

THE ORIGINS AND MOTIVATIONS OF THE CURRENT EMPHASIS ON CORRUPTION

THE CASE OF TRANSPARENCY INTERNATIONAL

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“No longer business as usual”. This title of a recent OECD publication¹ on fighting corruption and bribery reveals a longing for a new way of doing business that would be more respectful of basic principles of ethics and accountability. Corruption, broadly characterized as the “abuse of power for private gain”², is a notion whose legal parameters vary from system to system. Although the phenomenon itself is present in both the private and public spheres, some legal systems criminalize private sector corruption with the same laws and standards applicable to public officials while others prefer to resort to other types of offences such as fraud, theft or breach of trust. Internal corruption has been traditionally prohibited in most countries while corruption in international trade was until recently a generally admitted business practice. The term ‘bribery’, often used as a synonym for corruption, places the emphasis on the offer side, i.e. the giving of some advantage to “facilitate” a transaction. Extortion, on the other hand, refers to an active role from the demand side such as the behaviour of the official who refuses to consider a company’s bid unless a bribe is paid. Corruption is frequently associated with other forms of economic crime such as fraud, money laundering, embezzlement and trading in influence.

Corrupt exchanges vary in their dimension. At one end is the ‘petty corruption’ suffered by citizens in their day-to-day dealings with public officials. At the other end is what has been called ‘grand corruption’ which typically takes place in large-scale transnational contracts. Milos Zeman, former Prime Minister of the Czech Republic, expressed one of the most problematic aspects of the phenomenon when he declared at the 10th International Anti-Corruption Conference that “corruption is the only crime that is advantageous for both sides”³. Indeed, both the bribe payer and the recipient benefit from the deal. Corruption generally profits the most powerful -the biggest companies able to pay bribes to gain new contracts and government officials who personally enrich themselves or are elected thanks to illegal contributions- making the emergence of an anticorruption movement all the more difficult. The victims, because in such transactions they often take the form of a diffuse third party, are harder to identify and may not be aware of their plight. Corruption may hurt shareholders, investors and competing companies. It can affect the citizenry as a whole in a number of ways: poor services due to corrupt contracting practices, distorted processes within the administration, the judiciary and the police, and even economic or political instability of the countries when the phenomenon is too pervasive.

Recent years have seen an outburst of anticorruption rhetoric and activity. At the normative level, production of anticorruption legislation has developed both domestically and internationally. Within civil society, groups have formed and initiatives have been launched to tackle the phenomenon. In the political debate, anticorruption programmes are presented as a token of democracy and good

¹ OECD, *No Longer Business as Usual: Fighting Bribery and Corruption*, OECD publication, October 2000

² United Nations Global Programme against Corruption (GPAC) : <http://www.unodc.org/unodc/en/corruption.html>

³ From his speech at the 10th International Anti-Corruption Conference, Prague, October 2001, quoted in *Respondanet*, respondanet.com. For comments on corruption and censorship in the Zeman administration itself, see Holub, Petr, Not Only Corruption But Censorship As Well, in *Respekt*, 15 02, http://www.respekt.cz/english/clanek_detail.php?f_id=82

governance while allegations of corruption can be used behind the scenes as weapons against rivals. Corporate discourse is now inconceivable without recurrent references to integrity and business ethics. In the news, corruption makes for good headlines. Anechiarico and Jacobs⁴ speak of “the politics of scandal and reform” and explain that “the media play a crucial role in the politics of corruption reform. Corruption sells”.

As with everything, this generalized frenzy around corruption and ethics can be best understood when placed in context. In this research, I set out to investigate the historical and motivational aspects of the current emphasis on corruption. The discussion is divided in two parts figuring two different approaches. The first part gives an overview of the progressive raising of awareness over corruption issues and the elaboration of anticorruption measures. As such, it is based on a review of literature including newspaper articles as well as academic and official publications. The second part considers the case of the anticorruption non-governmental organization (NGO) Transparency International. It makes use of secondary sources as described above but also rests on interviews I carried out in June, July and August 2005 with Transparency International members, ex-members and other people involved in the anticorruption movement. The choice of Transparency International as an object of study has been made as the result of several interconnected reasons. First, the organization has carried out an impressive amount of work and is noted for its great ability to focus media attention on the issue of corruption. But unlike what often happens with public institutions and other non-governmental organizations, a review of the existing literature did not bring out much comprehensive and independent analysis of Transparency International. Finally, a preliminary research had revealed elements which supported the case for a deeper inquiry.

A point must be addressed before I go any further: I only became aware as I was conducting my research that the publication of this article would coincide with the election campaign for a new president for Transparency International⁵. My intention was, and still is, to open a debate that I think has been neglected for too long. I believe that decisions are best made when they are taken under public scrutiny after an extensive discussion involving those they will affect. Corruption and the way it is fought have implications for all of us, directly or indirectly. They also tell a lot about our vision of the world and our approach to resolving its problems and preventing new ones from arising. Therefore, it is my hope that this paper will contribute to enlightening an important reflexion at a critical time.

⁴ Anechiarico, Frank and Jacobs, James B., *The pursuit of absolute integrity: how corruption control makes government ineffective*, London : University of Chicago Press, 1996

⁵ The General Meeting is, as far as I know, scheduled to take place on 13-14 November 2005.

Part 1: Corruption and anticorruption in context:

The historical development of anticorruption instruments

Two phases can be identified in the development of public concern and institutional responses over corruption: the period of activity following the Watergate scandal (I) and the subsequent internationalization of the anticorruption project (II).

I. US scandals in the 70s: a starting point for public concern and legislative action against corruption

Hamlet: What news?

Rosencrantz: None, my lord, but that the world's grown honest.

Hamlet: Then is doomsday near. But your news is not true.

William Shakespeare, *Hamlet*, Act 2

A. The facts : foreign payments as “a matter of business judgement”

In June 1972, five burglars were arrested during a break-in at the Democratic National Committee Headquarters in Washington. In addition to bugging equipment, \$ 4,200 was found in their hotel rooms. When tracing the source of the money, the FBI discovered that one of the burglars had withdrawn \$ 89,000 from a Miami bank, a sum originally deposited in the form of Mexican cheques for President Nixon’s re-election campaign.⁶ This incident was the beginning of what would later be remembered as the Watergate scandal.

Investigations followed and the Committee to Re-elect the President, the CREEP, or CRP, was found to have violated the Federal Election Campaign Act of 1971. Several corporations were charged with illegal use of corporate funds to finance domestic political campaigns. The Securities and Exchange Commission (SEC), a federal agency created in 1934 to oversee the integrity of the financial markets, discovered violations of the securities laws by these corporations, such as falsification of financial records and constitution of slush funds sometimes used for illegal foreign payments. In particular, the Northrop Corporation had illegally financed the CREEP and further investigation showed that it had also made dubious contributions to foreign government officials. Since Northrop sold military aircraft, the Senate took the matter seriously and the Subcommittee on Multinational Corporations, chaired by Senator Church, initiated a series of hearings to determine the motives and consequences of the payments.

During the hearings, the officials of Northrop did not deny making the payments, arguing instead that their arrangements were merely a duplication of the sales structure of their competitor, the Lockheed Corporation, rendered necessary by the common commercial practices. The officials of Lockheed confirmed the allegations of Northrop. During the hearings, Chairman Haughton declared: “Lockheed does not defend or condone the practice of payments to foreign officials. We only say

⁶ Albanese, Jay S., What Lockheed and La Cosa Nostra have in common, in *Crime & Delinquency*, April 1982, p.214

that the practice exists, that in many countries it appeared, as a matter of business judgement, necessary in order to compete against both US and foreign competitors.”⁷

At that time, bribing foreign officials was not expressly prohibited by US domestic laws. Moreover, it appeared during the hearings that the payments may not have been an initiative of Lockheed. Rather, the company claimed to have learned during the course of its business that refusing to pay bribes excluded it from being considered by a potential purchasing government. Confirming what he had said during the hearings, Kotchian, the President of Lockheed, wrote a book relating his sales in Japan. There he states: “I thought the pledge of money was like admission to a ballgame. And if you didn’t pay the admission, you were not even qualified to participate in the game -your product wouldn’t even be considered. [...] The payment of money was not an offensive, but rather a defensive strategy to defend ourselves in the game of international trade”⁸. The meaning of these allegations was that the corporations had not so much corrupted government members, as they had been the victims of extortion maneuvers *by* the foreign officials themselves.

According to Albanese, the amount of money involved in the Lockheed case was never properly investigated and neither was the possibility evoked by some Senators that the payments might have had consequences on inflation or on gains made by the Communist Party in Italy where Lockheed had sold aircraft. But even though the events may not have been fully investigated, they would become of historical importance due to the impact of their disclosures -following investigations revealed that over 300 US companies had made corrupt payments abroad- and to the attention given to them by the media⁹. In addition to the domestic aspects, public awareness was suddenly raised on the new issue of corruption in international trade and evolved into a strong hostility towards the dubious practices of the business world. New social standards were being set, advocating more transparency and ethics both in the private and public sectors.

B. The legislative reaction : “corporate bribery is bad business”

Judging that “corporate bribery is bad business”, damaging to US foreign relations, to the image of American democracy abroad and harmful to the efficient functioning of US capital markets, the Senators introduced bills to counter the problem¹⁰. The Foreign Corrupt Practices Act (FCPA) was finally adopted in 1977 under the Presidency of Jimmy Carter. The Act criminalized bribes given to a foreign government official for the purpose of obtaining and maintaining sales, prohibited the falsification of records and obliged the companies to maintain strict accounting standards over their assets.

The adoption of domestic legislation, however, was unsatisfactory as no international standard common to all companies had been set. While federal laws would give more transparency and higher ethical standards to US corporations, they would harm them in the international market where vying foreign companies not prohibited to pay bribes would be more competitive. Unsatisfied with this situation, US policy makers insisted on the necessity to establish a level playing field where American companies would not be put at a disadvantage. The perceived inequity was further aggravated by the fact that some of America’s major trading partners such as Germany or France

⁷ US Congress, Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, *Multinational Corporations and US foreign policy- Hearings Part 12, 94th cong., 1st sess.*, 1976, p.346, quoted in Albanese, op.cit. p. 218

⁸ *Rokkiedo Jiken* (Lockheed Incident), Book I: Lockheed Sales Mission, 1976, quoted in Albanese, op.cit., p 221

⁹ About the importance given to the Watergate hearings by the media, see Garay, Ronald, *Watergate*, Encyclopedia of Television, Museum of Broadcast Communications,

<http://www.museum.tv/archives/etv/W/htmlW/watergate/watergate.htm> and Ornstein, Norman J., Less Seems More: What to do about Political Corruption, in *The Responsive Community*, Winter 1993-1994, pp 7-22.

¹⁰ US Senate, Committee on Banking, Housing and Urban Affairs, *Foreign Corrupt Practices and Domestic and Foreign Investment Improved Disclosure Acts of 1977*, Report to accompany S. 305, 95th Congress, 1st session (No 95-114) , 2 May 1977, <http://www.usdoj.gov/criminal/fraud/fcpa/1977sen.htm>

allowed their companies to deduct as business expenses the bribes paid to foreign government officials. The losses suffered by American companies due to uneven competition were later valued in the tens of billions of dollars per year¹¹.

Thus, after the adoption of the Foreign Corrupt Practices Act, the US, then the world's first exporter, increased its lobbying on international and regional organizations to have them adopt anti-corruption provisions¹². By 1975, it had already obtained a resolution from the General Assembly of the United Nations condemning bribery and other corrupt practices in international commerce. In 1979, the UN Economic and Social Council drafted an International Agreement on Illicit Payments, but the General Assembly did not support it and it was never adopted. As evidence of US determination to involve the international community in its anticorruption project, the FCPA was amended in 1988. The new provision directed the President to pursue an international agreement with the members of the Organization for Economic Cooperation and Development (OECD) to have them adopt domestic anticorruption provisions. But further pressures, scandals, investigations and disclosures would be necessary for the international community to start to adopt significant measures.

II. The internationalization of the anti-corruption project

"Ideology is the permanent hidden agenda of criminal justice".

Walter Miller, Ideology and criminal justice policy, *Journal of Criminal Law and Criminology*, June 1973, p.142

A. The progressive building of awareness over corruption

1. The kleptocracies exposed to public opprobrium

Although during the 1970s the investigations had mostly revealed corruption in international trade and within the developed world - US, Japan, the Netherlands, Italy, or France, to cite a few - in the 1980s and 1990s attention also focused on the Third World. Kleptocracies, meaning 'government by thieves', became the word used to refer to the Third World governments headed by corrupt officials who massively and systematically plundered funds for their personal profit. The misgovernance of such regimes was progressively brought to the attention of the international public. Illustrations of these situations abound: Indonesia under General Suharto (1967-1998), the Philippines under Marcos (1966-1986), Zaire -now the Democratic Republic of Congo- under General Mobutu (1965-1997), Haiti under Duvalier (1971-1986), Chile under General Pinochet (1973-1990)...

This kind of corruption, however, appeared in a context of dictatorial regimes where it was only one mischief among others. Gross violations of human rights like torture, arbitrary arrests and executions of alleged political opponents were usually commonplace in these countries, in an atmosphere of repression, civil conflict or belligerency. Also, the kleptocrats had not prospered on their own: during the Cold War, the Western world, and in particular the United States, had often been an active supporter of such leaders which it saw as useful bulwarks against the expansion of Communism¹³. In addition to providing 'economic advice' and 'technical assistance'¹⁴, the US was also a supplier of arms and maintained cooperative relationships with the rulers. The Philippines, under dictatorship

¹¹ Clinton, William J., *Statement by the President*, 10 November 1998, <http://www.usdoj.gov/criminal/fraud/fcpa/signing.htm>

¹² See Rossbacher, Henry H. and Young, Tracey W. *The foreign corrupt practices act within the American response to domestic corruption*, 14th international symposium on economic crime, Cambridge, September 1996, <http://www.rossbacherlaw.com/foreign.htm>

¹³ See, for example, Kumar, Satish, *CIA and the Third World: a study in Crypto-Diplomacy*, 1981, London: Zed Press.

¹⁴ On "technical assistance" abroad as a pretext for covert action and to recruit informants, see Agee, Philip, *Inside the Company. CIA diary*, 1975, Harmondsworth: Penguin.

and martial law since 1972, accommodated two important US military bases and was on good terms with a variety of American businesses. The US overlooked the gross human rights violations committed there, and when the dictator Marcos fled his country in 1986 he was taken to Hawaii in U.S. Air Force planes¹⁵. He had undertaken a thorough looting of public resources during his rule. After he escaped, a commission was created to recover the billions of dollars in assets plundered by his government.

Such cases were commonplace in the Cold War era, but maybe the most notorious and well documented is that of Chile under General Pinochet (1973-1990). According to a recent US Senate report investigating the General in relation with money laundering and foreign corruption, “in court filings, press accounts, and other reports, Mr Pinochet has been accused of involvement with human rights abuses, torture, assassinations, death squads, drug trafficking, arms sales, and corruption”¹⁶. He has been the subject of repeated litigation in at least seven countries and orders have been issued against his assets. But in this case too, the responsibility of the West is striking. In 1970, having been unable to prevent the election of socialist leader Salvador Allende to the presidency of Chile, the US via its intelligence service concentrated on discrediting the President, weakening the economy to destabilize the country and preparing the way for the coup which would lead to the accession to power of General Pinochet. CIA Director Richard Helm’s 1970 note of President Nixon’s instructions for CIA operations in Chile is telling: “\$10,000,000 available, more if necessary - full time job - best men we have - game plan - make the economy scream”¹⁷. Subsequently, for more than two decades, US financial institutions helped General Pinochet to best administrate his wealth¹⁸.

