

**The Legitimacy of Transnational NGOs: Lessons from the Experience
of Transparency International in Germany and France**

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1. Introduction

Transnational non-state actors (TNAs) are central to the processes and outcomes of contemporary global governance. That TNAs of various kinds – non-governmental organizations (NGOs), advocacy networks, epistemic communities, social movements, transnational corporations, transnational organized crime groups, terrorist organizations, and others – influence the decisions and outcomes of global politics in crucially important ways has been a matter of consensus in the literature of International Relations (IR) since at least the 1990s.¹ Regarding non-profit transnational NGOs (TNGO) in particular, research has shown that these groups both complement and challenge the authority of the international state system, while also both challenging and increasing the legitimacy of various international institutions. Across a broad range of issues, it is widely acknowledged, these actors “can have a substantial impact on state policies, on the creation of international norms, and on the diffusion of these norms into domestic practice.”² If it ever was, the state clearly is no longer the sole actor of consequence in IR.

A less settled question remains why and under what conditions specific TNGOs are more or less likely to affect global political processes and outcomes. Hypotheses explaining TNGO effects, generally, include the prevailing *international conditions* (great power politics and the material structure of the international system; international institutions and the social structure of the international system; the particular phases in the international policy cycle – whether agenda-setting, norm creation, treaty creation, or treaty implementation); *domestic conditions* (such as political opportunity structures and idea or norm resonance); *complex patterns of domestic/international interaction* (such as

* This paper is part of a larger study which considers TNGO legitimacy as one of four key independent variables (the others are access, policy framing, and norm resonance) to explain patterns of norm diffusion and policy change in the international regime of anti-corruption, *Banning Bribes: Deviance and Compliance in the International Regime Against Corruption* (manuscript).

¹ Thomas Risse, ‘Transnational Actors and World Politics’, in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds.), *Handbook of International Relations*, (London: Sage, 2002), pp. 255-274, ch. 13.

² Risse, ‘Transnational Actors and World Politics’, pp. 263-264.

boomerang effects and spiral models); and the *characteristics of TNGOs* (material and ideational resources), their *targets* (vulnerability to transnational pressures), and their *strategies* (such as communicative processes including shaming, learning, and arguing.) Focusing on the *characteristics of TNGOs* that are purported to explain variation in TNGO effects, one aspect often identified in the literature remains underexplored: Their legitimacy.

Questions about legitimacy preoccupy much contemporary scholarship in International Relations and related disciplines, in general. Scholars of global governance especially are increasingly concerned with identifying the sources of political legitimacy beyond the state. In these inquiries, “legitimacy” carries a variety of interpretations: normative (concerning the moral or ethical basis of the actor’s behavior or aims), sociological (concerning the acceptance of the actor by its audiences or constituencies), political (concerning the acceptance and justification of shared rule within governance and authority relationships) and others. Research on legitimacy asks such questions as: What are the normative, sociological, and political bases of “legitimate” global governance?³ How might the effectiveness of crucial “transplanetary regimes” for governing finance, migration, disease control, disarmament, and ecological integrity be improved by increasing their legitimate bases of authority beyond the state?⁴ What are the “legitimacy criteria” for evaluating the institutional processes of global governance?⁵ More critically, what are the various processes of *legitimization* at work in global governance?⁶ These are deep, complicated, and important questions, and legitimacy remains a central concern in ongoing debates about reforming global governance for greater effectiveness, accountability, and justice.⁷

³ Held 2005, Keohane 2006.

⁴ Jan A. Scholte, ‘Towards Greater Legitimacy in Global Governance’, *Review of International Political Economy*, 18:1 (2011), pp. 110-20.

⁵ Daniel Mügge, ‘Limits of Legitimacy and the Primacy of Politics in Financial Governance’, *Review of International Political Economy*, 18:1 (2011), pp. 52-74.

⁶ James Brassett and Eleni Tsingou, ‘The Politics of legitimate Global Governance’, *Review of International Political Economy*, 18:1 (2011), p. 10.

⁷ Brassett and Tsingou, ‘The Politics of Legitimate Global Governance’.

