

**THE TWENTY-EIGHTH MAJOR FRANK B. CREEKMORE, JR.
LECTURE**

*Pascale Helene Dubois**

I. Introduction

Thank you, Colonel, for the introduction, and thank you very much for inviting me. It's a true honor to be here.

I looked at the course description for this week, and I saw that, so far, you have focused mostly on the latest developments in U.S. government procurement law, which is the purpose of this course. This afternoon we'll actually talk about a very different world; the world of international organizations, international anti-corruption, fraud in development projects, and the debarment system at the World Bank. I often speak at conferences dealing with international anti-corruption, in particular conferences dealing with the enforcement of the U.S. Foreign Corrupt Practices Act (FCPA). And when I start my address, I usually start with: "And now, for something entirely different."

So, speaking to you after you've been hearing for the past three days about all the latest and greatest in the area of U.S. government procurement law, I'll start the same way: "And now, for something entirely different!" But as you will see, there are actually some interesting things that we have in common, and the bank's suspension and debarment system was actually based on the U.S. system. More about that later.

First, I will start my remarks by telling you about the World Bank. Second, I will give you a quick history of international anti-corruption, and how this has influenced what international organizations, such as the World Bank, are doing to fight fraud and corruption, and you will again see many links to the U.S. system. Third, I will discuss the World Bank's suspension and debarment process and draw some comparisons with the U.S. system. And I will finish with some latest developments from where I'm sitting.

So let me start first by telling you a little bit more about the World Bank.

II. History of the World Bank and Key Statistics

The World Bank is an international organization that was established in 1944, just before the end of the Second World War, at the Bretton Woods conference.¹ It is the oldest and, to this day, largest Multilateral Development Bank.² The initial purpose of the World Bank was to contribute to the reconstruction of Europe after the end of the war. The first loan of \$250 million was made to France in 1947, to meet the cost of purchasing and importing into France certain equipment and materials required as part of a general plan of reconstruction and modernization.³ Once the reconstruction of Europe was complete, the bank targeted economic development for poor countries, especially in the late sixties and seventies, when the Bank was under the leadership of former U.S. Secretary of Defense Robert McNamara.⁴ In those years, the primary focus was to fund large infrastructure projects, such as dams, electrical grids, irrigation systems, and roads.⁵ As time went on, these “brick and mortar” type of projects were supplemented with projects focusing on what you might call human development: health, education, and financial inclusion, to name a few.⁶

Fast-forward to today: Since that very first loan in 1947, the Bank has financed more than 12,000 projects all over the developing world.⁷ Last year, the World Bank committed nearly \$61 billion dollars in loans

* Chief Suspension & Debarment Officer, The World Bank; Adjunct Professor of Law, Georgetown University Law Center; and Co-Chair of the International Bar Association’s Anti-Corruption Committee. The author would like to thank her colleagues at The World Bank Office of Suspension and Debarment for their assistance in preparing and editing this lecture: Paul Ezzeddin, Jamieson Smith, Collin Swan, Jessica Berrada, Eleanor Ross, Berk Guler, and Haiyue Xue.

¹ *History*, THE WORLD BANK, <http://www.worldbank.org/en/about/archives/history> (last visited Jan. 29, 2017).

² *Id.*

³ *Governance and Goals of the World Bank*, THE WORLD BANK, <http://siteresources.worldbank.org/ESSDNETWORK/Resources/481106-1129303936381/1777397-1129303967165/chapter1.html> (last visited Jan. 29, 2017).

⁴ William Clark, *Reconsiderations: Robert McNamara at the World Bank*, FOREIGN AFFAIRS (1981), <https://www.foreignaffairs.com/articles/1981-09-01/reconsiderations-robert-mcnamara-world-bank>.

⁵ THE WORLD BANK, *supra* note 1.

⁶ *Id.*

⁷ *Projects & Operations*, THE WORLD BANK, <http://www.projects.worldbank.org/> (last visited Jan. 29, 2017).

and other forms of financing.⁸ Some recent examples: we made a \$700 million dollar loan to Ghana for a natural gas project that could increase their power generation capacity by 40 percent.⁹ We committed \$205 million dollars to Ecuador for the Metro Line in their capital, Quito, this should reduce carbon emissions and unlock congestion.¹⁰ We approved a \$350 million dollar program for Iraq to help rebuild seven cities and towns liberated from ISIS.¹¹ We also step up in emergency situations, as with the \$150 million dollars that was offered in support of Zika-affected countries, to help with their response to the virus.

Now as you might imagine from all this, the World Bank is not a bank in the traditional sense. The Bank's primary activity is to provide financing to low- and middle-income countries to promote economic development and the reduction of poverty.¹² When you enter the main building of the World Bank, there is a big plaque on the left wall that says "The World Bank—Our Dream is a World Free of Poverty."¹³

We are an international organization—technically, we are a specialized agency of the United Nations, although our operations and identity are completely independent of the UN. So who owns the World Bank? Basically, all of the countries of the world including, of course, the U.S. We have 189 member countries, and it's those member countries that have provided the World Bank with its capital over the years.¹⁴

⁸ *World Bank Group Support Tops \$61 Billion in Fiscal Year 2016*, THE WORLD BANK (July 12, 2016), <http://www.worldbank.org/en/news/press-release/2016/07/12/world-bank-group-support-tops-61-billion-in-fiscal-year-2016>.

⁹ *The World Bank, World Bank Approves Largest Ever Guarantees for Ghana's Energy Transformation*, THE WORLD BANK (July 30, 2015), <http://www.worldbank.org/en/news/press-release/2015/07/30/world-bank-approves-largest-ever-guarantees-for-ghanas-energy-transformation>.

¹⁰ *Projects & Operations: Quito Metro Line One*, THE WORLD BANK, <http://projects.worldbank.org/P144489/ecuador-quito-metro-line-one?lang=en&tab=overview> (last visited Jan. 29, 2017).

¹¹ Yerevan Saeed, *World Bank Loan to Help Iraq Rebuild in Areas Retaken from ISIS*, RUDAW (Dec. 7, 2015), <http://www.rudaw.net/english/middleeast/iraq/120720153>.

¹² *What is IDA?* THE WORLD BANK, <http://ida.worldbank.org/about/what-ida> (last visited Jan. 29, 2017); *Middle Income Countries Overview*, THE WORLD BANK, <http://www.worldbank.org/en/country/mic/overview> (last visited Jan. 29, 2017).

¹³ *Overview*, THE WORLD BANK, <http://www.worldbank.org/en/topic/poverty/overview> (last visited Apr. 26, 2017) (The World Bank Group's mission is [also] carved in stone at our Washington headquarters . . .).

¹⁴ *What We Do*, THE WORLD BANK, <http://www.worldbank.org/en/about/what-we-do> (last visited Jan. 29, 2017).

