



Confronting Corruption

Transparency International-USA Recent Developments Spring 2005

TI-USA ELECTS CHAIRMAN & DIRECTORS

On May 26, **Grant Aldonas**, former Under Secretary of Commerce for International Trade, assumed the leadership of the TI-USA Board from **Fritz Heimann**, who had served as TI-USA Chairman for the past 12 years. Mr. Aldonas brings 25 years experience in international trade and investment and a deep commitment to the anti-corruption agenda at the international and national levels. He is currently practicing law in Washington, D.C. and will serve as both the Director of the Economics Program at the German Marshall Fund and as Adjunct Professor of Law at Georgetown University.



Other new directors elected in 2005 include:

- **Peter Clark**, partner at Cadwalader Wickersham & Taft LLP & former Deputy Chief of the Fraud Section at the Department of Justice,
- **Kevin Ford**, Vice President & Associate General Counsel for Goldman Sachs & Co,
- **Katherine Gurun**, General Counsel for Bechtel Corporation,
- **Ben Heineman**, Senior Vice President of Law and Public Affairs for General Electric Company,
- **Jeffrey Kindler**, Vice Chairman & General Counsel of Pfizer, Inc.,
- **Ambassador Alan Larson**, former Under Secretary of State for Economic, Business, and Agricultural Affairs.

Harvey Goldschmid, Commissioner at the US Securities and Exchange Commission will join the board upon his departure from the SEC later this year.

Fritz Heimann will remain on the board. Mr. Heimann, former Associate General Counsel of General Electric, was a founder of TI. Over the past 12 years, he has led the US Chapter and played a key role in promoting the OECD Convention to Combat Bribery of Foreign Public Officials. Mr. Heimann currently chairs the Working Group on Bribery and Corruption of the U.S. Council for International Business and is Vice Chairman of the International Chamber of Commerce Commission on Anti-Corruption. He edited Fighting Bribery: A Corporate Practices Manual, published by the ICC. TI-USA would like to thank Mr. Heimann for his tireless efforts on behalf of the chapter and the international anti-corruption movement and looks forward to a continued partnership. Mr. Heimann will be honored formally at a TI-USA event later this year.

US LEGISLATION TO COMBAT CORRUPTION AT DEVELOPMENT BANKS

Leveraging the influence and global reach of the World Bank and other MDB's to fight corruption has long been a priority for Transparency International. On May 26, 2005, Senator Richard Lugar (R-IN) introduced legislation, S. 1129, aimed at combating corruption in international development projects, which picks up on many of the recommendations TI-USA submitted in testimony to the Senate Foreign Relations Committee hearings on "Corruption and the World Bank" in May 2004 and in its subsequent work with Senator Lugar's staff on specific proposals.

S. 1129 takes on major issues and makes several innovative proposals, including the creation of an "Anti-Corruption Trust" pilot program that would assist poor countries with corruption investigations and prosecution.

(continued on page 2)

Wolfowitz to Continue Anti-Corruption Agenda

In his first days at the World Bank, President Paul Wolfowitz has underscored his intention to continue the Bank's efforts to reduce corruption in development. He noted that a new attitude among African leaders toward critical issues like corruption offers a historic opportunity and, on the eve of his departure for Africa, he reached out to TI Chairman Peter Eigen for his views.



US LEGISLATION TO COMBAT CORRUPTION AT DEVELOPMENT BANKS

(continued from page 1)

Among other key provisions supported by TI-USA, S. 1129 requires U.S. executive directors at the World Bank and other MDB's to use the United States' "voice and vote" to promote the following initiatives:

- Changing the "pressure to lend" incentive structure that currently links staff appraisals to project design and implementation, and requiring staff to increase its focus on monitoring existing loans.
- Publishing information on loans, credit, grants, country assistance strategies and other documents on MDB websites prior to consideration by the board.
- Requiring any recipient of MDB funding to sign a code of conduct consistent with the Foreign Corrupt Practices Act.
- Coordinating debarment, cross-debarment, procurement and consultant guidelines such that any entity that is debarred by one MDB is automatically ineligible to do business with other MDB's for the period of ineligibility.
- Linking budget support, adjustment lending, or policy lending for non-project loans, grants or credits to a country's having transparent procurement practices and budgets that are publicly available.
- Linking non-humanitarian assistance to "resource dependent" countries, (producers of oil, gas and minerals) to governments having or establishing systems that: accurately account for revenues and expenditures related to resource extraction; publish independent audits of these accounts; and publish all resource-extraction contracts and aggregated payments,