Alongside such foundational questions, the level of mid-range theory presents somewhat different legitimacy questions:⁸ Which actors should exercise power at the global level, and what rules should guide their action?⁹ To what extent are non-authoritative, TNGOs legitimate actors in world politics?¹⁰ More precisely, what are the conditions under which *specific* TNGOs may be accepted as legitimate in their spheres of activity, and why?¹¹ In view of the importance of transnational advocacy by non-state actors across a wide range of issues in global politics, this latter question is important if we are to understand the impact of TNGO activities. On a practical level, TNGOs themselves may wish to better understand the legitimacy dynamics that might enable or constrain the effectiveness of their advocacy efforts. Despite the scope and importance of these questions, it seems that the kinds of studies which might help develop mid-range theoretical insights about TNGO legitimacy in global governance attract less attention in the literature than they warrant.

In an effort to contribute to such mid-range theoretical development, this article presents three arguments about the legitimacy of non-profit TNGOs in global governance. *First*, as a practical matter for these actors, legitimacy matters. The presence or absence of legitimacy has important effects on the outcome of policy advocacy by TNGOs. To have an impact on outcomes, TNGOs advocating for new norms or policy change by and among states, international institutions, or other non-state actors, domestically or internationally, must be accepted as legitimate by these varied audiences. Although insufficient on its own, legitimacy is a necessary condition for effective advocacy. *Second*, the acceptance of a particular TNGO as a legitimate actor in policy advocacy depends on the values of the audiences for the TNGO's advocacy, which confer that legitimacy. In other words, the legitimacy of TNGOs is most appropriately conceived as a relational, sociological, and empirical question rather than a quality

⁸ Clark 2003; Vivien Collingwood, 'Non-Governmental Organisations, Power and Legitimacy in International Society', *Review of International Studies*, 32 (2006), pp. 439-54.

⁹ Clark 2003.

¹⁰ Collingwood 'Non-Governmental Organisations', pp. 439-54, citing Dianne Waddell, *Organisation Development and Change* (South Melbourne, Victoria: Thomson, 2004). Collingwood has identified the contours of these ongoing debates.

¹¹ Following Collingwood (2006), "TNGO" is used here as an umbrella term, capturing a range of organizational approaches, where "transnational" describes organizations that operate in and across a number of different countries. While TNGOs perform a range of functions in global governance, the focus here is on norm entrepreneurial and policy advocacy functions.

inherent in an organization or its characteristics. Thus to assess and understand TNGO legitimacy in practice requires attention to the values, identities, outlooks and interests on both sides of the relationship in any given context: the TNGO advocate and the target audience. Crucially, the very same ‘source’ of TNGO legitimacy in the eyes of one audience can be viewed with suspicion and as non-legitimate by another. *Third*, the legitimacy of TNGOs should be understood as a strategic resource: an asset for advocacy that NGOs can seek strategically to generate and cultivate, endogenously. Where TNGOs gain acceptance as legitimate advocates for policy change, the probability of their success in leading change is greatly increased. Where they fail to do so, the effectiveness of their advocacy will be limited.

The article illustrates and supports these arguments through a comparative analysis of two related anti-corruption advocacy initiatives by Transparency International (TI), the leading TNGO in the international regime of anti-corruption. The first involves TI’s activities in Germany in the period leading up to and immediately following the conclusion of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the centerpiece of the international regime focused on criminalizing transnational business bribery. In this case, the business and policy elites who were the target of TI’s anti-bribery advocacy accepted this TNGO as highly legitimate, due in large part to the elite personal relationships of its leaders and its non-confrontational strategy. Although Germany had been a longstanding supporter of transnational business bribery through policies permitting its tax-deductibility – and had opposed international criminalization – TI was able to exploit its legitimacy and effectively pressure German business and political elites to swiftly comply with the OECD anti-bribery Convention – a significant policy shift – despite important and countervailing material interests.

The second case comprises the activities of TI in France during the same period concerning the same issues. Here, the very same elite relationships and non-confrontational strategies which conferred legitimacy in Germany worked against TI in France. In direct contrast to its German experience, Transparency International in France notably failed to achieve legitimacy among key business and political elites. As a result, its policy advocacy in favour of the OECD Convention was ineffectual. Like Germany,

France had previously permitted the tax-deductibility of foreign bribes and opposed international regulation that would require this policy to change. Yet in France, unlike Germany, TI was an ineffective policy advocate and did not produce a similar shift towards the criminalization of bribery in international business.¹² These findings firmly support the article's main arguments concerning the legitimacy of specific TNGOs in global governance, generally.