Our Headquarters is located in Washington, D.C.—we’re actually a block away from the White House.¹⁵ We also have offices in 120 countries around the world, in all of the developing countries such as Argentina, Afghanistan, Sudan, and Indonesia.¹⁶ The World Bank is governed by a Board of Directors composed of representatives from the ministries of finance from all of our member countries. We employ more than 10,000 staff in Washington and around the world.¹⁷

III. The Broader World Bank Group

Now, I’ve been talking about the World Bank. But the World Bank is actually the “World Bank Group,” consisting of five separate institutions.¹⁸ You first have the International Bank for Reconstruction and Development, or IBRD—that is the initial World Bank entity that was established at the Bretton Woods conference back in 1944.¹⁹ The IBRD lends money to middle-income countries, such as Argentina, South Africa and Thailand.²⁰ The International Development Association (IDA), was set up later on, to be able to give “concessional loans” at extremely good rates to the poorest countries, for example, Afghanistan, Liberia, and Cambodia.²¹

Then, in addition to IBRD and IDA, which are making loans to countries, there are three other World Bank Group entities that deal directly with the private sector.²² The first is the International Finance Corporation, or IFC.²³ You could see IFC as an investment bank that

¹⁵ *Id.*

¹⁶ *What We Do*, THE WORLD BANK, <http://www.worldbank.org/en/about/what-we-do> (last visited Jan. 29, 2017).

¹⁷ *Id.*

¹⁸ *About the World Bank*, THE WORLD BANK, <http://www.worldbank.org/en/about> (last visited Apr. 26, 2017) (listing the five organizations).

¹⁹ *The Roles and Resources of IBRD and IDA*, THE WORLD BANK, <http://www.worldbank.org/en/about/annual-report/roles-resources> (last visited Jan. 29, 2017).

²⁰ *World Bank Group Finances*, WORLD BANK GROUP, <https://finances.worldbank.org/countries> (last visited Apr. 26, 2017) (Country Summaries).

²¹ *The Roles and Resources of IBRD and IDA*, *supra* note 19; *Borrowing Countries*, THE WORLD BANK, <https://ida.worldbank.org/about/borrowing-countries> (last visited Jan. 29, 2017).

²² *See About IFC: Overview*, INT’L FIN. CORP., http://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new (last visited Jan. 29, 2017).

²³ *Id.*

wants to do development.²⁴ As an example of what IFC does, they recently invested in the first power plant in Afghanistan that was fully financed and developed by the private sector.²⁵

Then there is also MIGA, which stands for Multilateral Investment Guarantee Agency.²⁶ MIGA provides political risk insurance to private sector investors.²⁷

And then finally, we have the International Centre for Settlement of Investment Disputes, or ICSID.²⁸ ICSID is the arbitration arm of the World Bank Group, dealing with investment disputes between the private sector and our member countries.²⁹

So in sum, the World Bank Group has two sovereign lending arms, meaning where we lend directly to governments, that's IBRD and IDA. And then there are the three private sector arms, which try to make sure that the private sector invests in poor countries. I'll be speaking about IBRD and IDA, since that's the part that I work for. That's also what's traditionally been referred to as the "World Bank" as opposed to the World Bank Group.³⁰

IV. The Twin Goals

Now, the World Bank's official goals, what we call the Twin Goals, are (1) Ending Extreme Poverty and (2) Promoting Shared Prosperity.³¹ Promoting Shared Prosperity is a different way of saying that we want

²⁴ *Id.*

²⁵ *Press Release, International Finance Corporation, IFC Supports Development of Afghanistan's First Privately Financed Power Plant*, INT'L FIN. CORP. (Sept. 22, 2016), <http://ifcextapps.ifc.org/IFCExt/Pressroom/IFCPressRoom.nsf/0/BCED32B224292885258036002DB8AE>.

²⁶ *See Who We Are*, MULTILATERAL INVEST. GUAR. AGENCY, <https://www.miga.org/who-we-are> (last visited Jan. 29, 2017).

²⁷ *Id.*

²⁸ *See About ICSID*, INT'L CENT. FOR SETT. OF INVEST. DISP., <https://icsid.worldbank.org/en/Pages/about/default.aspx> (last visited Jan. 29, 2017).

²⁹ *Id.*

³⁰ *See World Bank Units*, THE WORLD BANK, <http://www.worldbank.org/en/about/unit> (last visited May 30, 2017) (describing the international organization).

³¹ THE WORLD BANK, ANNUAL REPORT 2016, 3 (June 30, 2016), <https://openknowledge.worldbank.org/bitstream/handle/10986/24985/9781464808524.pdf>; *Shared Prosperity: A New Goal for a Changing World*, THE WORLD BANK, (May 8, 2013), <http://www.worldbank.org/en/news/feature/2013/05/08/shared-prosperity-goal-for-changing-world>.

everybody in these countries to benefit as their economies improve. In order to fulfil those Twin Goals, we make loans to help our member countries grow their economies and lift their people out of poverty. But unlike a traditional bank, which will only care whether its loan gets paid back, we also care very much about whether the project for which the loan was made gets implemented.³² If we lend money to Kenya to build roads, for example, we want to make sure that the roads actually get built.

Let's use this Kenya example to set the stage. Kenya comes to the World Bank and says, "I need a new roads system." We then develop the project together, and we end up signing a loan agreement—let [us] say for \$300 million dollars—so that Kenya has money to build the new roads.

V. Procurement at the World Bank

So when Kenya gets that \$300 million, what does it do? As you might suspect, it starts doing a lot of public procurement. And even though those contracts will be between Kenya and the contractors, the World Bank requires that these procurements follow the World Bank procurement rules, not the Kenyan ones.³³ Legally speaking, one of the conditions of that loan agreement between Kenya and the World Bank will be that Kenya has to conduct all of the necessary public procurement in accordance with the World Bank's procurement rules.³⁴ So the role that the World Bank plays in those procurements is going to be quite different than the role that you and your colleagues play here in the United States.

In U.S. government procurement, the U.S. government contracts directly with corporations and individuals to obtain the goods and services it needs.³⁵ Now, in the Kenya example that we've been using, it is Kenya that is responsible for procuring the goods and services needed to

³² See *World Bank Sanctioning Guidelines*, THE WORLD BANK, <http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WorldBankSanctioningGuidelines.pdf> (last visited May 30, 2017) ("The purpose of the WBG's sanctions regime has been and remains to assist the WBG in upholding its fiduciary duty under the Articles of Agreement to ensure that the funds entrusted to it are used for the purposes intended.").

³³ *Project Procurement*, THE WORLD BANK, <http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework> (last visited May 29, 2017) (containing policies for projects after July 1, 2016).

