WHY UN INSPECTIONS?
ACCOUNTABILITY AND THE RULE OF LAW

Stuart S. Yeh
University of Minnesota
THE WORLD BANK / IMF VIEW

• The source of poor economic growth is misguided dirigisme--the practice of directing economic activity through central planning

• Corruption is a byproduct of dirigisme: state controls, monopoly power and discretionary authority create opportunities for corruption

• Solution: structural adjustment, privatization and transparency to reduce corruption, improve governance, foster development and promote economic growth
ALTERNATIVE VIEW

- Corruption persists for a different reason: the government institutions that normally check corruption—the police, judiciary, and anticorruption units—have been infiltrated and co-opted by ruling elites who benefit from the continuation of corruption.
- Elites must cooperate or find that they are ostracized or punished in various ways.
- Elites may lose their positions to individuals who are more compliant and willing to participate in corrupt schemes.
- Corruption will continue to persist despite World Bank and IMF structural reforms and despite efforts to improve transparency because those reforms are weak and fail to address the deeper political economy of corruption.
- Corruption is a primary, rather than secondary, reason for development failure.
- World Bank and IMF structural reforms fail to address the forces driving the persistence of corruption and poverty.
A DRIVING FORCE

• Need for much more aggressive action to curb corruption

• If World Bank and IMF policies are based on incorrect assumptions, then those policies are unlikely to be effective

• If corruption cannot be effectively addressed through structural reforms and improved transparency, then it will persist and its negative effects on development and economic growth will persist

• If corruption is not merely a symptom of dirigisme, but is a driving force behind its persistence and is deeply-rooted in ways that are not effectively addressed by World Bank and IMF-style reforms, and if corruption plays a primary rather than a secondary role in stalling development, this may explain the failure of World Bank and IMF policies

• In essence, the World Bank and IMF may have misdiagnosed the problem as dirigisme and may have misdirected their efforts to obtain a solution
WHY UN INSPECTORS?

• If the abuse of unchecked domestic power is simultaneously the source of corruption and the barrier to reform, then external intervention may be necessary to break the stalemate.

• An international treaty establishing an inspectorate empowered to investigate allegations of corruption, with operational independence from domestic interference, may be necessary to ensure the type of level playing field that is needed for economic liberalization to be successful.

• All Western countries deter corruption through aggressive, independent investigators.

• The two major cases where embedded government corruption was demonstrably arrested--Hong Kong and Singapore--involved the establishment of independent investigators.

• Since corruption frequently extends to the highest level, it is necessary for the international community to establish a body of inspectors—it is not possible to rely on domestic leaders to implement the necessary changes.
THE ICC MODEL

• While Western criminal investigators operate where the rule-of-law prevails, investigators from the International Criminal Court (ICC) have demonstrated that many of the most notorious, seemingly untouchable perpetrators of war crimes can be arrested and brought to trial even in the most lawless areas of the world where the rule-of-law is weak.

• Arrests were made despite the possibility that the investigators might themselves be harmed.

• This challenges the notion that conditions in many developing countries would prevent corrupt officials from being brought to justice by international investigators.
NOT A PAPER TIGER

• The Court convicted Thomas Lubanga, the founder of the United Congolese Patriots, of war crimes, including kidnapping and forcing children to participate in armed conflicts

• The Court convicted Germain Katanga, former leader of the Patriotic Resistance Force in Ituri, of being an accomplice to war crimes

• The Court is currently trying Jean-Pierre Bemba Gombo, former Vice-President and one of the richest men in the Democratic Republic of the Congo, for war crimes and crimes against humanity

• Laurent Gbagbo, the former president of Côte d'Ivoire, was indicted and arrested for crimes against humanity and is currently facing trial
ROME STATUTE

• The process by which the Rome Statute was established provides a model for establishing a UN inspectorate.

• The UN General Assembly established a committee that drafted the ICC Statute, leading to adoption by 120 nations in 1998 and ratification by 111 nations by March 2010. The same process could be pursued to establish a UN inspectorate.

• The Rome Statue provides a model of the process by which domestic leaders may be compelled, through international pressure, to sign and ratify a protocol that would expand the scope of the United Nations Convention Against Corruption (UNCAC), create the ICAC and, upon ratification, create the legal duty to comply with investigations led by UN inspectors that would accompany ratification.
International nongovernmental agencies (NGOs) created a powerful coalition and were influential in obtaining passage and ratification of the Rome Statute.

Organizations such as Amnesty International were particularly effective because of the recognition by domestic leaders that these organizations could mobilize voters, thereby threatening the survival of any leader opposed to the Statute.

NGOs such as Amnesty International set the terms of the debate, framed the passage of the Statute as a moral issue, and compelled domestic leaders to adopt the Statute or face public condemnation.