After the collapse of the Soviet Union, the anti-communist dictators lost their usefulness to the Western world and the support that they had enjoyed heretofore. When their rule ended, they were then presented to the public as greedy, evil kleptocrats. These ‘revelations’ converged to feed the anticorruption cause. But state institutions and the notion of public good had been so profoundly damaged in these countries that kleptocratic regimes continued to exist after the Cold War and even after scandals of corruption involving the former leaders. In other words, internal corruption seemed so endemic as to resist variations in leadership. The United Nations Office on Drugs and Crime reports that the Philippines, Haiti, and Nigeria, in particular, suffered again very high levels of corruption in the 1990s¹⁹. In the latter case, even today with General Olusegun Obasanjo as President of the country, corruption is said to remain a common practice within political circles²⁰.

2. Corruption in privatization of ex-USSR countries

After the dissolution of the USSR, privatization of ex-communist countries became a fertile ground for corruption. In Eastern Europe, according to economist Joseph Stiglitz, the process was often a disaster because of the inadequacy of the policies of the International Monetary Fund²¹. In Russia for example, the ‘shock therapy’ -privatizing quickly, liberalizing prices instantaneously- failed to benefit the economy. Instead, a few people were the real beneficiaries and corruption flourished in a

¹⁵ *The Harvard Crimson*, Marcos supporters’ bank accounts frozen (no writer attributed) 11 March 1986, <http://www.thecrimson.com/article.aspx?ref=126613>

¹⁶ US Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act*. Supplemental Staff Report on US Accounts used by Augusto Pinochet, 16 March 2005,

http://hsgac.senate.gov/_files/PINOCHETREPORTFINALwcharts.pdf (hereinafter as 16 March 2005 US Senate Report)

¹⁷ Rhodri Jeffreys-Jones, *The CIA and American Democracy*, c.1989, London : Yale University Press

¹⁸ 16 March 2005 US Senate Report.

¹⁹ UNODC Anticorruption Toolkit, 3rd edition, Vienna, September 2004, p. 574,

http://www.unodc.org/pdf/crime/corruption/toolkit/corruption_un_anti_corruption_toolkit_sep04.pdf

²⁰ See Odunlami, Tayo, *Nigeria: corruption notebook*, The Center for Public Integrity,

<http://www.publicintegrity.org/ga/country.aspx?cc=ng&act=notebook>. General Obasanjo succeeded to General Abacha in 1998 and is a member of Transparency International.

²¹ See Stiglitz, Joseph, *Globalization and its discontents*, Penguin Books, 2002

country where the market lacked institutional monitoring and regulation mechanisms. Privatization in East Germany also led to corruption affairs. The *Treuhandanstalt*, a government agency created to administer the change of ownership of the firms, soon became involved in various scandals. The decisions concerning the prices of the former state-owned companies and their new ownerships were often influenced by favoritism, nepotism or corruption²².

The danger with such situations was that they could jeopardize the functioning of and support for the market economy. Countries from the ex-USSR later re-elected former communist parties or leaders who advocated a return to a managed economy²³. According to Stiglitz, Russian peasants found themselves in a position worse than the one they had known during the Communist era. Corruption, already condemned by the citizens of the developed world, was having a disastrous effect on the developing countries. It was a battle that had to be fought in order to maintain confidence in the economic and political system and limit its defaults to a tolerable level.

3. Corruption in connection with social inequity and crime

The relevance given to the scandals of the kleptocracies, where immensely wealthy leaders ruled over a country stricken by destitution, may be the reason why corruption is often said to be a cause of poverty. Later analyses by the international organizations and financial institutions tried to further address the causality between corruption on the one hand and misgovernance and poverty on the other, as is illustrated in a working paper of the International Monetary Fund written by Paulo Mauro in 1996. Although the author identifies a negative correlation between corruption on the one hand and investment, growth and government expenditure on education on the other, he recognizes that “the issue of causality has not been fully resolved, and perhaps it is unlikely to be even with further research, since causality may well operate in both directions”. What is more evident is that, as one can read in a September 2000 OECD Policy Brief, corruption “distorts the allocation of resources”. As we will see, among international organizations and financial institutions, anticorruption programmes and good governance represent today one of the main strategies in the fight against poverty.

But scandals of corruption are not limited to poor countries or countries in transition. Savona and Mezzanotte describe how the phenomenon is present in virtually every European Union Member State²⁴. The most striking example is probably the Italian operation *mani pulite* (“clean hands”), started in 1992, which brought to light a national situation where corruption was endemic, reaching all levels in the hierarchy of power and even altering the democratic process within the Parliament. The international community further denounces the fact that corruption feeds a myriad of crimes of different nature, such as non-compliance with health and safety or environmental regulations and unmonitored scientific experimentation²⁵. But in a world more and more victim of criminal organizations and terrorism, a major concern is the possible diversion of funds towards criminal groups. Thus, corruption was an explicit concern at the adoption of the Convention against Transnational Organized Crime. Resolution 55/25 of November 2000²⁶ by which the convention was adopted expressly links the fight against corruption to the fight against organized crime and asks for the criminalization of corruption. More recently, concerns have been expressed of links between corruption and terrorism. According to the UNDP Paragon Training Module on Public Services and Accountability, “bribes open doors for terrorists”.

B. The progressive setting of international standards

²² Savona, E. U. and Mezzanotte, L., *La corruzione in Europa*, Carocci Editore, Roma, 1998, chapter 2

²³ Stiglitz, *op. cit.*

²⁴ Savona, E. U. and Mezzanotte, L., *op. cit.*

²⁵ UNDP Paragon Training Module on Public Services and Accountability, January 2003, <http://unpan1.un.org/intradoc/groups/public/documents/eropa/unpan018915.pdf>

²⁶ http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf

1. In the international organizations

In the early 1990s, the US was still leading the way in promoting international anti-bribery instruments. The matter was first discussed and acted upon within the OECD. In May 1994, the OECD Council approved a recommendation condemning bribery in international business transactions. It called for the adoption of adequate legal provisions and established a working group to follow the implementation of the text and keep on working on the subject. “Convinced that further action [was] needed on both the national and international level”, the OECD saw its initiative as a potential “catalyst for global action”²⁷. Then, on April 11, 1996, “under intense pressure from the United States”²⁸, it agreed on a new recommendation. Bribes to foreign officials should no longer be tax-deductible, a possibility that existed in some countries. This disposition obliged the member nations should rewrite their tax codes.

In 1997, a revised version of the 1994 recommendation was adopted and the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions was eventually agreed to. It entered into force in February 1999. The official reports accompanying the adoption of the US implementation instrument, the 1998 International Anti-Bribery and Fair Competition Act, illustrate the active role of the US in pushing forward international standards and the national self-interest at work in this project. They also illustrate the integration of new concerns such as good and democratic governance. Thus, President Clinton wrote “we have long believed bribery is inconsistent with democratic values, such as good governance and the rule of law”²⁹ while the Department of Justice explains in a transmittal letter that “The OECD Convention, when fully implemented by all parties, will help create the level playing field and transparent contracting long sought by American businesses as they compete around the world for public contracts”³⁰. A further OECD recommendation on “improving ethical conduct in public service” (1998) addressed the demand side, fixing a set of principles that should be followed by public administrations. The OECD, willing to rally all the members of the international community, developed anticorruption initiatives with other organizations and non-member countries³¹. The 40 Recommendations of the Financial Action Task Force on Money Laundering also have general relevance to corruption efforts. In particular, recommendation No 6 of 2003³² encourages financial institutions to report transactions which would suggest bribery or abuse of public trust.

The Organization of American States, under the impulsion of the US, was the first regional organization to adopt a binding agreement against corruption: the Inter-American Convention against Corruption of March 1996. In May 1997, it was the turn of the European Union to adopt the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union³³. The Council of Europe (COE) also joined in the battle. In 1994, at the close of the Council’s Nineteenth Conference, the Justice Ministers launched the idea of an anticorruption programme³⁴. The programme was adopted by the Committee

²⁷ Recommendation C(94)75/Final, <http://www.oecd.org/dataoecd/9/52/1952622.pdf>.

²⁸ H.H. Rossbacher and T.W. Young, *The foreign corrupt practices act within the American response to domestic corruption*, 14th international symposium on economic crime, Cambridge, September 1996, <http://www.rossbacherlaw.com/foreign.htm>.

²⁹ Clinton, William J., *Statement by the President*, 10 November 1998, <http://www.usdoj.gov/criminal/fraud/fcpa/signing.htm>

³⁰ US Department of Justice, Transmittal letters to the US House of Representatives and Senate concerning the draft bill “International Anti-Bribery Act of 1998”, 4 May 1998, <http://www.usdoj.gov/criminal/fraud/fcpa/tranlet.htm>

³¹ OECD Policy Brief, The fight against bribery and corruption, September 2000, <http://www.arabjudicialforum.org/policybrief.pdf>

³² http://www1.oecd.org/fatf/pdf/40Recs-2003_en.pdf

³³ See <http://europa.eu.int/scadplus/leg/en/lvb/l33027.htm>

³⁴ Council of Europe, Explanatory Report on the Criminal Law Convention on Corruption, GMC (98) 40, 1st December 1998, <http://www.usdoj.gov/criminal/fraud/fcpa/gmc9840e.htm>

of Ministers in 1996 and led to the January 1999 Council of Europe Criminal Law Convention on Corruption which came into force in 2002. One of its particularities is its applicability to the private sector as well as to public officials. It also creates the new crime of trading in influence which would later figure in the UN Convention against Corruption. The Council of Europe then followed up with the November 1999 Civil Law Convention on Corruption entered into force in 2003 which covers private corruption as well and imposes financial liability on governments for acts of corruption by public officials. The African Union Convention on Preventing and Combating Corruption was adopted in July 2003.

In 1997, the UN established the Office on Drugs and Crime (UNODC) to assist the Member States in their struggle against illicit drugs, terrorism, organized crime and other criminal activities including corruption³⁵. The 2000 UN Convention against Transnational Organized Crime entered into force in 2003 requires the criminalization of four specific offences, one of which is corruption. The convention specifically targeting corruption, the Convention against Corruption, or Merida Convention, was finally adopted by the General Assembly in October 2003. It expands the possibilities for international cooperation against corruption even in the absence of an element connecting the fraudulent transaction to organized crime. The thirtieth ratification instrument was deposited on 15 September 2005 by Ecuador and the convention will enter into force on 14 December 2005³⁶.

2. In the international financial institutions

Today, the World Bank considers corruption to be “the single greatest obstacle to economic and social development”³⁷. This has not always been the case. Until 1995, corruption was seen exclusively as a political issue. Officials from Transparency International interviewed for this study invariably underlined this aspect and some of them suggested that at that time there may have been corruption within the Bank itself. The Bank, to justify its refusal to support anticorruption initiatives, provided legal advice to the effect that it was a political question with which it could not interfere. This approach changed when James Wolfensohn became President in 1995. In a speech made at the General Meeting in Hong Kong in 1997, he announced the new intention of the World Bank to condemn and tackle corruption³⁸. Since then, the Bank has supported more than 600 anticorruption programmes and governance initiatives in its member countries³⁹. One of the measures adopted to promote integrity and good governance as a structural goal has been the suspension of loans in the presence of evidence of corruption⁴⁰. The International Monetary Fund has also put in place good governance and anticorruption policies similar to that of the Bank⁴¹.

3. Non-governmental interventions

States and intergovernmental organizations do not have the monopoly of fighting corruption. Other segments of society entered the anticorruption arena and contributed to coordinating the mobilization at the international level. In October 2002, parliamentarians from different parts of the world set up the Global Organization of Parliamentarians against Corruption (GOPAC). In 2003, a committee

³⁵ <http://www.unodc.org/unodc/en/about.html>.

³⁶ See http://www.unodc.org/unodc/en/crime_signatures_corruption.html.

³⁷ <http://www1.worldbank.org/publicsector/anticorrupt/index.cfm>

³⁸ Wolfensohn, James D., *The challenge of inclusion: 1997 Annual Meeting Address*, 23 September 1997, The World Bank

³⁹ <http://www1.worldbank.org/publicsector/anticorrupt/index.cfm>

⁴⁰ For the example of Kenya, see World Bank: *Kenya, World Bank take new steps against corruption*, Press Release, 28 October 2004, <http://www.odiousdebts.org/odiousdebts/print.cfm?ContentID=11758>.

⁴¹ See: *The IMF and good governance*, International Monetary Fund, <http://www.imf.org/external/np/exr/facts/gov.htm> and for the suspension of IMF loans in Kenya see Shaw, Robert, *IMF Unlikely to Resume Loans to Kenya Soon*, 7 September 1997, <http://www.imfsite.org/mission/unlikely.html>

made of representatives of the private sector (including General Electrics, PricewaterhouseCoopers and Shell International), non-governmental organizations, the European Bank for Reconstruction and Development and the Trade Union Advisory Committee to the OECD elaborated the Business Principles for countering bribery⁴². The Principles direct the enterprises to prohibit bribery and to commit to the implementation of an anti-bribery programme. According to the presentation document, the initiative was inspired by the necessity to take into account the evolution of the regulatory frameworks and to provide a response to the growing risk of corruption scandals. The principles “have been pitched at good practice level to attract the widest possible acceptance”. Non-governmental organizations (NGOs) also joined the movement. The most widely known for its work and high visibility is Transparency International, to which we will now turn.

⁴² Business Principles for Countering Bribery, June 2003,
http://www.transparency.org/building_coalitions/private_sector/business_principles/dnld/BPCBfinal.pdf

Part 2: The case of Transparency International

As the anti-corruption establishment has become more professionalized and self-conscious, it has generated its own momentum; in effect, it has become an interest group with components outside and inside government”.

Anechiarico and Jacobs, *The pursuit of absolute integrity*, 1996

Transparency International (TI) is a non-governmental organization headquartered in Berlin and founded in May 1993 with the declared intention of helping to combat corruption worldwide. The charter creating TI was signed by the following people: the German Peter Eigen, a former World Bank official, who, according to all accounts, originated the idea of an anticorruption NGO; Peter Conze from GTZ (the German Society for Cooperation and Development); Jeremy Pope, former Counsel to the Commonwealth Secretariat-General; Fritz Heimann, from General Electric; Michael Hershman, president of the Fairfax Group⁴³; Frank Vogl, president of Vogl Communications and former Director of Information and Public Relations at the World Bank; Roy A Stacey, US Deputy Assistant for African Affairs; Laurence Cockcroft, development economist; Kamal Hossain, former Minister of Foreign Affairs of Bangladesh, and Jerry Parfitt. After the International Secretariat (TI-S) was formed, national chapters were created and multiplied rapidly. The present analysis is organized around three themes. The first part considers Transparency International at work, i.e. the initiatives it carries out as well as the assumptions and attitudes underlying them. The second part looks at the internal functioning of the organization while the third considers some of the contributors to TI.