³⁴ *Id.*

³⁵ *Government Procurement: Bids and Contracts*, FIND RFP, <https://findrfp.com/Government-Contracting/Contract-Method.aspx> (last visited Apr. 26, 2017).

implement the roads project.³⁶ The World Bank is providing the financing, but we are not the end-user of the goods or services being procured. We do not have a direct relationship with the contractors. In sum, the contract is between Kenya and a contractor, financed by the World Bank, and is using the World Bank's procurement rules, not the Kenyan rules.³⁷

Why, at least until recently, has the Bank always insisted on the use of its own procurement rules? Well, remember that the World Bank gets its money from its member countries.³⁸ And so it has a fiduciary duty³⁹ to ensure that its loans are used for their "intended purposes."⁴⁰ As an aside, "intended purposes" is language that comes from our Articles of Agreement, the international treaty that set up the World Bank.⁴¹ And this brings us to the issue of fraud and corruption. Obviously, if money that was supposed to go into the construction of roads ends up going missing, or lining the pockets of government officials, that is a big problem. When that happens, the loan proceeds were obviously not used for their "intended purposes."

VI. History of FCPA, OECD, and UNCAC

Now it may seem obvious that the World Bank would be concerned about fraud and corruption in its operations. It wasn't always so, and it took years for the World Bank to get involved in the fight against corruption.⁴² It all started with the United States getting involved in

³⁶ Pascale Hélène Dubois, Paul Ezzeddin & Collin Swan, *Suspension and Debarment on the International Stage: Experiences in the World Bank's Sanctions System*, 25 PUB. PROCUR. L. REV. 61, 62 (2016).

³⁷ *Id.*

³⁸ *See Member Countries*, THE WORLD BANK, <http://www.worldbank.org/en/about/leadership/members> (last visited May 29, 2017).

³⁹ *Procedure: Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects*, THE WORLD BANK 4 (June 28, 2016), [http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/36010451377105390925/Procedure_Bank_Procedure_Sanctions_Proceedings_and_Settlements_in_Bank_Financed_Projects\(6.28.2016\).pdf](http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/36010451377105390925/Procedure_Bank_Procedure_Sanctions_Proceedings_and_Settlements_in_Bank_Financed_Projects(6.28.2016).pdf).

⁴⁰ *Id.*

⁴¹ *International Monetary Fund & International Bank for Reconstruction and Development, Articles of Agreement*, THE WORLD BANK (July 1–22, 1944), http://siteresources.worldbank.org/EXTARCHIVES/Resources/IBRD_Articles_of_Agreement.pdf (last visited Feb. 3, 2017).

⁴² *Helping Countries Combat Corruption: The Role of the World Bank*, THE WORLD BANK (Sept. 1997), <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf>.

international anti-corruption. You may have heard about the wonderful book *A Little History of the World* by E. H. Gombrich⁴³—well, here is a little history of international anti-corruption.

Why did the United States become interested in fighting corruption overseas? Believe it or not, it started with the Watergate scandal.⁴⁴ Beyond the part of Watergate that we all know well, the Watergate hearings also happened to expose corporate slush funds that were used to pay bribes to foreign government officials.⁴⁵ It turns out that a number of prominent firms were involved in bribery scandals overseas. One company was Lockheed Aircraft Corporation.⁴⁶ They were implicated in the bribery of multiple foreign governments. This included a \$10-million-dollar payment to West Germany's Minister of Defense and over \$100 million dollars in commissions to a Saudi arms dealer.⁴⁷ They also paid some smaller bribes to officials in Japan, the Netherlands, and Italy.⁴⁸

Now, at the time, there was no bar to paying bribes to foreign government officials, either in the securities laws or elsewhere. Sure, there were laws against domestic bribery, but—perhaps understandably—no one had enacted laws that prevented U.S. businesses from paying bribes overseas. The fact that bribing foreign officials was not illegal prompted the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs to state: “Well, then, it would seem to me that maybe we ought to consider, as the legislative body for our Government, making [bribery of foreign officials] a violation of the law.”⁴⁹ And that's just what Congress did.

In 1977, the United States enacted the Foreign Corrupt Practices Act, or FCPA, as the first national law intended to fight transnational bribery, meaning, and the bribery of foreign government officials.⁵⁰ It was, and

⁴³ E.M. GOMBRICH, *A LITTLE HISTORY OF THE WORLD* (Caroline Mustill ed., 2005).

⁴⁴ See Public Broadcasting Service, *Spotlight: History of the FCPA*, WETA (Feb. 13, 2009), <http://www.pbs.org/frontlineworld/stories/bribe/2009/02/history-of-the-fcpa.html>

⁴⁵ *Id.*

⁴⁶ Robert Smith, *Corporate Bribery Files: The Latest in Diplomatic Secrets*, N.Y. TIMES (Mar. 21, 1976), http://www.nytimes.com/1976/03/21/archives/corporate-bribery-files-the-latest-in-diplomatic-secrets.html?_r=0 (containing archived documents).

⁴⁷ *Birth Of The FCPA: This Bribery Is Positively Bananas*, WHISTLEBLOWER JUST. NET., <https://whistleblowerjustice.net/birth-of-the-fcpa/> (last visited Jan. 29, 2017).

⁴⁸ *Id.*

⁴⁹ Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO ST. L.J. 929, 954 (2012).

⁵⁰ See *Spotlight: History of the FCPA*, *supra* note 44.

remains the case that many, if not most, countries prohibit the payment of bribes by their own nationals to their own government officials; but the FCPA is different, in that it prohibits the payment of bribes by American firms to foreign government officials.⁵¹

Jumping ahead now to 1989: the United States has the FCPA on its books, and wants to make sure there is a level playing field, so that U.S. firms don't have an unfair disadvantage against their foreign competitors⁵²—after all, if you cannot bribe, but your competitors can, it's not going to feel like a fair fight. So, the United States, led by the Commerce Department, briefly thinks of going to the UN to do something, but then decides to approach the Organization for Economic Cooperation and Development (OECD) in Paris—where all the major industrialized countries are members.⁵³

And, in 1989, the OECD agrees to form a working group, and a few years later—by the way, a few years⁵⁴ is very quick for any international agreement—a Convention is signed, obliging all OECD countries and a few others to criminalize the payment of bribes to foreign officials.⁵⁵

At the time, the countries that signed the Convention accounted for more than “70 percent of world exports and [more than] 90 percent of foreign direct investment”—these were the United States' major trading partners.⁵⁶

Fast-forward again to another key milestone: In 2005, a much larger group—this time, almost every country in the world—signs the United Nations Convention Against Corruption (UNCAC), which requires its signatories to prohibit the payment of bribes to foreign officials.⁵⁷ So, in

⁵¹ *Id.*

⁵² See MARK PIETH, ET AL., *THE OECD CONVENTION ON BRIBERY: A COMMENTARY* 4 (2007).

⁵³ *Id.*

⁵⁴ Since the Organisation for Economic Co-Operation and Development's (OECD) conventions are binding on all its members, their adoption must be unanimous and therefore usually take a very long time. See *OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS* 1, 3 (Sept. 18, 2001), <http://www.imf.org/external/np/gov/2001/eng/091801.pdf>. Here, the OECD opted for interim steps. The first step was in 1994 and was a non-binding recommendation. The final step was adoption of the convention in 1997. *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 2.

