topic than on the truth of what is argued\textsuperscript{116}. The principal issue is to recognize the relative nature of reality\textsuperscript{117}. The recognition of relativism, not a simplistic relativism arguing in favor of a total absence of ethical standards, this is not the position argued here. Relativism is seen here as an imposition of reality over the painful process of constructing arguments to sustain political positions. It is not referred to the absence of truth, that is not questioned here, but to the missionary attitude of the “developed” world, I really prefer to name it “The North”, in trying to promote a development based on its mental structures and political biases\textsuperscript{118}. What is not understandable is the assumption of the existence of a medicine\textsuperscript{119} to remedy the issue of corruption and the assumption of the inability of the people from the south to achieve a real development, if it is necessary. The basic problem is the recognition of development as a need and the discussion can be very difficult when development means invasion, intervention, occupation, and violation of basic human rights as in the case of Iraq\textsuperscript{120}.

A. Discourse and Reality:

A discourse is a construction of reality\textsuperscript{121}. The development of positions and arguments to sustain a political position is based on the premise of a real world

\textsuperscript{116} This imply certain relativistic approach but it will be explained later that it does not imply an absolute relativism.
\textsuperscript{117} See Greene, B. The Fabric of the Cosmos, at 8 to 10, 2004. New York: Random House, for a discussion of the relativistic reality and the consequences of these theories of physical sciences on the rest on our understanding of reality.
\textsuperscript{118} See De Soto for a discussion on the problems presented by imperialistic approaches to development. His proposal of hearing the dogs bark is the basis for my proposal for a holistic approach to anticorruption projects.
\textsuperscript{119} See the reference to pharmakos on Derrida, supra note 11.
\textsuperscript{120} It is not supposed to be this but the close relation between development programs and the US Foreign Policy imposes a charge of suspicion on those programs.
\textsuperscript{121} “Discourse-meaning a series of speech acts and their related practices-has a certain materiality, the materiality characteristic of events. An event is something that happens. In this sense it is part of reality.” Rivera-Ramos, E. The Legal Construction of Identity, supra at 21. See Foucault, M. La Verdad y sus Formas Juridicas, 162-63. Enrique Lynch trans. 3\textsuperscript{rd} ed. 1988.
interpreted and reconstructed as the person arguing thinks it is\textsuperscript{122}. The mere encounter with reality is an experience of interpretation\textsuperscript{123}. Consider for example in the case for development the attitude of Transparency International. It is supposed to be a non-governmental organization that fights corruption. The principal role of the organization is to portray the reality of corruption using tables, diagrams, and numerical factors\textsuperscript{124}. For me it is insulting seen an organization like this trying to say to the rest of the world who is and who is not corrupt. It is colonialism at the maximum expression in the era of interpretation and images\textsuperscript{125}. Today reality is not what it is, if there is the possibility of something being real, but what it seems to be. The character of a country today do not depends on what the country is but what the rest of the world thinks about that country\textsuperscript{126}. It is a construction, the identity of discourse. The problem on the representation of Transparency International is that their representation of corruption is based on the assumption of the business community. This is the cynical element of the work of this pseudo-independent organization. They represent who is corrupt or who is not depending on the opinions of managers and CEO’s\textsuperscript{127}. Who is more corrupt? Why not to question the integrity of those that are portrayed as the victims of corruption? Who is going to belief that the opinions of the business sector are capable of portraying the reality of

\textsuperscript{122} In this sense the discourse is a construction of reality and an interpretation of the reality of the other.
\textsuperscript{123} “…those interpretations, too, constitute events…” Id. At 21.
\textsuperscript{124} Inserted in the economic centered reality and ideology of the new-liberalism program.
\textsuperscript{125} If colonialism is the domination of weaker peoples, as defined before, then if we are living in the era of images, the construction of the other, the definition of what is a country is its totality and the one that attributes to itself the power to define has the power to construct and destroy, and is a colonial power. This is more important in the context of an international community where some voices are not heard unless they express themselves in the language of those that control the instruments for the formation of the identities.
\textsuperscript{126} This issue is very important for example in the world of investment and the market of stocks where images and information play a central role in the determination of how much money enters a country and for how long. See Allen-Paulos, J. A Mathematician Plays the Stock Market, at 31, New York: Basic Books, 2004, for an interesting discussion of representations and images, convictions and beliefs and the impact of those in the market.
\textsuperscript{127} See note 56.
corruption in any country? Transparency does not have reasons to belief that the opinions of those managers could be biased and the responses be based on certain interests?