TI'S CHINA PROGRAM GARNERS US SUPPORT



Transparency International's program in China garnered support when TI's national contact in China, Dr. Wenhao Cheng visited Washington, D.C. in March. Dr. Cheng is the director of the Anti-Corruption and Governance Research Center of Tsinghua University in Beijing, where he coordinates research projects on corruption prevention and control, and provides expert

advice to the Chinese government on corruption prevention systems, including for the Beijing Olympic Games. He studied under Professor Susan Rose-Ackerman at Yale University Law School.

The visit, sponsored by the Hills Program on Governance at the Center for Strategic and International Studies (CSIS) offered an opportunity to meet with experts and explore possible cooperation. At a dinner discussion co-hosted by CSIS, Transparency International-USA and the National Committee on US-China Relations, Dr. Cheng spoke on "Governance Challenges in China." Among the key areas Dr. Cheng identified as being susceptible to corruption were: state-owned enterprise reform, distribution of public land, taxation and public health systems. He advocated a three-prong approach to address these vulnerabilities: law enforcement, corruption prevention and good governance education. He noted that the Chinese government is committed to international efforts, citing its signing of the UN Convention Against Corruption and the UN Convention against Transnational Organized Crime. It is also creating a management information system for use by public agencies and a nationwide electronic government project aimed at encouraging transparency.

The Hills Program on Governance and Dr. Cheng agreed to establish a program at Dr. Cheng's Center to work on governance issues. Dr. Cheng is planning a meeting this year to launch a Chinese version of TI's Business Principles for Countering Bribery.

taking account of local law and "substantial competitive harm" to contracting companies.

- Adopting whistleblower protections consistent with Sarbanes-Oxley (and the model used for the Inter-American Convention Against Corruption).

Senator Hagel (R-Neb.) is a co-sponsor. TI-USA will support the legislation, which is expected to go to mark-up by July.



2005 GLOBAL CORRUPTION REPORT: SPOTLIGHT ON CONSTRUCTION



Transparency International launched its 2005 *Global Corruption Report* on March 16, 2005 at press conferences in London, Washington, D.C., Addis Ababa, and other cities around the world. In addition to its regional assessments, this year's report focuses on corruption in the construction sector, the sector most vulnerable to corruption according to TI's Bribe Payers

Index. The report concludes that corruption in large-scale public projects hampers sustainable development, harms the environment and can even cost lives. The report makes recommendations on how to curb opportunities for corruption and sets out TI's recommended minimum standards for public contracting.

A panel discussion hosted by TI-USA in Washington, D.C. included TI's Head of Research Robin Hodess, American Society of Civil Engineers Director of International Alliances, Michael Sanio, and the World Bank Senior Institutional Integrity Officer Glenn Ware.

Among the report's key findings is the magnitude of the problem -- approximately \$3 trillion spent annually on construction projects globally, and losses due to corruption and bribery estimated conservatively at 10 percent or \$300 billion annually. TI's "Minimum Standards for Public Contracting" call on public contracting authorities to:

- ensure that contracts are subject to open, competitive bidding
- vet companies and blacklist those who engage in bribery, fraud or collusion
- provide public disclosure of the entire process, and
- ensure monitoring by independent oversight agencies and civil society.

The report issues a warning call for reconstruction in post-war Iraq and post-tsunami Indonesia and Sri Lanka, noting that such areas of confusion and change are particularly vulnerable to corruption, especially where civil society institutions are weak and there is a history of poor governance. Given the billions of dollars being spent on reconstruction in these countries, the report urges that the planning process address opportunities for bribery and corruption.