⁵⁷ *U.N. Convention Against Corruption, Signature and Ratification Status as of 12 December 2016*, U.N. OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/>

a way, the United States “exported” its FCPA. What started as a piece of legislation in one country, the FCPA, led to the creation of a first convention: the OECD Convention, which covered the world’s major trading partners, and then led to a second convention, UNCAC, this time covering almost every country in the world.

Now, as you might imagine, enforcement is stronger in some countries than in others, but as of today, it is safe to say that almost every country in the world has some sort of criminal law prohibiting transnational bribes.

And, of course, international organizations like the World Bank do not operate in a vacuum. So, against the historic backdrop that I just described, it should come as no surprise that around the same time that the U.S. is helping the OECD convention to get off the ground, we see the World Bank starting to get involved in the fight against international corruption.

VII. Anti-Corruption Comes to the World Bank

It all started with the then-President of the World Bank, Jim Wolfensohn, who declared in a seminal 1996 speech that the World Bank needed to “deal with the cancer of corruption.”⁵⁸ The corrosive effects of fraud and corruption on economic development, and particularly the poor, were becoming impossible to ignore.

When you think about it, the estimated economic impacts are staggering. Christine Lagarde, Managing Director of the International Monetary Fund (“IMF”), our sister organization, in a recent speech said: “The annual costs of bribery alone—a subset of corruption—is estimated at a massive US \$1.5–2 trillion dollars—roughly 2 percent of global GDP.”⁵⁹ In the words of our World Bank President, Dr. Jim Yong Kim: “Each dollar lost to corruption is a dollar diverted from a pregnant woman

treaties/CAC/signatories.html (last visited Jan. 29, 2017); *The United Nations Convention Against Corruption*, GAN INTEGRITY, <http://www.business-anti-corruption.com/anti-corruption-legislation/united-nations-convention-against-corruption> (last visited Jan. 29, 2017).

⁵⁸ Dubois, Ezzeddin & Swan, *supra* note 36.

⁵⁹ Christine Lagarde, IBA Washington 2016 Opening Ceremony Speech (Sept. 2016), <http://www.ibanet.org/Conferences/washington-oc-christinelagarde.aspx>.

who needs health care; or from a girl or a boy who deserves an education; or from communities that need roads and clean water.”⁶⁰

VIII. Prevention and Enforcement

And so now, two decades after President Wolfensohn’s famous “cancer of corruption” speech, the World Bank works to address corruption from two different angles: enforcement and prevention.⁶¹ Enforcement, because we respond to fraud and corruption detected in our own operations through our suspension and debarment system. And prevention, because we work with our member countries to try to prevent fraud and corruption from happening in the first place.

For example, on the prevention side, we finance anti-corruption and rule of law projects. We also carefully review potential projects before we enter into the loan agreement, and projects are actively supervised during implementation.

The need for supervision becomes very apparent in some cases like one we recently saw in Liberia on an emergency infrastructure project that had a sanitation component. A garbage removal contractor was reported because instead of picking up garbage, as they had been contracted to do, they had been making their first and last scheduled runs and relaxing in the shade the rest of the day but faking the relevant records to overstate the number of garbage pickups made. The folks at the supervising entity who were supposed to be checking all of this were looking the other way in exchange for things like fancy watches. This meant trash was stacking up all over the city, defeating the purpose of this project and making things not only unpleasant but also unhealthy. And a case like this highlights the need for enforcement—and yes, this contractor ended up getting debarred by my office.

We’ll come back to enforcement in a minute, but first a few words on prevention. When trying to prevent corruption, transparency is a corruption fighter’s strongest ally. For example, by simply posting budgets on the doors of schools and in newspapers, the Government of

⁶⁰ *Report on Functions, Data and Lessons Learned 2007 – 2015*, THE WORLD BANK, 1, 2 (2015), <http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/OSDReport.pdf>.

⁶¹ *The World Bank Sanctions System & Anti-Corruption Efforts*, CREATE (May 6, 2016), <https://create.org/news/world-bank-sanctions-system-anti-corruption-efforts/>.

Uganda increased the amount of money going to local schools by 60 percent. We also recognize that it is the citizens of our member countries who will be the ones who ultimately hold governments accountable. And so we are trying to help people by simply giving them access to information about the services they are supposed to receive. If you know what it is that your government is supposed to give to you, you are a lot more likely to ask for it.

We know that technology is critical, too. Let's look at the example of Smart Cards in India. With the World Bank's support, India created a biometric smart card system that helps people establish their identity and ensures that any payments go to them personally and not into the pockets of the wrong people.⁶²

These are just a few prevention examples. But we know that, in addition to the good work being done on prevention, enforcement is still a very necessary part of the picture. When we catch someone engaging in fraud and corruption on World Bank-funded projects, there is obviously a need to act – both to ensure that corrupt firms don't benefit from future World Bank business, and to deter those firms, and all firms, from engaging in misconduct in the future.

This is where our sanctions system comes in. And this is where our language starts to sound a lot like yours in the U.S. – suspension, debarment, aggravating factors, mitigating factors, and negotiated resolutions. As we'll see, there are some features of the World Bank system that are unique to the international context; which makes sense given that we are an international development bank and not a sovereign power. And this leads to some interesting comparisons to the U.S.

IX. History of the World Bank's Debarment System

As a U.S. audience involved in government contracting, you might be interested to know that it was the U.S. system that the Bank looked at most closely when our sanctions system—again, this is what we call our suspension and debarment system—was being designed.⁶³

⁶² *Id.*

⁶³ Pascale Dubois, *Domestic and International Administrative Tools to Combat Fraud & Corruption: A Comparison of U.S. Suspension and Debarment with the World Bank's Sanctions System*, U. CHI. LEGAL F. 195 (2012).

You may remember that I just talked about the “cancer of corruption” speech in 1996. Well, that was the year that the Bank first put into place some rules for debarment.

Now, the system has evolved quite a bit over the years. But, the system that we have today can be traced back to 2002, when the World Bank commissioned Dick Thornburgh, the former U.S. Attorney General and U.N. Undersecretary General, to propose new debarment rules for the Bank.⁶⁴

During this review, a number of approaches were considered. Thornburgh looked at models from several different countries and international organizations. Ultimately, Thornburgh pointed to the practice of debarment in the U.S. federal system as the most useful starting point. He referred specifically to the suspension and debarment provisions within the Federal Acquisition Regulation (“FAR”). From there, the World Bank, of course, adjusted a number of things to fit its particular operating model.⁶⁵

X. World Bank Sanctions Systems Basics

So how does our system work? Let’s take a look at the basics. I’ll start by looking at what can get you into trouble, and who is subject to our jurisdiction. Then we’ll look at how the cases are investigated and adjudicated. And then we’ll look at the different types of sanctions that the World Bank can impose, including debarment.

