

## Transparency International Canada

### Presentation on Business and Bribery by Frank Vogl<sup>1</sup> to the TI-Canada- Business Roundtable October 1, 2013.



Ladies and gentlemen it is a great pleasure to be with you this morning. There would not be a TI-Canada without Bronwyn Best and I want to thank her profoundly for inviting me and, far more importantly, for her constant and excellent contributions to the fight against corruption.

Bronwyn has made a great contribution to the TI global movement and I would also like to mention in this context the Chair of the TI global board of directors, another outstanding Canadian, Huguette Labelle. Huguette, a former senior Canadian government official, has played an enormous role in strengthening the TI movement and promoting the cause of anti-corruption.

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<sup>1</sup> *Frank Vogl is a co-founder of Transparency International (TI) and served as its first Vice Chairman from its establishment in 1993 through 2001. He is a member of TI's Advisory Council and Advisor to its Managing Director. He is a co-founder and the Vice Chairman of the Board of Directors of The Partnership for Transparency Fund. Frank Vogl is the author of "Waging War on Corruption – Inside the Movement Fighting the Abuse of Power," published in 2012 by Rowman & Littlefield.*

## Beyond Compliance

Today, I want to talk about three particular aspects: first, that business people must look at issues related to anti-corruption in ways that reach far beyond compliance; second, that business needs to understand how far the anti-corruption landscape has changed over the last 20 years and that, one result is that business people paying bribes have ever greater risks of being caught and punished; and, third, I want to describe an increasingly complex global business environment where the dangers of rising corruption cannot be excluded.

On a previous visit to Canada I recall a conversation with a senior executive at GE Canada. He noted that his firm had won a major foreign contract from a foreign government and after they had been informed of this result the minister from the host government said he would like to slightly modify the agreement. He suggested that GE Canada increase the bid, which he assured would be accepted, and place the added amount into another "official" account. GE Canada refused and lost the deal.

A couple of years later I was in a board meeting of the U.S. Ethics Resource Center and I happened to mention Bangladesh. Instantly, the then chairman of the board, Ray Gilmartin, who was also the chairman and CEO of Merck, the pharmaceutical giant, interrupted me and declared: "We do not do business in Bangladesh – we cannot work there and stay true to our business principles."

The examples of GE Canada's action and Ray Gilmartin's comment attest to a fundamental point: there comes a time when corruption surfaces in a deal and a firm must say NO. It has to walk away from what might have been a lucrative contract.

There is a great deal of discussion in business about compliance with anti-bribery rules and regulations. That is important and necessary. Business approaches, however, need to go well beyond compliance. Graft relates to the integrity of people who pay bribes to win deals and to the firms that they represent.

When we talk business and corruption, then we need to focus on the ethics of the firm and on its corporate culture. The right approaches start with leadership and the tone that the CEO and the members of the board of directors set.

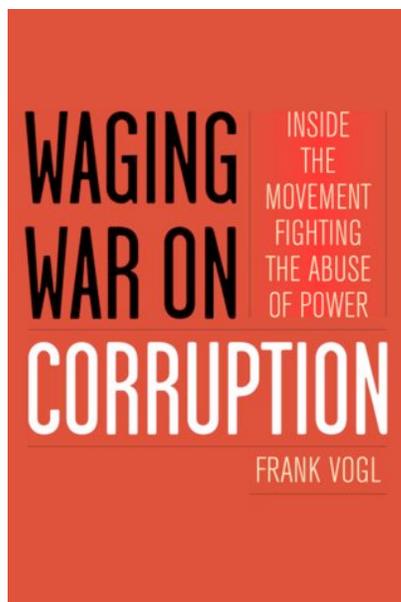
Major corporations need to have

reputational risk committees of their boards of directors that focus on ensuring oversight of all aspects of corporate ethics, from supporting internal whistleblowers to barring the payments of bribes to public officials.

I was warned that many of you may have issues on your minds about the demands by foreign government officials for bribes from business and about the regulatory frameworks that now exist. My experiences in Tanzania some years ago in helping to establish a mining company there with colleagues from Canada highlighted the crucial point that principles matter. Companies that make it clear from the outset that they will not pay bribes do best over time.