TI CO-HOSTS MEETING WITH ADB AND OECD ON CORRUPTION PREVENTION IN TSUNAMI RELIEF



With billions of dollars at stake for tsunami relief in countries with historically weak governance records, Transparency International joined with the Asian Development Bank (ADB) and the Organization for Economic Cooperation and Development (OECD) in hosting an "experts meeting" on corruption prevention in tsunami relief. The April 7, 2005 meeting in Jakarta, Indonesia brought together more than 60 senior representatives from governments, civil society, and the private sector from the six most affected countries – India, Indonesia, Maldives, Malaysia, Sri Lanka and Thailand – and representatives from 16 key donor agencies and international organizations involved in tsunami relief and reconstruction efforts. Transparency International's Regional Director for Asia Pacific, Peter Rooke, participated in the meeting as did representatives from TI headquarters in Berlin and local chapters in Indonesia, Sri Lanka, Thailand, Germany, Malaysia, and India.

Participants called for greater donor coordination and accountability in their operations, especially in the management of financial flows. In particular they called for transparent procurement and project implementation processes; underscored the importance of internal and external audits and evaluation and monitoring; and stressed the need for greater donor coordination.

Participants called on donors to apply uniform procurement rules, and to require publication of books and records, and internal and external controls. They encouraged governments to involve affected people and civil society in decision-making; disseminate information widely; and provide easily-accessible corruption-reporting channels combined with effective whistle-blower protection mechanisms. Participants also acknowledged that non-governmental organizations play an important role in monitoring the relief and reconstruction process and in reporting any suspected corrupt activities to appropriate authorities.

Participants urged all stakeholders involved in tsunami assistance to ensure transparency and



TI DEVELOPING TOOLS TO ASSIST COMPANIES IN COUNTERING BRIBERY

TI's Steering Committee for Countering Bribery met in London, England on May 10, 2005 to review new tools that TI is developing to help businesses implement the Business Principles for Countering Bribery. To support its Business Principles, TI developed a comprehensive guidance document and a soon-to-be released Six-Step Implementation Process guide. TI is also developing a self-evaluation module for companies wishing to benchmark their own practices against the Business Principles and is considering the feasibility of developing an external assessment tool for companies that may want to undergo an external review. TI is being assisted in this task by PricewaterhouseCoopers, a long-standing member of the Steering Committee.

The Steering Committee is a multi-stakeholder group that includes leading companies from the US, Canada, Latin America, Europe and Asia. These companies cooperated in the development of the Business Principles, and have been supporting TI's efforts to make them the leading corporate anti-bribery framework since their 2002 launch.

FTSE DRAWS ON TI'S BUSINESS PRINCIPLES TO DEVELOP NEW INDEX

The FTSE Group, an independent indexing and data services company, is incorporating anti-bribery and corruption criteria into its index series that measures the performance of companies that meet globally-recognized corporate responsibility standards. The soon-to-be-launched revised FTSE4Good Index Series draws heavily upon TI's *Business Principles for Countering Bribery* and will be finalized following input from NGO and company focus groups.

In the initial phase, FTSE will apply the anti-bribery criteria to companies at highest risk depending upon: a) whether a company operates in a high-risk country; b) whether the company is part of a high-risk industry; and c) whether the company participates in high-risk business activities.

ICC APPROVES REVISED RULES OF CONDUCT ON EXTORTION AND BRIBERY

The International Chamber of Commerce (ICC) Commission on Anti-Corruption adopted revised Rules of Conduct on Combating Extortion and Bribery ("ICC Rules of Conduct"). The revised rules provide more detailed guidance on the use of agents and other intermediaries, joint ventures and outsourcing arrangements, political and charitable contributions, and the use of facilitation payments. Fritz Heimann, TI-USA's Board Chairman, and Vice-Chair of the ICC Standing Committee on Extortion and Bribery, noted

that the revised rules are consistent with TI's Business Principles for Countering Bribery in most respects, except in their treatment of facilitation payments. Both the ICC Rules of Conduct and TI's Business Principles are recommended as models for adoption to companies around the world that have subscribed to the UN Global Compact. The revised ICC Rules of Conduct have been submitted for approval at the ICC executive board at its meeting in Durban, South Africa, scheduled for June 20-22, 2005.



TI CHAPTERS PRESENT COUNTRY ASSESSMENTS IN OAS MONITORING MEETINGS

TI national chapters from Latin America and the Caribbean participated in the March OAS Committee of Experts review of implementation and enforcement of the Inter American Convention Against Corruption (IACAC) and presented recommendations to promote greater implementation and enforcement of the Convention. The experts reviewed Mexico, Honduras, the Bahamas, the Dominican Republic, El Salvador, and Trinidad and Tobago.

