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Ann FLORINI
Singapore Management University, annflorini@smu.edu.sg

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INCREASING TRANSPARENCY IN GOVERNMENT*

Ann M. Florini

Senior Fellow
The Brookings Institution
1775 Massachusetts Avenue NW
Washington, DC 20036
USA

Ann M. Florini is Senior Fellow at the Brookings Institution. She has been associated with UCLA, the Carnegie Endowment for International Peace, the Rockefeller Brothers Fund, and the United Nations Association of the USA. Her latest book is *The Coming Democracy: New Rules for Running a New World* (Island Press 2003).*This article was written for the Eleanor Roosevelt Institute for Justice and Peace for the forthcoming book, *The Future of Peace in the Twenty-First Century*. ©Eleanor Roosevelt Institute for Justice and Peace.

A key to good governance is to make governments and markets transparent. Transparency runs counter to incentives of agents to create feifdoms at the expense of those they have been chosen to serve. This is true of national governements, corporations, international organizations, and even organizations designed to promote transparency.

Dr. Florini discusses the history of transparency in government, in corporate life, and in international organizations. Increased calls for transparency arose after the Cold War in the 1990s, but backsliding has occurred since September 11, 2001.

Of particular interest is the author's discussion of transparency issues related to the World Bank, the WTO, and to environmental protection.

Information is the lifeblood of both democracies and markets. Without information, citizens have no basis upon which to evaluate their representatives or voice their opinions, and both elections and the very process of representation become a meaningless sham. Without information, the financial markets upon which modern economies depend become irrational exercises in guesswork, and governmental regulators cannot hope to carry out their responsibilities. The key to good governance is thus to make governments and markets transparent. And as the world becomes more tightly integrated, a compelling need is arising to ensure that people in one part of the globe have access to information about what is going on elsewhere, so that they can have voice in far-away matters that now affect them directly. Only such open flows of information can ensure that governments and economic systems will enjoy the long-term stability

and widespread legitimacy upon which peace and prosperity depend.

That is a daunting task. The world has too few mechanisms for collecting and distributing information, and the people who have information often have incentives not to share it. But it is by no means undoable.

Transparency is one end of a long continuum of behavior. At one extreme, nothing is hidden. All government files are open to inspection by anyone wanting to see them, and meetings are always public. At the other, secrecy reigns supreme, and no one outside the narrow circles of government is permitted to know anything. No country actually functions at either extreme, but some come close. Sweden first enshrined the ideal of public access to information in its basic law in 1766 and now is among the world's most effective practioners and promoters of transparency. Countries like Iraq fall closer to the other end of the spectrum. The task is thus to move global society closer to the transparency end of the spectrum.

Such movement is possible because the degree of transparency that prevails is the result of deliberate choices. Governments must choose to release information. Sometimes those choices are governed by specific laws or constitutional requirements, and sometimes they are individual initiatives on an ad hoc basis. But files do not open themselves. Increasing transparency requires that someone, somewhere, decides to hand over information.

The stakes are high. Those choices now lie at the heart of the debate over democracy, governance, the international economy, and the fate of an increasingly globalized world. Everyone, from leaders of international organizations to protestors on the street, is demanding that others turn over information. But at the same time, powerful forces are fighting back, arguing that information can be misused by corporate competitors, other governments, even terrorists. The outcome of the battle between transparency and secrecy will do much to determine whether the twenty-first century sees endless conflict, or long-term peace and prosperity.

This chapter will address several specific matters. First, it investigates how transparency is related directly to achieving and maintaining international peace, by transforming the security relationship between countries. Second, it examines transparency's indirect role in contributing to legitimate and effective governance. Third, it explores the trends in transparency in national politics, international organizations, and environmental management.

GLOBAL SECURITY THROUGH TRANSPARENCY

Over the past five decades, a new idea has grown deep roots: that states can pursue security not through the threat or use of force, but by actively persuading others that they have nothing to fear. That persuasion takes the form of detailed disclosures about military practices and capabilities. Transparency both constrains a state's ability to undertake successful aggression and, increasingly, provides a powerful signal of benign intentions. Today, the world's major military powers have enmeshed themselves in a web of confidence-building measures and arms-control treaty verification provisions that, taken together, require an extraordinary level of disclosure. Those transparency measures range from relatively painless steps, such as refraining from concealing activities from surveillance satellites, to more difficult measures such as providing detailed data disclosures, up to the point of requiring countries to host highly intrusive inspections of sensitive military and civilian installations.

The extent of transparency in the security field is particularly striking in view of how rapidly countries have scaled that ladder of increasingly intrusive transparency measures, starting from attitudes less than a century ago that found the whole idea of transparency an intolerable invasion of national sovereignty. The first significant proposals in the early part of the twenty-first century met a chilly response. The Treaty of Versailles, at the insistence of the French, contained provisions for regular and detailed inspections of Germany. Those provisions were not, of course, "voluntary" for Germany, and it is hardly surprising that Germany's compliance was limited. The more difficult reaction to explain was that of the United States and Britain. The British and Americans seemed far more concerned with upholding norms of sovereignty over the often-incompatible requirements of disclosure. The

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Americans argued that a Peace Treaty that returned sovereignty to Germany could not simultaneously undermine that sovereignty with disclosure requirements.[1] The British objected on pragmatic grounds that intrusive requirements such as inspections would more likely provoke conflict than bolster the cause of peace.[2] The end result was a compromise between the French desire for a permanent monitoring commission and the British and American preference for reliance solely on the reports of their military attaches regarding Germany's compliance with its disarmament obligations. Under Articles 203 and 204 of the Treaty of Versailles, three Inter-Allied Control Commissions were established to monitor German compliance, and Article 205 gave the Commissions the authority to inspect any site in German territory at any time.[3]

The system did not last long largely because the concept of expecting transparency from a sovereign state remained anathema to so many. By 1922, Germany was openly defying the obligatory inspections. Despite strident French protests, German intransigence went unpunished, and in January 1927 the last of the Control Commissions was dissolved, even though the Allies recognized that German non-compliance with its disarmament obligations remained significant.[4]

Arms-control treaties of the time similarly indicated little support for notions of transparency. The most important of the interwar security agreements, the three multilateral treaties on naval arms control generally referred to as the Washington Treaty system, generally relied for verification solely on the traditional method of reporting by military attachés. The disarmament efforts of the League of Nations, in a series of meetings beginning in 1925, found themselves most deeply divided over the issue of what, if any, verification measures should apply to any convention. The United States, Britain, Chile, Sweden, and Italy favored reliance on the good faith of nations, while Belgium, Czechoslovakia, Finland, France, Poland, Romania and Yugoslavia wanted a permanent supervisory agent.[5] By the first session of the World Disarmament Conference in July 1932, the United States had shifted to a vague call for adequate measures of supervision and control, probably in response to public pressures stemming from the lack of adequate information on the Japanese invasion of Manchuria.[6] When Franklin Roosevelt, who had long supported greater transparency to verify arms control compliance, became president, progress on transparency for

the first time began to seem possible.[7] But by 1934 the negotiations had collapsed for other reasons, and the evolution of transparency in the security field had to wait decades for a more propitious climate.