I. Transparency International at work

A. An impressive contribution to the anticorruption project

The initial intention of the founders, as is reflected in the original version of the charter⁴⁴, was to focus on corruption in international business transactions. However, at the first General Meeting at Quito, Ecuador, in 1994, participants made the point that TI’s mission needed to go beyond international trade to cover all types of corruption including the ‘petty’ corruption suffered by citizens on a daily basis. In his interview with me, Laurence Cockcroft, chairman of TI-UK and member of TI’s board, insisted that over time TI had indeed broadened its focus to include new issues such as petty corruption, corporate ethics and corrupt dealings in developed countries. The charter was recently amended to include this broader approach and now reads that “the purpose of the Society is to take action to combat corruption and prevent criminal activities arising from corruption so as to help build a world in which Government, politics, business, civil society and the daily lives of people are free of corruption”. Over time, TI has developed a number of concepts and tools which are now common references in the fight against corruption.

1. The Source Book and the National Integrity System

⁴³ The Fairfax group is “a global private intelligence, security and investigative firm founded in 1983”. (<http://michaelhershman.us/bio.shtml>)

⁴⁴ The original charter was amended at the 2004 Annual Membership Meeting. The first version of art. 2 used to read: “the purpose of the Society is to take action to control corruption international business transactions”. The Secretariat representative explained to me that the new charter is in the process of being registered with the German authorities and will be put online when the formalities are completed.

The first of TI's initiatives was the Source Book. According to Jeremy Pope, as the TI founders were negotiating financing with the Ford Foundation they were encouraged to create intellectual property. This provided the stimulus which led Jeremy Pope to write the Source Book. The Author's note to the Source Book 2000 indeed mentions that "the Ford Foundation [...] encouraged the project from the outset in 1995" and was instrumental in making further developments possible. The Book exists today in more than 20 languages and the last edition was published in 2000 (364 pages). The online version on TI's website is freely accessible and regularly updated.

The book establishes and advocates the "*National Integrity System*" (NIS), "an holistic approach to transparency and accountability"⁴⁵. "The National Integrity System is the sum total of the institutions and practices within a given country that address aspects of maintaining the honesty and integrity of government and private sector institutions". It rests on twelve institutional pillars, namely the legislature, the executive, the judiciary, the supreme audit institutions, the ombudsman, the independent anti-corruption agencies, the public service, the local government, the media, the civil society, the private sector and the international institutions. Integrity is ensured within the pillars thanks to rules and practices described in Part 3 of the Book, such as free elections or good financial management. The goal of establishing a national integrity system is to "make corruption a 'high risk' and 'low return' undertaking". This, however, must be accomplished without imposing "unwarranted costs or needless restrictions that might obstruct people from doing their jobs effectively". Systemic change and horizontal accountability are presented as the critical elements in combating corruption efficiently. National Integrity System country studies were undertaken to provide a detailed analysis of these institutions in the different countries and to suggest changes that would benefit the nations and reduce corrupt practices. The studies typically include interviews or focus groups with officials and professionals⁴⁶. After they are conducted, Country "Integrity System Audits" can also be developed by TI to adapt and "repair" the institutions and practices which constitute the national integrity system.

The standard framework advocated in the Source Book and its vocation to universalism⁴⁷ seem to reach their limits when applied to certain local realities. For example, it is surprising that some of the NIS reports for Latin American states reviewed for this research paid very little, if any, attention to the fact that the countries studied only recently emerged from years or decades of dictatorial regimes. Such omission casts doubts on the possibility of a fair and realistic assessment of a country's situation with regard to corruption. This is even more so as the reports are generally very critical of governments and political parties, a criticism which can only be constructive if placed within the broader analysis of the history and dynamics of electoral politics in the country. A different example of the surprising conclusions reached in the NIS country reports is the study on Niue. Niue is a small island state in the Pacific Ocean with, according to the report, fragile natural resources and a resident population of 1,769 people in 2003⁴⁸. Based, among other things, on the observations that "the police [...] do not have a special unit to investigate and prosecute corrupt offences", that "there is no ombudsman" and no special investigative/watchdog agencies, the report concludes that "Niue's NIS is by and large nonexistent". Common sense, however, suggests that such heavy administrative machinery, which would require human and financial resources and a workload important enough to justify its existence, would be difficult to imagine in a 2000-inhabitant community. In addition, the report makes no mention of Niue as a money laundering center, in spite of the usually close association between money laundering and corruption and the fact that Niue was on the FATF's list of non-cooperative countries and territories in the fight against money-laundering (NCCTs) until 2002.

⁴⁵ <http://www.transparency.org/sourcebook/00-author.html>

⁴⁶ http://www.transparency.org/activities/nat_integ_systems/country_studies.html

⁴⁷ The Source Book advocates "the need to adopt an holistic approach to any anticorruption reform programme".

⁴⁸ 2.166 people in 2005 according to the CIA World Factbook. Niue is also said to have big uranium deposits (<http://www.webpost.net/nb/nbn/>)

2. The Corruption Perceptions Index

The Corruption Perceptions Index (CPI) measures corruption as perceived by the business community and other professionals. It has been published yearly since 1995. Jeremy Pope recounted the launch of the CPI in the following manner: In 1995, an intern in the Berlin office was attempting to put together a ranking of corrupt countries. He came up with different systems, one of which leaked to a journalist of a German newspaper who published it. The reaction was mitigated within TI: the staff pondered whether to deny the survey or say it was work in progress, and then decided to let it go. It had had little impact in the press until a reporter at the New York Times used it in her article. It was published a first time in the Sunday edition and a second time by mistake the following Sunday. Jeremy Pope concluded that “whoever had missed it the first time picked it up then. This is what created TI’s international exposure and got it off the ground.” The CPI became a very popular survey. According to Fredrik Galtung, “the CPI has been cited in thousands of newspaper articles. It is cited almost on a daily basis”⁴⁹. *The media and the fight against corruption*, a presentation by Peter Eigen on the basis of a working paper by Frank Vogl⁵⁰, describes the CPI as a “handy league table” and enounces that “it is a fact that almost every newspaper in the world has in one way or the other picked up our Índice de Percepción de Corrupción [CPI]”. In this speech, the CPI is presented as the major example of the contribution that TI makes to the media’s anticorruption cause.

The Index, however, has also been strongly criticized, including by its former supporters, for its methodology and outcomes. Thus, Fredrik Galtung, a former TI researcher, wrote an article in which he identifies seven failures of the CPI one of which is its private sector bias and the lack of representativeness of the sample of respondents⁵¹. Controversies also exist about the conclusions to be drawn from the CPI. In the 2003 CPI press release, Peter Eigen declares that “those countries starting with a high degree of corruption should not be penalized” while, two paragraphs later, he insists that “donors countries and international financial institutions should take a firmer line, stopping financial support to corrupt governments”. And, although answer 5 to the CPI 2004 FAQs makes it clear that “TI does not encourage the CPI to be used in this way [i.e. to decide aid conditionality]”, Fredrik Galtung highlighted in 2005 that “the use of the CPI in the context of donor conditionality has become a matter of public record”, giving as an illustration the Bush administration’s Millennium Challenge Account.

3. The Bribe Payers Index

The Bribe Payers Index (BPI), first published in 1999, was prefigured in an answer to the CPI 1996 FAQs: “[The CPI] is not a fair assessment of the responsibility associated with corruption in international trade. Industrial countries which may be successful in keeping their homes clean and highly engaged in bribing foreign officials bear a much higher burden than our ranking can indicate. We will have to establish a ranking of active bribery in international trade, in order to bring some light into this part of obscure criminal activity”. Indeed, the BPI complements the CPI by measuring the supply side of international corruption, i.e. the propensity of leading exporting firms to bribe abroad. Fredrik Galtung laments the fact that, while the CPI is issued yearly, the BPI, destined to imbalance the message of the CPI, has only been issued twice, in 1999 and 2002, and “remains virtually unknown in the wider public and is generally ignored in the world press”. The choice of respondents also suggests a risk of bias, since companies which donate to TI or from which members of TI’s staff are issued are apparently included in the interviewees⁵².

⁴⁹ Galtung, Fredrik, *Measuring the Immeasurable: Boundaries and Functions of (Macro) Corruption Indices*, 2005, <http://tiri.org/documents/boundaries.pdf>

⁵⁰ Eigen, Peter, *The media and the fight against corruption*, speech presented to the CELAP Conference, San Juan, Puerto Rico, 8 July 1999, http://www.transparency.org/speeches/pe_puerto-rico.html

⁵¹ Galtung, *op. cit.*

⁵² 1999 BPI framework document, http://www.transparency.org/cpi/1999/bpi_framework.html

4. The Global Corruption Report

The Global Corruption Report (GCR) synthesizes news and short articles to provide an overview of the level and nature of corruption around the globe. The first was published in 2001 and up to now, three more have been issued, each giving special focus to a theme of particular relevance. The 2003 Report placed emphasis on access to information while the 2004 Report was on political corruption. A noteworthy fact about the 2004 GCR was that it included a list of ‘notorious leaders’ ranking former heads of states according to the funds they were suspected to have plundered. Albeit the data used in the Report came from material already in the public record, a TI official explained that some families of the heads of states exposed as kleptocrats tried to either sue or threaten TI with lawsuits. The Report also generated tensions between TI-Secretariat and its Filipino Chapter, since ex-Filipino leader Joseph Estrada, who was on the list, was on trial at that time and the release of the list was perceived by the local Chapter, whose chairperson is a judge, as interfering with the due process of law. The 2005 Report had a special section dedicated to post-conflict reconstruction and the 2006 Report, due to be released shortly, will be on health.

5. The Global Corruption Barometer

The Global Corruption Barometer is described as “a survey that assesses general public attitudes toward and experience of corruption in dozens of countries around the world”⁵³. Two Global Corruption Barometers have been released until now, in July 2003 and December 2004, based on general household surveys conducted on behalf of TI by Gallup International⁵⁴. One of the questions of the July 2003 GCB to which the TI press release dedicated much attention was the following: “if you had a magic wand and you could eliminate corruption from one of the following institutions, what would your first choice be?” Political parties ranked first, while the private sector ranked last. This result enabled TI to stress the importance of the work it is involved in with political parties and on electoral and campaign financing issues.

But in other questions, asked how significantly they believed corruption affects political life and the business environment in their countries, the respondents minimized the discrimination between public and private sectors: 84,4% thought it affects political life somewhat significantly or very significantly and 82,8% thought it affects the business environment in the same way⁵⁵. It is noteworthy that the United States is one of the countries where the largest proportion of interviewees deemed corruption to have an insignificant impact on political and economic life. Given what we saw in Part I of this research about the consequences of corruption on US politics and businesses and the efforts of American decision-makers to push forward anticorruption legislation, one might venture to think that the GCB is more a measure of the level of confidence respondents have in their country than a truthful reflection of the real impact of corruption.

The conclusions of the GCB 2004⁵⁶ are that “the public around the world perceive[d] political parties as the institution most affected by corruption. [...] After political parties, the next most corrupt institutions worldwide were perceived to be parliaments followed equally by the police and the judiciary”. Interesting questions to address would be whether the higher visibility of public institutions and scandals involving them does not partly account for their poor ranking in the opinion of the public, and to what extent the image given by a GCB in particular and by the media in general contributes to shaping the future perceptions and surveys. One can also hypothesize that since citizens identify more with the public institutions than with the private sector, they may be more sensitive to political corruption and unaware of the extent and role of private sector corruption.

⁵³ <http://transparency.org/surveys/index.html#barometer>

⁵⁴ Press release, http://transparency.org/surveys/barometer/dnld/barometer2003_release.en.pdf

⁵⁵ See the press release and the full data at <http://transparency.org/surveys/barometer/dnld/barometer2003.en.pdf>

⁵⁶ http://transparency.org/pressreleases_archive/2004/2004.12.09.barometer_eng.html

6. Public procurement

According to Jeremy Pope, Robert McNamara, former President of the World Bank, suggested that what was needed to promote integrity was an anti-bribery pledge signed by a corporation's CEO. But Jeremy Pope contended that "no one would support a negative engagement not to bribe. The commitment had to be positive and not negative". The idea was therefore transformed into the Integrity Pact. The Integrity Pact (IP), aimed at preventing corruption in public procurement, rests on an agreement between a public administration and all bidders for a public sector contract and prohibits bribery and other corrupt practices⁵⁷. The 2002 IP status report⁵⁸ gives an overview of the application of the Pact and comments that the political will to use this instrument seems to be more present at the municipal than at the regional or national level.

On the website of the Brazilian Chapter of TI, Claudio Abramo stresses the limited use that has been made of the Integrity Pact by TI National Chapters, giving as the reason the lack of an "open debate about its merits and defects"⁵⁹. The Executive Director of TI-Brazil laments that the Integrity Pact is only based on voluntarism and suggests more useful initiatives for promoting integrity in public contracting such as lobbying "to perfect the laws and regulations both within countries and among multilateral agencies, and to enforce existing regulations" and supporting the constitution of databases of prices which would "publici[ze] the information and thus empower civil society".

7. Lobbying for the OECD convention

One of the most crucial accomplishments of TI was, according to Jeremy Pope, the successful lobbying campaign for the adoption and ratification of the OECD convention. As we have seen, international anti-bribery instruments have been actively promoted by the United States since the adoption of the FCPA in order to level the playing field for US businesses. Using different arguments, TI also pressured the members of the OECD for the setting of the standards which would become enshrined in the convention. As was explained to me, "only the US wanted the convention, in order to protect its own exporting industries. TI argued that the convention was needed to protect the Third World, which was a much better argument than that of the US." Therefore, TI had meetings with government officials and parliamentarians in various OECD countries. It lobbied on the UK government and was successful in persuading an official to get the policies changed. In Australia and Canada, TI was also instrumental in combatting the initial reluctance of the policy-makers.

It is not entirely clear, however, what arguments were used to convince the officials. Although the OECD convention has a general value of deterrence of bribery in vendor countries with the consequent reduction of corrupting influence in the Third World and constitutes a step towards future asset recovery provisions, the appeal these arguments would have had to OECD policy-makers is uncertain. Germany was also strongly opposed to the convention which it saw as an obstacle to the competitiveness of its companies. In this case, TI approached German businessmen and had them sign a letter to the effect that involvement in corruption was damaging to German businesses. The letter was sent to all the governments which were negotiating the OECD convention. The German government subsequently reversed its position.

8. Other contributions

⁵⁷ See http://transparency.org/integrity_pact/preventing/integ_pacts.html

⁵⁸ http://transparency.org/building_coalitions/integrity_pact/i_pact.pdf

⁵⁹ <http://www.transparencia.org.br/demofortransp/index.html>

In many instances, Transparency International conducts activities in association with other bodies and contributes to publicizing the outcome of the activities. In 1996, TI became the Secretariat (and Peter Eigen the Secretary) of the International Anti-Corruption Conference Series, a project launched in 1983 by law-enforcement agencies to enable professionals from all over the world to exchange their experiences⁶⁰. In 2003, along with the New York-based NGO Social Accountability International, TI facilitated the initiative which led to the adoption of the Business Principles for Countering Bribery. In the person of Laurence Cockcroft, the organization chaired the Steering Committee which developed the content of the principles.

TI is also concerned with developing education, knowledge and training about the issue of corruption. In 2001 it produced the first *Corruption Fighters' Tool Kit*, "a compendium of practical civil society anti-corruption experiences", as an international edition in CD-ROM format⁶¹. The 2002-2003 toolkit (424 pages) presents local initiatives almost exclusively by TI national chapters in developing countries. The projects are organized around seven themes: awareness raising (12 initiatives), procurement (3 initiatives), election campaigns (7 initiatives), access to information (6 initiatives), public institutions (8 initiatives), business ethics (1 initiative) and diagnostics (9 initiatives). The 2004 Special Edition Toolkit Teaching Integrity to Youth (84 pages) presents 11 integrity-oriented educational initiatives developed for youth of various ages by TI chapters, other NGOs and public bodies. Under the umbrella of the Global Campaign on Urban Governance and in partnership with UN-HABITAT (the United Nations Human Settlements Programme), TI has elaborated the 2004 publication *Tools to Promote Transparency in Local Governance*⁶² (201 pages). In addition, TI organizes training courses and workshops for journalists and parliamentarians.

