Hurdles in countering cross-border corruption
By MICHAEL PEEL

While governments have been talking tough on banishing bribery, they have been slow to take effective action,

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AT AN APRIL 1994 meeting in London's Baker Street, four multinational building companies held a curious "cultural" discussion about a Nigerian gas plant project that was to generate them billions of dollars of work over the following decade.

The partners—France's Technip, Snamprogetti of Italy, Japan's JGC and KBR, now a Halliburton subsidiary—talked about whether their "agency agreements" should be open or "kept from the eyes of third parties".

"No partner should be exposed to unfair risks—legal, tax etc," say minutes of the meeting taken by a consortium official.

The documents are evidence in a complex and sprawling $ 170m (£ 90m) alleged bribery case that has triggered investigations by authorities in four countries including, it emerged last week, the Serious Fraud Office. The news has drawn fresh attention to promises made by rich countries to crack down on the involvement of their companies and nationals in bribery overseas. The evidence, say anti-corruption campaigners, is that many nations are still failing to do enough.

The main impetus behind international attempts to crack down on bribery is the Organisation for Economic Co-operation and Development, a grouping of 30 industrialised nations. Since 1999, an OECD convention has required its signatories to make tougher laws and start enforcing them to strengthen development, reduce poverty and bolster confidence in markets. On international bribery, according to a promise on the OECD's website, it is "no longer business as usual".

Yet listed immediately below that bold claim, a series of OECD reports show just how far some countries have to go. The first three make significant criticisms of the performance of Japan, the Netherlands and Denmark on tackling bribery.

The reports say Denmark should toughen its penalties for bribery, while Japan needs to strengthen itslaws, start investigating andprosecuting bribery and "urgently" assess impediments to doing this.

Perhaps most revealingly, the report on the Netherlands, published in June, says there have still been no trials or convictions for overseas bribery, in spite of "encouraging" recent signs that the authorities are starting to take the subject more seriously. Given the size of the Netherlands' economy, trade and involvement in "risky sectors and markets", the OECD concludes that "more investigations and prosecutions of foreign bribery would be expected".

This critique could be applied equally to quite a large number of other countries, say some anti-corruption campaigners. In June, Transparency International, an anti-corruption watchdog, published a report that said only one-third of OECD member states had taken significant action to enforce anti-bribery laws. It particularly criticised Canada, Italy and Britain — alongside Japan and the Netherlands.

Britain, for example, has yet to launch a single prosecution under a 2001 law that prohibits the bribery of overseas public officials. Some UK investigators complain that, while they are keen to pursue alleged bribery, the legal framework and the political will to allow them to do so seem to be lacking. “We have a law that is not fit for purpose,” says one investigator. “Is the government’s commitment to anti-corruption real?”

A corruption bill long promised by the British government has yet to be published, leaving damaging loopholes and uncertainties, say anti-corruption campaigners. An attempt to introduce a bill was aborted in 2003 after it was attacked for being too vague in its definition of “acting corruptly” and for failing to cover cases in which an employer consented to the bribery of its agent.

A number of other problems have been identified by the OECD. In a report published in June, it said nine countries still did not expressly prohibit companies from accounting for bribes as a tax-deductible business cost.

It also pointed to “perceived weaknesses” in rules governing the behaviour of government export credit agencies, which have long been criticised for turning a blind eye to alleged corruption in order to allow lucrative trade to continue.

Some of these short-comings have been thrown into greater relief by heightened activity over the past few years in a minority of countries, principally the US. The authorities there have investigated a number of non-US multinationals, leading some foreign executives to complain that overseas companies are being targeted because Washington does not think their home countries are doing enough to combat bribery. It is an impression the US has done little to dispel.

The latest development in the Nigeria gas plant investigation came a few weeks after the summit in Russia of the Group of Eight leading industrialised nations issued a strongly worded condemnation of corruption. It is the kind of statement that is triggering questions about whether rich countries are guilty of hypocrisy. As Transparency International has put it: “The G8 cannot prescribe anti-corruption and transparency measures that they themselves have not followed.”