The next section discusses the concept of legitimacy in global governance and the sources of TNGO legitimacy generally suggested in the literature. To provide background context for the case studies, section 3 provides a brief overview of Transparency International and its activities in the international regime of anti-corruption during the 1990s and the early years of the 21st century. Sections 4 and 5 examine Transparency International's legitimacy in Germany and non-legitimacy in France, respectively, during that time and explains each in reference to two factors: membership in elite social networks and a non-confrontational strategy for advocacy. Section 6 concludes with some observations regarding TNGO legitimacy generally and comments on directions for further research.

2. The Legitimacy of TNGOs in Global Governance

Legitimacy is notoriously difficult to define. Most simply put, the notion of something or someone being legitimate reflects a stamp of approval associated with being right, appropriate, empowered or agreed upon according to some set of rules. *Normative* conceptions of legitimacy rely on standards from liberal-democratic principles, such as respect for the rule of law or the protection of human rights. When a set of rules or an international institution reflects or embodies such standards, according to this conception, it can be said to be legitimate. A *sociological* conception of legitimacy, on the other hand, considers the legitimacy of rules, institutions, behaviours or outcomes to be a matter of empirical fact rather than of normative judgment. According to this view, one can observe legitimacy in the extent to which a set of rules or an institution is *accepted* as such. As Robert Keohane has put it, “[i]n the sociological sense, legitimacy is a matter of

¹² France ultimately did comply with the OECD Convention, but only later, more reluctantly, to a lesser degree, and due to forces other than advocacy by TI.

fact. An institution is legitimate when it is accepted as appropriate, and worthy of being obeyed, by relevant audiences.”¹³ In a similar vein, Steven Bernstein has developed a *political* conception of legitimacy where legitimacy is “based on relations between institutions and the communities they serve/interact with.”¹⁴ In Scholte’s succinct definition, “legitimacy is a relationship between the governed and their governors.”¹⁵ As Collingwood puts it, moreover, the concept is “multi-leveled, simultaneously implying both agreement with the rules (whatever these may be) and – following Weber’s understanding of the concept – the *perception* that the behaviour in question is legitimate.”¹⁶ To some degree then, like beauty, legitimacy is in the eye of the beholder; it depends on perception and relationship.

Generally speaking, the literature on TNGOs in global governance has tended to emphasize normative, *a priori* sources of TNGO legitimacy. Amidst the up-swell in TNGO activity at the UN and in world politics generally during the 1990s, early research on the legitimacy of NGOs and various social movements tended to tie legitimacy normatively to a set of outcome criteria linked to democratic governance and theories of democracy. NGOs and a robust global civil society were seen as part of the solution to the growing “legitimacy gap” in global governance.¹⁷ Later studies identified legitimacy problems associated with integrating TNGOs into the structures of global governance. As these organizations typically originated from the richer, western countries of the northern hemisphere, skeptics argued, they would likely further tip the balance of interests against those of the southern hemisphere and contribute to the fragmentation, privatization, and further de-legitimization of an already unjust global order.¹⁸ Hence, they were considered to lack legitimacy. In addition, to those whose view of the international political system privileged a state-centric conception of world order, the advocacy and governance

¹³ Keohane 2006, p. 2.

¹⁴ Brassett and Tsingou, ‘The Politics of Legitimate Global Governance’, p. 5.

¹⁵ Scholte, ‘Towards Greater Legitimacy’, p. 111.

¹⁶ Collingwood, ‘Non-Governmental Organisations’, p. 444.

¹⁷ Commission on Global Governance 1995; Sebastian Haunss, ‘Challenging Legitimacy: Repertoires of Contention, Political Claims-Making, and Collective Action Frames’, in Achim Hurrelmann, Steffen Schneider and Jens Steffek (eds.), *Legitimacy in an Age of Global Politics*, (New York: PALGRAVE MACMILLAN, 2007), pp. 160-1, ch. 8. pp. 160-161. In Hurrelman, Steffek 2007. The “legitimacy gap” is the disparity between ... and ...