Recognizing that "The effective use of knowledge is perhaps the most potent of all the weapons we can use in the fight against corruption" and that "the right information in the right hands is a formidable combination", TI has set up the Knowledge Centre "to make necessary knowledge readily available - to activists, policy-makers, journalists, lawyers, parliamentarians, private sector interests, law enforcers and law reformers"⁶³. An important element of the Knowledge Centre is CORISweb, the Corruption Online Research and Information System, a portal elaborated by Transparency International which gives access to more than 16,000 resources among which one can find a media archive from major newspapers around the globe, research papers and a legislative database. TI also regularly produces its own media releases.

On the outside, TI is sometimes perceived as a powerful news source which suits both mainstream and alternative media but can therefore easily escape scrutiny. The mainstream media can criticize the kleptocracies thanks to tools such as the CPI while the alternative media find support for their depiction of the harmful influences of capitalism. Anechiarico and Jacobs insist that corruption is a socially constructed category of behavior and TI does not hide its role: "TI is constantly "reinventing" the issue of corruption to keep it relevant on the world agenda"⁶⁴. The 8 July 1999 presentation based on a working paper by Frank Vogl, head of Vogl Communications, explains the media success of TI's indices by the fact that "after all, in today's journalism no topic will ever make headlines as long as there aren't some easy-to-grasp figures, charts and tables to illustrate the problem".

B. An ambiguous stance

1. A strategic choice: prevention v. exposure

⁶⁰ <http://www.transparency.org/iacc/pastiacc.html>

⁶¹ An introduction to the Corruption fighters' toolkit, http://transparency.org/toolkits/2002/ch0-intros/introduction_by_peigen.pdf

⁶² http://transparency.org/toolkits/dnld/ti_un_toolkit.pdf

⁶³ http://transparency.org/knowl_intro.html

⁶⁴ <http://www.transparency.org/activities/activities.html>

As is stated on TI's website and as was consistently confirmed to me during the interviews, the proposed methodology that the organization would adopt in its fight against corruption was contentious. Peter Eigen's idea of creating an international business monitor which would expose corrupt dealings by Western companies exporting to the Third World was thought by his colleagues to be at best "unlikely to be effective" and at worst "crazy". The reasons for these reactions were that, according to Laurence Cockcroft, naming and shaming would entail "legal complications", would oblige TI to carry out its own investigations and would "target companies with huge resources". Jeremy Pope gave similar arguments: "everybody would be bankrupt and there would be no money to fund this activity and the court cases it would generate". The approach was therefore recast. Instead of "throwing stones at people", the organization had to favor a "positive" stance and focus on prevention as "the only, and much harder, way to fight it". Laurence Cockcroft deemed this choice to be "reasonable and in conformity with TI's objective which is promoting changes in institutions and policies". As a result, TI does not name the companies where corrupt practices have been identified and does not initiate lawsuits.

The reasons for not creating an international business monitor, however, are debatable. The risk of legal complications and the difficulty of carrying out one's own investigations would have been avoided had TI chosen to denounce, rank or monitor the companies on the basis of cases dealt with by courts and financial regulators⁶⁵. Further, in other instances such as the publication of the list of allegedly corrupt leaders⁶⁶, the organization did not hesitate to run the risk of being perceived as defamatory and as interfering with the due process of law. It is also doubtful whether being named by TI alone could have had so serious implications as to make companies go bankrupt. On the other hand, the risk of exposure and adverse publicity linked to a business monitor could have put a real pressure on companies and have prevented or limited the creation of extensive and harmful fraudulent schemes.

The fear of targeting companies with huge resources may be more convincing in explaining TI's choice: states, who are big contributors to TI, would have been reluctant to fund an organization which would expose their own companies. Stan Cutzach, who answered on behalf of the Secretariat, underlined that TI's position with relation to exposing companies was evolving and that TI was prepared to occasionally cite a case if it was already in the public domain and enabled the organization to "make a point about structural problems". He further explained TI's philosophy with relation to naming and shaming: "While many things might have happened in the past, TI wants to bring together people committed to change. It doesn't focus on the past" and "doesn't want to exclude potential partners on the basis of their past records."

TI also expresses concerns that the anticorruption project should not be too disruptive for governments and the conduct of public affairs. In the author's note to the Source Book, Jeremy Pope warns that "the quest for integrity ought not to render government dysfunctional"⁶⁷. The presentation of the book later states that "Complete eradication [of corruption] is both unrealistic and undesirable". Pope explained that today the whole anticorruption rhetoric of "lock people up and throw away the key" is seen as negative and that the drawbacks of the anticorruption project as presented by Anechiarico and Jacobs -increasing bureaucratic pathology and public administration dysfunction⁶⁸-

⁶⁵ A frequent objection to this technique is that it reflects better the activity and efficiency of the courts and regulators than the real level of crime. This problem is not insurmountable. In international business, the principal exporters are developed countries in which financial oversight is generally present and active. In addition, a ranking could be realized by regulator or by country. The SEC, for example, would be a good source as it monitors not only American businesses, but also foreign companies whose stock is registered on the New York Stock Exchange.

⁶⁶ Global Corruption Report 2004.

⁶⁷ <http://transparency.org/sourcebook/00-author.html>

⁶⁸ Anechiarico and Jacobs argue that "the present-day anticorruption project is committed to forms of disciplinary control that nurture and exacerbate bureaucratic pathologies and make fundamental public administration reform all but impossible".

are now perceived as more real than ever, a mindset which reinforces the need for a positive and non-threatening approach.

But the standards mentioned above in relation with companies strikingly differ from those applied to the states. The policy of not naming and shaming does not hold for countries and their former or present leaders and as we have seen, the bulk of TI's work, surveys and initiatives in effect contributes to associating corruption with the state apparatus and political parties. The Secretariat representative explained that "The CPI puts poor countries under a bad light so TI also issues the BPI, a ranking of exporting nations". The BPI in effect puts blame on richer states, so that the impression may be given that government is inherently dishonest.

On the other hand, the private sector is spared direct negative publicity and the instances of cooperation between TI and this sector, such as the Business Principles, contribute to giving of it a favorable image which, as we will see, may not be totally deserved. Also in contrast with the philosophy applicable to companies, the passing of time apparently ceases to be a guarantee that old instances of corruption will not be exhumed, as is illustrated by the previously mentioned list of "kleptocrats" published in the 2004 Global Corruption Report. This asymmetrical approach, however, is not based on the view that extortion would be the driving force for corruption. According to a member of TI's Board, "there is no real extortion, only in exceptional cases. Rather, the companies put money on the table and then they start talking."

2. A moral approach to the political debate: "Winning the hearts and minds of politicians"

The ghost of communism has not ceased to haunt the victors of the Cold War. Fear over the reappearance of communism implicitly appears as a nightmarish scenario in the discourse of the members of TI. Thus, Peter Eigen, in the preface of the Source Book, writes that "if large numbers of people in the emerging democracies become disillusioned with the democratic experiment and start to yearn for times of greater certainty, then the chances are that the old and failed remedies will be tried once more, and further impoverish their lives". Another TI official explained to me that, in spite of the importance of freedom of speech, Karl Marx's writings could be considered to be dangerous for the mind. Of course, it does not come as a surprise that an organization composed of and working with top business officials would not support nationalization and collectivization of the means of production and would instead crystallize its preoccupations of fairness around the ideal of moral capitalism. But TI's angle is only one approach to corruption⁶⁹. Given the high profile of the organization and its rhetoric of consensus, non-partisanship and freedom of speech, risks are that TI's positions could be presented as *the* solution while avoiding a necessary debate around the issues at stake.

The "systemic changes" advocated in the Source Book have to be understood as changes within the system and in particular towards the improvement of its components identified as faulty. As Laurence Cockcroft pointed out, "we try to persuade the establishment within the institutional framework". It is not agreed by all TI members, however, that the systemic focus of the Source Book is actually reflected in the policies set by the organization. In a recent discussion (end 2003) of the draft strategic plan of the organization⁷⁰, Claudio Abramo, Executive Director of the Brazilian Chapter, laments that the plan proposed by the Board followed almost exclusively what he identifies as the "moral conception" of corruption while neglecting the "systemic conception"⁷¹. In his words, "the only specific tools the plan explicitly mentions are the most notoriously associated with the moral viewpoint, and furthermore tools that are rooted in voluntarism (as Integrity Pacts, Business

⁶⁹ For other approaches, see Global Witness (<http://www.globalwitness.org/>), the Corner House (<http://www.thecornerhouse.org.uk/>), Stiglitz, op.cit., Anechiarico and Jacobs, op. cit. and many more.

⁷⁰ I understand the strategic plan to be a document or set of documents establishing the policies and methodologies to be promoted and implemented by the organization and its chapters.

⁷¹ <http://www.transparencia.org.br/demofortransp/index.html>

Principles, the Wolfsberg Principles). No mention is made of tools such as legislative or justice observatories [...]”. Abramo describes how even the methodologies followed at the Strategic Planning Meeting privilege the moral approach and laments that the organization has not dedicated more importance to the setting and enforcement of ‘hard’ legislative standards.

Indeed, TI’s early reluctance over the project of a UN convention against corruption sharply contrasts with the zeal it deployed for the ratification of the OECD convention. Thus, the 31 May 2001 press release⁷² clearly casts doubts on the desirability of a UN convention and on the capacity of the United Nations to cope with corruption. TI writes that “It would be a *very great mistake* for anyone to believe that a UN convention *by itself* will alter *in any way* the great burden of suffering corruption is inflicting on billions of people around the world in the course of their daily lives” (emph. add.). In this press release, Peter Eigen explains that what is needed is action at the national level and that a UN convention would not have the potential to impact upon local instances of corruption. When Eigen mentions the importance of international “arrangements”, he only says that “the UN *could* play a role” but insists that “the struggle to contain corruption begins with *winning the hearts and minds* of politicians, private sector interests, civil society and people at the national level” (emph. add.).

Other more subtle features of TI’s discourse indicate the importance of the moral viewpoint. Meetings are being described as “retreats”⁷³, which is religiously connoted and also gives the impression of decisions taken behind closed doors. TI is also referred to as a “broad church (temple and mosque)”⁷⁴ and it is intriguing that the text of impressive dimensions advocating for anticorruption a “holistic” approach based on several integrity pillars has been called the *Source Book*. The Book advocates “the need to adopt an holistic approach to *any* anticorruption reform programme”⁷⁵ (emph. add.), a declaration which could be interpreted as supporting a missionary approach to the fight against corruption when other scholars emphasize the better chances of success of *ad hoc* reforms limited in scope and targeting only one specific type of corruption⁷⁶. In the 31 May 2001 press release mentioned above, Peter Eigen said about the Declaration issued by the Ministers at the 2001 Conference on Fighting Corruption and Safeguarding Integrity that “the language of international discourse is improving”. Given the strong connotation of TI’s discourse itself, it is legitimate to wonder what Mr Eigen meant and if the shift to the moral and voluntary approaches is likely to be more effective in the fight against corruption and maladministration.

II. Controversies in the internal governance

A. Overview of the charter

The Charter of TI has been amended in 2004. The only major modification, however, has to do with the purpose of the Society (art. 2) and not the functioning of the organs. At the time this article is being written, the new version awaits approval by the German authorities while the original version can still be found online⁷⁷.

The organs of the society comprise the Membership Meeting, the Board and the Executive (art. 4). The Membership is open to “organisations and individuals of recognised integrity from diverse [...]”

⁷² http://transparency.org/pressreleases_archive/2001/2001.05.31.hague_declaration.html

⁷³ http://www.transparency.org/about_ti/history.html

⁷⁴ Interviews

⁷⁵ <http://www.transparency.org/sourcebook/00-author.html>

⁷⁶ See for example Tisné, Martin and Smilov, Daniel, *From the Ground Up. Assessing the Record of Anticorruption Assistance in Southeastern Europe*, Center for Policy Studies, Central European University, 2004

⁷⁷ The new version was communicated to me by TI-S on 1 September 2005. The original version is available at http://www.transparency.org/about_ti/charter-full.html. The following description is based on both texts and, if the article numbers have changed, both are indicated.

backgrounds” who are committed to the realization of the goals set in the charter (new art. 6.). Membership is granted by a decision of the Board of Directors (new art. 6.3) and comprises two kinds of members, the accredited National Chapters and the Individual Members (formerly called Personal Active Members) (art. 6.2, formerly 6.1). National Chapters are represented at Membership Meetings by an Official Chapter Representative (art. 6.4 formerly art.6.3). An accreditation policy for National and Regional chapters and an appointment policy for Individual Members are decided by the Membership Meeting upon proposition of the Board of Directors (art. 6.3, formerly art. 6.2).

1. The executive

The executive (art. 10) is comprised of the Chairperson and the Vice-Chairperson, who “shall be elected by the Membership Meeting from among the official chapter representatives and the personal active members”. The chair is elected for a three-year term and re-eligible for a maximum of a further two terms but “shall remain in office until another executive is elected”. With the approval of the Board of Directors, the executive may appoint Managing Directors in order to perform its duties (art. 11). The Members of the executive represent the Society in judicial and extra-judicial matters.

2. The Board of Directors

“The Board of Directors comprises the members of the executive and ten to thirteen additional members elected by the membership meeting from among the Official Chapter Representatives and the Individual/Personal Active Members” (art. 13.1) (pursuant to art. 14.11, the number of additional members is decided by the Board of Directors itself). The Board of Directors is chaired by the Chairperson and the quorum is set at two thirds of its members. Decisions are made by majority voting and in the absence of a majority the Chairperson has a casting vote.

The overarching function of the Board (art. 14) is to “determin[e] the strategy and policy of the Society and supervise[e] its activities”. This includes in particular:

- Budgetary responsibilities.
- Accreditation, suspension and disaccreditation of national chapters and approval, suspension or removal of Personal Active Members, managing Directors, members of the Advisory Council, Supporters and Honorary Members.
- Decision making and implementation: “implementing decisions of the Membership meeting” and “making decisions on any other matters of particular importance not reserved to the Membership Meeting”.
- Setting the Membership Meeting’s agenda: “the Board refers to the Membership Meeting any matters to be decided upon by that meeting”.

3. The Membership Meeting

The Membership Meeting is in particular responsible for “giving formal approval to the actions of the Executive and Board of Directors”, electing and removing the executive and members of the board of Directors and deciding or revising the accreditation and appointment policy of Members (new art. 15.2, former and new art. 6). It is chaired by the chairperson and takes decisions by simple majority except in specific cases such as the removal of the Chair or a Board Member for which a majority of two-thirds is required (art. 18.4). The quorum comprises half the members (art. 18.3). As for the Members’ influence over the agenda, “Members may for consideration by the Executive submit matters for inclusion on the agenda [...] The Membership Meeting itself shall decide whether to accept such additional matters for inclusion on the agenda” (art.16.2).