Companies that strive to be good corporate citizens in the overseas countries where they work by demonstrating integrity are the ones that do best. Companies that pay bribes may win a deal, but they may well pay very dearly in the longer term. In today's hyper-information era, - what I call the age of transparency – rogue corporate executives and their corrupt government counterparts have ever fewer places to hide. The risks of investigation and exposure are rising.

My concern is that too few business executives understand this and recognize that there is always a clear ethical line that dare not be crossed. Too many are willing to cross that line to win some profitable new business.



## The Changing Corruption Landscape

The landscape of global corruption is complicated and understanding it better can be beneficial to business. Outstanding research at the national and the global levels is pursued and published by Transparency International. Corruption impacts poverty, justice, security, finance and the establishment and sustainability of democracy. The bribes that government officials overseas may seek to extort in a business deal are not isolated events, but integral so often to the context in which those officials live.

Given the plethora of stories about corrupt governments and bribe-paying corporations you may be surprised that in my book I suggest there are solid grounds for cautious optimism. Transparency International is now celebrating its 20<sup>th</sup> anniversary and over these last two decades I have seen remarkable developments that convince me that we are at a tipping point in a rising number of countries where sustainable curbs on corruption are probable.

In 1990, I met in Nairobi with an old friend from the World Bank, Peter Eigen, who was at the time the Bank's Kenya-based director for eastern Africa. He was distraught that so much foreign aid funding that should alleviate poverty, was just enriching corrupt elites – funds that should have been used to build sanitation systems, hospitals and schools, were instead building personal bank accounts in Switzerland for crooked government leaders.

Peter spoke to a range of friends and in early 1993 a few of us established Transparency International with headquarters in Berlin, Germany. We elected Peter the chairman and my friend Kamal Hosain of Bangladesh and I were the first vice chairmen. We had no cash, no staff and no offices, but we were determined.

*The Economist* magazine ran a cartoon of Don Quixote and Sancho Panza tilting at windmills. We would tell people about our idea and they would politely say how nice and implied that we were idealistic, hopeless dreamers.

## The 20 year perspective

Transparency International was born as the Berlin Wall came down, the Cold War ended and intense debates were launched in many parts of the world over how to build democracy, how to ensure human rights and basic freedoms, and how to reduce

poverty. We opened our doors and discovered that people in scores of countries not only were deeply frustrated about their corrupt and illegitimate governments, but they wanted to join us.

Now, within the context of fighting corruption, please consider a few key developments in the roughly 20 years from the fall of the Berlin Wall to the rise of the Arab Spring:

- 20 years ago there was no international civil society movement dedicated to fighting corruption. Today, TI has 94 national chapters, more than 200 staff at our headquarters and tens of thousands of supporters. A decade ago a few of us also established the Partnership for Transparency Fund, which has implemented over 220 projects in many poor countries as it has worked with scores of local anti-corruption civil society groups. Never before have there been as many civil society organizations dedicated to press freedom, human rights, building democracy and curbing corruption as there are today.
- 20 years ago there were very few academics specializing in this field, now 5,000 people subscribe to TI's research network. There is an enormous amount of valuable anti-bribery research now widely available.
- 20 years ago none of the leading development aid agencies recognized the corruption issue or did anything about it. TI campaigned for change, as did others. Today, every one of the major multilateral and bilateral aid agencies have anti-corruption priorities and programs, backed by clear support from the Group of 20 at the summit level. For example, for years the World Bank arrogantly claimed it was squeaky clean in every respect – now, it is not only striving to promote good governance, but its investigative unit has done remarkable work with great impact – as Canadian business, for example, has recently learned.
- 20 years ago there was not a single anti-corruption international convention, today, there are regional conventions; there is the OECD Anti-Bribery Convention and the United Nations Convention against Corruption.
- Back then there were no meaningful partnerships between civil society and business to counter corruption – TI-Canada was a pioneer in bringing both together. Today, there are many

fora at international levels, from the World Economic Forum to the Extractive Industries Transparency Initiative (EITI).