B. Deconstructing the Anti-corruption Discourse:

In this context the first task is to deconstruct\(^{128}\) the discourse to see what is behind it, who is saying what, and what are the reasons for their positions. For example who is behind certain analyst that portrays certain country as corrupt in an evaluation of the World Bank? Who wins with those discourses? What sectors are beneficed? Those are questions that should be asked when reading an analysis of corruption in certain country. The same goes to any program designed to address corruption. The basic element to see is who is going to be beneficed by the construction of certain program and who does not\(^{129}\). The argument that is used continuously is that the corruption of the South is so rampant that anything they do is to get private gain unlawfully\(^{130}\). It is more like a funny joke the arguments of professionals in the developing sector than real serious arguments. I have seen professionals of the World Bank talking as if the people of the south were stupid, ignorant, uncivilized, or without any capacity to deal with the problem of corruption. The problem is that the construction of the international community, in the

\(^{128}\) “…deconstruction turns to be a rigorously and carefully constructed philosophical theory which asserts that any text’s meaning is overlaid with a complex constellation of social innuendo, explicit or not.” Keller, D, Deconstruction: Fad or Philosophy?, Humanitas, Vol. XIV, No. 2, 2001.

\(^{129}\) Any program is a political program and there are always certain players that are willing to use the opportunity to win or loose.

\(^{130}\) This kind of assumption may not be expressed in writing but when the discourse is deconstructed the real assumptions are discovered and the explanation for corruption or any administrative problem signs to certain assumption of character and on the nature of the people from the South. For example explaining that the people of Indonesia take loans and think that they do not have to pay it back, or assuming that the judicial reform of certain country does not works properly because the Judges are not willing to let it work because they have economic interests at stake.
anti-corruption discourse, is based on the racist assumption of the inability of the South to do anything. The only people that believe that assumption are the colonizers of the North or any Ally that those colonizers can have in the South, usually an Elite member\textsuperscript{131} that is beneficed by the business of those colonizers.

Some authors have portrayed the discourse on corruption as an otherness discourse\textsuperscript{132}. The arguments in favor of anti-corruption usually present the south as people that are corrupt. Some people present arguments based on the assumption that there are cultures of corruption and that the people on certain countries do not have any other form of doing business but to act in a corrupt manner. This perception is aggravated with the discourses of certain authors from the south that enjoy using these arguments and representations. Here the issue is the representation of the other, the one that is not me, in this case when the argument is used to portray the corrupt character of the South, is the North the one that is not corrupt and the character of corruption is more an extension of the identity of the North than an explanation of the South. In these cases the North projects its identity over the South and the nature of the South is explained, colonized, from the perspective of the North. If the South is different it has to be corrupt, uncivilized, and humanoid\textsuperscript{133}.

The conclusions are based on mere assumptions, usually based on pseudo-scientific studies made by firms from the North, with money from the North, and by people of the

\textsuperscript{131}In Puerto Rico it is called Lacayo, those Indians that worked for the Spaniards in the colonization of the island to gain some personal benefit or because they were afraid.

\textsuperscript{132}“...corruption as a word is an othering tool. It is not descriptive of a specific action but rather is a negative evaluative concept which tells us less about the behavior itself than about the value system of the person or society labeling it.” Polzer, T. Corruption: Deconstructing the World Bank Discourse, Development Studies Institute, Working Paper Series, No. 01-18, 2001. “…to call a regime corrupt is to say something about the speaker’s preferences, not about the regime itself.” Euben, G. 1992, Corruption, In Ball, T et al, eds. Political Innovation and Conceptual Change, Cambridge: Cambridge University Press.