4. The Advisory Council

An Advisory Council supports the work of the Society. It “shall be appointed comprising individuals of recognised integrity from varied geographical, cultural and professional backgrounds and with extensive experience in areas specifically relating to the purpose of the Society” (art. 19.1). Its chairperson is appointed and removed by the Board of Directors. Its members are appointed and removed by the Board in consultation with the Chair of the Council (art. 19.2). The Council determines its own procedures and develop recommendations for the work of the Society (art. 19.3). Pursuant to art. 19.4, “The Board of Directors will maintain close contact with the Chairperson of the Advisory Council”.

B. The internal management in practice: “an undemocratic system of governance”?

TI’s governance as it has been operating over the past few years has been subject to critics from the chapters as well as from members of the Secretariat. The main points of disagreement relate to the way decisions are made and to the overcentralization of the organization which in practice, according to the dissenting voices, submits the chapters to policies decided in closed groups in Berlin.

1. The relationships with the chapters

a. Tensions in the relationships

By all accounts⁷⁸, the rapid development of chapters in the early years was a great pride for the organization which had been struggling to establish its basis and did not expect to spread so rapidly across the world. The relationships between the chapter and the center, however, seem to have deteriorated over time. Criticism by chapter members remained confined to corridors, email exchanges and meeting rooms until the resignation in 2003 of Ms Aub, heretofore General-Secretary of the Jamaican chapter. Ms Aub, who left “on matters of principle”, wrote a resignation letter which was partly reproduced in the press⁷⁹ and in which she criticized many aspects of the internal governance. TI Jamaica having been unable to find a person prepared to take her place and “do all the work involved- for no remuneration”, the country is currently without a chapter. Ms Aub explained that, instead of leading an opposition faction within the movement, as some had suggested she could do, “[her] points were better made by [her] being a ‘sacrificial lamb’”.

Her departure was not a one-off incident in the history of TI. The concerns that she had expressed were echoed by other TI members who reacted to her resignation. Jeremy Pope, Managing Director and one of the founders of the movement, also distanced himself from the organization because of disagreements over the policies promoted by the Board. Different recounts of the separation say that he “broke”, was “fired” or “made redundant”. Although he is still an active member, he abandoned his main responsibilities and, along with another associate who left TI, founded a new anticorruption organization⁸⁰. According to Jeremy Pope and other opinions I collected, “a lot of good people have drifted away from TI”.

In his campaign website⁸¹, Claudio Abramo, candidate to the chairmanship of TI-S in November 2005, gives examples of propositions he made to the Board which would have increased the participation of National Chapters in discussions and policy-making. Some of his suggestions were, according to the website, not acknowledged, and Claudio Abramo concludes that “the board does not

⁷⁸ Interview with Jeremy Pope, Stan Cutzach, TI-S website and websites of local chapters.

⁷⁹ See Bolaji Abdullahi in *Thisdayonline*: <http://www.thisdayonline.com/archive/2003/01/14/20030114news03.html>; Kevin Pina, *The US vs Haiti*, 2004, <http://www.ftaaimc.org/es/2004/01/3410.shtml>; Disquiet at Transparency International, *The Guardian*, Nigeria, 20 January 2003, <http://news.biafranigeriaworld.com/archive/ngguardian/2003/jan/20/article29.html>

⁸⁰ Tiri, www.tiri.org

⁸¹ <http://www.transparencia.org.br/demofortransp/index.html>

want to allow chapters to actually play a participating role in TI". At various times he insists that the policies imposed upon the chapters are "ready-made doctrines indifferent to pluralism".

Expressing a similar concern, Ms Aub had previously noted that "it has been [her] experience that many of the chapters, particularly those of the developing countries, are not given sufficient opportunity to air their comments, criticisms and objections publicly, and in such a way that would commit the governing body of TI to take notice of the common views of these countries and to *act accordingly*" (emph. in original).

b. The accreditation policy

Pursuant to art. 6 of its charter, TI has put in place an accreditation policy. A TI official explained to me that this is supposed to ensure coherence and coordination in the movement and that the TI logo is like a franchise, granted when chapters follow TI guidelines such as not naming and shaming. The principles to follow are detailed in the "Umbrella statement"⁸² and include values (transparency, accountability, integrity, solidarity, courage and democracy) and guiding principles (such as coalition building, political non-partisanship, non-exposure of individual cases, independence from funders and diverse representation on the governing bodies). The accreditation procedure currently in force, adopted at the 2003 and 2004 Membership Meetings⁸³, puts in place a relatively heavy procedure for the access to the status of TI Chapter. There are two preliminary phases by which the applicant organization becomes first a National contact and then a provisional member. When the chapter in formation has demonstrated its "determination, diligence and competence to combat corruption in its own country and as a member of the movement", it can apply for full accreditation by submitting an application to TI-S⁸⁴. After that, accredited chapters have to undergo a tri-annual review so that TI-S can satisfy itself of the chapter's compliance to the fundamental principles. A special review can also be initiated at any time. The policy also states that "the Board of Directors may at any time suspend an NC with immediate effects, if this is considered necessary to avoid a threat to TI or its reputation [...]".

In her letter of resignation (2003), the former General-Secretary of TI Jamaica had written that "[she found] the proposed Accreditation Procedure both arrogant and offensive [in that it would] provide the governing body and the Secretariat with far too much power over all the chapters". A former Managing Director of the organization underlined how disaccreditation was sometimes used as a threat against chapters which, albeit coherent in their fight against corruption, had claims or complaints which appeared as a nuisance to the Secretariat. One of the examples given was that of TI-Philippines which put itself at odds with TI-S over the controversy relating to Joseph Estrada being cited in the list of corrupt leaders of the Global Corruption Report 2004 while he was on trial. Claudio Abramo, head of a chapter which, according to a respondent, was also threatened with disaccreditation, laments that "what one day was envisaged as a network of self-driven Chapters is being transformed into a hierarchical, centralised organisation managed according to the principle of the Chief" and warns that TI runs the "risk of becoming a rich countries' club where Chapters from poorer countries are expected to follow policies designed to appease transnational corporations"⁸⁵.

The position of the Secretariat in this debate is that the adoption of the accreditation procedure was done democratically and that there have been misunderstandings by some chapters over clauses of the contract. Albeit it is implemented by the Board, "the accreditation process has been discussed at each TI's Annual Meetings since 2002 and was decided by the Membership Meeting. It has not been

⁸² A "Statement of Vision, Values and Guiding Principles" for Transparency International, http://www.transparency.org/about_ti/vision-statement.html

⁸³ National Chapter Accreditation and Individual Member Appointment Policy, http://www.transparency.org/about_ti/chapter_accred.html

⁸⁴ This includes a detailed questionnaire called "self-evaluation form", see previous footnote.

⁸⁵ <http://www.transparencia.org.br/demofortransp/index.html>

imposed. It aims at introducing accountability within TI. The fundamental philosophy behind the accreditation procedure is not TI-S v. the chapters. TI-S on behalf of the chapters protects the rights of other chapters. TI-S holds the movement together [...] So far, the TI flag stands as some kind of guarantee for some quality standards. It is one of the central roles of TI-S to protect the flag and therefore the reputation of its chapters”. The Secretariat representative also explained that, contrary to the interpretation made by Claudio Abramo and other chapter members, the new contract in no way obliged the Chapters to use the Integrity Pact.

The Secretariat representative referred to an example to illustrate how the Secretariat acts as a guardian of TI’s principles and, by the same token, of the support of donors: the Executive Director of a chapter⁸⁶ had allegedly jeopardized TI’s principle of being non-confrontational with the government. The donors subsequently decided to stop their support to the chapter and reached to TI-S to have the matter resolved. The issue had a negative impact on how TI as a whole was perceived and jeopardized funding for the entire movement. One of the purposes of the accreditation process is therefore to guarantee against such problematic situations. We will come back to this example when discussing the influence of donors over TI’s work.

2. The internal balance of power

a. The controversial category of Personal Active Members

As we have seen, Personal Active Members, “individuals of recognized integrity from [...] diverse backgrounds”, have a voting right at Membership Meetings and can be elected as Board members and chairperson. But the legitimacy of giving voting rights to Personal Active Members (PAMs) has been challenged. Thus, Ms Aub declared that “not only [she], but many others of the membership, have no idea why "Personal Active Members" are appointed. Is this done to reward service or monetary contributions to T.I.? “. She further ventures that they are “most probably [appointed] in exchange for whatever their companies/influence can do for T.I.”. According to the former General Secretary of TI-Jamaica, PAMs, “having no constituency, should have no vote”, and “their presence is enough to skew the results of ALL TI’s “open elections” (emph. in original).

Jeremy Pope bluntly stated that “Eigen gets his friends to be PAMs”. He described that “there is a group of about 35 [32 at present] PAMs, and there are 60-odd accredited chapters which have a vote as well but don’t always turn up at meetings, so that many votes can be controlled by Eigen through his friends. Some even regard the past elections as having been “rigged”, which is a shocking thing to say about an anti-corruption NGO”. Peter Eigen, who was at the origins of the ideas that evolved into the creation of TI, has been its chair from 1993 until now. According to another respondent to my study, he “refuses to yield his chair to anyone despite his several announcements to the contrary”⁸⁷ and his chairmanship was described as a “continuing manipulative dominance”.

The Secretariat representative explained that the existence of PAMs (or, according to the new terminology, Individual Members) had to be understood in the context of the historical creation of TI. TI started as a gathering of individuals and only later developed its chapter membership. Some of the present Individual Members are the founders of TI. Stan Cutzach also explained that Individual Members regularly lose power within TI and that the internal policies restrict the percentage of Individual Members vis-à-vis National Chapter representatives: “The number of Individual Members should not be more than half of all Members. Over time the number of Individual Members should be reduced to less than one third of all Members”⁸⁸.

⁸⁶ The Secretariat did not wish to name this chapter publicly.

⁸⁷ Elections are scheduled to take place in November of this year. See Transparency International’s Quarterly Newsletter, June 2005, p.16, http://www.transparency.org/newsletters/2005.2/ti_q_jun2005.pdf

⁸⁸ National Chapter Accreditation and Individual Member Appointment Policy, http://www.transparency.org/about_ti/chapter_accred.html

b. Are decisions made out of “previous agreements before the scenes”?

The testimonies of a chapter representative about the workshops and reunions at TI’s International Meetings convey the impression that these gatherings do not unfold according to the ideal rules of the democratic debate. The meetings were described in these words:

“A number of persons sit in a room to discuss a controversial subject, such as [accreditation policies or facilitation payments]. A rapporteur (chosen by the organisers of the conference) takes charge, usually with two assistants. There are anywhere between 40 and 60 persons present in the audience. All are encouraged to give their views on the subject. Many do so. Just before the rapporteur announces that he will now hammer out the consensus of the meeting, a group of ten to fifteen persons drift into the meeting- room, scatter and sit down. It is the views of ONLY these persons that the rapporteur will note down for the report on the meeting. And it is only these views which go forward to the General Meeting. Any divergent views are simply ignored and not noted.

We, who live in the developing countries, easily recognise this technique. It is frequently used here in national conferences on controversial matters. In our case, usually with the addition of a foreign firm, who are introduced to the audience as "experts on this matter". In this way all are allowed to talk, but every real decision is made by the leadership (or, in this case, the chairman).”

Or:

“The reports made to the plenary sessions were so different from the general views that had been voiced in the workshops which I attended, that I conclude that all decisions had already been made and positions already taken *PRIOR* to the workshop itself. [...] Could this have happened without previous agreement behind the scenes?”

Asked about these practices, the explanation TI-S offered was that it is about “group dynamics” and that “it also depends on how well the meeting is chaired and how different views are given a fair chance to be heard. TI is a movement of many different colors and perspectives. As in other places, people can feel that they have not been fairly treated, because in the end their views are not followed. The democratic process depends on how decisions are taken”.

3. “An elite organization”

The TI-S representative described the organization’s position with regard to political parties in the following manner: “It is possible that some parties in a country are closer to TI’s line. The issue of corruption is political. But TI is not behind political parties”. Asked to comment the opinion of a Board Member that “we are pretty conservative at the end of the day”, he explained that TI, because of the high proportion of top civil servants and business people in its membership, is often considered as an “elite organization” and does not fit the typical image of an NGO. This particular profile of TI is to be linked with the principle of “building coalitions”: “TI gains from the participation of influential people who have an address book. In most countries TI is not a mass movement, albeit in Argentina for example the chapter has a more popular base”. Advisory Council Members⁸⁹ were described as another “opportunity for TI to ensure support of prominent people for its cause. It is often about them lending their names, lending profile”.

Ecuadorian Vice-President Alberto Dahik, from the Ecuadorian Conservative Party (PCE), served as the first chair of TI’s Advisory Council in 1994 and 1995. His office was terminated when he became involved in a corruption scandal. A petition submitted in 2001 by Dahik himself to the

⁸⁹ The membership of the current Advisory Council is available at http://transparency.org/about_ti/adv-council.html.

Interamerican Commission on Human Rights⁹⁰ summarizes the episode in the following manner: “In July 1995, the National Congress accused the serving Vice President of Ecuador, Alberto Dahik, of bribery and corruption in the performance of his functions. On August 4, 1995, two members of Congress filed a criminal complaint in connection with those charges and, on August 16, the president of the Supreme Court decided to begin proceedings. The investigation conducted by the legislature ended on October 6, 1995, when the bid to remove Mr. Dahik from office failed to receive the majority vote required. In the judicial investigation, however, the Court issued a preventive custody order on October 11, 1995. On that same day, Mr. Dahik was allowed to enter Costa Rica and, on March 29, 1996, he was given political asylum.” In April 2005, The Ecuadorian Supreme Court annulled the conviction for corruption charges and the former Vice-President returned to his country⁹¹.

The TI website, which explains that Advisory Council members are “individuals of recognised integrity”, says about the Dahik scandal that “for TI the lesson was clear: those active in politics can have no place as high office holders in the TI movement”. This statement, however, is hard to reconcile with the principle that TI wants to work with top officials and prominent personalities. The TI-S representative explained offering the chairmanship of the Advisory Council to Dahik in the first place by the fact that at that time TI was eagerly trying to engage people who seemed committed to the anticorruption project. Now, the organization is presented as being more careful in its choice of members and associates. One might wonder, however, if TI’s willingness to stay close to the centers of power does not undermine its ability to ensure the support of less controversial personalities.

The successor to Dahik at the chairmanship of the Council, the Nigerian General Olusegun Obasanjo, was not less politically involved. Obasanjo is a symbol of the resistance against General Abacha, under whose dictatorial regime he was imprisoned from 1995 to 1998⁹². Elected president in 1999 and again in 2003 under the banner of the centrist People’s Democratic party, his name is nonetheless associated with corruption affairs. Journalist Tayo Odunlami explains how “in Nigeria, corruption remains a way of life, especially in government and business”⁹³. He gives the example of a scandal, in 1999, when a sum of 850,000 naira (about US\$6,000) was allegedly paid to some senators in exchange for their votes for Evan Enwerem, President Obasanjo's choice as President of the Senate. The reporter also relates that no action was taken by the president against inspector-general of police Balogun in spite of severe allegations of corrupt practices involving the officer. Further, Obasanjo is suspected of manipulating the Independent Corrupt Practices Commission to better suit his electoral interests⁹⁴.