- 20 years ago, there was not a single head of a government that I can recall who was ousted and then imprisoned because of corruption, and few politicians anywhere saw great risk in looting their national treasuries. In recent years more politicians in more countries have faced prosecution than ever before – the cry for “no impunity” to ensure justice for all, including the most powerful politicians, is gaining traction. now more vocal across the world than ever before..
- 20 years ago we did not have the Internet and mass e-mail and social media and the tools to disseminate anti-corruption news. Today, the scale of reporting about corruption is large; the distribution of news about corruption is wider than ever across the globe through the Internet; and, the expertise of investigative reporters is high – Global Witness in the UK, *ProPublica* in the U.S., and many others, are making enormous contributions.
- And, 20 years ago the idea of massive public engagement, with tens of thousands of citizens going into the streets to protest corrupt governments, was only a dream – today, from Brazil to India, from Russia to Tunisia, it is a reality.

## The Age of Transparency

People often ask me if I think corruption is worse today than it used to be, or just that better media reporting now makes us far more aware of the issue. I think the answer is the latter. From the earliest days of the political state corruption has abounded. We find much of Nicola Machiavelli's thought concerned with corruption. We find Shakespeare preoccupied with it, from Hamlet where we learn “there is something rotten in the state of Denmark,” to the wretchedly corrupt figure of Sir John Falstaff. I recall being on a TV panel with a reporter from Moscow who avowed: “We have a 1,000 year glorious history of Russian corruption.” So, corruption has been ever present, but my argument today is that we know far more about its manifestations, who the villains are and what should be done. People are better informed everywhere.

And, the more people are informed and the more they are willing to protest publicly, so the

greater are the risks that politicians take who abuse the public trust for their personal gain – and the greater are the risks to those ion business who illicitly pay those politicians and officials. Corrupt business people have ever fewer places to hide today.

We live in an utterly different world when it comes to the fight against corruption than we did just one generation back. To be sure, we often see progress and then we see backsliding; we see developments that really raise our hopes, only for those hopes to be dashed as new government leaders emerge that are as corrupt as the ones they replaced. We have seen such disappointments in Kenya and Ukraine and Egypt, for example.

But do not discount all the achievements of the last two decades. See those achievements for what they really are: the putting in place of essential building blocks that, taken together, set a powerful base for far greater success in the anti-corruption battles that together – yes together - we must wage.

Daily, as you read reports of individual scandals, you just see the individual photos and you may be depressed. But, I encourage you to see the full movie and recognize that substantial progress has been attained.

More people in more countries understand that there are always victims when corruption abounds and that the most vulnerable people in a country are so often the ones hit hardest by corruption. From increasing understanding and awareness comes action.

Two decades ago we could look at the mountain from afar and dream. Today, we have reached base camp. We are living the dream. Yes, we have still an Everest of corruption to surmount, but do not underestimate the momentum that is now so widespread, and the determination of so many to continue the fight for justice.

### **Business Challenges**

Now, let me turn more specifically to the issues of business and corruption. While there has been progress, as illustrated by the rising number of companies that have been punished under the law, there remain major challenges. Global business conditions are becoming ever more complicated as globalization intensifies, as more enterprises headquartered in more countries participate in global trade and investment.

Bribery in international commerce undermines market competition and this is the prime reason why business organizations and governments have sought to create a “level playing field” through the OECD Convention. There are many other matters that make the playing field far from level – from protectionist trade policies that abound, to foreign aid policies and export-import bank policies that often amount to subsidies for firms, to other interventions by governments to promote the interests of companies from their own countries in securing deals with foreign governments.

While I believe that the commercial arguments for the toughest possible enforcement of anti-bribery laws have substantial merit, I do not believe that it is useful for business leaders to look at this issue solely in commercial terms. They need to understand that the citizens of the countries where corporate bribery is widespread are not primarily concerned with issues of a “level playing field,” rather their focus is on the impact of corporate bribery on poverty and its broader effects on subverting justice and the potential for building transparent and accountable governance. Every corporate bribe is a blow against democracy and justice.

The OECD Convention has been signed by almost all the major trading nations, but implemented by relatively few. The scale of prosecutions and the level of fines pursued by the U.S. authorities are far greater than the actions by all other governments combined. Far more needs to be done by governments to staff their anti-corruption legal offices with sufficient people with sufficient experience to be effective; far more needs to be done by the courts in most countries to level punishments that can have an impact – an issue that I shall return to in a moment.