¹⁸ Roth 2001a, 2001b. Discussed in Haunss, ‘Challenging Legitimacy’, pp. 160-1.

activities of TNGOs *per se* lacked the legitimacy of state-driven and state based international politics.

Notwithstanding these debates, much early IR scholarship on international humanitarian, human rights, and development NGOs explicitly tied the legitimacy of these types of global actors to normative considerations. Hugo Slim, for instance, identified conformity to shared norms and established laws as primary sources of TNGO legitimacy in world politics. NGOs, according to Slim, derive their ethical and moral legitimacy “simply from claiming their legality within international law and by their being law-abiding” and from the moral substance of their mission, if based on the values of “human equality, dignity, impartiality, justice, freedom and personal and collective responsibility.”¹⁹ Put simply, in the normative sense, “NGOs and their networks are legitimized by the validity of their ideas, by the values they promote, and by the issues they care about.”²⁰

Aside from these purely normative standards, additional sources of legitimacy posited in the literature include both tangible and intangible factors. Tangible sources of legitimacy in the form of direct support from people (membership, financial support, consent, intellectual agreement), expert knowledge, important relationships, and mission effectiveness (“good performance”) must be “actively generated” by NGOs. In other words, valuable expertise derived from practical experience in the field, as well as important organizational and interpersonal connections (“what an organization knows and whom it knows”), can be major sources of legitimacy.²¹ Partnership with or support from powerful actors, sources of financial support, internal democracy, operational transparency, and constituent accountability are additional tangible factors identified in the literature as sources of TNGO legitimacy. Crucially, the strategic orientation of a TNGO might also be an important source of legitimacy. Vivien Collingwood, for instance, has noted the different paths TNGOs follow as they try to exercise influence at the international level. In a cooperative manner, some TNGOs seek to engage directly

¹⁹ Hugo Slim, ‘By What Authority? The Legitimacy and Accountability of Non-Governmental Organisations’, International Council on Human Rights Policy International meeting on Global Trends and Human Rights – ‘Before and After September 11’, Geneva (10-12 January 2002), p. 6-7.

²⁰ Miklos Marschall, ‘Legitimacy and Effectiveness: Civil Society Organizations’, *Transparency International*, (1 November 2002).

²¹ Slim, ‘By What Authority?’, p. 7

with governments and corporations, working within the system to influence policy and change the rules of the system for the better. In contrast, a “rejectionist” approach favoured by other NGOs reads as an argument that a radically different set of policies than those on offer in the current neo-liberal global order is needed to effectively address problems of social justice, environmental degradation, poverty, or conflict.²²

In addition to such tangible sources, intangible sources of legitimacy identified in the literature can be somewhat more difficult to generate, including such qualities as credibility, reputation, trust, and integrity. In contrast to the tangible sources of legitimacy, these “thrive on perception to function more like belief than fact. They can rely on image rather than reality and may not require any empirical experience to influence people one way or the other.”²³

Fewer scholars have examined the sources of a particular TNGO’s legitimacy or the processes through which a particular TNGOs seeks to generate and maintain legitimacy in its transnational advocacy efforts. Walton has sketched a theoretical framework for understanding how domestic, national-level NGOs generate and maintain legitimacy. The process can be exceedingly complex, organization specific, and involving different *kinds* of legitimacy (normative, cognitive, regulatory, and pragmatic.)²⁴ According to Walton, the process of legitimation is both interactive and dynamic, depending not just on the work and characteristics of NGOs, but on the “approaches, interests, and perceptions of the stakeholders”, which can vary over time as well as across stakeholders. Put differently, a TNGO’s target audience – not the TNGO itself or the issue it addresses – determines which types of legitimacy are required, and which characteristics confer such legitimacy.

Walton’s formulation in the domestic context is a useful signpost for the examination of legitimacy in the transnational realm. Attention to such relational aspects

²² Collingwood, ‘Non-Governmental Organisations’, p. 442.

²³ Slim, ‘By What Authority?’, p. 9. (For Slim, these sources of an NGO’s legitimacy are “intricately connected to specific mechanisms of accountability,” consisting primarily of a process including provisions for reporting, involving, and responding. Accountability therefore is a crucial aspect of legitimacy.)