Another controversy illustrates how issues of funding and strategies of coalition building become a source of confrontation between the Secretariat and the Chapters. According to a former Executive Director, “TI-Russia was enraged when Peter Eigen said that he was going to set up a “hit squad” (a group of people working full time and dedicated to finding a quick answer to a pressing problem) for Russia in Berlin and was going to approach the oligarchs to fund it -which would also help the headquarters with their funding crisis. Peter Eigen argued that the time had come for the oligarchs to make their money respectable, in the same way that bent businessmen had done in the USA at the turn of the 20th century. The Russian chapter was enraged -both at the interference in their own country in violation of TI rules of procedure, and at the idea of turning the robber barons into

⁹⁰ Alberto Dahik Garzozzi v. Ecuador, Petition 12.259, Report No. 93/01, OEA/Ser./L/V/II.114 Doc. 5 rev. at 381 (2001), University of Minnesota, Human Rights Library, <http://www1.umn.edu/humanrts/cases/93-01.html>. The petition was declared inadmissible on the basis that the domestic remedies had not been exhausted.

⁹¹ Former Vice-President of Ecuador Returns Home, Gives up Asylum, *The Tico Times*, 5 April 2005, http://www.ticotimes.net/dailyarchive/2005_04/daily_04_05_05.htm#story3

⁹² About Obasanjo and the 1976 coup that overthrew Brig. Muritala Mohammed as Head of Nigeria, see Baobab Press, *The CIA in Nigeria*, <http://www.dawodu.com/cia1.htm>

⁹³ Odunlami, Tayo, *Nigeria: corruption notebook*, The Center for Public Integrity, <http://www.publicintegrity.org/ga/country.aspx?cc=ng&act=notebook>

⁹⁴ *idem*

“saints” on the side of virtue- and they managed to abort the idea.” This incident reportedly occurred in or around 2002. In December 2003, Claudio Abramo denounced that TI-S sometimes conducted initiatives in countries without consulting the local chapter, and that “this should not be allowed”.

III. The donors

A. Overview of the donors and funding policies

1. The initial funding

During its early years, according to Jeremy Pope, “TI had terrible problems raising money”. The World Bank was opposed to the organization until 1995 for the reasons discussed above (Part two-II-B) and still reticent to officially fund it after that year. Support from the Bank first came in indirect ways, through officials sympathizing with the anticorruption cause who used the Bank facilities to help the organization in its projects. Then, the new President Wolfensohn, prevented from directly financing TI by the dissenting advice of the Bank’s legal department, decided to employ Peter Eigen and Jeremy Pope as consultants for the Bank⁹⁵. These contracts were described as very profitable and contributed to making funds available to TI. In another arrangement, TI reportedly received from Ecuadorian Vice-President Alberto Dahik \$10.000 coming out of a secret fund constituted during the military dictatorship. The Ecuadorian Parliament, which had not been informed or asked for consent, later discovered the payment and expressed its dissatisfaction. But, according to my respondent, it never formally asked for the money to be refunded which in practice amounted to consenting to the contribution *a posteriori*. More regular sources of funding came with donations from the Nuffield and Rowntree foundations secured by Laurence Cockcroft. Ford Foundation funding was also “critical to the new NGO”⁹⁶ and to the launch of some its initiatives such as the Source Book and National Integrity System country studies⁹⁷.

2. The finances since 1997

Today, the financial contributions to the organization come from three sources: the public sector, the private one and foundations⁹⁸. The diversity of the funding, according to Jeremy Pope, is a guarantee of independence⁹⁹. The identity of the donors and the amount of the grants are usually available from the TI websites. The analysis of TI-Secretariat’s financial statements from 1997 to 2004 shows an evolution in the quantity and origin of the donations received¹⁰⁰. Generally, over the years, the total income has been largely dominated by the public sector, mainly in the form of donations by country development agencies and ministries of foreign affairs which represented approximately 56% of the income in 1997 and 77% in 2004. The main countries contributing in this way are the US, the United Kingdom, Canada, Finland, Norway, Sweden, Switzerland, Germany, Denmark and the Netherlands. International and regional organizations and financial institutions, absent during the first years, are now contributing but their part remains minimal. The exception is the European Commission which in 2004 topped the list of donors. Foundation funding is modest too, with the exception of large donations by the Open Society Institute and occasionally the Mac Arthur Foundation. From 1997 to 2000, TI-Secretariat sources of income have been dominated by two donors: USAID (the US Agency for International Development) and the Open Society Institute. Corporate funding, minimal but on

⁹⁵ Interview with Jeremy Pope. See also http://transparency.org/about_ti/history.html

⁹⁶ http://transparency.org/about_ti/history.html

⁹⁷ As I remember it, a former version of the TI website indicated that the Ford Foundation had financed National Integrity System country studies in three countries of Latin America.

⁹⁸ In addition to financing from “individuals, membership fees, income from publications, events and other activities and from an endowment fund”. See http://www.transparency.org/building_coalitions/codes/donation_policy.html.

⁹⁹ Staps, Freek, Onderzoek: 'Speurders in een geheime wereld', in *NRC Handelsblad*

¹⁰⁰ The data comes from the material available at http://www.transparency.org/about_ti/finance_report/index.html.

the increase, represented 3.1% of the total income in 1997 and 6.7% in 2004¹⁰¹. National Chapters are independently responsible for raising their own funds, which accounts for variations in the proportion of donations coming from each of the three sources.

3. The relationships with the donors

TI's donation policy sets two criteria for the acceptance funds: acceptance should not "impair TI's independence to pursue its mission" and "should not endanger its integrity and reputation"¹⁰². Further, "care should be taken to ensure that project-related funding does not result in undue influence over TI's programme work". In spite of these dispositions, a respondent to my study mentioned the influence of donors in sometimes deciding on the use of the material put together by TI researchers, as well as the consequent disillusionment of the staff: "a researcher who had responsibility for the very important National Integrity System Country Studies refused to pass an assessment because some facts were wrong. Berlin put the study on the website anyway, and without making corrections etc., because the donors wanted it. [The researcher] has refused to have anything more to do with the organisation. In the same way, a number of excellent staff have become disillusioned and have left. One person from its senior management who left comparatively recently has said that there is no discussion of policy at the management level."

Asked about the controversial National Integrity System study, the Secretariat representative said that he had no particular knowledge of this case. He hypothesized that "it may have been a matter of deadline, with an agreement between TI and the donor that the study would be published before a certain date. Not releasing the study in time may have led to donors refusing to make further contributions in the future. It would have meant that TI did not have the capacity to deliver, which would not have been strategically good". He also explained that TI's professionalism is at stake where reviews of agreements are concerned and that TI would be reluctant to review an agreement if it has committed to it, as it would reflect badly on its reputation as a contract partner. Such approach, however, has the obvious drawback of submitting research to possibly inappropriate commercial standards and may result in having loyalty to donors prevail over the intellectual integrity of the material produced.

In the case mentioned above (II-B-2), donors had stopped funding to a chapter and reached to TI-S because of the confrontational attitude of a member of this chapter vis-à-vis the government. This example tends to explain the closeness between TI leaders and their supporters in terms of their common understanding of the stance that the anticorruption project should adopt. The USAID itself, in a 2003 public report, made the observation that NGOs were becoming more and more close to and dependent upon their funders¹⁰³. Hereinafter, I will look at the attitude of some foundations and country agencies on the one hand, and corporate donors on the other.

B. The suggestive stance of foundations and country agencies

Some observers express suspicion that TI may be a concealed government initiative or serve as a cover for intelligence operations. The French journalist Pierre Abramovici¹⁰⁴ highlights the involvement of some supporters of TI in US intelligence operations. Other writers do not hesitate to call TI a "CIA correspondent"¹⁰⁵ or to describe it as having being set up by the United States¹⁰⁶.

¹⁰¹ The German GTZ is counted in this category.

¹⁰² Donations policy: http://www.transparency.org/building_coalitions/codes/donation_policy.html

¹⁰³ Réseau Voltaire, *Les ONG, nouveau bras de la diplomatie US*, 6 January 2005, <http://www.voltairenet.org/article15885.html>

¹⁰⁴ Abramovici, Pierre, Une ONG Contestée, in *Le Monde Diplomatique*, November 2000, <http://www.monde-diplomatique.fr/2000/11/ABRAMOVICI/14428>

¹⁰⁵ De Brie, Christian, Etats, mafias et transnationales comme larrons en foire, in *Le Monde Diplomatique*, April 2000, http://www.monde-diplomatique.fr/2000/04/DE_BRIE/13634

Similar concerns have been expressed to me by the president of a small NGO in the Third World and a public official from a Western country.

It is indeed public knowledge that some TI donors have been used by the CIA during the Cold War to covertly support US foreign policy goals. Professor James Petras reports that “a US Congressional investigation in 1976 revealed that nearly 50% of the 700 grants made in the field of international activities by the principal foundations were funded by the CIA”¹⁰⁷. The Ford Foundation, in particular, acted as a conduit to direct CIA funds to operations deemed necessary in the defence of US interests abroad. In 1954, an Administrative unit was created within the Foundation to deal with CIA representatives and manage its use as a cover for the Agency. The interchange of personnel was a common practice and most of the Foundation’s presidents had worked or would work in the CIA or other branches of national security. After a scandal in 1966 revealed its ties with the Intelligence Agency, the Ford Foundation became more autonomous and flexible in its choice of recipients. According to James Petras, however, it has “refined” its style of collaboration but retained the substance of its previous policies. Similarly, journalist Paul Labarique considers that “the Ford Foundation has not strayed away from its objectives of defending the strategic interests of the United States”¹⁰⁸.

1. The era of the “mercantilist Cold War”

a. Economic intelligence

In 1995, former US Secretary of State Henry Kissinger wrote that “the absence of both an overriding ideological or strategic threat frees nations to pursue foreign policies based increasingly on their immediate national self-interest”¹⁰⁹. For the intelligence community, the turn of the 1990s has resulted in a need to adjust the traditional missions and methods to a new global configuration. Raman, director of the Institute for Topical Studies in Chennai, India, explains that “Since the Cold War, the US has given added importance to economic intelligence”, i.e. the protection of a country’s business interests in foreign markets¹¹⁰. He attributes this phenomenon to “a general belief that future threats to national security could be more economic than military” and calls this new era “the mercantilist cold war”. The importance to work hand in hand with businesses has been emphasized by Admiral Stansfield Turner, CIA director under President Carter, who expressed in 1991 the need of a “more symbiotic relationship between the worlds of intelligence and businesses”¹¹¹.

b. “Supporting democracy abroad”

The National Endowment for Democracy (NED) is a big source of income for some local TI chapters, for example TI-Colombia, and John Brademas, former chairman of the Endowment, is a member of TI-USA and TI-Secretariat Advisory Councils. The Center for International Private Enterprise (CIPE), one of the four core institutes of the NED and a non-profit affiliate of the U.S. Chamber of Commerce also supports national chapters, for example TI-Kazakhstan¹¹². As for its history and function, the NED was founded in 1983 “by a Republican President and a Democratic Congress” “to

¹⁰⁶ Cassen, Bernard, Arrière-pensées dans la lutte anticorruption, in *Le Monde diplomatique*, May 2001, <http://www.monde-diplomatique.fr/2001/05/CASSEN/15207>

¹⁰⁷ J. Petras, *The Ford Foundation and the CIA: a documented case of philanthropic collaboration with the Secret Police*, in <http://www.rebellion.org/petras/english/ford010102>

¹⁰⁸ Labarique, Paul, Pourquoi la fondation Ford subventionne la contestation, in *Réseau Voltaire*, 19 April 2004, <http://www.reseauvoltaire.net/article13444.html>

¹⁰⁹ Kissinger, Henry, *Diplomacy*, New York: Simon & Schuster, 1995

¹¹⁰ Raman, B, *Economic Intelligence*, South Asia Analysis Group, 1999, <http://www.saag.org/papers/paper50.html>

¹¹¹ cited in Raman, op. cit.

¹¹² See <http://www.transparencykazakhstan.org/english/partners.html>

promote democracy in countries where it does not exist or is struggling to emerge”¹¹³. As Allen Weinstein, one of its founders, declared in 1991, “a lot of what we do today was done covertly 25 years ago by the CIA”¹¹⁴. By this he meant that the Endowment could now promote overtly the kind of foreign policy operations which had previously been funded through CIA fronts. The Center for International Private Enterprise has the special mandate of working to “build democratic institutions through market-oriented reforms around the globe”¹¹⁵.

The activities of agencies such as USAID and the NED are anchored in a rhetoric frequently used in international development: the pairing of the two distinct goals of promoting national interest and helping foreign countries. Thus, the creation of the Endowment is based on the premise that “American assistance on behalf of democracy efforts abroad would be good both for the U.S. and for those struggling around the world for freedom and self-government”¹¹⁶. Similarly, according to the USAID’s official website, “U.S. foreign assistance has always had the twofold purpose of furthering America's foreign policy interests in expanding democracy and free markets while improving the lives of the citizens of the developing world”. This attitude, however, can create confusion over the actual motivations and criteria for the allocation of grants in countries where the relationship is not so osmotic.

In 1997, USAID was the biggest donor to TI, contributing 24.8% of the total income (DM 470,646¹¹⁷, including a project contribution for the Strategic Planning Meeting). In 1998 it made a massive donation of DM 1,237,550 (27.9%), taking the second position after the Open Society Institute. It kept this rank until 2000, although the amount of its payments sharply decreased in 1999. During the past years, USAID remained among the first five donors with payments around € 500,000. In 1997 and 1998, important monetary and in-kind donations were also made to TI-Secretariat by TI US chapter. The chapter later disappeared from among the list of donors. The 1997-1998 contributions, at a moment in which other country agencies were still timid in supporting TI, corresponds to the period of intense US lobbying at the OECD to have the members adopt and then ratify (ratification occurred on 15 February 1999) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This may suggest that the US saw TI as a complementary way of promoting the OECD convention –we saw how successful TI was in convincing reticent countries to ratify the text- and reinforcing the development of the anticorruption mentality necessary to rally support for the OECD standards.

c. Further implications of the anticorruption project

Instability has been identified as a possible by-product of a mismanaged anticorruption programme. A research paper by Tisné and Smilov¹¹⁸ describes how, in Southeastern Europe, the various anticorruption projects have succeeded in raising public demands and awareness, but without managing to meet the expectations that had been created. This in turn has led to the disaffection and discontent of people not only for the anticorruption rhetoric, NGOs and donors, but also for their governing officials, therefore increasing the risk of political instability in countries which are already emerging from a troubled period. The authors question “whether anticorruption assistance itself might not have [...] fuelled the crisis of political representation that besets the region”.

¹¹³ Brademas, John, *The Accountability of the Executive to the Legislature*, 8th International Anticorruption conference, Lima, 1997, http://www.transparency.org/iacc/8th_iacc/papers/brademas.html. The NED is an unusual entity in that although it is a private, non-profit organization, it is financed primarily by the US Federal government.

¹¹⁴ Cited in Ignatius, David, Innocence Abroad: The New World of Spyleless Coups, in *The Washington Post*, 22 September 1991, p. C1.

¹¹⁵ <http://www.cipe.org/about/>

¹¹⁶ Lowe, David, *Idea to reality: NED at 20*, <http://www.ned.org/about/nedhistory.html>

¹¹⁷ Sums are expressed in the currencies used in the financial reports.

¹¹⁸ Tisné, Martin and Smilov, Daniel, *From the Ground Up. Assessing the Record of Anticorruption Assistance in Southeastern Europe*, Center for Policy Studies, Central European University, 2004

Others denounce that the United States makes use of agencies such as USAID, NED and the CIPE to pursue national self-interest by distorting electoral processes. Allegedly, these agencies powerfully influence the outcomes of elections by supporting or setting up organizations and actions to the benefit of candidates which better suit the United States. Examples given are Nicaragua¹¹⁹ (support to the anti-Sandinistas), Georgia¹²⁰ (support to candidate Mikhail Saakachvili), Ukraine¹²¹ (support to Viktor Yushchenko) and Venezuela¹²² (support given to the opposition to President Chávez). Care should be taken to ensure that the anticorruption project, which cuts across such sensitive areas as politics, economics, electoral processes, public administration and development, is not instrumentalized or used against the public interest and the will of the local constituencies.