While lamenting inadequate enforcement, I am somewhat heartened by the fact that cooperation between public prosecutors and investigators across national borders has intensified over the years. Many of the U.S. cases have been developed solely because U.S. officials have been able to obtain key evidence from counterparts in other countries. Often the U.S. authorities have been tipped off to situations that have evolved into major cases. Often foreign prosecutors have believed they lack the resources to pursue a full-scale investigation and prosecution of a major multinational corporation and that their best course is to work with the U.S. authorities and assist them in developing a case.

## **Corruption and poverty in Africa**

How bad is trans-border corporate bribery?

There is no meaningful data, but that it does distort trade, that it contributes to the total volume of illicit financial flows and that it has a major impact on governance and poverty is certain.

The “African Progress Panel” chaired by former United Nations Secretary-General Kofi Annan, published a remarkable report a few months ago. It asked the question why there is so much poverty in most of the approximately 20 resource rich countries of sub-Saharan Africa.

These countries with formidable oil, gas and mining resources attract substantial foreign direct investment – including from Canada. They receive significant revenue income. Nevertheless, as Annan has noted, they, “Still have some of the worst human development indicators in the world. Millions of people suffer debilitating and protracted periods of ill health because of avoidable diseases. Resource-rich countries probably account for two-thirds of Africa’s out-of-school children – one in three of the world’s total.”

The report points out that Angola, for example, has enormous resources and a tiny percentage of its population lives in luxurious splendor, while more than 90 % of Angolans live in terrible poverty. It is staggering to consider that in oil-rich Nigeria the rate of infant mortality is three times as great as in Bangladesh.

When I was associated with a junior Canadian mining company operating in Tanzania 20 years ago, which was eventually bought by Barrick, I was struck by the vastness of the country’s natural resources and the vastness of human poverty. Where, I would ask, for example, were the proceeds of substantial diamond exports going? Why was it that the sales of “Tanzanite” – a stone found only in Tanzania – was mainly sold through dealers in Nairobi, Kenya? Where was all the gold going that was mostly being mined by artisanal workers and illegal companies, and who was benefitting?

The Africa Progress Panel has called on the governments of the resource-rich countries to develop strategies that secure “poverty reduction, inclusive growth and social transformation.” The Panel argued: “Success will require leadership, transparency, and accountability, too. There is no

substitute for public scrutiny in developing effective and equitable policies.”

The Annan report noted: “The hemorrhaging of resource revenues that occurs through secretive deals and the operations of offshore companies is an unconscionable blight on the lives and hopes of African citizens.”

Annan added: “Global companies operating in Africa should apply the same accountability principles and the same standards of governance as they are held to in rich countries. They should also recognize that disclosure matters. The extensive use by multinational investors of companies registered in tax havens and offshore centers, and their dealings with other offshore companies, is potentially damaging to their own corporate reputation and shareholder interests.”

Annan rightly blames governments and their business partners, including multinational enterprises, for the poverty in so much of Africa. In recent years the global commercial stage has become more complicated as Russians and Chinese and many others have emerged as major players in many industries and in many sectors. Often, these entrants on the business stage have no compunction to use bribes, to forge special relationships with governments, to hide assets in complex offshore holding companies and to seek advantage through pressures deployed by their own governments.

### **Russian and Chinese Players**

I start one of the chapters in my book by describing the amazing court battle that took place some 18 months ago in London, where the Russian oligarch Boris Berezovsky was suing rival oligarch Roman Abramovich for more than \$6 billion. He lost the case and has subsequently died under somewhat mysterious circumstances. But the trial provided a stage for the rivals to colorfully describe how they amassed their vast fortunes and political wealth as Communism collapsed and the young government of Boris Yeltsin grabbed the reigns of Kremlin power in the 1990s.

No opportunist was more cunning and more ruthless in those days than Berezovsky. He was a man to be feared. He had vast influence over the privatization of many of Russia’s state-owned enterprises. He was such an intimate of Yeltsin, that when Putin came to power he feared that he would be among the first to be purged, and he fled into exile in London. He long believed that Abramovich had

short-changed him in terms of the pay-offs he felt were his due for enabling Abramovich to seize control over a major oil company and later over other companies; thus the court case.