After World War II, the United States took on France's previous role as the leading promoter of transparency in the security field, in a generally futile effort to elicit information about its highly secretive adversary in the emerging Cold War. From the beginning, U.S. early proposals for nuclear-arms control included highly intrusive inspection provisions.[8] The most dramatic move came with President Dwight D. Eisenhower's 1955 "Open Skies" proposal to allow the United States and the USSR to overfly each other as a means of building confidence that no untoward or threatening activities were going on below.[9] Although discussions continued for several years, they proved inconclusive, and Open Skies faded away once the advent of spy satellites rendered the need for aerial overflights less pressing. In talks about general and complete disarmament, the U.S. and the USSR used rhetoric endorsing unprecedented transparency measures, none of which led to concrete agreements.

In the 1960s, both superpowers began spy satellite programs that introduced a substantial degree of involuntary transparency, but they refrained from making efforts to shoot down one another's satellites, a kind of tacit acceptance of the resulting disclosures of information.[10] Such national technical means enabled the two superpowers to finesse the whole problem of information disclosure in the first major nuclear-arms control accord, the 1963 Limited Test Ban Treaty.[11] In the SALT I interim agreement limiting deployments of strategic nuclear-launch vehicles and in the Anti-Ballistic Misile (ABM) Treaty curtailing development and deployment of strategic defenses, both in 1972, the two sides made that tacit acceptance explicit, promising not to interfere with or use deliberate concealment measures against each other's national technical means of verification.[12] In other bilateral nuclear arms control treaties negotiated in the 1970s, the superpowers agreed to add some (unverified) data exchanges to the arsenal of transparency provisions.[13] One, which did not come into force until the 1990s, would have allowed mutual on-site inspections under restricted conditions, a real breakthrough in transparency for the time.[14]

In 1968, the adoption of the Non-Proliferation Treaty (NPT) expanded the application of significant transparency measures to a wide range of countries.[15] The Treaty required signatories that were not already recognized

as possessing nuclear weapons to allow the International Atomic Energy Agency to monitor all of its nuclear facilities and materials to determine whether they were being diverted for use in a weapons program.

On the conventional-weapons front, progress toward transparency was slow until well into the 1980s. The 1976 Helsinki accord among member-nations of NATO and the Warsaw Pact and other European countries introduced some basic transparency provisions such as advance notification of planned large military maneuvers, largely at the insistence of the neutral and non-aligned states.[16]

But as it turned out, all these relatively minor steps cumulatively laid the groundwork for what would become a major transformation in the 1980s. Some of this was superpower politicking—various members of the Reagan administration, which came to power in 1982, made sweeping transparency proposals either because they believed such transparency was essential to deter what they saw as inevitable Soviet cheating, or because they abhorred arms control altogether and found such proposals a politically expedient means of deflecting pressure for serious negotiations. But when Mikhail Gorbachev came to power, things changed. Virtually the first move that the new Soviet leadership made to demonstrate its new international attitude was to agree to accept mandatory foreign inspection of much of its territory to demonstrate that their military maneuvers did not exceed various restrictions.[17] Over the next few years, transparency-related proposals flew fast and furious between the two sides. By 1991, they had signed a Treaty on Intermediate-Range Nuclear Forces in Europe; an agreement to reduce, not just limit, their strategic nuclear delivery vehicles; and a Treaty on Conventional Forces in Europe, all requiring very detailed exchanges of data and numerous and intrusive on-site inspections of military facilities. They even managed to sign, at long last, an Open Skies accord among all the members of NATO and the by then former Warsaw Pact, permitting

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overflights of one another's territory, although that treaty has never come into effect.[18]

By the early 1990s, in other words, a norm of transparency had become thoroughly entrenched in the security area among the former adversaries of the Cold War. Two decades ago they were prepared to send one another into oblivion. Now, they think nothing of providing one another with detailed listings of all military holdings and inviting one another's military commanders to check out their latest equipment.

In the 1990s, security-related transparency began to reach well beyond the European context. The Gulf War, and especially the subsequent revelations about Iraq's broad-brush efforts to develop weapons of mass destruction on the sly, led to several major multilateral agreements. It showed the limits of effectiveness of the multilateral transparency instruments then in use, such as the inspection of nuclear facilities mandated by NPT. The experience of the inspections system imposed on Iraq as part of the cease-fire terms indicated just how intrusive transparency might have to be to address proliferation threats.

Following the Gulf War, revelations about Iraq's nuclear, chemical, and biological weapons program led to U.N. Security Council resolutions requiring Iraq to dismantle those programs, subject to sweepingly intrusive monitoring by the IAEA and a United Nations Special Commission (UNSCOM). Perhaps the most striking evidence of the degree to which transparency is now seen as normal in international relations was the unanimity with which the international community agreed to impose the most stringent monitoring conditions possible, not only on the Iraqi disarmament process, but on Iraq for the foreseeable future. To verify that Iraq's ability to make weapons of mass destruction was eliminated, the United Nations Security Council imposed extraordinarily intrusive transparency measures.[19] To carry out these measures, the U.N. created UNSCOM, with virtually unlimited authority to go anywhere and see anything in Iraq to uncover and dismantle Iraq's biological, chemical, and ballistic missile programs. Security Council Resolution 687 also extended to the International Atomic Energy Agency an enhanced inspection and monitoring mandate. Both the IAEA and UNSCOM were charged with ensuring that existing systems and production facilities were destroyed and with establishing and implementing a long-term monitoring plan to guard

against any revival of the programs.

UNSCOM and the IAEA inspectors began their work with the premise that Iraq had accepted the terms of the resolution and that their work would be much like that of verifiers of arms-control treaties, who must be alert for cheating but generally expect to find compliance. As any reader of headlines in the 1990s knows, they were sorely disappointed. Iraq made innumerable efforts to delay handing over information, providing incomplete or blatantly falsified documents, interfering with and intimidating UNSCOM and IAEA inspectors, and in general evading the letter and the intent of its legal obligation under Resolution 687.[20] Although the international community has been badly divided over how strongly to deal with Iraq, it is striking that Iraqi complaints that the inspections constitute an affront to its national sovereignty have fallen on deaf ears, in sharp contrast to the post-Versailles experience of Germany. Then, as described above, some members of the victorious coalition publicly and privately expressed their sympathy with Germany's sense of forced disclosure as an affront. Now, some of the victors may be more interested in pursuing their vested economic interests in Iraq than in ensuring that Iraq cannot bring its weapons programs back. But with the exception of China, which has consistently abstained from U.N. votes regarding Iraqi inspections, no country has objected to the idea of enforced monitoring.

One of the most important effects of the Iraqi revelations was to spur multilateral agreement on a highly intrusive treaty to ban possession and production of chemical weapons. As of 1999, the Chemical Weapons Convention (CWC), which entered into force in 1997, had 170 signatories (of whom 126 had ratified the treaty). The treaty itself is less than 50 pages long, but the Verification Annex is more than twice that length. And the scrutiny to which they subject non-governmental actors, the provisions go beyond any other international agreement. The same chemicals that have revolutionized agriculture and medicine over the past century can be used to make chemical weapons. Because these substances are so widespread and so thoroughly integrated into the fabric of the international economy, with a few exceptions they cannot simply be banned. Instead, the verification net must be cast both wide and deep, covering an enormous range of chemicals and imposing stringent verification requirements. These include routine and very-short-notice surprise inspections of a vast array of often

privately-owned chemical facilities. The Organization for the Production of Chemical Weapons (OPCW), established by the terms of the CWC to carry out implementation, has carried out more than 500 such inspections in some 30 countries. In addition, parties are required to provide detailed declarations about which facilities on their territories produce or consume certain chemicals (above "threshold" amounts). All parties have access to the declarations of all other parties.