A. Causes for Debarment from World Bank-Financed Contracts

I have been using the term “corruption” a lot – it’s a nice simple term. But many of the cases we see involve more than just traditional corruption, meaning bribery. We often see forged documents and other types of fraud, either when a company is trying to win a contract, or during its execution. These situations can vary from forged bid securities and performance guarantees to false invoicing and misrepresentations about past experience. We’ve also seen situations where a company

⁶⁴ Dubois, Ezzeddin & Swan, *supra* note 21.

⁶⁵ THE WORLD BANK, WORLD BANK GROUP SANCTIONS REGIME: AN OVERVIEW, <http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/Overview-SecM2010-0543.pdf> (last visited Jan. 20, 2017); Dubois, *supra* note 63.

“borrowed” the experience of a larger firm to qualify for a contract by falsely claiming that they intended to perform the contract with the larger firm as part of a joint venture. In reality, the larger firm never planned to be a part of the project but just pretended to be, for a small payment. And of course we see things like bid-rigging as well.

Now sometimes, there is nothing like a few photographs to show you the types of things we see and why fighting corruption matters to us.

Why Fighting Fraud and Corruption Matters

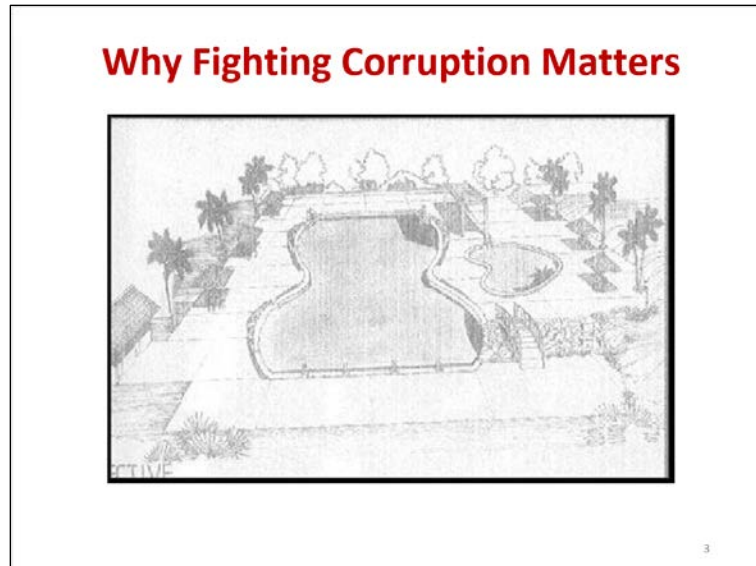
Infrastructure Project (East Asia Pacific)

- Road 30% narrower than specifications
- No road surfacing, contrary to specifications
- The contract was paid in full



How did this happen?

This is a road in an Asian country. The World Bank is investigating accusations that something funny is going on. The guy in the pink shirt is the World Bank INT investigator. He jumped on a plane and took a well-known investigative tool with him: a tape measure. You’ll see that this road is not only 30 percent narrower than specifications, but also does not have any surfacing. In a tropical country, this means that after the first rain, this road will not exist anymore. But, the contract was paid in full.




Here we have an architectural rendering of an eco-spa and hotel in a lovely resort area.




But, here's what the country got. No, this is not a hippo pond – it was supposed to be a swimming pool for humans. This is the swimming pool 30 days from completion and more than half of the funds paid.

Why Fighting Corruption Matters




"New" baby warmer

- User risks electric shock
- Does not fits specifications
- Procurement unit accepted delivery
Contract paid in full



"New" hospital



"New" hospital

5

Here we have some photos of a project to build a new hospital. Even though none of this was usable, the contract was paid in full.

Why Fighting Corruption Matters: Bank-Financed Rural School



6

And, finally, we have here a new school that the Bank financed. Looks like it would be a pretty nice school, doesn't it?

Why Fighting Corruption Matters:
**What was actually in the Bank-Financed
school building**



7

Except, this is what the school was actually used for. It turns out that the local official was an onion farmer and thought that the school would be better used to dry his onion crop.

Why Fighting Corruption Matters:
Actual School 500 Feet Away



8

Meanwhile, this is where the students were actually going to school. The guy with his back to the camera is the INT investigator.

At the World Bank, we have several grounds for debarment. Specifically, the World Bank has five things that we call “Sanctionable Practices”: Corruption, fraud, collusion, coercion, and obstruction.⁶⁶ These have precise legal definitions at the World Bank, and while the meaning of each is probably somewhat intuitive, obstruction may be a bit less so. What is an obstructive practice? Well, anything that a company does to obstruct the World Bank’s investigation, be it destroying evidence, lying to investigators or refusing to comply with contractual audit rights.⁶⁷ Any one of these things is considered a sanctionable practice in its own right.

Let me show you how this played out in a recent case. A contractor was hired for a project in Ukraine. Unfortunately, the company paid large bribes to government officials responsible for project implementation, and there was bid-rigging as well. When the Bank started investigating the corruption and collusion charges, the contractor and its executives impeded the Bank’s contractual inspection and audit rights by continually refusing to grant our investigators access to the documents that they had requested. Ultimately, we determined that the contractor and two of its executives had engaged in corrupt and collusive practices and also had engaged in an obstructive practice, and they all received lengthy debarments.

B. Jurisdiction

Now, can the World Bank just debar anybody, anywhere, any time? No, our rules require that the misconduct be related to our operations. Without getting overly technical, what I generally say is that the World Bank can debar any company or individual that engages in one of the sanctionable practices while competing for, or executing, a World Bank-financed contract. So it could be a U.S. company, a Belgian company, a Senegalese company, a company from anywhere—we can debar them if we catch them engaging in one of those prohibited practices on a World Bank-financed contract. But we can’t debar a company for something that has nothing to do with us—if you commit some sort of crime, but

⁶⁶ WORLD BANK, *supra* note 60.

⁶⁷ *Id.*

there is no link to the World Bank's activities, we will not have any basis to act.

C. Explanation of the Sanctions Process

So we have talked about the grounds for debarment, and who can be debarred. Let's take a look at how our adjudicative process works—in other words, if you have been accused of fraud or corruption for any of the other three sanctionable practices, how will the case be decided?

There are three players to know about. We have an investigative unit, the Integrity Vice Presidency (“INT”)—they are sort of like the World Bank's inspector general for fraud and corruption on our projects. And we have two levels of adjudication⁶⁸: my office, which is somewhat parallel to a U.S. agency's Suspension and Debarment Officer (“SDO”), and then an appeals board, which is called the World Bank Group Sanctions Board and is composed entirely of non-World Bank staff.

Any sanctions case starts with an allegation received by the investigators. INT has the responsibility for selecting which matters are investigated, and their job is to conduct an objective fact-finding. Once INT completes its investigation, it may decide to start sanctions proceedings by submitting a document with all the accusations and evidence (the Statement of Accusations and Evidence (“SAE”)) to my office, the Office of Suspension and Debarment (“OSD”). INT's evidence may include, among other things, information about the project, records of interviews with the respondents and witnesses, and documentary evidence. In many cases INT will have sent out a “show cause” letter to the accused company, giving them a chance to respond to the investigative findings—and, if the company responded, that will be part of the evidence as well.