A situation which illustrates the political implications of the work of TI and the reasons for some people's hostility towards the organization was the impact in Haiti of the 9th Corruption Perceptions Index¹²³. The index, where Haiti ranked as the country perceived as the third most corrupt on the list, was released on 7 October 2003¹²⁴. This was shortly after the murder of Amiot Métayer, a hero of the resistance against the Duvalier and Cedras dictatorships, and in the middle of a chain of events and media releases which Haiti-based journalist Kevin Pina described as a destabilization programme orchestrated by the Washington-backed opposition. Pina further established a link, albeit indirect, "for they rarely are in such matters", between Peter Eigen and a legal consultant who was at the time provisional president of the opposition party Democratic Convergence. The untimely release of the CPI and the indirect connection are most probably and most hopefully only a sad coincidence in the tragic sequence of events which agitated the country, but the incident still casts doubt on the appropriateness of the CPI, especially in consideration of its questionable methodology. It also illustrates the counterproductive potential of anticorruption tools and initiatives detached from the local reality of the countries they target.

2. The Open Society Institute

The funding by the Open Society Institute (OSI) was of particular importance for Transparency International until about 2000. It followed a pattern partly similar to the USAID payments. The OSI contributed 21.6% of the total funding in 1997 and subsequently topped the donors' list with DM 1,668,199 (37.6%) given in 1998, DM 1,493,734 in 1999 (26.1%) and DM 1,256,303 (18.2%) in 2000. Its contributions then sharply diminished, were non-existent in 2003 and reappeared in the form of € 44.436 from the Swiss OSI Development Foundation recorded as income in 2004. The Open Society Institute has now moved its funding to Tiri, the organization created as "an outgrowth of TI" to monitor the implementation of the anticorruption provisions at governmental level.

¹¹⁹ Agee, Philip, The Nature of CIA Intervention in Venezuela, in *Réseau Voltaire*, 13 June 2005, <http://www.voltairenet.org/article30358.html>

¹²⁰ Réseau Voltaire, *Les ONG, nouveau bras de la diplomatie US*, 6 January 2005, <http://www.voltairenet.org/article15885.html>

¹²¹ idem

¹²² See Agee, 2005, and Golinger, Eva, How the NED Violates Sovereignty and Self-Determination in Venezuela, in *Réseau Voltaire*, 13 June 2005, <http://www.voltairenet.org/article126408.html>: "On Thursday, July 7, 2005, a Venezuelan Judge determined the Federal Prosecutor had presented sufficient evidence to allow a case against four members of the opposition organization Súmate to proceed on its merits. The case [...] is based on the organization's use of a \$53,400 grant from the National Endowment for Democracy to "conspire against the government". [...] the goal [of the grant] was to "promote a recall referendum against President Chávez". See also <http://www.ned.org/grants/venezuelaFacts.html>.

¹²³ Pina, Kevin, *The US vs. Haiti*, 4 January 2004, <http://www.ftaaimc.org/es/2004/01/3410.shtml>.

¹²⁴ The CPI was released in July 1995, 1996, July 1997, September 1998, October 1999, September 2000, June 2001, August 2002, October 2003 and October 2004.

The Open Society Institute was founded and is funded by billionaire George Soros¹²⁵. Soros, born in Hungary in 1930, emigrated to the United Kingdom in 1947 after the Communists took over the country. He studied at the London School of Economics where he came under the influence of philosopher Karl Popper, who would have a marked impact on his thought. In 1956, Soros found employment at Wall Street. He began to invest and turned out to be a very successful financier: he became an expert at finding tax loopholes, operating in grey areas and exploiting small variations from one country to another in the value of a given share or financial instrument¹²⁶. He invented the hedge fund, “largely secretive funds, usually trading in offshore locations” and created the Quantum Fund, a “little regulated, private investment partnership based in Curaçao [...] geared to wealthy non-US individuals who typically attempt to achieve quick, very large returns based on highly leveraged “bets” that currency will depreciate or appreciate”¹²⁷. The US Securities and Exchange Commission does not permit the securities of such hedge funds to be marketed on public stock exchanges because of their minimal regulation and disclosure requirements.

Soros is particularly infamous for his currency trading practices. Observers report that he made \$ 1 billion in one day by speculating against the British pound, “breaking the Bank of England” and “taking money from every British tax payer”¹²⁸. At the time of the 1997 Asian crisis, Malaysian Prime Minister Mahathir blamed Soros for having contributed to destabilize the region by speculating against the nations’ currencies. The Prime Minister argued that without currency controls in place, no country could have withstood the inflows and outflows of capital created by Soros’s speculation, an analysis which was confirmed by economist Joseph Stiglitz who recognized the role of currency speculation in precipitating the crisis and the need for capital controls to protect the Southeast Asian countries from speculation¹²⁹. In the 1980s, George Soros was convicted of insider trading before a French court¹³⁰.

In 1979, enjoying the financial wealth that the free capital market system had enabled him to accumulate, Soros established the Open Society Fund in New York “as an NPPO [non-profit professional organization] to support dissidents living under communist regimes”. In 1984, he started to set up foundations in Central and Eastern Europe “to help countries make the transition from communism”¹³¹. According to philanthropy scholar Olga Lazin, “[Soros’] prominent role in bringing down the Iron Curtain is indisputable”. The Open Society Institute was created in 1993 and provides support to the existing network of foundations.

Soros’ immense wealth and frenetic activity to precipitate the collapse of the Soviet Union would have been the dream of any Western intelligence service. Suspicions soon formed that the Open Society Institute might have ties with the Central Intelligence Agency¹³². As writer Heather Cottin points out, the goals of both organizations were the same. In 1987, the Chinese government made official charges that Soros’ Fund for the Reform and Opening of China had CIA connections. In the 1990s, the Russian Federal Counter Intelligence Service FSK accused Soros’ foundations in Russia of espionage.

¹²⁵ See Lazin, *Rise of the US Decentralized Model for Philanthropy: George Soros’ Open Society and National Foundations in Eastern Europe*, UCLA International Institute, 2001,

<http://www.isop.ucla.edu/profmex/volume6/1winter01/01lazin1.htm> and <http://www.soros.org/>.

¹²⁶ Muravchik, The mind of George Soros, in *Opinion Journal*, 6 September 2004,

<http://www.opinionjournal.com/extra/?id=110004764>

¹²⁷ Lazin, op. cit.

¹²⁸ idem and Cottin, Heather, *George Soros, Imperial Wizard*, 9 December 2003,

<http://www.leftgatekeepers.com/articles/SorosImperialWizardDoubleAgentByHeatherCottin.htm> or

<http://left.ru/inter/2003/december/soros.html>

¹²⁹ *Globalization and its discontents*, 2002.

¹³⁰ Inskip, Steve, Interviews: George Soros Discusses Efforts to Spread Democracy. *NPR News*, Morning Edition, 9 May 2005, Audio file available from <http://www.npr.org/templates/story/story.php?storyId=4635465>

¹³¹ Lazin, op. cit.

¹³² See Cottin, op. cit.

The lack of information available contributes to envelop the activities of the Soros Foundations in mystery. Comparing the Rockefeller and Soros foundations in a study of the OSI model of philanthropy, Olga Lazin wrote that “Soros has done little self-reflection and, because of his decentralized boards, has not developed a central archive where independent analysis can be undertaken”. The scholar, who started her research with the idea of studying “the history of the activities of the Soros foundations”, soon discovered that the lack of available material obliged her to refocus her work. The National Boards of the Foundations are reluctant to disclose information, the justification being that “each National Board is concerned that confidential data might be misused against them”.

Lazin also wrote that “although theoretically the National Foundations are independent and can seek funds from any source, the reality has been that because Soros is basically the sole funder, they must develop projects within the Soros general guidelines or face non-renewal”. Soros, described as “the only private citizen with his own foreign policy”¹³³, said that he wanted his foundation network “to be the conscience of the world, to support civil society that is critical of the state and of the government”. But his financial activities seem difficult to reconcile with his support for the anticorruption project, as such project could involve the passing of laws and the setting of standards in opposition to his own practices. It may be hypothesized that his contribution to TI and other anti-corruption initiatives may have been guided by the possibility to influence the political debate in former communist countries, some of which, to his great disappointment, had re-elected ex-communist leaders¹³⁴. According to the TI website, “a large grant from George Soros's Open Society Institute [...] opened the way for TI to be much more active in Central and Eastern Europe than it ever could have been before”.

C. The ambiguous attitude of the corporate donors

Corporate funding does not represent a major source of income for TI-Secretariat. It amounted to only about 6% of the total income in 2004. This percentage, however, has more than doubled since 1997. According to the financial statements, the number of corporate contributors also seems to have increased over time. The proportion of corporate money going into the budgets of the national chapters depends on the fund-raising policies and opportunities in each country. Companies funding is of particular importance to chapters such as TI-USA, TI-France and TI-Germany. In the following developments I will focus on the identity and record of some of these corporate donors and discuss what may motivate their participation in the anticorruption project.

1. TI: “a fig-leaf for corrupt businesses”?

a. A deceiving commitment to transparency

TI’s donations guidelines state that “TI can receive funding from corporations and donors from the private sector. This does not imply any endorsement of a donating company's policies or record. It is advisable that a potential donating company has made a public commitment to ethical standards (such as the UN Global Compact, the Business Principles etc.), and TI bodies may request that corporate donors sign a commitment to integrity before any donation from that company is accepted. [...] TI works with companies on the understanding that they are working towards a business environment in which bribery is not accepted”. Material from financial regulators, courts and other

¹³³ See Inskeep, op. cit. Soros, traditionally on good terms with the US establishment, put himself at odds with the conservatives during the last presidential elections by channelling \$ 27 million to anti-Bush campaigners. Soros stresses that his private political activities are wholly separate from the Open Society Institute and now expresses his desire to get away from party politics.

¹³⁴ See Lazin: “[Soros ...] recognized the need to reorganize civil society [...] in the ruins of the Russian Empire [...]. Otherwise, the socialists would remain in place”.

official sources, however, suggests that not all corporate sponsors to TI are consistently committed to uplifting honesty and transparency in their own business operations¹³⁵.

Shell UK finances the International Secretariat and many local branches of Shell (Belgian Shell, Shell Bangladesh, Shell Italia, Shell Colombia...) finance TI local chapters. In 2004, however, the Shell Transport and Trading Company, P.L.C. along with another oil company agreed to pay \$120 million civil penalty to settle a fraud case with the US Securities and Exchange Commission involving massive overstatement of hydrocarbon reserves during the years 1997-2002¹³⁶. The companies simultaneously settled for £17 million a market abuse case relating to the same facts with the UK Financial Services Authority¹³⁷.

KPMG Netherlands also finances the International Secretariat and KPMG Germany, another donor to the Secretariat, is the company auditing its budget since 2002¹³⁸. In 2003, KPMG LLP (US) and four of its partners were charged with an audit fraud in which they enabled Xerox -Fuji Xerox Japan is also a donor- to manipulate its accounting practices to close a \$3 billion gap between actual operating results and the results reported to the investing public. The facts covered the period 1997 to 2000. In 2005, KPMG LLP agreed to settle the litigation for \$22 million¹³⁹. KPMG LLP has also recently been the main focus of an extensive US Senate investigation on the role of accountants in the illegal tax shelter industry¹⁴⁰. The Senate findings were that from 1998 to 2003, KPMG had devoted substantial resources to produce a continuing and varied supply of abusive or illegal tax shelters, used aggressive marketing tactics to sell these products and concealed these activities from tax authorities. PricewaterhouseCoopers, which donates both to the International Secretariat and to the US chapter, was also said to have sold during the period 1997 to 1999 generic tax products to multiple clients despite evidence that some of them were either abusive or illegal. In the same investigation, it was discovered that Deutsche Bank and UBS “provided billions of dollars in lending critical to transactions which the banks knew were tax motivated, involved little or no credit risk, and facilitated potentially abusive or illegal tax shelters”.

JP Morgan Chase¹⁴¹, another regular donor to TI-S, agreed in 2003 to pay \$135 million to settle SEC allegations that it helped Enron -also a donor- and another company commit fraud¹⁴². The investigation revealed that JP Morgan Chase had designed complex structured finance transactions which had no business purposes aside from masking its loans to Enron so that the company would seem to be in a better financial health than it really was. The SEC litigation release reports that between December 1997 and September 2001, the bank made masked loans to Enron for total of

¹³⁵ Corporate sponsors have been identified from the TI websites, Annual Reports, Audited Financial Reports and Statements of Income.

¹³⁶ Litigation release available at <http://sec.gov/litigation/litreleases/lr18844.htm>, SEC complaint at <http://sec.gov/litigation/complaints/comp18844.pdf>, press release at <http://sec.gov/news/press/2004-116.htm>, administrative proceeding release at <http://sec.gov/litigation/admin/34-50233.pdf>

¹³⁷ Press release at <http://www.fsa.gov.uk/Pages/Library/Communication/PR/2004/074.shtml>, final notice at http://www.fsa.gov.uk/pubs/final/shell_24aug04.pdf.

¹³⁸ Also, KPMG Kenya audits the Kenyan chapter.

¹³⁹ See 2005 litigation release at <http://sec.gov/litigation/litreleases/lr19191.htm>, 2003 litigation release at <http://sec.gov/litigation/litreleases/lr18389.htm>.

¹⁴⁰ US Senate, Committee on Homeland Security and Governmental Affairs (formerly Committee on Governmental Affairs), Permanent Subcommittee on Investigations *US Tax Shelter Industry: the Role of Accountants Lawyers and Financial Professionals. Four KPMG Case Studies: FLIP, OPIS, BLIPS, and SC2*, Report prepared by the Minority Staff of the Permanent Subcommittee on Investigations, November 2003, http://www.senate.gov/~govt-aff/_files/sprt10834tax_shelters.pdf and *The role of professional firms in the US tax shelter industry*, 8 February 2005, http://www.quotloos.com/Tax_Shelter_Industry_Firms.pdf

¹⁴¹ J.P. Morgan Chase & Co. is a financial holding company created by the December 31, 2000, merger of J.P. Morgan & Co. Incorporated with the Chase Manhattan Corporation (<http://www.sec.gov/litigation/complaints/comp18252.htm>).

¹⁴² See 28 July 2003 press release, <http://www.sec.gov/news/press/2003-87.htm>, the complaint at <http://www.sec.gov/litigation/complaints/comp18252.htm> and the litigation release at <http://www.sec.gov/litigation/litreleases/lr18252.htm>.

approximately \$2.6 billion. The Senate further emphasized how “shocking was the extent to which respected US financial institutions like Chase, Citigroup and Merrill Lynch helped Enron carry out its deceptions and misleads investors and analysts about the company’ finances”¹⁴³. In another case still in 2003, JP Morgan Securities¹⁴⁴ and UBS Warburg¹⁴⁵ were ordered to pay monetary sanctions of a total of \$80 million each for actions involving conflicts of interest between research and investment banking.