Despite its high aspirations for transparency, the implementation record has been mixed. On the positive side, in 1996 the U.S. Department of Defense not only disclosed information required by the CWC but also declassified a multitude of details about the U.S. chemical-weapons stockpile.[21] Britain makes all of its declarations publicly available.[22] In July 1997, India, after years of denying that it had any weapons of mass destruction, openly declared its possession of stocks of chemical weapons, even though Pakistan had not yet ratified the CWC and even though India's chemical weapons program had not previously been publicly revealed.

Unsurprisingly, the transparency provisions of the CWC have not been enthusiastically embraced by all parties. Many are failing to disclose all the information required by the CWC. More than a quarter have not even filed the mandatory initial declarations covering chemical weapons, weapons facilities, and portions of the commercial chemical industry. The United States has awarded itself the right to veto challenge inspections of U.S. facilities if the president so decides.[23] Yet compared to the information previously available to the public and to most governments, the CWC represents a striking advance.

In addition to this web of formal transparency commitments, there is a large number of voluntary transparency arrangements and treaties that have not entered into force—and may never do so—but that incorporate stringent transparency procedures. One such is the Comprehensive Test Ban Treaty, which prohibits all nuclear explosions. It was signed by more than 70 countries in September 1996 but is unlikely to enter into force because of the refusal of India to adhere and the recent rejection of the treaty by the United States Senate. The Treaty establishes an International Monitoring System (IMS) of 321 stations around the world, an International Data Center, a communications system, and on-site inspections to monitor compliance, and the Preparatory Commission of what is intended to become

the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) is establishing the global verification system. It has to date exchanged more than 40 letters of agreement with 31 states hosting monitoring facilities to enable work to proceed, pending the conclusion of formal bilateral agreements, and has concluded such formal arrangements with Canada and New Zealand.

The United Nations Register on Conventional Arms was established in response to the shock of the Gulf War, when members of the coalition against Iraq sometimes found themselves fighting weapons they themselves had originally supplied. The political impetus behind efforts to increase transparency in international conventional arms transfers came initially from Japan and Britain, with strong support from France and Germany. Negotiations over the establishment of the Register were heated. Developed countries proposed a Register in which countries would report only on transfers of finished conventional weapons. Pakistan argued that ignoring stockpiles and indigenous production of weapons would provide a very incomplete picture of arms. Egypt objected strongly to the exclusion of weapons of mass destruction, saying that by omitting these the Register could not provide an adequate basis for reasonable national security calculations. Brazil and Argentina, among others, questioned the focus on finished weapons systems, noting that transfers of dual-use technology mattered just as much as transfers of completed weapons systems.[24] In the end, these objections were met largely by promises to consider them later, promises that have largely gone unfulfilled.

Nonetheless, since the Register started in 1992, more than 90 reports have been filed every year, with 80 countries providing reports just about every year and many others participating more sporadically.[25] These reports cover transfers of seven categories of major conventional weapons: battle tanks, armored combat vehicles, large-caliber artillery, combat aircraft, attack helicopters, warships, and missiles and missile launchers. Because the United Nations provided few definitions about what constitutes a transfer (When a sale is agreed on? When the importer actually receives the weapons?), substantial discrepancies sometimes arise between the reports of exporters and importers.

There are enormous regional discrepancies in participation rates. OECD states, countries of the former Soviet Union, the larger states of

the Americas, and much of Asia regularly file reports. China participated until 1998, when it withdrew in protest over the inclusion of exports to Taiwan in the U.S. submission, arguing that "arms transfers from the U.S. to Taiwan are neither legitimate nor transfers between sovereign states."[26] In the Middle East and North Africa, only Israel and Iran regularly report, while members of the Arab League have refused to participate in a Register that does not encompass weapons of mass destruction. Few sub-Saharan countries take part.

A variety of transparency-related security measures also exist at the regional level, beyond the European ones described above. Argentina and Brazil began a program of mutual inspections of each other's nuclear facilities in the late 1980s.[27] In 1999, the Organization of American States adopted an Inter-American Convention on Transparency in Conventional Arms Acquisitions.[28] The Middle East has seen its share of transparency measures too, particularly in the form of mutually-agreed aerial monitoring of cease-fire zones.

Overall, the idea of transparency as a contributor to rather than a threat to security is well established. It has become so widespread that it can no longer be seen as merely the result of a few states' calculation of immediate national self-interest. Rather, it reflects a wholesale shift in thinking: a change in norms as to what behavior is appropriate and desirable for states. A new standard of behavior now enables states to signal their non-aggressive, cooperative intentions.

One major question-mark for the future is China. China has taken some significant steps toward greater transparency, accepting the verification provisions of the CWC, participating until recently in the UN Register, and taking part in military exchanges with the United States. But the key issue is not so much China's reaction to specific transparency proposals as China's acceptance or rejection of the broader normative structure within which transparency is embedded. China is still reluctant to embrace that normative structure, as its refusal to support international inspections of Iraq indicates. But that reluctance is not outright rejection.

The other major, and as yet unanswerable, question is what consequences the September 11, 2001 attacks will have on global attitudes toward transparency. This question takes us beyond the security realm and will be addressed at the end of this chapter.

WHY TRANSPARENCY IS ESSENTIAL TO LEGITIMATE AND EFFECTIVE GOVERNANCE

In the security field, transparency has emerged for purely pragmatic reasons: It works. But the debate over transparency's broader role in governance is normative as well as practical. The justification for demanding greater transparency gets down to fundamental issues of the moral basis for governance.

Both governments and corporations suffer from what social scientists call the "principal-agent problem." Governments are not supposed to be independent actors doing whatever suits their own interests. They are supposed to be agents, acting on behalf of their "principals," the citizens. Similarly, corporate managers are supposed to be the agents of corporate stockholders, and increasingly of other stakeholders such as local communities. But agents often have interests that differ from those of their principals. The academic school-of-thought known as public choice theory points out that governmental officials face incentives to increase their budgets and bureaucratic fiefdoms, actions that do not necessarily serve the public interest. Similarly, corporate managers often act to increase their personal incomes rather than the incomes of the shareholders they ostensibly serve.

Governmental officials face incentives to increase their budgets and bureaucratic fiefdoms, actions that do not necessarily serve the public interest. Similarly, corporate managers often act to increase their personal incomes rather than the incomes of the shareholders they ostensibly serve.

Overcoming the principal-agent problem is thus one of the basic conundrums of governance, whether corporate or governmental. One of the basic solutions is to increase the transparency of the agent's behavior, making it possible for the principals to monitor what is going on. The informational asymmetry always favors the agents (agents inherently know what they are doing, while principals have to come up with ways of finding out what the agents are up to), but transparency can go far to reduce that asymmetry and thus reduce the power the agents have over the principals. And it is a fundamental tenet of democratic theory that the accountability made pos-

sible by transparency leads to better results. Without transparency, there is no way to know whether institutions are pursuing their goals efficiently and effectively, or even whether they are pursuing the right goals.

The principal-agent framework provides a powerful answer to the normative questions about the value of transparency. If agents are employed to serve the interests of the principals, the prevailing presumption should be in favor of agent transparency. Agents have no inherent rights to withhold information from principals.

That leaves unanswered the pragmatic questions about how and when to promote transparency. After all, under some conditions secrecy is necessary to enable agents to serve the interests of the principals. Transparency is not always a good thing. It can be neutral, or even harmful. It merely enables people to acquire information. It does not by itself enable people to do anything with that information. Nor does it convey any understanding of the meaning of the information. It does little good if no one cares to do anything with the information. And sometimes the sheer cost of amassing information far outweighs the public benefit that would accrue from its disclosure.