The Convention provides a comprehensive anti-corruption framework for the Americas. It has been ratified by 33 of 34 OAS members and calls for the criminalization of a wide range of corrupt acts, increased enforcement, enhanced judicial cooperation, and stronger preventive measures. To date, the Committee of Experts has reviewed 18 countries and issued Country Reports with recommendations on how to improve country compliance with the Convention. Fifteen countries have permitted these reports to be published on the OAS website at www.oas.org. Select national chapter submissions are also available on the site. TI has underscored the need for broader publication of the reports, accelerating and strengthening the Mechanism, and formally recognizing civil society participation in the review process. TI has also recommended that all countries report annually on steps they have taken to enact the Committee's recommendations.

The OAS is considering additional measures that would build on the Convention, including the denial of safe haven to corrupt officials and those who corrupt them, their extradition, and the recovery and return of stolen assets. TI participated in an OAS experts meeting on this issue in Washington DC and in the June OAS General Assembly in Florida.

In September 2005, TI will participate in the review of Canada, Guatemala, Guyana, Jamaica, St. Vincent and the Grenadines and the United States.

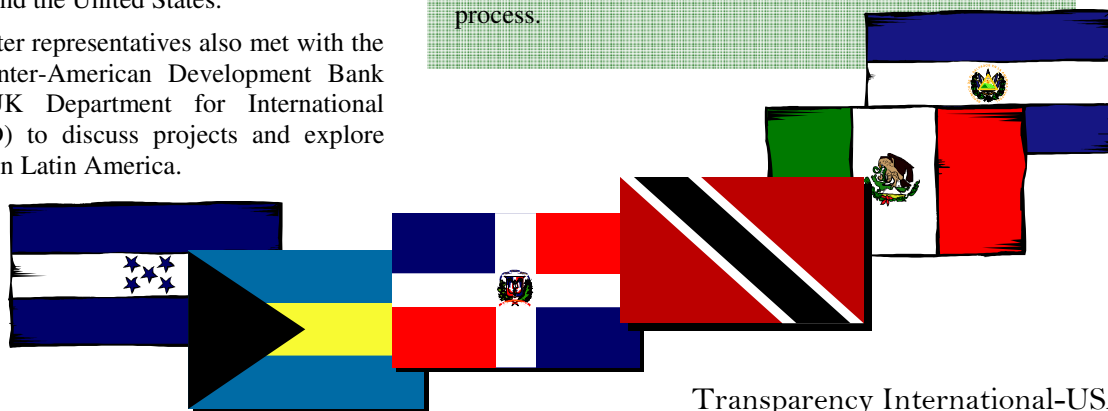
TI national chapter representatives also met with the World Bank, the Inter-American Development Bank (IDB), and the UK Department for International Development (DFID) to discuss projects and explore future collaboration in Latin America.

ABA RECOMMENDS US RATIFICATION OF UN CONVENTION

At the ABA Section of International Law spring meeting on April 13-16, 2005, the Task Force on Foreign Corrupt Practices, co-chaired by TI-USA board member, Lucinda Low, and Managing Director Nancy Boswell, and including many leading FCPA legal experts, presented its report and recommendation that the US ratify the UN Convention Against Corruption. The recommendation was adopted by the Section Council and will be submitted to the ABA House of Delegates for approval in August. The Convention has not yet been transmitted to the Congress nor has a timetable been set.

The recommendation calls for "a declaration that: (i) the Convention, except for Articles 44 (Extradition) and 46 (Mutual Legal Assistance) is non-self-executing, (ii) that no new legislation is necessary to implement the convention, including Article 35 (Private Rights of Action), given that US courts currently recognize the private remedies in certain circumstances for corruption-related actions, and that (iii) in ratifying the Convention the United States does not intend to broaden or enhance current US law."

The recommendation also states "that the United States should urge other countries to implement the UN Convention in ways consistent with recognized concepts of due process and fundamental rights..." Finally, the recommendation states that the ABA "supports the development of a mechanism to monitor the implementation and enforcement of the UN Convention, taking into account the monitoring efforts of other organizations such as the OECD, and taking such steps as may be necessary or appropriate to promote efficiency in monitoring and avoid duplication of effort, while promoting the participation of civil society in the monitoring process." TI has already convened a study group to develop recommendations for an effective monitoring process.