By the way, what are some of the more interesting things we've seen in the evidence over the years? Let's just say there are differing levels of sophistication. A large cash bribe was once found in the backseat of a public official's car. In another case, a few companies openly kept receipts of bribe payments as part of their records—they'd been hit up for bribes by the same government officials so many times that they wanted to have proof that they had already paid! Those are some of the easy

⁶⁸ CREATE, *supra* note 61; WORLD BANK, *supra* note 60.

ones. Other situations, of course, prove much more complicated to unravel and have involved the use of agents and other third parties as conduits for paying bribes. Or sometimes we have to sift through fake names or false invoices for services not actually rendered.

So all of this evidence gathered by INT is turned over to my office for review. Once we receive the case, my colleagues and I then carefully review every accusation made by INT to decide if there is “sufficient evidence” that the accused company, “the respondent,” as we call them, engaged in the alleged sanctionable practice(s). Notice that reference to the “sufficient evidence” standard. “Sufficient evidence” is defined in the World Bank’s Sanctions Procedures as “evidence sufficient to support a reasonable belief, taking into consideration all relevant factors and circumstances, that it is more likely than not that the respondent has engaged in [the alleged sanctionable practice(s)].”⁶⁹

Still on the evidence, note that the Sanctions Procedures require INT, as a neutral fact-finder, to disclose all relevant evidence that would reasonably tend to exculpate the respondent or mitigate the respondent’s culpability.⁷⁰

Now, if we determine that INT does not have sufficient evidence to support one or more of the alleged sanctionable practices, the case is referred back to INT for the removal of the unsupported accusation(s)—or, at INT’s discretion, they could decide to investigate further.

If we do find sufficient evidence for all of INT’s accusations in the SAE, we issue a Notice to the respondents that incorporates INT’s accusations and the whole evidentiary record. At that time, we also tell the company what the proposed sanction is, which we calculate based on the World Bank’s Sanctioning Guidelines. Also, when that Notice is issued, we temporarily suspend the respondents, which means that they cannot receive any new contracts that are financed by the Bank. That temporary suspension will remain in place until the case is over.⁷¹

⁶⁹ THE WORLD BANK, *supra* note 60.

⁷⁰ *Procedure: Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects* § III.A.3.02, THE WORLD BANK, [http://teresources.worldbank.org/EXTOFFEVASUS/Resources/3601045-377105390925/procedure_Bank_Procedure_Sanctions_Proceedings_and_Settlements_in_Bank_Financed_Projects\(6.28.2016\).pdf](http://teresources.worldbank.org/EXTOFFEVASUS/Resources/3601045-377105390925/procedure_Bank_Procedure_Sanctions_Proceedings_and_Settlements_in_Bank_Financed_Projects(6.28.2016).pdf) (last visited June 13, 2017).

⁷¹ *Id.* at § III.A.4.02.

Once we have issued the Notice, the respondents have 30 days to submit to my office a written “Explanation.” They can try to convince me to revise the recommended sanction, based on additional mitigating factors—for instance, new information about the company’s compliance program. Or, if they can show a clear basis for it, I may withdraw the Notice, terminate the suspension and close the case.

We get one of these Explanations in about one third of all the cases. And we’ve adjusted the recommended sanction a number of times, but withdrawal of the whole case has been rare.

So this is the essence of what happens at my level. Now, respondents are also given 90 days to appeal the case to the World Bank Group Sanctions Board—which is the second and final tier of adjudication in our system. They do this by filing a document called a “Response” with the Sanctions Board. The appeal is *de novo*, meaning that the Sanctions Board is not bound in any way by my office’s findings or recommended sanction. One other thing to point out: At my level everything is “on the papers,” which is very different from the U.S. experience, while at the Sanctions Board there can be a hearing.⁷² The Sanctions Board will review the evidentiary record, look at what the parties have to say, and then issue a decision. If they find that the company more likely than not engaged in the alleged sanctionable practice(s), the Sanctions Board will impose an appropriate sanction, again taking into account the World Bank’s Sanctioning Guidelines. The decision of the Sanctions Board is final and not appealable. It’s also published on the World Bank’s website.

You may be wondering how often we see appeals to the Sanctions Board. The answer: roughly one third of the time. And so what happens when a company does not appeal? When the 90-day period to appeal is over and there’s no appeal, then I impose my recommended sanction, and the case is over. And so that’s how approximately two thirds of the cases get resolved. In those non-appealed cases, my office posts a short document on the Bank’s website that contains basic

⁷² See Procedure: Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, THE WORLD BANK §6.01, §4.02 (Jun. 28, 2016), [http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/3601045-1377105390925/Procedure_Bank_Procedure_Sanctions_Proceedings_and_Settlements_in_Bank_Financed_Projects\(6.28.2016\).pdf](http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/3601045-1377105390925/Procedure_Bank_Procedure_Sanctions_Proceedings_and_Settlements_in_Bank_Financed_Projects(6.28.2016).pdf).

information about the case, including the accusations and the sanction imposed.

D. Types of Sanctions

Now, let's take a closer look at the types of sanctions we impose. First, I should emphasize that—just like in the U.S.—for us at the World Bank, suspension and debarment are administrative remedies, not criminal sanctions. So far, you have heard me talk mainly about debarments. But there are actually five different sanctions with three forms of debarment: debarment with conditional release, fixed-term debarment, and conditional non-debarment.⁷³ And then there are two others: Letters of reprimand and letters of restitution, which are fairly self-explanatory.⁷⁴

The sanction that we use the most often is something that we call debarment with conditional release. Under our Sanctioning Guidelines, this is the “default” sanction.⁷⁵ It means that a company will be ineligible to receive new Bank-financed contracts for a minimum period; the effect is prospective, so ongoing contracts are not affected.⁷⁶ The starting point is three years, but it can be higher or lower depending on mitigating and aggravating factors, which are set out in our Sanctioning Guidelines. At the end of that minimum period, the company is released from debarment only if it has complied with the specified conditions, which usually means that they have put into place a compliance program that is satisfactory to the Bank—the office at the World Bank that decides on this is the Integrity Compliance Office (“ICO”), which is housed in INT. If the company doesn't comply, they remain debarred, even after that minimum period of debarment is over.

Why the conditions for release? Well, the Bank wants to be sure that a debarred company is serious about compliance and remediation before it regains its eligibility to get new World Bank-financed contracts.

So that's debarment with conditional release, and that is the form of debarment that we use the most, especially at my level of the system. I

⁷³ THE WORLD BANK, *supra* note 60 at 13.