²⁴ Oliver Walton, ‘Conflict, Peacebuilding and NGO Legitimacy: National NGOs in Sri Lanka’, *Conflict Security and Development*, 8:2 (April 2008), p. 138, citing Lister 2003. *Normative legitimacy* refers to a basis of acceptable and desirable norms, standards, and values. *Cognitive legitimacy* is “based on goals and activities that fit with broader social understandings of what is appropriate, proper, and desirable.” *Regulatory legitimacy* is achieved by abiding laws and regulations and pragmatic legitimacy by conforming to demands for services, partnership, or by receiving private funding.

of legitimacy is precisely what most of the literature on TNGOs lacks. While the legitimacy of a political order (be it national, international, global) often refers to the dynamics of political authority and political obligation (requiring acceptance, obedience, and compliance)²⁵ the legitimacy of TNGOs generates pressure to be considered, as opposed to an obligation of obedience. This is because state compliance with the policy advocacy demands of TNGOs is voluntary, resulting from persuasion and other norm dynamics rather than political coercion. To be an effective persuader, one must be accepted as a legitimate participant in the debate. In short, on this conception, legitimacy must be conferred and cannot be commandeered.

Accordingly, and as the case of Transparency International shows, the central argument of the present analysis is that a TNGO's "sources of legitimacy" are best understood as variables that are affected by the audience which must grant legitimacy to the TNGO. The very same "source of legitimacy" – for example, support from powerful actors, membership in elite social networks, or strategic orientation – can be viewed with approbation by one audience and suspicion by another. The legitimacy of a TNGO cannot be assessed without examining both sides of the relationship: the TNGO itself and the audience which grants it the legitimacy it requires.

Putting aside the question of whether TNGOs *per se* lack legitimacy in global governance, the question in the case of a particular TNGO's norm entrepreneurship and policy advocacy is to explore whether, how, and why that TNGO achieves or fails to achieve sufficient legitimacy to influence politics in any direction; to have, so to speak, "standing" on the matter. Rather than attempting to catalogue the purported *a priori* bases of legitimacy, the present discussion is explicitly empirical, not normative: it does not propose what standards *should* count as required criteria for legitimate participation in processes of global governance, rather it seeks to describe what *does* count in an TNGO's pursuit of legitimacy.

This sociological conception of legitimacy relies on empirical evidence to assess the extent to which a target audience has conferred legitimacy on a particular TNGO at a particular point in time. The methodological question arises: How do we know this

²⁵ Beisheim 2005, 244 and Klosko in Hurrelmann, Schneider and Steffek, 'Legitimacy in an Age of Global Politics', pp. 160-1. Beisheim argues that as long as a TNGO is not able to make collectively binding decisions, these actors do not need to legitimate their actions vis-à-vis society.

legitimacy when we see it? While legitimacy is a necessary factor in the effectiveness of norm articulation and policy advocacy, to avoid circularity the definition and measurement of legitimacy must be distinct from indicators of effectiveness.

As a baseline, public statements and media reports can shed light on the opinions and attitudes of target audiences concerning the legitimacy of a TNGO. Favourable reportage in the news media, supportive public statements by public officials, and a willingness for target audiences to be publicly associated with the TNGO indicate that the audiences have conferred some measure of legitimacy. On the other hand, negative news stories or public comment, derisive or dismissive attitudes expressed publicly by key audience members are indicators that the TNGO lacks legitimacy in the eyes of these audiences. Less publicly, personal interviews reveal private attitudes concerning the legitimacy of a TNGO. Financial support by target audiences for the TNGO is another indicator that these audience consider the TNGO legitimate. Not least, the very act of “taking the meeting” with a TNGO indicates that the target audience has conferred legitimacy. Just as, for instance, opponents of negotiating with terrorists argue that doing so gives legitimacy to terrorists and their methods, so the very decision to “take the meeting” with a TNGO indicates a measure of legitimacy that the TNGO has standing to be heard.²⁶

The examples that follow examine the diverse levels of legitimacy achieved by Transparency International in Germany and France – that is, the varying degrees to which these groups were accepted as legitimate policy advocates by their respective target audiences – by drawing on evidence from public statements by government and business officials, newspaper reports, self-assessments by TI leaders, and interviews with TI leaders and government officials. Before turning to this evidence, the next section provides an overview of Transparency International and its activities during the emergence of the international regime of anti-corruption in the 1990s.