OECD CRITICIZES UK AND JAPAN FOR ENFORCEMENT DEFICIENCIES

The OECD Working Group on Bribery, charged with monitoring the enforcement of the OECD Convention to Combat Bribery of Foreign Public Officials in International Business Transactions, conducted onsite reviews and adopted highly critical reports on the United Kingdom and Japan. The OECD has now completed Phase 2 on-site reviews for all G-7 countries.

For the UK, the Working Group's recommendations included:

- enacting at the earliest possible date comprehensive legislation whose scope clearly includes the bribery of a foreign public official.
- ensuring that the office charged with investigating and prosecuting bribery offences is provided appropriate human and financial resources,
- establishing a clear obligation for civil servants to report possible instances of bribery to relevant authorities,
- improving whistle-blower protections,
- adopting reforms that clarify and unify the UK's accounting legislation with the International Accounting Standards, and
- increasing resources for the prompt and effective handling of mutual legal assistance.

The Working Group also recommended the government encourage its overseas territories and dependencies to adopt legislation in line with the principles of the Convention.

The Working Group found more serious lapses in Japan's enforcement of the Convention. The report recommendations included:

- creating a centralized mechanism for facilitating the sharing of information and coordination of investigations and prosecutions of transnational

bribery cases

- establishing an obligation for all public officials to report any suspected acts of bribery
- establishing "as a matter of priority" a formal system to process allegations of foreign bribery and pass them on to law enforcement authorities
- requiring external auditors to report indications of possible bribery
- improving whistle-blower protection
- prohibiting the establishment of off-the-books accounts and the recording of non-existent expenditures for the purpose of bribing foreign public officials, or hiding such bribery
- providing more guidance to companies concerning the adoption of adequate internal company controls, including standards of conduct, and internal auditing
- internally reviewing the reasons for the absence of "filed" investigations and prosecutions of foreign bribery cases
- reviewing the interpretation of "facilitation payments" and "international business transactions" provided in the Ministry of Economy, Trade and Industry Guidelines to ensure they conform to the Convention.

The Working Group also reported that it "is not sufficiently satisfied that Japan is in full compliance with the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials" and recommended that Japan enact legislation or amend its regulations as a matter of priority to effectively prohibit the tax deductibility of any bribe payments to foreign public officials. Full texts of these and the other Phase 2 country reports can be found at www.oecd.org. For further information on Convention enforcement and Phase 2 reviews, see also the US Department of State's "Battling International Bribery 2004" report, available from the State Department.



MCC SIGNS FIRST “COMPACTS”

The Millennium Challenge Corporation (MCC), the US government entity created in 2004 to administer a new approach to development assistance, signed the first “compacts” with Madagascar and Honduras in April and May and expects to sign two more with Nicaragua and Cape Verde in June.

The Millennium Challenge Account (MCA) takes a new approach to US aid, linking development assistance to good governance, investing in health and education, and economic policies that encourage trade and investment. Only countries that meet a list of criteria -- including a strict target for controlling corruption -- are eligible to present proposals to the MCC for funding consideration. The MCA development assistance approach also emphasizes country ownership and accountability. All proposals presented to the MCC must be formulated through a consultative process in which civil society has input into the development priorities and programs contained in a proposal. All compacts also provide for oversight mechanisms to ensure accountability in the use of funds.

These elements draw on lessons learned from past development but have necessarily taken time to implement correctly. The delay has drawn criticism, including from African leaders. The program has also seen its budget slashed and the head of the MCC resigned, raising concerns about the future of the program.

The first compact, between the MCC and Madagascar, calls for nearly \$110 million in US assistance over 4 years to implement programs that will reduce poverty by helping rural Malagasy secure formal property rights to land, secure access to credit, and receive training in agricultural production, management and marketing techniques. A \$215 million 5 year compact with Honduras will focus on rural development and transportation projects.

The MCC is in compact negotiations with Georgia and TI-Georgia is playing an active role and is advocating greater transparency in MCC procurement transactions in that country's proposed compact with MCC.