A significant proportion of the corporations mentioned as contributors to the US chapter can be found to have entered settlement agreements with the Securities and Exchanges Commission, mostly for fraud and failure to conform to the securities laws which resulted in losses for the shareholders. In 2003, the SEC stressed the role of American International Group, Inc, “one of the world’s largest insurance underwriters”, in enabling another company to commit securities fraud¹⁴⁶. In 2004, in order to settle a SEC action and related criminal charges brought by the Fraud Section of the US Department of Justice, AIG agreed to pay disgorgement and penalties totalling \$126 million¹⁴⁷. Following a civil action by the SEC, the pharmaceutical company Bristol-Myers Squibb was ordered to pay \$150 million “for perpetrating a fraud scheme to overstate its results from the first quarter of 2000 through the fourth quarter of 2001”, thereby causing “significant harm” to the shareholders¹⁴⁸. Likewise, in 2000 and 2001, CMS Energy fraudulently inflated its revenues and misled shareholders¹⁴⁹. Enron and Arthur Andersen, infamous for their extensive fraud schemes, also donated to the US Chapter¹⁵⁰. PricewaterhouseCoopers LLP¹⁵¹, in addition to the affairs already mentioned, settled an agreement relating to violations of auditor independence standards and related improper conducts having occurred from 1996 through 2001. In 2003 it was censured and agreed to pay \$1 million for improper conduct and in 2004 it was required to pay a \$2,4 million penalty for wilfully aiding and abetting another company to violate securities laws¹⁵². Reliant Energy was accused of illegal transactions having occurred in 1999, 2000 and 2001¹⁵³. In 1997, General Electric was fined \$25 million for paying bribes in a contract with Egypt¹⁵⁴.

In addition, the 15 July 2004 Senate report found that oil companies operating in Equatorial Guinea (EG), including ExxonMobil and CMS Energy, both TI donors, and their subsidiaries, “may have contributed to corrupt practices in that country by making substantial payments to, or entering into formal business ventures with, individual E.G. officials, their family members, or entities they control, with minimal public disclosures of their actions”. The most recent facts investigated by the Subcommittee for this report date back to 2004. In a subsequent report¹⁵⁵, Bank of America, another

¹⁴³ US Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations *Senate Subcommittee Report charges US financial institutions with aiding ENRON deceptions*, Press release, 2 January 2003, http://hsgac.senate.gov/index.cfm?Fuseaction=PressReleases.View&PressRelease_id=330&Affiliation=C

¹⁴⁴ 31 October 2003 judgement: <http://www.sec.gov/litigation/litreleases/judgm18114.pdf>.

¹⁴⁵ Judgement: <http://www.sec.gov/litigation/litreleases/judge18112.htm>. See also press release: <http://www.sec.gov/news/press/2003-144.htm>, litigation release: <http://www.sec.gov/litigation/litreleases/lr18438.htm>.

¹⁴⁶ See 11 September 2003 litigation release, <http://www.sec.gov/litigation/litreleases/lr18340.htm>

¹⁴⁷ See 30 November 2004 litigation release, <http://sec.gov/litigation/litreleases/lr18985.htm> and press release <http://sec.gov/news/press/2004-163.htm>

¹⁴⁸ See news digests <http://www.sec.gov/news/digest/dig080404.txt> and <http://www.sec.gov/news/digest/dig080904.txt>. For another case see also <http://sec.gov/news/press/2005-118.htm>

¹⁴⁹ See 17 March 2004 press release, <http://sec.gov/news/press/2004-38.htm>

¹⁵⁰ See for example <http://www.sec.gov/news/press/2003-87.htm>

¹⁵¹ See administrative proceedings instituted on 11 May 2004 <http://sec.gov/litigation/admin/34-49678.htm> and litigation complaint <http://sec.gov/litigation/complaints/comp18701.pdf>.

¹⁵² <http://sec.gov/news/press/2003-65.htm> and <http://sec.gov/litigation/complaints/comp18701.pdf>

¹⁵³ <http://www.sec.gov/news/digest/dig051203.txt>

¹⁵⁴ See Abramovici, Pierre, Une ONG Contestée, in *Le Monde Diplomatique*, November 2000, <http://www.monde-diplomatique.fr/2000/11/ABRAMOVICI/14428>

¹⁵⁵ US Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act*. Supplemental Staff Report on US Accounts used by Augusto Pinochet, 16 March 2005, http://hsgac.senate.gov/_files/PINOCHETREPORTFINALwcharts.pdf

donor, is cited as one of the financial institutions which helped General Pinochet and his family move their funds to the United States. “Account records indicate that, from 1993 until 2004, Bank of America maintained 3 U.S. accounts and as many as 6 CDs [certificates of deposit] at a time for Mr. Pinochet’s daughter, Ines Lucia Pinochet. At least three of these CDs, in the amount of \$100,000 or more, were purchased in 2002; the other CDs, which ranged in value from \$10,000 to \$125,000, were purchased between 1996 and 2002, and some were held in trust for one or more of her sons. The maximum amount of funds in Ms. Pinochet’s Bank of America accounts at one time totaled about \$420,000, in December 2002.”

In France, Vivendi Media, one of the companies financing the national chapter, seems to be chronically involved in bribery¹⁵⁶. In 1997, Vivendi executives were convicted of bribing the mayor of Saint-Denis, France, to obtain a water concession. The former mayor of Angoulême, France, admitted accepting \$55,000 from a Vivendi affiliate. Vivendi Universal, a parent company of Vivendi Media, and two of its top officials agreed to pay over \$51 million in disgorgement and civil penalties to settle a civil fraud case with the SEC in 2003¹⁵⁷. The fraud, perpetrated between 2000 and 2002, included false press releases, improper adjustments to earnings, and failure to disclose future financial commitments with the intention of avoiding acknowledging the company's liquidity problems. And according to Jeremy Pope, “someone in a major German newspaper’s on-line edition wrote that the German companies all joined TI-Germany only after a scandal and that TI is just a fig-leaf for corrupt companies”.

Although some companies raise fewer doubts as to their integrity, the above findings are not exhaustive and the list could go on. It is noteworthy that the affairs mentioned are recent and occurred around the time when the companies were contributing to TI. In addition, the cases have been limited to economic and financial criminality to retain coherence with the issue of corruption and do not include other types of offences such as violations of labor, environmental or human rights laws.

As we have seen, TI’s list of “some of the most notorious leaders” published in the Global Corruption Report 2004 enumerates former Heads of State along with the dates of their rules and ranks them according to the sums they are alleged to have plundered. Based on this data, a yearly average of the looted funds would give the following: General Suharto: \$781million; Marcos: 536; Colonel Mobutu: 156; General Abacha: 700; Milosevic: 91; Duvalier: 37; Fujimori: 60; Lazarenko: 78.5; Alemán: 20; Estrada: 26,3. These sums easily compare with the amounts of money -either of the fines or the fraudulent transactions- involved in the corporate cases described above. The comparison helps bring some relativity to TI’s approach to corruption. It suggests that the almost exclusive emphasis the organization places on misdeeds by governments and government officials may be disproportionate and that it would be exaggerated to demonize the “notorious leaders” on the basis of their financial wrongdoings only while ignoring the considerable volume of fraudulent transactions taking place in the private sector.

b. The explanation: “Big businesses want to stop bribing, but don’t know how to do it”

Asked about TI’s justifications for accepting the companies’ money, Jeremy Pope is said to have replied “The bills must be paid”¹⁵⁸. In an interview with me he underlined that these apparent paradoxes were not limited to TI: “the Ethics Resources Center in Washington was funded by Enron”. He further explained that “TI wants to work with the private sector” and that the stance to adopt in this case is to “take the money and hold companies to their word”. It is not obvious, however, that TI

¹⁵⁶ Public citizen, *Veolia Environment: a corporate profile*, February 2005, <http://www.citizen.org/documents/Vivendi-USFilter.pdf>

¹⁵⁷ See <http://www.sec.gov/divisions/enforce/claims/vivendi.htm> and the December 2003 litigation release at <http://www.sec.gov/litigation/litreleases/lr18523.htm>.

¹⁵⁸ Staps, Freek, op. cit.

really has the capacity to hold companies to their word, since it has no investigative and prosecuting powers and follows the policy of not naming and shaming. Admitting that some of TI's donors had been involved in corruption, Peter Eigen declared: "We are no angels. Big companies want to stop bribing, but don't know how to do it. They are afraid to lose to their competitors. No one wants to be the first to stop. We have to be realistic and understand they have to keep on working. We are totally pragmatic. We have to work with the big companies without imposing on them a standard they wouldn't be able to respect"¹⁵⁹.

Echoing this view, Jeremy Pope commented that "companies don't have control over all their employees", suggesting that although the management would want to promote integrity, some individual members of staff go against the corporate policies and engage in unethical or illegal practices. The official position of TI-S was similar: "Some chapters request companies to sign an integrity pledge to commit themselves to do business ethically. What guides TI when there is a scandal is: had the company taken appropriate care to avoid what happened? Was it a matter of individual or corporate misconduct? Did the company take appropriate measures after the case was known, did it take sanctions? Did it cooperate appropriately with the legal authorities? Was the integrity pledge broken or was it just the unfortunate behaviour of a staff member?"

A look at the facts gives a more pragmatic edge to these declarations. First, the Senate and SEC reports on the Enron fraud, the tax shelter activities and the continuing help provided to General Augusto Pinochet all suggest a pervasive culture of disregard for ethics, the rule of law and the interests of the public, shareholders and investors. Even if, as emerges from the reports, some corporate officials were in disagreement with the abusive practices, their opinion and complaints did not withstand the general dynamics of seeking profit by all means. Further, a former Managing Director of TI made a telling account of a scandal involving Siemens (Siemens is a donor to TI and at least one member of TI-Germany has been from the company): "there was a scandal over a contract between Siemens and the Munich Police for the purchase of bullet-proof equipment. The corrupt transaction meant that the police didn't get the safest equipment. The scandal broke. There were prosecutions and police officers thrown out. Some members of Siemens' staff were sentenced to jail. Siemens paid the legal costs and the staff's salaries while they were in prison. After their imprisonment they went back to work for the company."

2. Anti-corruption programmes: a competitive asset in the international market place

It is interesting to see what motives beyond the mere willingness to curb corruption can inspire corporate support to TI. Public relations researchers, professionals and business experts consistently emphasize the importance of public relations, image and reputation for companies, especially in consideration of the corporate scandals of the past years. Thus, Alan Greenspan is quoted as saying that "In today's world where ideas are increasingly displacing the physical in the production of economic value, competition for reputation becomes a significant driving force"¹⁶⁰. Gwinavere Johnston of Johnston Wells PR explains that public relations, defined as "the management of relationships between an organization and the constituencies upon which it depends", must restore the public's eroding trust towards the corporate world: "Reputation can account for a large portion of a company's market capitalization, and can be its most important long-term asset"¹⁶¹.

According to Riccarda Dümke, "intangible assets [such as PR] may provide companies with an even more stable basis for competitive advantage than developed patents and technologies". The specialist

¹⁵⁹ Quoted in Pierre Abramovici, *Une ONG contestée*, Le Monde diplomatique, November 2000 (translation by the author)

¹⁶⁰ Cited in Dümke, Riccarda, *Corporate Reputation and its Importance for Business Success*, 2002, excerpt at <http://www.hausarbeiten.de/faecher/vorschau/10004.html#related>

¹⁶¹ Johnston, Gwinavere, *Today's Business Climate and the Role of Public Relations*, http://www.ad-mkt-review.com/public_html/docs/fs050.html

also stresses the importance of public relations to communicate good corporate behaviour¹⁶². Similarly, a Chief Executive Officer interviewed for White and Murray's study on "CEO's expectations of a changing public relations practice" insisted on the increasing demands for transparency, while another pointed out that "communications [...] can become self-serving propaganda" and give rise to a reputation gap when expectations cannot be met¹⁶³. The willingness to present one's corporation as transparent and ethical can explain the fact that companies with a particularly poor record contribute monetary and in-kind support to organizations like Transparency International. This is nonetheless worrying for the public when it amounts to giving an illusory image of a business, with the risk of making future disclosures of corporate misconduct even more sudden and painful. One could wonder whether it is appropriate for an organization like Transparency International to lend itself to such use.

Another advantage of the current emphasis on corruption for the business professionals is the renewed demand for the services of accountants, auditors and lawyers¹⁶⁴. This fact may be connected to the interest shown in TI by some of the world's biggest accounting and auditing firms such as PricewaterhouseCoopers or KPMG. According to one of my respondents, one of the firms which would merge to create PricewaterhouseCoopers was amongst the very first supporters of the idea of an anticorruption coalition. It is also noticeable that as the commitment to anticorruption becomes a competitive advantage or requirement, companies with the biggest resources, able to develop a broad anticorruption programme and to publicize it widely, also tend to find themselves in a better position to compete for contracts. Therefore, it seems important that precautions be taken to ensure that the application of anticorruption requirements does not unduly prevent the advancement of local businesses and increase the economic dependence of the developing countries on foreign firms, and that assessments are made on the basis of a company's record and not its statement of intent.

Conclusion

What emerges from this research is a picture in which powerful countries and their powerful foundations and companies, along with finance and business professionals, provide support to an organization devoted to combating corruption. The work of this organization is primarily, albeit not exclusively, targeted at poor countries which have often been the long-term victims of the corrupting influence of the said countries, companies and foundations. Moreover, from many accounts, the Secretariat of this organization seeks to place under its diktat its national chapters which may have divergent positions about the best way to combat corruption locally.

The future of Transparency International raises numerous interrogations. According to its former Managing Director Jeremy Pope, "TI has passed its peak as a global movement. Now it doesn't know what its role is. Its initial objectives have all been achieved. The standards have been set - OECD convention, UN convention... - and the topic is out in the open. The locus of action has shifted from Berlin to the chapters to get governments to take action, but people in the Secretariat are opposed to change the way TI is operating." The tensions are reflected in the internal debate about the succession to the chairmanship and the funding crisis of the Secretariat, described by Jeremy Pope as due to donors' greater willingness to fund the "dynamic" chapters than the "moribund" Secretariat.

¹⁶² Dümke, op. cit.

¹⁶³ White, Jon and Murray, Kevin, *Chief Executive Officers' expectations of a changing public relations practice*, Bled International Research Symposium, 2004, <http://www.bledcom.com/uploads/documents/white-murray.pdf>

¹⁶⁴ Anechiarico and Jacobs, op. cit.

At a more general level, there are important elements and characteristics of the anticorruption project which warrant attention. Many of today's integrity programmes tend to submit domestic processes to the input of foreign donors and corporate supporters with their own financial and ideological interests. As we saw, the initial internationalization of anti-bribery instruments led by the world's first exporter was mainly guided by national self-interest. The progressive appearance of corruption on the world's agenda nonetheless amounted to breaking a long-lasting taboo and this has to be acknowledged as a positive point.

It is now fundamental that we take this opportunity to make a fair assessment of the responsibilities, if we do not want to perpetuate a hopeless system of ignorance, denial and secrecy. It is, in particular, not desirable to close our eyes on the past, the study of which can enlighten our understanding of the current situation of corruption as well as make us alert as to a possible risk of instrumentalization of transparency programmes and related initiatives. It is also important to guard against the imposition of a constructed approach to corruption and anticorruption which would contribute to serving particular agendas to the detriment of others not less legitimate. The preservation of the independence and diversity of the numerous anticorruption initiatives existing in the world today can guarantee against these pitfalls. Hopefully these local organizations will receive the recognition they deserve, be it from public institutions, other organizations or the media.

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