While there are legitimate grounds for secrecy and concerns about transparency, they are easily taken too far. Protection of national security, for example, easily becomes an excuse for cover-ups of government incompetence or venality.

The list of situations in which disclosure can do more harm than good is fairly obvious: national security, individual privacy, and corporate-trade secrets all need protection. The same military information that reassures other countries that your military forces are not massing for attack can enable others to locate and attack your forces. There is no public right to know the details of other people's private lives. Corporations depend on their trade secrets to stay in business.

Moreover, in the absence of universally shared, or at least mutually compatible, norms, transparency can aggravate conflict. It may simply remove the ambiguity that can otherwise conceal conflicts or soften disagreements. For example, the world is arguably better off politely ignoring Israel's well-known but undeclared nuclear capability than demanding that

Israel own up to it. Although the principle of nuclear non-proliferation is well established among most other countries, few expect that Israel can be made to accept it. The costs to the nonproliferation regime of forcing the issue may well be higher than the benefits.

And information can easily be misused or misinterpreted. Transparency reveals behavior, but does not always give accurate clues about the meaning of that behavior. What someone is doing may be less important than why they are doing it. Americans do not worry about the British building nuclear weapons because Americans believe that Britain harbors no hostile intent. But they remain anxious about the possibility of a nuclear Iraq.

But while there are legitimate grounds for secrecy and concerns about transparency, they are easily taken too far. Protection of national security, for example, easily becomes an excuse for cover-ups of government incompetence or venality. And the costs of secrecy need to be kept in mind, even in these cases. When agents withhold information, they engender suspicion and hostility. They also are far more likely to make mistakes, even if their intentions are good. The complexity of many problems is simply too great for government managers to handle alone. They require feedback mechanisms so that new information is constantly incorporated. How can and should societies strike the appropriate balance?

A BRIEF HISTORY OF TRANSPARENCY

To answer that question, we start by looking at how the balance has varied over time. Demands for open flows of information have a long history in both politics and economics. One of the framers of the American Constitution, James Madison, wrote compellingly on the importance of information in a democracy:

> A popular Government, without popular information, or the means of acquiring it, is but prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

In the economic sphere, corporations have found themselves facing demands for disclosure of financial data for almost as long as publicly-held

corporations have existed. Great Britain experimented with disclosure laws starting in the mid-1800s.[29] In America, starting early in the 1900s, large numbers of small investors proved able to put substantial political pressure on the government to institute corporate disclosure standards that would protect them from deceit and insider dealings. The first organized body of professional accountants was not formed in the United States until 1886 and until the turn of the century corporate disclosure was not a public issue.

In the early part of the twentieth century, however, as in Great Britain, the extent of corporate disclosure gradually began to rise. That increase reflected significant changes in the nature of American business and investing, as some firms became too large to avoid scrutiny and, as in Britain, the number of small investors increased substantially. Those small investors proved willing to seek government action to reform commercial practices, accompanied by increasing criticism of management accounting and reporting practices by critics of big business and leaders of the public accounting profession. During the 1920s, the Investment Bankers Association of America tried to promote voluntary financial disclosure in order to protect legitimate investment bankers from the growing public resentment against the sellers of fraudulent securities and to forestall governmental regulation. In 1926, the New York Stock Exchange (NYSE) officially recommended that all listed companies publish quarterly reports containing some minimal disclosure of financial information.[30] At the same time, the American Institute of Accountants, the leading association of accountants, began to promote the development of standards of auditing and accounting, and encouraged the Stock Exchange to move further in this direction. In 1933, the NYSE announced that henceforth it would require independent audits of companies seeking a listing on the exchange, a practice already voluntarily followed by 90 percent of listed industrial companies.[31]

These moves proved insufficient to fend off the enactment of federal legislation. Spurred by the 1930s backlash against unregulated capitalism, the 1934 Security Exchange Act authorized the creation of a regulatory agency, the Securities and Exchange Commission (SEC), that would oversee a variety of new mandatory corporate disclosure practices. Companies whose securities were listed on national securities exchanges were thenceforth required to file periodic reports whose form and content would be determined by the SEC.[32] In subsequent years, the SEC worked with the

American Institute of Accountants to establish the new standards, principles and practices of accounting and auditing.[33]

After World War II, the Universal Declaration of Human Rights (Article 19) explicitly recognized the right to "freedom of opinion and expression: this right includes freedom to hold opinions without interference *and to seek, receive, and impart information and ideas through any media and regardless of frontiers*" (emphasis added). But with the expansion of governmental bureaucracies in many countries and with the emergence of multinational corporations and large inter-governmental organizations came new concentrations of power able to withhold information from people whose lives they affected. At the same time, the Cold War led to the rise of a highly secretive national security complex in the traditional bastion of transparency, the United States.

Counter-pressures to all this were limited, although there were some. One notable victory for transparency came in the form of the U.S. Freedom of Information Act, first passed in 1966 and strengthened in 1974. In the 1980s, transnational networks of civil society activists launched campaigns demanding information from inter-governmental organizations, particularly the World Bank. East and West negotiated some arms control agreements that included verification provisions that made the security establishments of the two sides increasing transparent to each other.

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But the real explosion of global demands for transparency came in the 1990s. At that time, the end of the Cold War eliminated one significant rationale for extreme secrecy. The spread of democratic norms, the increasing strength of civil society organizations, and the rise of increasingly independent media around the world have intensified pressures on governments to release information to their citizens. At the same time, global economic integration has led international investors (and the governments of capital-rich countries) to demand disclosures on corporate and national accounts in emerging economies, especially in the wake of the Asian crisis, which many blamed on the excessive secrecy of the Asian corporations and

governments. International financial institutions, which are major promoters of economic integration, are demanding information from governments and then posting that information on web sites. Those international institutions themselves face intense pressure from activists around the world to open up their analyses and processes of decision making. All these demands are facilitated by information technology, which is making information ever easier to locate and share.

Now a broad struggle is underway between the forces of secrecy and the promoters of transparency. Freedom of Information laws and constitutional provisions are popping up in countries from the United Kingdom to South Africa to Thailand to Japan, but many are weak or are not being fully implemented. Intergovernmental organizations of all types are debating new or revised disclosure policies. Environmental management is entering a third wave, based not on centralized regulation or market-based incentives but instead on what might be called "regulation by revelation." The backlash against transparency has been strengthened, though not caused, by the horrific events of September 11, 2001. Below we will see where the struggle stands.

NATIONAL GOVERNMENTS

The world is awash in proposals to require national governments to increase public access to information about them. Some of these demands are occurring in countries that have recently made, or are trying to make, a transition from autocracy to democracy, but many are taking place in countries long seen as well-established democracies that are good at holding free elections but not necessarily so good at keeping their citizens informed. Some of the constitutions of newly democratic or democratizing states contain provisions requiring governments to provide information to their citizens. In other cases, countries are enacting Freedom of Information Acts (FOIA) that lay out how citizens can get information from their governments, and restricting the conditions under which governments are allowed to refuse those requests.