By obtaining early ratifications from a coalition of nations that favored the Statute, pressure was brought to bear on holdouts, which then became more willing to ratify the treaty because their neighbors were doing so.

One of the last holdouts, Uganda, ratified the treaty on June 14, 2002, as a direct result of pressure from other governments, human rights NGOs, and humanitarian relief organizations to improve Uganda's record on human rights.
OVERCOMING OBSTRUCTIONS

• After an international treaty has been signed and ratified, domestic leaders may attempt to obstruct investigations and warrants issued to arrest powerful figures.

• However, the examples cited above suggest that the ICC has been remarkably successful in bringing even the most powerful individuals to justice.

• Even in the most corrupt nations in the world, the experience of the ICC suggests that independent investigators can complete their work, domestic officials can execute arrest warrants, and powerful figures can be brought to justice.

• The experience of the ICC gives reason to think that the proposed ICAC might be equally effective.
OBJECTION #1

• It might be argued that the proposed treaty is not workable. However, the fact that 111 nations are parties to the Rome Statute establishing the ICC demonstrates that 111 nations agree that international inspections are in fact workable.

• 111 nations voted to permit international inspections. While political obstacles may obstruct ratification of a parallel treaty, those obstacles were previously overcome in 111 nations.

• It might be argued that the proposed treaty would not achieve wide acceptance, but 111 nations have demonstrated their support for this type of international response.

• All 111 nations agree that international inspections are logical, sound, workable, acceptable and legitimate.

• While this does not guarantee that the same nations would ratify a parallel treaty to fight corruption, a strong legal precedent has been established.
OBJECTION #2

• It might be argued that there is no reason to think that domestic authorities would cooperate with UN inspectors, but they clearly cooperated in every instance where ICC arrest warrants were executed and the individuals were brought to trial.

• It might be argued that corrupt elites will have every incentive to block cooperation with UN inspectors. But those elites have every incentive to block ICC inspectors as well. While they have delayed the progress of ICC inspectors, they have been unable to stop inspectors from arresting the suspects in the cases cited previously.

• It might be argued that local leaders may mobilize nationalistic arguments against an agreement permitting international inspectors. However, citizens who are fed up with government corruption might see international inspections as a welcome antidote to corrupt rule.
OBJECTION #3

• It might be argued that the mere existence of international inspectors would not be sufficient to establish a global anticorruption norm. However, 161 nations have already ratified the UN Convention Against Corruption (UNCAC) and, thus, 161 nations have agreed to a legally binding agreement to fight corruption. The norm already exists. What is needed is capacity to enforce the norm.

• It might be argued that the anticorruption norm is "new" and securing international cooperation would be difficult. However, the Rome Statute broke a thousand year pattern that—with few exceptions--reserved prosecution of criminals to domestic courts. The Rome Statute established a powerful legal precedent for the creation of international agreements that permit international prosecutors to step forward when impunity prevails.

• From this point forward, the 161 nations that are parties to UNCAC can point to the Rome Statute as a model for an international agreement to fight corruption. The Rome Statute set a legal precedent that paves the way for future international treaties modeled on the Rome Statute. The anticorruption norm may be relatively "new" but there is now a powerful legal precedent for the proposed international treaty.
OBJECTION #4

• It might be argued that states where the rule of law is strong would not be willing to submit themselves to supranational supervision, leaving only weak rule of law states as parties to the proposed treaty, undermining the legitimacy of inspections.

• However, inspections could never be "imposed" on unwilling nations because international treaties are voluntary agreements. Only willing nations would sign and ratify such a treaty. They would do so only if their citizens believe the treaty is a legitimate approach for reducing corruption.

• The proposed treaty would be voluntary, not imposed by some external force. Only voluntary nations would be subjected to anticorruption inspections.
A WAY FORWARD

• Current policy is predicated on the assumption that Western assistance, in the form of aid, loans and conditions attached to loans, can be effective when it is channeled through the same dysfunctional domestic institutions that are the source of corruption, poor governance, and poor economic performance. However, if dysfunctional domestic institutions are the source of the problem, it makes little sense to rely on those institutions to implement the proposed cure.

• Channeling large amounts of IMF and World Bank funds through this dysfunctional system, without a strong external check on corruption, merely abets continued corruption and perpetuates poor governance and poor economic performance.

• Policy is predicated on the belief that there is no other path. Mainstream economists acknowledge the existence of corruption, but see no alternative to working with existing leaders and ruling elites within existing institutional structures. However, the precedent established by the 111 nations that ratified the Rome Statute suggests that it may be feasible to implement an international treaty that would create a body of UN inspectors, forming a potent deterrent to corruption.
THANK YOU