There are corrupt oligarchs today in many countries. Their power and wealth relates explicitly to their ties to top government officials, be they in Russia or Ukraine or other former Soviet countries. They pay bribes, they maintain offshore bank accounts, they sometimes act as agents in deals, and they have close ties in increasing numbers of cases to Western companies. They are increasingly integrated into every facet of international business.

Sometimes they make mistakes. Russians deposited billions of dollars in accounts in banks in Cyprus, which in turn invested in Greek bonds. As the bonds turned sour, the banks got into difficulties. Cyprus did not just face bankruptcy, but as a euro-zone member its demise threatened the collapse of the euro itself. Brussels came to the rescue but only after demanding that the depositors in those risky Cypriot banks lose their money – deposits were turned into bank shares and Russians now own the biggest banks in Cyprus, all of which are bankrupt. Data from the Russian central bank, meanwhile, suggests that there has been a subsequent rise in Russian accounts in the British Virgin Islands.

The Chinese have become vast investors in Africa, they are now the largest trading partner of Brazil and their major corporations are active across the globe in searches for investments and new partnerships. While I see no change in the ethics of Russian oligarchs so long as the Putin regime is in power in Moscow, there is a sliver of hope for change in China.

In January of this year the then new Chinese Central Committee General-Secretary, Xi Jinping, who in the spring added the key title of President, announced a full-scale attack on corruption, stressing that he will crack down on both “tigers” and “flies” – the powerful and the lowly in government and in the Communist Party. He declared: “We must have the resolution to fight every corrupt phenomenon, punish every corrupt official and constantly eradicate the soil which breeds corruption, so as to earn people’s trust with actual results.”

Remarkable developments have been seen in China in just the last few weeks. First, former top political leader Bo Xilai, the former governor and Communist Party chief of Chongqing province, who had been in line for appointment to the national

Standing Committee, was put on trial and then sentenced to life imprisonment for corruption.

At the start of September, Jiang Jiemin, head of the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council and a deputy secretary of this powerful council, was removed from office and it was announced that he is being investigated for corruption. At the same time, a number of top executives at the China National Petroleum Corporation, once headed by Jiemin, were dismissed for so-called “discipline violations” – a euphemism for corruption.

Jiemin owed much of his power and success in climbing the Party ladder to Zhou Yongkang, who retired late last year, following government changes to the then 9 member Standing Committee – the most powerful political body in China. He had been responsible for all state security and intelligence issues. It is said, according to the Chinese press, that he too is now being investigated.

The spate of corruption investigations of top officials in China comes at a time when it looks increasingly likely that the authorities are also starting to go after foreign businesses operating in China and their Chinese partners. A major corruption investigation has been launched, for example, into the activities of British pharmaceutical giant, GlaxoSmithKline.

### **Multinational Corporate Bribe-Payers**

It might sound as if I am suggesting that Western companies are innocents in this arena – one where ruthless and unethical Russians and Chinese conspire with thoroughly corrupt heads of governments and their cronies dominate. Well, it is not that simple.

Siemens decided to expand its overseas business by creating a sophisticated international corrupt network. This included special offshore bank accounts. Siemens perpetrated this activity after Germany had signed the OECD Convention and after the head of Siemens had publicly stated his strong support for the Convention.

Halliburton in the United States, through its then KBR subsidiary, joined with French and Italian partners to pay \$180 million in bribes to obtain \$2 billion in contracts in Nigeria. It knew what it was doing. It had a detailed strategy for ensuring payments were hidden and went through trusted

intermediaries. There are many cases like this that the U.S. Department of Justice has prosecuted where it is very clear that the firms viewed the use of bribes as core to their business strategies.

They believed that the risks of such activity were small compared to the potential rewards.

Last week I sat down in Washington with representatives from nine Transparency International chapters from Central and South America. I asked them if they felt foreign companies doing business with their governments were forced to pay bribes through extortion, or were the willing bribe-payers prepared at the outset to engage in corruption.

They spontaneously said the companies put bribe-paying into their plans when entering their countries – they expect to pay and they make their profit estimates at the outset on this basis.