3. Transparency International and the International Regime of Anti-Corruption

²⁶ Peter R. Neumann, ‘Negotiating with Terrorists’, *Foreign Affairs* (January/February 2007).

In the late 1990s, corruption became a major international policy problem to be entertained for the first time in international law. The end of the cold war, the liberalization of the global economy and the advance of globalization, the spread of liberal democratic principles, and the emergence of game-changing corruption scandals among business and political elites in Western Europe brought about a shift in global norms about corruption. Where once prevailed the attitude that corruption was a problem to be tolerated in developing countries in exchange for global political stability, or even that corruption might be beneficial to development and modernization, during this period corruption was redefined as a “cancer” to be stamped out of the global economy, wherein no country was immune from its scourge.

Alongside this shift in norms (and a concurrent trend toward legalization in world politics) states, international organizations and non-state actors produced a raft of international legal agreements, recommendations, and policy statements on combating global corruption. Following the typical life-cycle pattern of norm emergence identified by Finnemore and Sikkink, a new international regime of anticorruption surrounding a new norm of global anticorruption emerged. The basis of the norm was that corruption was both wrong, and harmful to economic development and political and economic liberalization. In this it was perfectly compatible with the norms of neoliberal globalization.

The legal centerpiece of this new regime was the 1997 OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions. Together with soft law recommendations, this legally binding “hard law” international treaty obligated its signatories to criminalize the bribery of foreign public officials, end their tax-deductibility, and establish meaningful monitoring and enforcement mechanisms to ensure compliance. For decades previous to this Convention, bribery in international business had been widely supported among OECD states as a strategic trade policy, particularly for industries with important impacts on a state’s foreign policy goals, global influence, or GDP – such as the arms industry, natural resource extraction, and construction – precisely those industries where bribery in contract procurement is most common. Signing the OECD Convention, not to mention complying with its obligations, required a significant shift in policy in at least two major

OECD states: Germany and France. Both these states had permitted the tax-deductibility of foreign bribes and for each complying with the Convention required significant policy and legislative change.

Transparency International (TI), which emerged during this period as the leading non-state advocate for the criminalization of transnational bribery, was a significant actor in the emergence of the new regime, and indeed in the history of the OECD Convention. Founded in Berlin by former World Bank executives of German nationality, TI quickly established itself as a persuasive transnational norm entrepreneur and policy advocate, and a major influence over international policy change on transnational bribery at the global level. TI influenced the World Bank to recognize corruption as “the single greatest obstacle to economic and social development.”²⁷ Its annual Corruption Perceptions Index became a key tool for raising awareness about global corruption and it developed widely respected tools for businesses and organizations seeking to control bribery and corruption in their operations. Today TI is, arguably, the most prominent TNGO devoted to combating corruption in the global economy.

Transparency International functions as a transnational advocacy network.²⁸ Though a secretariat in Berlin helps to coordinate its international anti-corruption efforts, TI’s organization consists of independent national chapters in approximately 85 countries. Each national chapter is indigenous, wholly locally owned, and responsible for determining national programs of action to suit national circumstances.²⁹ While there has been no generalized social movement that has pressured governments to comply with their anti-corruption commitments, the role of TI has been to operate through elite networks to persuade important decision-makers in the direction of anti-corruption policy, within the domestic political context of OECD states. In Germany and in France, TI employed a variety of persuasion strategies, including communicative strategies such as reasoned discourse and re-framing, as well as harnessing moral authority and exploiting the vulnerabilities of political elites for whom it was important to avoid

²⁷ World Bank 2001.

²⁸ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (New York: Cornell University Press, 1998).

²⁹ Transparency International, available at: {http://www.transparency.org/about_ti/organised.html}.

association with charges of “corruption”.³⁰ In particular, TI was most effective in those cases where it was able to call on states and business leaders to justify policies that were not in compliance with the state’s avowed norms. Where TI was perceived by government officials and business leaders as a legitimate actor, with the moral authority to prompt a justifiable response to its norm articulation, it was able to successfully advocate for compliance with emergent international anti-corruption norms and promote state compliance with the OECD Convention.

