

Increasing the Focus on Iran's Corruption

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Brief Analysis

Although Iran has formally accepted the U.S. offer to meet on October 1, expectations are low, particularly since Tehran has made clear that the nuclear issue is not negotiable. The United States and its allies have already begun to prepare for the possibility of failed negotiations by developing potential sanctions packages that could be imposed on Tehran. Unfortunately, due to Chinese and Russian opposition, pushing a strong resolution through the UN Security Council appears unlikely. Washington, however, can adopt other multilateral approaches to increase the pressure on Iran, such as ramping up its anticorruption enforcement efforts against companies doing business in Iran, and encouraging other countries to do the same. Given the widespread corruption in Iran, and the powerful anticorruption legislation in place in many countries worldwide, this approach could have a significant impact on the regime.

Anticorruption Legislation

Laws prohibiting U.S. companies from engaging in corrupt activity overseas have been on the books for more than thirty years. In 1977, Congress passed the Foreign Corrupt Practices Act (FCPA), which prohibited U.S. companies from paying bribes to foreign government officials to obtain or retain business. The FCPA also imposed various record-keeping obligations on companies in an effort to make it more difficult to hide these types of payments. Both civil and criminal penalties exist for violating the FCPA, which is jointly administered by the Justice Department and the Securities and Exchange Commission. Although the U.S. government's efforts have focused primarily on illegal activity by U.S. companies abroad, the statute gives the government extraterritorial reach over non-U.S. companies as well. Most importantly, any foreign company listed on the U.S. stock exchange falls under FCPA jurisdiction.

In the 1990s, a number of other countries began putting similar anticorruption legislation in place. The first step came in 1997, when the Organization for Economic Cooperation and Development (OECD) passed its Convention on Combating Bribery of Foreign Public Officials in International Business Agreements, which came into force in 1999. The convention defines bribery quite broadly and requires countries not only to cooperate on these types of investigations, but also to impose real penalties on companies found in violation. As of March 2009, all thirty OECD member states and eight others have signed this convention and passed their own legislation to implement it. Perhaps of greatest significance, the ratifying countries include Germany, Italy, and Austria, some of Iran's major trading partners. In June 2009, the OECD released a policy statement that calls on countries to enforce their national legislation more strictly, explaining that with the global economic crisis, companies will experience greater pressure to engage in illegal activity to raise needed funds. Additionally, the UN's Convention against Corruption, which came into force in 2005, has been signed by 140 member states and ratified by 80.

FCPA in Action

The United States has used FCPA in the past to target corruption by foreign companies in Iran. In October 2006, Norwegian energy giant Statoil reached a settlement with the U.S. government, agreeing to pay \$21 million and appoint an independent compliance director for various violations of the FCPA. Statoil admitted that it had paid millions of dollars to an Iranian official in 2001 and 2002, when the company was trying to break into the lucrative Iranian energy market. Statoil believed that this official could steer the contract for the development of the South Pars field -- one of the largest natural gas fields in the world -- to their company. Statoil, indeed, was subsequently awarded the contract.

The Statoil case was precedent setting: It was the first time the United States asserted FCPA jurisdiction over a non-U.S. company on the basis of its listing on the U.S. stock exchange. A senior Justice Department official explained the government's position later, noting: "If you come to the United States and seek access to our capital markets, we expect you to play by the same rules our own companies do."

Despite the relatively small financial penalty imposed against Statoil, the case had a major impact on the company. Since then, Statoil has spent millions of dollars in building a more robust internal anticorruption compliance system and putting good governance procedures into place. The damage to Statoil's reputation was significant, however, and the company remains under close government scrutiny.

FCPA penalties, in fact, can be far harsher and even more damaging for a company. In December 2008, for example, the German company Siemens was fined \$800 million for violation of the FCPA. As a result of the investigation, Siemens was also forced to replace senior management, and to bring on a U.S. lawyer as its first compliance director, among other changes.

Iranian Corruption

In the effort to develop effective ways to pressure Iran, the United States and its allies should consider employing these anticorruption tools more broadly for several reasons. First, as the Statoil case indicated, corruption in Iran is rampant, and increased scrutiny would undoubtedly uncover numerous violations. Contrary to their image as ideological fanatics, Iran's leaders devote much of their efforts to lining their own pockets -- fighting more often and viciously to protect their incomes rather than their ideas. Akbar Hashemi Rafsanjani, for example, currently the head of the Assembly of Experts (which chooses and has the power to dismiss the supreme leader), has always placed high priority on advancing the economic interests of his family, such as his son, who is now the manager of the Tehran Metro. And the powerful Islamic Revolutionary Guard Corps is both the central pillar of the Islamic Republic and a central pillar of its corruption, lining its pockets through shady deals and brute force.

Second, even the suggestion of increased focus by the United States and a number of other powerful industrialized countries could sufficiently deter many companies from doing business with Iran. The 2008 Transparency International Corruption Perceptions Index ranked Iran 141 out of the 180 countries it rated, indicating already widespread concern about Iran's business environment. The index also suggests that corruption is a growing problem, since Iran had ranked 105 two years earlier. In the end, companies may decide that compliance with anticorruption laws is too difficult and costly to do business in Iran.

Conclusion

The key for Washington in pushing this initiative forward will be persuading European companies to begin aggressively utilizing their existing laws. Although many European countries have strong legislation in place -- in many cases more strict than the FCPA -- they have generally been reluctant to use these powers. A good example is the debacle that ensued in 2007 when the British government halted an investigation into allegations that BAE had bribed senior Saudi government officials. Former prime minister Tony Blair defended the decision, stating that it was in the UK's "national interest" and that the inquiry could have "significantly [and] materially damaged our relationship with Saudi Arabia." Even though increased unilateral U.S. action against foreign companies participating in illegal business activities in Iran could have a significant impact, convincing others to join in a broader anticorruption effort would undoubtedly yield far greater results.

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