Sweden claims pride of place as the first country to adopt a law, its press freedom act, requiring access to governmental information, in 1766. Finland was also an early adopter of formal legislation, with its Publicity of

Documents Act adopted in 1951.[34] The United States followed with the Freedom of Information Act in 1966, although it was not until the Act was strengthened in 1974 in response to the Watergate scandal that meaningful implementation began. The momentum then picked up, with five additional countries adopting FOIAs in the 1970s, and six in the 1980s. By the 1990s, a wave of countries began debating the desirability of increasing government transparency, with 12 countries enacting FOIAs. South Africa has powerful transparency provisions written into its 1996 constitution.[35] Also in the 1990s, the United States passed an Electronic Freedom of Information Act to extend FOIA provisions to cover information not available in print. Following a report by a bipartisan national Commission on Government Secrecy headed by Senator Daniel Patrick Moynihan that was highly critical of governmental secrecy, the U.S. Congress began debating new legislation that would reduce the propensity of the governmental bureaucracy to classify everything in sight.[36] More recently, Bosnia, the United Kingdom, and Bulgaria adopted legislation. Laws are under discussion in India, Fiji, Botswana, Lithuania, Moldova, and Nigeria.[37]

The details raise serious questions about just how far the laws contribute to the transparency of governments... Even in countries with strong Freedom of Information laws, bureaucrats who want to withhold information find many ways to hold on to secrets. In the U.S. case, for example, implementation continues to fall far short of expectations.

Although this adds up to an impressive-looking flurry of activity, the devil is, as always, in the details. For many of these laws, the details raise serious questions about just how far the laws contribute to the transparency of governments. The proposed legislation in Zimbabwe and Belarus, for example, arguably constitute something closer to official secrets acts than to means of shifting governments closer to the transparency end of the continuum.

Even in countries with strong Freedom of Information laws, bureaucrats who want to withhold information find many ways to hold on to secrets. In the U.S. case, for example, implementation continues to fall far short of expectations. Part of the problem is sheer shortage of funding and person-

nel to respond to the 600,000 requests for information made under the law each year. FOIA offices within agencies are chronically under-funded and short-staffed, so it is unsurprising that most U.S. FOIA offices are backlogged—that is, they are not in compliance with the law's demand that FOIA requests receive a response within twenty days. Some agencies, like the CIA, the Federal Bureau of Investigation, and the Departments of Energy and State, take a year or two on average to respond. And often the responses themselves consist of heavily blanked-out documents. Even worse is compliance with the 1996 Electronic Freedom of Information Act, requiring government agencies to make computer databases, electronic documents, word processing documents, and even mail accessible to the public, to create "electronic reading rooms" that would contain substantial information, and to publish an annual report on their FOIA activities. Although many agencies have created the required web sites, many are hard to find and woefully incomplete, and compliance with requests for electronic information suffer all the problems seen with requests for paper documents.

The problems with implementation are partly normal bureaucratic matters, but they also reflect competing conceptions within the United States of what information should be freely available. The political parties have been feuding for decades over what constitutes compliance with the 1966 Freedom of Information Act. The feud takes particularly visible form in the competing memos issued by successive Attorneys General. Whenever a new administration of a different party from the preceding administration takes office, the Attorney General sends a memorandum to the heads of all federal departments and agencies laying out the standard the Department of Justice will use in deciding whether to defend agency decisions on FOIA matters when those decisions are challenged in court. The first was issued in May 1977 by Attorney General Griffin B. Bell when the Carter administration took office. The second was issued in May 1981 by the Reagan Administration's new Attorney General, William French Smith. None came from the first Bush Administration. Attorney General Janet Reno, who served under President Clinton, issued the third in October 1993, and the fourth came from Attorney General John Ashcroft on October 12, 2001.

A comparison of the two most recent memos illustrates how great the differences in implementation of transparency laws can be.

The Reno memo pushes agencies to

> ensure that the principle of openness in government is applied in each and every disclosure and nondisclosure decision that is required under the Act." It therefore "rescind[s] the Department of Justice's 1981 guidelines for the defense of agency action in Freedom of Information Act litigation. The Department will no longer defend an agency's withholding of information merely because there is a "substantial legal basis" for doing so. Rather, in determining whether or not to defend a nondisclosure decision, we will apply a presumption of disclosure.... In short, it shall be the policy of the U.S. Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption. Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be.[38]

The Ashcroft memo, after a quick genuflection in honor of governmental accountability, makes clear that it intends to strike rather a different balance than the previous administration. It says:

> The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information, and, not least, preserving personal privacy.... I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.... When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis...[39]

In other words, during the Clinton administration government agencies would have to demonstrate harm to justify withholding information requested under FOIA, or the Department of Justice would not defend them in court. During the second Bush administration, agency heads can rest easy if they have any legal justification for withholding information, and they receive no encouragement to release information.

The United States is not the only democracy where conflicting opinions on transparency are evident. Britain is in the midst of a major struggle over implementation of its new freedom of information law, enacted in November 2000. Prime Minister Tony Blair wanted to delay implementation until all 50,000 government bodies were prepared to adopt its provisions. Others in the government, including the lord chancellor Lord Irvine who is responsible for overseeing implementation, wanted to phase the law in gradually over three years. The prime minister won. As a result, the Act will not come into effect until January 2005, more than four years after parliament passed it.[40] And as we will see below, the September 11, 2001 attacks have led Canada to attempt to crack down on its Access to Information Act provisions.

INTERNATIONAL ORGANIZATIONS

As the world becomes increasingly tightly integrated, international organizations are becoming important actors in the transparency debate. They are particularly interesting actors, because they are on both sides simultaneously: demanding greater transparency from others but often resisting the application of transparency's principles to themselves.

For several years, the World Bank and especially the International Monetary Fund have pressed their member governments to make public information on a range of governmental economic and financial data. They argue that such transparency is necessary if countries are to attract foreign investment. Since 1996, the IMF has had a Special Data Dissemination Standard in place for countries that have or are seeking access to international capital markets.[41] (Countries not yet trying to integrate themselves into the global economy are expected to follow a less demanding General Data Dissemination Standard.) Scores of countries that subscribe to the Special Data Dissemination Standard list information on the Fund's Dissemination Standard Bulleting Board. The IMF has also adopted a Code of Good Practices on Fiscal Transparency and has released a Manual on Fiscal Transparency.

But the battle to open up governmental economic information is far from won. Particularly when it comes to national budgets, governmental

officials face strong incentives to muddy the waters. After all, if citizens know exactly how much money is being spent on what, they might object to the choices being made and demand changes in the policies—or in the officials. Governments thus resort to all sorts of tricks that enable them to hide taxes, overemphasize the benefits of spending, and conceal government liabilities. They present highly optimistic projections of growth and tax revenues, and then express surprise at later deficits. They keep some items off-budget or postpone major changes to late years.[42]

In addition to their role as proponents of national transparency, international organizations are targets of calls for greater disclosure. No international organization has faced more vociferous demands to open up than the World Bank. Beginning in the early 1980s, a wide range of NGOs began pressuring the Bank to be more forthcoming about its plans and policies, arguing that "if development bank project planning and design were open and transparent...fewer disastrous projects would be approved and a greater opportunity to promote development alternatives would exist."[43] Three different transnational civil society networks—on poverty, environment, and structural adjustment—have coalesced around opposition to World Bank projects and procedures.[44]

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The proponents of World Bank transparency are right. In the days when the Bank remained cloaked in secrecy, too often government officials in both borrowing and donor countries were less concerned with the quality of the projects being funded than with such considerations as the political imperatives of channeling funds to particular governments or the opportunities for personal enrichment or political power. Although at least some of the actors now demanding transparency from the Bank undoubtedly have their own agendas, if the Bank becomes truly transparent all agendas will have to be contested openly.