\textsuperscript{133}To be different imply the recognition of alternatives of being, from the perspective of the democratic imperialism, where everyone has to be as democratic as other are, the possibility of difference is reduced or extinct.
North, and usually interviewing people from the North that live in the South hiding in luxurious hotels and complex buildings with the elite of the nation. But the people from the country do not have any participation on those “scientific” studies. Usually the study is made from any other study that is based on other studies that no one knows who made 134.

**Conclusion:**

The mere study of history can be helpful to understand the relationship between colonialism and corruption. If the discourses are based on assumptions, usually those assumptions are no corroborated, and then the identity of the other, the South, savage Indian South, will include a vision of personal responsibility that excludes colonialism and the history between the nations, uncivilized South and the civilized non-corrupt North. If the idea of relativism is not acceptable today it was accepted in ancient colonial times when the idea of geographical moral was accepted as an explanation of what happened in other countries 135. Usually the argument was used to defend some person from the North that committed acts of corruption in the South projecting their actions on

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134 The sources for the construction of the Corruption Perceptions Index are described by Transparency International and mentioned: Freedom House Nations in Transit; The Economist Intelligence Unit; PricewaterhouseCoopers; The Institute for Management Development; The Political and Economic Risk Consultancy; The World Bank; The World Economic Forum; State Capacity Survey in Columbia University; Gallup International; Information International; The Multilateral Development Bank; The Business Environment and Enterprise Performance Survey; and The World Markets Research Center. It is interesting that the TI did not include any grassroots movement, any group on the side of antiglobalization, environmental movements, any labor movement, or any popular movement. The Corruption Perceptions Index is only the result of a bunch of people, certainly with great interests in favor of free markets and with strong interests in favor of the business sector. It is possible to have an independent research from those sources? Consider that the Index plays an important role in the development of investment and the projects of the international organizations concerning those countries mentioned as corrupt.

135 See Padideh Ala’l, supra note 1. “This current discourse has inherited the universalism of the moralistic discourse on corruption and combined it with the revisionist reliance on empirical and economic data.” At 882. “These initiatives and other assertions of universality, however, cannot overcome the deep-rooted distrust that has been created and sustained by the historical link between the topic of corruption and the continued exploitation of the South by the North.” At 932.
the nature of the South. This is a typical case of colonial projection. The representative of civilization was stealing from the Crown or acting in a corrupt manner, when he is questioned for his actions the responsibility is of the people from the South that are not civilized and corrupt. The master will argue that his actions are not corrupt because on these countries those actions are common. Obviously the authority questioning the corrupt official is not going to investigate if the allegations are real and the assumption of the inferiority of those peoples from the South will be established as a fact\textsuperscript{136}.

One of the real problems with the arguments in favor of anti-corruption strategies is that the ideological arguments are disguised as mathematical, scientific arguments. The mere use of scientific arguments to sustain some position is an example of what is colonialism\textsuperscript{137}. In some cases the arguments can be more effective on morals or ethics but the international community insists on presenting the issues as economic and not political to avoid the confrontation that it will imply. The other problem is that the arguments are focused on public corruption and private corruption is ignored. The construction of the discourse on the assumption of public corruption serves clear ideological goals to provide for the development of pro-privatization programs that will ensure the control of certain industries by the private sector that is assumed to be less corrupt. The private sector is so less corrupt that laws are not needed to deal with their problems but self regulation is more effective. The public sector cannot regulate itself but the private sector, because the people from the north are so good and moral, that they do

\textsuperscript{136} See the discussion on the case of Governor Hastings in Ala'I, supra, note 135.

\textsuperscript{137} It is an imposition of certain world view ignoring, usually the history, culture, philosophical views and perspectives, and religion of the people from the country that is supposed the object of the actions of the international community.
not need regulation and can self regulate their actions. Obviously the cases of Enron and Arthur Andersen are examples of what is wrong with those assumptions.

I will end this paper saying that the principal goal is to provide for a discussion of the issues presented here and that the call is for more inclusive and democratic perspectives and procedures to address the problem of corruption from a holistic perspective. I will close with the words of Hernando De Soto assuming them as mine: “I am not a die-hard capitalist. I do not view capitalism as a credo. Much more important to me are freedom, compassion for the poor, respect for the social contract, and equal opportunity.”

138 De Soto, H, The Mystery of Capital, supra, at 228.