Seven “threshold countries” that failed to qualify for funding because they did not meet the eligibility criteria will receive funds to improve their performance in the hope they can qualify in future. The seven, Albania, East Timor, Kenya, Sao Tome and Principe, Tanzania, Uganda and Yemen, have submitted funding proposals, the majority focusing on anti-corruption programs.

JORDAN STEPS FORWARD ON GOVERNANCE

Jordan has been a leader in promoting the good governance agenda in the region. It hosted a 2004 ministerial-level meeting of Middle East and North African (MENA) countries to discuss the “Initiative on Good Governance for Development in Arab Countries”. Participating ministers from 16 Arab countries endorsed an initiative that included: 1) reforming public governance; 2) modernizing public institutions; 3) strengthening country capacity for designing and implementing reforms; and 4) using international, regional, and bilateral donor funds more effectively.

Building on this initiative, in February 2005 Jordan again hosted a meeting of MENA Prime Ministers, who recognized the importance of implementing measures and principles set forth in the UN Convention Against Corruption as a way to combat corruption, reduce poverty and create an enabling environment for sustainable development. Jordan, working with France and the US, will lead a working group that will address the role of the judiciary and enforcement of judgments.

In a recent visit to Washington, DC, Jordan's King Abdullah invited TI-USA and a small group of leading NGO's for an exchange of views on reform programs. As in past gatherings with the King, he spoke about the governance challenges he faces and efforts underway to combat corruption.



SPEAKERS CORNER

In Almaty, Kazakhstan, TI-USA Advisory Council member **John Brademas** spoke bluntly about the problem of corruption in the former Soviet republic. Singling out corruption as one of the two principle challenges facing the country, Brademas highlighted the country's poor ranking in TI's latest Corruption Perception Index and told conference participants that "Kazakhstan has a long way to go to be regarded as a country where honest business can be done."

TI-USA Board member **Prof. Susan Rose-Ackerman** was a panelist at an international seminar on "Corruption as an Impediment to Social Development" hosted by the Kennedy School of Government at Harvard University in February. She also participated in a working group on "Promoting Democracy and Accountable Government" at a Club of Madrid, Spain event entitled "Democracy for a Safer World." Prof. Rose-Ackerman is the author of "From Elections to Democracy: Building Accountable Government in Hungary and Poland" published by Cambridge University Press, 2005. Her work "Corruption and Government" was recently translated into Azeri, Arabic and Ukrainian.

In April, 2005, TI-USA Managing Director **Nancy Boswell** joined US Ambassador to the OAS John Maisto, and OAS General Counsel, William Berenson in addressing the ABA's Spring Meeting on "The Western Hemisphere's Agenda for Good Democratic Governance."

TI-USA Board member and Colgate University Professor **Michael Johnston** is the editor of "Civil Society and Corruption; Mobilizing for Reform" The book covers a year-long series of events sponsored by Colgate University's Center for Ethics and World Societies on "Corruption: Wealth, Power, and Democracy." The book is available through University Press of America.

TI-USA Managing Director **Nancy Boswell** spoke to the Conference Board's Council of Senior International Attorneys on "Judicial Corruption in Latin America" at the group's March meeting.

In April, TI-USA Board member **Michael Hershman** traveled to Bangkok, Thailand where he participated in the 11th Crime and Crime Prevention Congress and gave a presentation on Anti-Corruption Education and Training at Interpol's International Group of Experts on Corruption meeting.

TI-USA Board Members **Kevin Ford** and **Michael Hershman** made presentations to the International Investigators Conference on June 8 in Washington, DC. TI-USA's Managing Director and staff member **Susan Cote-Freeman** also met with representatives from the investigative offices of the multilateral development banks that were participating in the gathering. The conference brought together the directors of the fraud and corruption offices for the multilateral development banks, the United Nations and the European Union.

We welcome news of events and publications. Please send your contributions to: administration@transparency-usa.org.



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TI-USA is the U.S. Chapter of Transparency International, headquartered in Berlin, Germany. TI is a non-profit coalition of business, academic, civic, and professional leaders which promotes anti-corruption reform. Financial support is provided by corporations, law firms, individuals, foundations, and development agencies.