

# **OPINION: Foreign Corrupt Practices Act Revisited**

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The Foreign Corrupt Practices Act was established in 1977 as a way of curbing corrupt business practices within the United States. As a result of the Securities and Exchange Commission investigations in the 1970s, over 400 US companies admitted to making questionable or illegal payments to foreign government officials.<sup>1</sup> Congress passed the act to stop bribery of foreign officials and to restore public confidence within US business practices.

As an amendment to the act, the International Anti-Bribery Act was adopted in 1998, which makes it illegal for any US individual or corporation to bribe a foreign official. There is no allowance for any payment amount, which makes it illegal to offer even a penny as a bribe. The focus is more on the intent than on the value of the bribe.

Unfortunately, many oil-producing nations have high levels of corruption that makes it impossible to conduct foreign business there unless bribes are utilized. By preventing US businesses from making bribes as a business practice, they are also unable to conduct business in many oil-producing nations, severely jeopardizing US oil supply. Meanwhile, China has stepped in to offer as an alternative option for a strong business partner to such oil-producing states. It is time for the US government to radically revise the Foreign Corrupt Practices Act because its current form jeopardizes US's ability to secure foreign energy supplies.

The Foreign Corrupt Practices Act is ultimately ineffective—it does not actually stop foreign corrupt business practices. While US commerce certainly dominates global investments, Americans are not the only players. Many other businesses outside the US have plenty of capital to “invest” (bribe) and support corruption, and no other country has enacted a law similar to the Foreign Corrupt Practices Act that prevents them from doing so. A particular example is China,

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<sup>1</sup> US Department of Justice. Unlawful Corporate Payments Act of 1977. House Report No. 95-640 (28 September 1977): accessed at <<http://www.usdoj.gov/criminal/fraud/fcpa/history/1977/houreport.html>>

which has been negotiating with rogue governments that the US refuses to deal with on grounds of not following acceptable levels of transparency, human rights, and international diplomacy. Yet China has adopted a policy of non-interference investments and argues that the idea of “corruption” is relative to domestic expectations.<sup>2</sup> China does not extend its influence over another country’s domestic policies through its foreign investments. One such example is reflected in the oil-producing nation Sudan where 90 percent of its export earnings come from oil.<sup>3</sup> US companies are barred from investing in Sudan because US legislators hope that depriving the Khartoum government of oil revenues would end the civil war in Sudan. Yet the Chinese National Petroleum Company has been investing in Sudan’s oil industry since 1996, and the Chinese government has even engaged in Sudanese arms dealings as early as the 1960s.<sup>4</sup> China clearly provides Sudan with an alternately strong business partner when the US gives the cold shoulder.

US security is heavily coupled with foreign energy security, and this will especially hold true throughout the coming decades as oil supply decreases while demand increases. Peak oil theorists argue that world oil supply will sharply decline as early as 2020.<sup>5</sup> By contrast, demand for oil is expected to increase dramatically with China’s and India’s growing energy consumption. It is inevitable that an oil shortage will occur unless steps are taken to curb global

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<sup>2</sup> Taylor, Ian. "China's Foreign Policy towards Africa in the 1990s." *The Journal of Modern African Studies*, Vol. 36, No. 3 (Sept 1998): 443-460.

<sup>3</sup> Aslam, Abid. "Darfur Groups Ask U.S. Funds to Drop Chinese Oil Majors." *Inter Press Service News Agency* (5 Sept 2007): accessed at <<http://ipsnews.net/africa/nota.asp?idnews=39159>>

<sup>4</sup> *Human Rights Watch Report: Sudan, Oil and Human Rights*. Washington, D.C.: Human Rights Watch (2003) accessed at <<http://www.hrw.org/reports/2003/sudan1103/sudanprint.pdf>>

<sup>5</sup> Total: Future Energy. “Interview with Jean-Michel Gires” (2007): accessed at <[http://www.total.com/en/corporate-social-responsibility/Future-Energy-1/Interview-Gires\\_9295.htm](http://www.total.com/en/corporate-social-responsibility/Future-Energy-1/Interview-Gires_9295.htm)>

consumption—which is highly unlikely. It is also strongly evident that most oil-producing nations lack what the US considers an acceptable level of transparency, and often times bribery is a required component of conducting business there. The Foreign Corrupt Practices Act is detrimental to the US because it prevents US business from establishing strong ties with several oil-producing nations. Furthermore, oil-producing nations are forced to deal with alternate business partners like China, which places China at an advantage over the US.

The Foreign Corrupt Practices Act must be revised in order to secure energy supplies. A possible revision is to allow specific forms of foreign bribery by examining the nature of their intentions. Payments can be allowed to foreign officials if it will help foster business that concerns ensuring energy security. There is already an exception to the act that allows for “grease payments.” These payments are distinguished from bribes because they are intended for a public official to expedite performance on duties he is already required to perform but may be delayed in the absence of such payments. This exception can be further extended to completely exempt bribes made with the intention of securing foreign energy sources, which includes the acquisition of oil fields and the rights to extraction.

The Foreign Corrupt Practices Act has created a divide between the US and several oil-producing nations. China has filled this gap by investing in oil-producing nations with which the US has refused to conduct business. If this trend continues, China will have a clear advantage in global energy sources, which will hurt the US when oil becomes a scarce resource. As US security relies on oil acquisition, it is imperative for US security interests that the Foreign Corrupt Practices Act be radically revised.