⁷⁴ *Id.*

⁷⁵ *World Bank Sanctioning Guidelines*, THE WORLD BANK <http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WorldBankSanctioningGuidelines.pdf> (last visited May 29, 2017); THE WORLD BANK, *supra* note 60 at n. 33.

⁷⁶ CREATE, *supra* note 61.

also want to quickly mention one other form, which is conditional non-debarment. A conditional non-debarment is somewhat similar to an administrative agreement in the U.S. system, in which a respondent agrees to take certain corrective measures to avoid debarment. The company remains eligible for new contracts, but at the end of the period, it has to show that it has complied with certain conditions—and again the primary condition will involve a compliance program. If the company fails to comply with the conditions by the specified date, then they get debarred. If they comply, they don't get debarred.

Now, any final sanctions, whatever they may be, that are imposed by either my office or the Sanctions Board are announced to the public. And like in the United States with the SAM.gov system, our list of debarred firms and individuals is posted in a public place, on the World Bank's public website. So, that means anybody in the world can see who we've debarred.⁷⁷ And if you look at the list, you will probably recognize several of the companies. In terms of numbers, since 1999, we have sanctioned more than 770 firms and individuals.

E. Due Process

So, that's a description of our process. Now you may wonder, why do we have this process? Couldn't the World Bank simply make a unilateral management decision that Contractor X will no longer be able to get contracts financed by the World Bank? Well, part of the answer, of course, is that the Bank isn't just deciding for itself. Our decision impacts our member countries since debarring a company means none of our member countries can use that company anymore on a Bank-financed project; at least for the period that the company is debarred.

Debarment, as we all know, is a serious thing. Our system therefore provides the accused company with due process before the World Bank makes its decision.⁷⁸ Now, when we look around the world, there really are no uniform standards for due process across suspension and debarment systems. The rules can vary, depending on the different purposes and

⁷⁷ *World Bank Listing of Ineligible Firms & Individuals*, THE WORLD BANK <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984> (last visited Jan. 29, 2017); THE WORLD BANK, *supra* note 60.

⁷⁸ THE WORLD BANK, *supra* note 60.

objectives of the system.⁷⁹ For example, the United States views suspension and debarment actions as business decisions that merit a decision-making process that, per the FAR, is “as informal as is practicable, consistent with principles of fundamental fairness.”⁸⁰

For the World Bank, we have a slightly more formal approach,⁸¹ although a number of the elements will be familiar to you and are consistent with basic notions of fairness and due process. First, we provide respondents with notice of our action and an opportunity to be heard, both during the investigation and then after my office issues the Notice to the company. Secondly, our office presents respondents with a copy of all the evidence that has been used in making the suspension or debarment decision. The one exception that we have, by the way, is for confidential witnesses. The testimony of confidential witnesses is kept separate and their identities are not revealed to the respondents. And finally, our two-tier system means that respondents have an opportunity to appeal to an independent tribunal—our Sanctions Board—if they are not satisfied with the result at my level.

F. Settlements or Negotiated Resolution Agreements

Most of our cases are handled in the regular sanctions process. But, we also have a way for contractors to settle or what we call a Negotiated Resolution Agreement. This can happen at any stage of the process, starting from the investigative phase all the way up to the Sanctions Board.⁸²

There are some interesting comparisons between the Bank’s settlements and the use of administrative agreements by U.S. SDOs. As you know, in the U.S., administrative agreements can allow a respondent to avoid suspension or debarment by agreeing to take certain corrective

⁷⁹ *Id.* at 22.

⁸⁰ See FAR 9.406-3(b)(1) (2016) (“Agencies shall establish procedures governing the suspension decision making process that are as informal as is practicable, consistent with principles of fundamental fairness.”).

⁸¹ Compare, THE WORLD BANK, AMENDMENT TO THE IBRD/IDA SANCTIONS PROCEDURES (2011), http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WB_Sanctions_Procedures_Jan_2011.pdf with FAR 9.406-3(b)(1) (2016), (stating that US “[a]gencies shall establish procedures governing the debarment decision making process that are as informal as is practicable, consistent with principles of fundamental fairness.”).

⁸² THE WORLD BANK, *supra* note 60.

measures, like implementing a robust compliance program, giving training to employees, and providing regular reports to the SDO on its progress.⁸³ In many World Bank settlements, the sanction imposed still involves some period of debarment.

To give you another real-life example, in one recent settlement case, we saw a contractor on an electric power project in North Africa who engaged in fraud because it falsely claimed that it had not made any payments to agents in connection with its bid whereas in fact it had. In the settlement, the contractor agreed to a period of debarment.

G. Comparing Systems

So, what would I highlight as some of the key differences between our systems? First of all, aside from the obvious jurisdictional issues, I would look at the grounds for debarment. The Federal Acquisition Regulation, as you all know, lists enumerated grounds for debarment, but it includes a broad catch-all provision. In other words, a respondent could be debarred for any cause determined to affect its “present responsibility.”⁸⁴ At the Bank, there are simply not as many grounds for debarment.⁸⁵ And that’s perhaps not a huge surprise, given that the original purpose of the World Bank’s system was to respond to fraud and corruption. At the Bank, we only have those five sanctionable practices: fraud, corruption, collusion, coercion and obstruction. What really jumps out to you is probably the absence of performance—we cannot debar for poor performance. Another big distinction as far as grounds are concerned: Criminal convictions or civil judgments are not grounds for debarment in and of themselves in our system. A criminal conviction in one of our member countries does not automatically lead to debarment. As we know, for the World Bank to debar, the misconduct has to be related

⁸³ See U.S. DEPARTMENT OF THE INTERIOR, PUBLIC GUIDE TO U.S. DEPARTMENT OF THE INTERIOR SUSPENSION AND DEBARMENT PROGRAM 1, 13-14 (2015), https://www.doi.gov/sites/doi.gov/files/migrated/pam/programs/acquisition/upload/DOI-Debarment-Program-Informational-Guide_4_23_15.pdf (DOI calls these “Compliance and Ethics Agreements”); see also GENERAL SERVICES ADMINISTRATION, ADMINISTRATIVE COMPLIANCE AGREEMENT 1 (2015), <http://procurement-reform.org/wp-content/uploads/2015/11/Tremco-ACA-with-GSA.pdf> (sample administrative agreement with GSA).

⁸⁴ FAR 9.406-2(a)(5) (2017).

⁸⁵ Pascale Dubois, *Domestic and International Administrative Tools to Combat Fraud & Corruption: A Comparison of US Suspension and Debarment with the World Bank's Sanctions System*, U. CHI. LEGAL F. 195 (2012).

to World Bank operations, and our own investigators have to find sufficient evidence to prove the case in our system.