My colleague from Mexico said we should just look at Wal-Mart, which according to major investigations by The New York Times, executed a program of bribe payments to local government officials in much of Mexico in order to rapidly obtain planning and building permits to establish stores. The U.S. Justice Department is investigating Wal-Mart, which has announced it is undertaking its own international review of corporate practices.

Or in the area of money laundering, a number of the largest global banks have paid substantial fines in the United States for laundering money into the U.S. financial system on behalf of Iranian clients in violation of trade sanctions on Iran; they include Lloyds, ING and Standard Chartered.

These cases were dwarfed by investigations into massive money laundering by HSBC, ranging from the alleged transfer of cash into the U.S. for Mexican drug cartels, to the illicit opening of U.S. accounts for a Saudi individual seen to have close ties to terrorist organizations. HSBC agreed to a record fine earlier this year of \$1.9 billion.

But, the U.S. Justice Department did not open a criminal prosecution of HSBC, or Standard Chartered or some of the other banks. It concluded that to do so would risk damaging the fragile global financial system. In discussions of this before a U.S. Senate hearing, Senator Grassley of Iowa exclaimed, “These banks are too big to jail.” Apparently, they are.

## **Making the punishment fit the crime**

How can you find an appropriate punishment for the crime of corruption that finally makes major corporations decide that the risks are too great to continue bribery and that the integrity path is one to follow?

How do you force HSBC to seriously consider its practices – the world’s fourth biggest bank – when none of its top executives is held liable for the money laundering, when no criminal charges are brought and when it is clear none will be?

If Wal-Mart is found guilty for its Mexican adventures, then what kind of punishment will be appropriate for this firm with its annual revenues of \$444 billion and its annual profits approaching \$30 billion?

I believe the time has come to get tougher. To ensure there are fewer negotiated settlements with corporations; to prosecute more executives who paid bribes in violation of the U.S. law; and to see that the victims are never forgotten. Fines should go to those in poor countries who have been cheated – the fines should support new schools and hospitals and other social services.

## **Reforms and rising government actions**

Reforms are underway and it is important to take note of them. In the extractive industries we are seeing new laws come on stream that will compel almost all major companies in these sectors to disclose on an annual basis their full payments to foreign governments – European authorities have included forestry in this legislation. Such transparency will not end the corruption, but it is an important start. In the defense sector we are seeing industry groups coming together to try and forge voluntary anti-bribery guidelines and similar efforts are starting in the construction sector.

To add to the offensive against bribery and corruption in international business, there has to be a far greater focus on money laundering and far greater efforts by major governments to ensure that funds found in illicit bank accounts are returned to the people of the countries from which those funds were stolen. The Group of Eight and the Group of 20 in their summit meetings this year pledged to do much more on this front.

There is a need for a comprehensive agenda of actions to create a world with far less corporate bribery. This agenda should be set and it should be promoted by business itself. It is an agenda that needs to go far further than corporate pledges against bribery and internal corporate compliance programs with national versions of the FCPA and the OECD Convention.

There need to be more top executives being seen to walk the talk, publicly decrying the offshore holding companies and money laundering schemes and the secret deals with government officials. There need to be pro-active corporate actions to show the Chinese in China that companies have their own high ethical standards and will not be extorted and will not engage in all manner of illicit payments, even if this means losing business to rivals.

### **Civil society impact rises**

There are no shortages of challenges on the global corruption landscape, but never before have so many in so many countries found common cause to act to reduce graft and bribery in their nations. The combined forces of the anti-corruption movement are getting stronger ever single day. Those who call us still just idealistic dreamers should look at the record.

On December 10, 2011, three African women received the Nobel Peace Prize: Ellen Johnson-Sirleaf and Leymah Gbowee, from Liberia, and Tawakkol Karman, from Yemen. Their richly deserved award was for their valor in promoting freedom and justice. In presenting the prize the chair of the Norwegian Nobel Committee, Thorbjørn Jagland, concluded his speech in Oslo with a quotation from the American author and civil rights advocate James Baldwin, who wrote, “The people that once walked in darkness are no longer prepared to do so.”

Mr. Jagland added, “Make a note of that!— all those who wish to be on the right side of history.”

Thank you

Frank Vogl [fvogl@PTFund.org](mailto:fvogl@PTFund.org) Washington DC Tel: 202 364 8225