These pressures for transparency have had an impact, in part because the argument has resonated so effectively with U.S. policymakers. Members

of Congress proved willing to hold funding for the Bank hostage to the establishment of new Bank disclosure policies.[45] Under the disclosure policy established over a decade ago, the Bank releases a project information document on every project. Also available are final staff appraisal reports, environmental impact statements, and other documents.

Since then, there has been much rhetoric from the Bank promoting a more participatory model of development. Bank President James Wolfensohn began emphasizing the importance of "inclusive decision-making" processes. Bank publications began stressing the importance of "empowerment" in reducing poverty. Because access to information is a necessary (though not sufficient) condition for such participatory development, expectations were high when the disclosure policy came up for revision in 2000. But the revision of the disclosure policy turned out to entail a considerable fight, one that usefully illustrates the ongoing political struggle over transparency throughout the world.

The Bank staff who drafted the revisions found themselves facing competing pressures. Although the Bank already releases enough information to allow for after-the-fact accountability, its disclosures do not enable citizens to participate in policy debates before decisions are made. On one side were civil-society groups from all parts of the world, along with the governments of a few wealthy countries, who called for much more disclosure of Bank documents. This side argued that information disclosure is essential to foster informed public debate and constructive engagement between society and government, a crucial if often missing piece of the development puzzle. Moreover, the pervasive fears of Bank and Fund interference with national sovereignty can only be assuaged if the public, including the legislature and other representative institutions, are informed about what decisions are actually being made and by whom. Disclosure of what the Bank is doing and what agreements it is signing with governments is necessary if the Bank is to deliver on promises to include new voices in the deliberative process.

On the other side were many governments, particularly from the larger developing countries. (Smaller countries have already essentially been forced by the world's wealthiest nations to disclose documents that richer developing countries are still permitted to keep secret.) They argued that it is up to them, not to the Bank, to determine what information ought to be

released at what time and to whom. Information needs to be restricted to prevent market upheavals and to "protect the deliberative process." When pushed, off-the-record some said that what they most objected to was the possibility that their political opposition at home would use information from Bank documents in political fights against them—exactly what political oppositions are supposed to do in democracies.

In the end, anti-transparency forces largely won. The Bank's revised disclosure policy makes only minor improvements, and most significantly does not release project appraisals or country assistance strategies before the Bank's Board takes action on them. In other words, the policy continues to permit only after-the-fact accountability, not informed participation during the planning and decision-making processes.

Even the existing disclosures often do not measure up to expectations. Whether meaningful transparency has been achieved—or can be achieved—at the World Bank remains unclear. As is virtually always the case, policies from above to promote transparency within an institution provide only a starting point. Whether project information documents actually contain information that make it possible for outsiders to comment meaningfully on projects in the early stages of planning will depend on the incentives World Bank staff face. If staffers are rewarded primarily for getting large projects through the pipeline quickly, they will have every incentive to make those documents as bland and meaningless as possible, in order to ward off objections to their projects. If, however, Bank staff are held accountable for the ultimate success of projects, they will have every incentive to permit widespread participation in the planning and preparation of projects in order to be able to anticipate problems and ensure that stakeholders in the borrowing countries support rather than oppose those projects. In short, the disclosure policy by itself means little. It can be just another bureaucratic hurdle, or it can be a useful and welcome tool.

Beyond this question of the utility of transparency as a means of helping the Bank do its job better lies the moral issue discussed above. The Bank is not an end in itself. It exists to provide certain services. It was constituted by national governments, but its avowed goal is to help the world's poor. In other words the Bank is an agent, but it answers to two quite different principals: those affected by the projects it helps to finance and the governments of its member states. Governments are in turn supposed to be agents

for their citizens. When governments use Bank funds in ways that are not in the interests of their citizens and those citizens complain to the Bank about those uses, should the Bank withhold information from affected citizens on the grounds that only their governments—their supposed agents—are entitled to see that information?

The World Trade Organization is now undergoing a similar debate over what information it should make public. As the disciplines of the global-trading system have grown more effective, they have alarmed many people now demonstrating their concerns both on the streets and in repeated demands for greater transparency. Many governments, especially from developing countries, object strongly to calls for greater citizen participation, arguing that public input should take place only at the national level and that both negotiations and dispute settlement are properly handled exclusively by governments, who will decide for themselves what information to release to their citizens. In part, their objections stem from the North-South imbalance. Northern civil society groups, including trade associations, generally have the resources to engage the WTO. Many Southern governments fear that allowing greater civil-society participation will further turn the odds against them. It is understandable that these new WTO members are reluctant to dilute the benefits of their membership to this once-exclusive "club." But civil society demands have become so strong, effective, and globally connected that efforts to fend them off will only result in damage to the WTO as a whole. If the WTO wishes to recapture widespread public legitimacy, it needs to undertake a systematic effort to address the widespread public perception that the international trade regime is largely closed to public scrutiny and participation.

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The WTO's relationship with the outside world has already begun to change. The increasing impact of trade rules on other policy areas has compelled the WTO to engage in regular interaction with a wider range of

multilateral organizations, especially the United Nations Environment and Development Programs (UNEP and UNDP, respectively). Growing public interest in its work has compelled the WTO to organize public meetings and consultations, as well as engage in a series of regional conferences and workshops designed to encourage interaction between the Secretariat and the public. The WTO Secretariat has also made significant progress toward document availability. Its 1996 derestriction policy, informal but regularized meetings with the public, and the Internet now enable more people around the world to review its material.

Nevertheless, citizens still lack access to information that would enable them to comment on policy as it is being considered or present their views in any meaningful way. Citizens must be empowered to participate in the formation of trade policy before decisions are made, not after. While public participation is seldom efficient, democratic governments must earn public support by engaging in a degree of open discussion, sharing information, and subjecting their decisions to public scrutiny. The WTO has yet to satisfy civil-society groups on these counts.

Other intergovernmental organizations have done better. Indeed, efforts to remain opaque are swimming against a powerful tide of greater citizen participation in global institutions. The United Nations and many of its agencies routinely involve NGOs in their deliberations, with standard procedures in place for accreditation. In intergovernmental treaty negotiations on many issues, non-governmental organizations have become constructive players with full access to information. They are routinely incorporated into negotiations on environmental issues, receiving country position-papers and draft treaties as a matter of course.

SAVING THE ENVIRONMENT THROUGH TRANSPARENCY

The issue area where transparency has as of yet contributed the most is environment. The story begins in the United States over fifteen years ago. In 1986, in response to the Bhopal catastrophe in India, the U.S. Congress enacted the Emergency Planning and Community Right-to-Know Act. This Act requires companies to disclose what amounts of a few hundred specified toxic chemicals they release into the air or the water or onto the land (above

certain threshold levels). The companies must send the information to the U.S. Environmental Protection Agency (EPA), which uses it to compile a Toxics Release Inventory that is then made public. The act itself puts no limits on emissions of these toxic chemicals. It merely requires companies to own up publicly about what they are emitting. But that has proved sufficient to bring about an enormous change in behavior. Emissions of the indexed chemicals at facilities covered by the law fell 44 percent between 1988 and 1994, even though production of those chemicals rose 18 percent. No environmentalist would have dared dream of getting a 44 percent reduction mandated by the usual types of environmental regulations. It turns out that regulation by revelation can work much better than the more traditional regulation by governmental dictate.