A second difference between the U.S. and World Bank systems is that, in the World Bank system, if there is a finding of misconduct, a sanction will be imposed. It may be lower or higher, depending on the existence of aggravating or mitigating circumstances, but a finding of misconduct will lead to a sanction, and that will usually be a period of debarment. That is not necessarily the case in the U.S. In the U.S. system, the SDO will look at whether the company is presently responsible, and if so, debarment is not necessary.⁸⁶ Some would argue that there is a difference in perspective between the U.S. and World Bank systems. In the U.S., the SDO is making a determination of present responsibility moving forward. This is about whether to do business with a firm or individual in the future, based on its condition today. On the other hand, the Bank's SDO is making a determination of whether there was *past* misconduct. If there was past misconduct, some sort of sanction will be imposed, even if there is substantial mitigation. We do not have the "present responsibility" concept that exists in the FAR.

XI. Cross Debarment

A. Other Multilateral Development Banks

One other feature of the World Bank's system that I should mention is something that we call "cross-debarment."⁸⁷ There are five Multilateral Development Banks—essentially mini-World Banks for each region—that are part of a cross-debarment agreement signed in 2010: the World Bank, the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, those are the Latin American countries, as well as the European Bank for Reconstruction and Development.⁸⁸ When one of these banks, say the World Bank, imposes a debarment of longer than one year, all the other Multilateral Development Banks will impose that debarment as well. So if you get debarred by one Multilateral Development Bank, you get debarred by all

⁸⁶ FAR 9.406-1(a) (2016).

⁸⁷ THE WORLD BANK *supra* note 42; *see also* THE WORLD BANK, MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS AMONG MULTILATERAL DEVELOPMENT BANKS 1 (2010), http://siteresources.worldbank.org/INTDOII/Resources/Bank_paper_cross_debar.pdf [hereinafter MUTUAL ENFORCEMENT].

⁸⁸ MUTUAL ENFORCEMENT, *supra* note 86.

of them.⁸⁹ So imagine being a company that does business in a lot of emerging markets. A World Bank debarment that leads to cross-debarment by all of the other Multilateral Development Banks will take a big chunk out of that company's business. That's why a lot of companies are paying close attention to our debarment system these days.

B. Other Governments

At the national level, though, meaning with individual countries, things are different. We do not have any cross-debarment arrangements with national governments. So if the U.S. debar a company, we will not automatically cross-debar with the U.S., and the U.S. will not automatically cross-debar with us.

There was an article in the Washington Post not too long ago that touched on some of these issues.⁹⁰ The Bank had debarred a firm and its owner for eight years – for multiple instances of misconduct. It seems that after the World Bank sanctioned this firm, the firm went on to win several million dollars' worth of work with the U.S. government. But the article didn't seem to recognize that the U.S. government has a different debarment system than the World Bank. The U.S. government is not bound by our debarments, and U.S. agencies need to determine for themselves whether or not a company is presently responsible.

XII. Closing

So now, we've looked at what the World Bank does, how it came to be that the World Bank adopted debarment as a way to combat corruption, and along the way we also did a little history of international anti-corruption. We then took a look at the World Bank's suspension and debarment system and made a few comparisons to the U.S. system.

⁸⁹ THE WORLD BANK, *supra* note 42, at 1, 5.

⁹⁰ Katia Savchuk, Bethan McKernan, Michael Phillis & Annie Zak, *Contractor Blacklisted by World Bank Still Gets Millions in Work*, WASH. POST (Sept. 23, 2016), https://www.washingtonpost.com/business/contractor-blacklisted-by-world-bank-still-gets-millions-in-work/2016/09/23/8bbc0f14-7ea1-11e6-9070-5c4905bf40dc_story.html?utm_term=.cc2f995e4f45.

I'd like to just wrap up our time together by drawing your attention to some recent and interesting developments in the fields of international anti-corruption and debarment.

A. New Multilateral Development Banks

First, there are two brand-new Multilateral Development Banks. The first is the Asian Infrastructure Investment Bank ("AIIB"), which was established in 2014.⁹¹ The AIIB, which will focus on infrastructure investment in the region, is headquartered in Beijing. The World Bank has started to partner with the AIIB on several projects in the region.⁹²

You may have also heard of the New Development Bank ("NDB")—formerly known as the BRICS Development Bank—which was established in 2014 by the BRICS states: Brazil, Russia, India, China and South Africa. The NDB will also focus on investments in infrastructure, mainly in the BRICS countries.⁹³

As a member of the oldest development bank, it will be very interesting for me to collaborate with these two new institutions and see how their sanctions systems evolve.

B. UK Summit

Another recent development comes out of a big anti-corruption summit that was conducted by the UK government in May of this year—pre-Brexit. The event brought together more than 40 countries (including Brazil and China) and tackled some of the key corruption challenges around the world, including secrecy jurisdictions, illicit financial flows and even corruption in sports, think FIFA scandal.⁹⁴ Now

⁹¹ *Quick Facts & Numbers*, ASIAN INFRASTRUCTURE INVESTMENT BANK, <https://www.aiib.org/en/index.html> (last visited Jan. 29, 2017).

⁹² *About AIIB* ASIAN INFRASTRUCTURE INVESTMENT BANK, <https://www.aiib.org/en/about-aiib/index.html> (last visited Jan. 29, 2017); Saibal Dasgupta, *AIIB Takes Big Strides Amid Fears About China's Dominance*, VOA NEWS, June 27, 2016, <http://www.voanews.com/a/aiib-big-strides-fears-china-dominance/3394153.html>.

⁹³ *Formation of the New Development Bank*, NEW DEVELOPMENT BANK, <http://ndb.int/genesis.php> (last visited Jan. 29, 2017).

⁹⁴ *The Anti-Corruption Summit: Now the Hard Work Begins*, TRANSPARENCY INTERNATIONAL, http://www.transparency.org/news/feature/anti_corruption_summit_now_the_hard_work_begins (last visited Jan. 29, 2017).

what's interesting is that, after the Summit, Transparency International, the well-known anti-corruption NGO, published a list of all of the commitments that these countries made to fight corruption. Interestingly, several countries committed to look at debarment as a way to combat corruption in public procurement. Remember the history of anti-corruption? It was all about criminal laws: the FCPA in the U.S., the OECD and the UNCAC conventions. This seems like a big development: That we are seeing several countries openly looking at administrative remedies—i.e., debarment systems—as an additional tool in the fight against corruption.

C. National Systems / Research

And it may be that debarment is already more prevalent around the world than we think. My office has been doing research on national debarment systems, and they seem to exist in many more countries than one might expect. We've done a preliminary look at 28 countries and have found some sort of exclusion mechanism in all but two of them. So that's 26 out of 28 countries we looked at that have a debarment system.

D. Colloquium

So, to my colleagues and I, debarment is an interesting and growing field. Which brings me to my last item, which is really a plug. My office will be hosting our Fourth Colloquium on Suspension and Debarment in late March⁹⁵ at the World Bank's headquarters in DC. If you're interested in debarment, we would be happy to have you as our guest.

And if you are interested in learning more about the World Bank's debarment system, my office's public report is a useful resource. It's easy to find at worldbank.org/sanctions.

⁹⁵ The colloquium was rescheduled to September 14, 2017.