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The success of this new approach has drawn the most sincere form of flattery—imitation. Indonesia in recent years adopted a similar, but simpler, approach, publicly grading facilities by color according to how well they meet existing regulations. According to the World Bank, the program is significantly increasing compliance with environmental regulations. Its success, due to the pressure of both local public opinion and the business community's desire to market to environmentally sensitive foreign consumers, has spurred further imitation. In 1997, the Philippines announced the introduction of a public-information program called Ecowatch. Mexico's environmental agency recently announced that it will begin to publish information on the environmental performance of 3,000 industries to provide incentives for them to clean up their act.

Governments are not the only ones attempting to use information to improve the state of the environment. A major U.S. environmental group called Environmental Defense has launched a website called "Scorecard"

(www.scorecard.org) that makes TRI and other data accessible to anyone with an Internet connection. The site is very user-friendly. An American types in his or her postal code, and up pops a map that displays local schools, major roads, and TRI facilities. Included is information on the relative toxicity of specific compounds and rankings of which facilities pose the biggest health threats. The site has been the topic of stories in the national television news and national news magazines. And it is heavily used, with over 11 million hits in its first year of operation.

An Indian non-governmental organization, the Centre for Science and Environment (CSE), is also pursuing the transparency approach to environmental regulation, publishing ratings that compare companies within a given industry on their environmental performance. Since the Indian government does not require companies to provide public information about environmental records, the CSE decided to ask the companies directly. To induce companies to provide information, the CSE adopted a carrot and stick policy. The stick was that any company that failed to provide information would automatically be ranked at the bottom. The carrot was that if companies could prove they were trying to improve their environmental performance, their efforts would be reflected in the rankings.

With funding from the United Nations Development Programme (funneled through the Indian government), CSE set out to rank companies in the pulp-and-paper industry, a renowned polluter. Much to the surprise of CSE, by the time the ratings were released, every company in the industry had provided the requested information, apparently convinced that the harm to their reputations of refusing to comply—and thus being ranked last—outweighed any possible harm from complying with the survey. Although the rankings were released only this summer, CSE claims already to have had an impact, primarily by raising the profile of environmental concerns to the highest levels within the companies.

RESPONSES TO SEPTEMBER 11, 2001

In short, while transparency is highly desirable, it is by no means inevitable. Many of the responses to the horrific events of September 11, 2001 provide powerful evidence of governmental ability and willingness to fight back

against transparency. Although the national struggles described above are part of the long-term seesaw between opponents and proponents of transparency, particularly in the United States, September 11 spurred substantial backsliding from previous progress toward greater transparency.

Most notable is the newly popular practice of "scrubbing" websites, i.e., removing information that someone believes might aid terrorists in planning attacks. Ironically, the Government Secrecy Project at the Federation of American Scientists, one of the leading NGO proponents of governmental transparency, removed information from its own web site, primarily concerning the location of secure intelligence facilities on the grounds that such information was not publicly available elsewhere.[46] Other scrubs raised more serious concerns about the appropriate balance between protecting legitimate secrets and ensuring that citizens have the information necessary to protect themselves.

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The Environmental Protection Agency, for example, has removed a database with information on chemicals used at 15,000 industrial sites in the United States.[47] The database was the result of a Congressional requirement several years ago, after the Bhopal disaster in India, that companies submit information about potential toxic waste spills so that local emergency services and residents could make appropriate plans to deal with worst-case scenarios.[48] But now, the EPA apparently feels that the danger of providing terrorists with ready access to such information outweighs the public's right to know whether their children's day-care centers are located next to potentially dangerous chemical sites.

Other government agencies, including many at the state level, are pursuing a similar course of action. The Nuclear Regulatory Commission

temporarily closed down its web site altogether, and when it reopened the web site restored only "select content." The Internal Revenue Service now prohibits unescorted public access to the reading rooms Congress required it to establish, ostensibly out of concern for employee safety. The state of Pennsylvania has removed some environmental information from its website, and the state of Florida is withholding public access to information on crop dusters.[49]

Since there are other easy ways for terrorists to locate significant targets, not least by looking in the phone book, it is at least debatable whether such removal of information actually serves the interests of the American public. The greatest danger is not that information about vulnerable facilities might be misused. The danger is that making it difficult for citizens to find out about vulnerable facilities makes it far less likely that the vulnerabilities will be corrected or that sensible precautionary planning to deal with potential attacks will take place.

The United States is not alone in its concerns over transparency in an age of terrorism. The Canadian government introduced legislation in October 2001 that would entitle the Minister of Justice to issue certificates suspending applications of Canada's Access to Information Act. Department of Justice officials claimed that terrorist groups had used the Act to try to obtain sensitive information, although they admitted that no sensitive information was actually released.[50] The Justice Minister argued that the change was necessary to maintain information-sharing agreements with Canada's allies.[51]

THE FUTURE OF TRANSPARENCY

The struggle to create a broad global culture of transparency still clearly has far to go. The cliché about information being power has much truth to it, and holders of such power are rarely willing to share it in the absence of compelling incentives. But the opponents of greater transparency are not merely the vested interests. Secrecy is a deep-rooted habit of thought in many circles. Overcoming all this will take long-term, consistent effort, with a healthy respect for the relatively narrow sets of circumstances in which secrecy is truly more appropriate.

Fortunately, the promoters of transparency have some powerful weapons on their side as well. First, the broad trend toward greater democracy brings with it a normative shift more accepting of transparency principles. When governments are seen as entities whose purpose it is to serve the public interest, governmental rights to keep secrets from the public face a higher standard of justification. Second, in issue areas from security to economics to environment, many parts of the world have enjoyed much success with transparency, providing powerful models of how disclosure can serve broad public interests.

To ensure that these positive trends continue will require concerted action on the part of many people. The broad trend toward appropriate national legislation needs to be strengthened. International organizations need to commit themselves to serious disclosure policies. The wide array of civil society groups and others working to promote transparency need to collaborate across issue areas and national and organizational boundaries. The various rationales for continued secrecy (and particularly the new justifications based on anti-terrorism efforts) need to be fully and publicly evaluated. The fight will not be easy, and it will probably never be fully won. But the progress made in recent decades provides good reason to believe that further progress is possible.

Notes

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2. *Ibid.*

3. Treaty of Versailles, in Charles I. Bevans, compiler *Treaties and Other International Agreements of the United States of America, 1776-1949* (Washington, DC: United States Government Printing Office, 1969), vol. II, pp. 130-131.

4. Burns and Urquidi 1968, vol. I, p. 179; Neal H. Peterson, "The Versailles Treaty: Imposed Disarmament," in Richard Dean Burns, ed., *Encyclopedia of Arms Control and Disarmament* (New York: Charles Scribner's Sons, 1993), p. 630.

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6. Richard Dean Burns, "Origins of the United States' Inspection Policy, 1926-1946,"

Disarmament and Arms Control, Spring 1964, p. 163.

7. Davis 1993, pp. I-A-26, I-A-27.

8. Walter La Feber, *America, Russia, and the Cold War: 1945-1971* (New York: John Wiley and Sons, second edition, 1972), p. 34; "The Baruch Plan: Statement by the United States Representative (Baruch) to the United Nations Atomic Energy Commission, June 14, 1946," in United States Department of State, *Documents on Disarmament 1945-1959*, vol. 1, (Washington, DC: United States Government Printing Office, 1960), p. 11.

9. "Statement by President Eisenhower at the Geneva Conference of Heads of Government: Aerial Inspection and Exchange of Military Blueprints, July 21, 1955," in *Documents on Disarmament 1945-1959*, 1, pp. 486-487.

10. John Lewis Gaddis, "The Evolution of a Reconnaissance Satellite Regime," in Alexander L. George, Philip J. Farley, and Alexander Dallin, eds., *U.S.-Soviet Security Cooperation: Achievement, Failures, Lessons* (New York: Oxford University Press, 1987), pp. 353-372.

11. "Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water, August 5, 1963" in *Documents on Disarmament 1963*, pp. 291-293.

12. Article XII of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, 26 May 1972; Article V of the Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitations of Strategic Offensive Arms, reprinted in Roger P. Labrie, ed., *SALT Hand Book: Key Documents and Issues 1972-1979,* (Washington, DC: American Enterprise Institute, 1979) pp. 18, 21.

13. "SALT II, Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapons Tests, July 3, 1979," in *Documents on Disarmament 1974*, pp. 228-9.

14. Treaty Between the United States of America and the Union of Soviet Socialist Republics on Underground Nuclear Explosions for Peaceful Purposes, May 28, 1976, in *Documents on Disarmament 1976*, pp. 328-332.

15. Treaty on the Non-Proliferation of Nuclear Weapons, in *Documents on Disarmament 1968*, pp. 461-465.

16. Document on Confidence-Building Measures and Certain Aspects of Security and Disarmament, Conference on Security and Cooperation in Europe, Final Act, 1975; John J. Maresca, *To Helsinki: The Conference on Security and Cooperation in Europe, 1973-1975* (Duke University Press, 1985).

17. Document of the Stockholm Conference on Confidence and Security-Building Measures and Disarmament in Europe, convened in accordance with the relevant provisions of the concluding Document of the Madrid meeting of the Conference on Security and Co-operation in Europe, paragraph 65.

18. "Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of the Intermediate-Range and Shorter-Range Missiles," in Stockholm International Peace Research Institute, *SIPRI Yearbook 1988: World Armaments and Disarmament* (Oxford: Oxford University Press, 1988), pp. 395-485; Treaty on Conventional Armed Forces in Europe; *Vienna Document 1990* of the Vienna Negotiations on Confidence- and Security-Building Measures Convened in Accordance with the Relevant

Provisions of the Concluding Document of the Vienna Meeting of the Conference on Security and Co-Operation in Europe, Official Text (Washington, DC: United States Arms Control and Disarmament Agency, 1990); "Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms," *Arms Control and Disarmament Agreements* (Washington, DC: United States Arms Control and Disarmament Agency, 1991.

19. Security Council Resolution 687 (1991), "Iraq-Kuwait," section C.

20. See, e.g., Tim Trevan, "UNSCOM Faces Entirely New Verification Challenges in Iraq," *Arms Control Today* vol. 23, no. 3 (April 1993), p. 11.

21. "CWC Implementation Factoids," Chemical and Biological Weapons Nonproliferation Project, Stimson Center, www.stimson.org/cwc/factoids.htm.

22. *Ibid.*

23. http://wwv.armscontrol.org/ACT/aprmay99/jgam99.htm.

24. Michael Moodie, "Transparency in Armaments: A New Item for the New Security Agenda,": *Washington Quarterly,* vol. 15, no. 3 (Summer 1992).

25. "Developing Arms Transparency," 1997, www.acronym.org.uk/35armreg.htm.

26. www.acronym.org.uk/35armreg.htm.

27. http://www.stimson.org/cbm/la/lachron.htm

28. Organization of American States, "Convention on Transparency in Weapons Acquisitions Adopted," Press release, www.oas.org/juridico/english/releases/htm.

29. The Britain Joint Stock Companies Act became law in 1844, requiring joint stock companies to keep books of account; to present a 'full and fair' balance sheet at each meeting of shareholders; to file a balance sheet with the Registrar of Companies; and to appoint auditors who were entitled to examine the books and question officers of the company. The Companies Act of 1856, however, erased the 1844 act, and companies remained nearly completely free in accounting matters until the twentieth century. Since 1900, Britain has gradually increased the regulation of financial statements and audits through various Companies Acts. The 1900 Companies Act, for example, once again made annual audits compulsory for joint stock companies. The 1948 Companies Act required the disclosure of a profit and loss account. T.A. Lee and R.H. Parker, eds., *The Evolution of Corporate Financial Reporting*. Garland Publishing, Inc.: NY, 1984, p. 194. The reason for the shift in favor of transparency was a growing recognition that a stock market could not function efficiently over time without it. As the British Government's Greene Committee noted in 1926 "Small shareholders are becoming more numerous and more intelligent; investors and their advisors are increasingly guided by precise information rather than by private tips or market rumor; public policy and economic necessity are gradually changing our conceptions of how much the shareholders and the public ought to know." Quoted in Nissim Aranya, "The Influence of Pressure Groups on Financial Statements in Britain," in Lee and Parker, p. 268.

30. David F. Hawkins, "The Development of Modern Financial Reporting Practices among American Manufacturing Corporations," in J.R. Edwards, ed., *Studies of Company Records, 1830-1974,* Garland Publishing, Inc., NY, pp. 261-294.

31. John Carey, "The Origins of Modern Financial Reporting," in Lee and Parker, pp. 241-264.

32. George Cochrane, "The Auditor's Report," in Lee and Parker, p. 176.

33. George J. Benston, "Public (U.S.) Compared to Private (U.K.) Regulation of Corporate Financial Disclosure," in Gary John Previts, ed., *The Development of SEC Accounting*. Reading, MA: Addison-Wesley Publishing Company, 1981, pp. 275-290. The essential difference between British and American practices of corporate disclosure remains today that Great Britain has no regulatory agency like the SEC. Instead, the British Companies Acts stand on their own because the nature of the disclosure required is described specifically in the Acts. The British Department of Trade has the power to investigate failures to conform to the requirements of the Acts, but mainly it serves as a repository for the statements filed and it is rather private regulatory agencies, such as the London Stock Exchange and associations of investment bankers, that investigate disclosures. Unlike the SEC, however, these private British groups have no power to add regulations to the law. As a result, the United States system of financial disclosure regulations and monitoring is more extensive and costly than the British one.

34. http://web.missouri.edu/~foiwww/intlfoi.html.

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36. *Report of the Commission on Protecting and Reducing Government Secrecy*, Pursuant to Public Law 236, 103rd Congress (Washington, DC: Government Printing Office, 1997).

37. On the United Kingdom's debate, see, for example, the Freedom of Information Bill, available at http://www.publications.parliament.uk/pa/cm199900/cmbills/005/2000005.htm; the Freedom of Information Consultation on Draft Documents, available at http://www.homeoffice.gov.uk/foi/dfoibill.htm; and the House of Commons Committee on Public Administration report on the government white-paper on freedom of information, July 1998, available at http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/cmpubadm/398-vol1/39802.htm. On the Indian debate, see Vikram Khub Chand, "Legislating Freedom of Information: India in Comparative Perspective," Paper prepared for the Right to Information Workshop hosted by the Commonwealth Human Rights Initiative at Dhaka, Bangladesh, July 5-7, 1999.

38. www.id.doe.gov/doeid/foia/memo.htm.

39. www.usdoj.gov/oip/foiapost/2001foiapost19.htm.

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46. Lou Dolinar, "Access Denied," *Newsday.com*, October 24, 2001.

47. Robin Toner, "A Nation Challenged," *New York Times*, October 27, 2001.

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