However, the legitimacy of TI as a global policy advocate on anti-corruption was not uniform across its various target audiences. Indeed, as the following sections show, the degree to which this group was received as a legitimate advocate for policy change varied significantly across Germany and France.

4. Transparency International in Germany

Transparency International in Germany was accepted as highly legitimate by two key target audiences for its advocacy against transnational bribery: major business leaders and government policy makers. In addition, TI received favourable press coverage in the media in Germany and was widely recognized as an important advocate on issues related to anti-corruption in development assistance, international business practices, and domestic politics in Germany.

To begin with, in 1993 a small group of German former-World Bank executives and academics working on a volunteer basis established both TI’s national chapter in Germany (TI-Germany) in Munich and the international secretariat of the transnational TI organization (TI-S) in Berlin. Both groups devoted their work to fighting corruption internationally and their advocacy activities emphasised the harmful effects of corruption in the developing world; the activities of TI-Germany also raised awareness about corruption in Germany itself. From 1995 through 1998, both TI-S and TI-Germany’s advocacy shifted focus to concerted lobbying for the adoption in Germany of anti-corruption initiatives then underway at the OECD, specifically to curb the supply-side of transnational bribery. TI in Germany in particular lobbied businesses and the government to control the widespread German practice of *schmiergeld* – paying “lubricant money” to

³⁰ Risse, ‘Transnational Actors and World Politics’, discusses such strategies, pp. 267-8.

smooth the way in international business transactions. The prevailing assumption among business and government in Germany at the time was that “without this ‘lubricant’ no business can take place” and therefore transnational bribes were acceptable – and also tax-deductible – business expenses.³¹

At the outset both business and government opposed changes in German policy regarding transnational bribery and resisted TI’s anti-corruption advocacy on this. According to TI’s managing director at that time, Hansjorg Elshorst, there was “clearly a strong opposition of European business against TI because they felt that corruption is a nice way of being the most successful, of having a comparative advantage with the United States, where that was forbidden.”³² TI, moreover, “evoked much resentment in the Bonn bureaucracy due to its public criticism of German policies like those permitting the tax-deductibility of bribes paid abroad.”³³ In face of this status quo, according to TI’s Chairman Peter Eigen,

... we were at the beginning, as Transparency International, received as real trouble makers and enemies by our government in various ministries, in particular the ministry of economics which was leading the German governmental team at the OECD. And also in German business — there were very few companies who recognized what [they] were doing was corruption. They called that commissions, and said this was legal, it was customary in these countries, and, if, while this was unpleasant, it was something which one had to do if one wanted to do business internationally.³⁴

Yet much evidence suggests that in spite of this resistance, TI was in fact accepted as a highly legitimate organization such that it was ultimately able to persuade business leaders and public officials to support its anti-corruption position. Starting in 1996, when TI-Germany attained official non-profit status, German-based multinational corporations endorsed TI through corporate memberships and financial support and they began to adopt TI’s anti-corruption strategies in their business practices. By 2001, TI-Germany’s corporate members and most significant financial supporters were Germany’s largest and most prestigious firms, including ABB, BASF, DaimlerChrysler, Deutsche

³¹ Barbara Crutchfield George, Kathleen A. Lacey, and Jutta Birmele, The 1998 OECD Convention: An Impetus for Worldwide Change, *American Business Law Journal*, 2000, pp. 513

³² Hansjoerg Elshorst, Managing Director, Transparency International, Interview (Berlin 2 July 2001)

³³ Arnold J. Heidenheimer and Holger Moroff, Controlling Business Payoffs to Foreign Officials: The 1998 OECD Anti-Bribery Convention, in Heidenheimer et al, (eds), *Political Corruption: Concepts & Contexts, Third Edition* (New Brunswick: Transaction Publishers, 2002), pp. 950

³⁴ Peter Eigen, Founder and Chairman, Transparency International, Interview (Berlin 3 September 2001)

Lufthansa, Robert Bosch, Siemens, and others. Business leaders and government officials attended private meetings with TI's German leaders, granting them direct access and the opportunity to persuade these reluctant players to TI's advocacy. In 1997 the CEOs of twenty-five of Germany's major multinationals openly endorsed TI and its anti-corruption efforts in an open letter to the OECD. And, when ultimately they began the legislative process finally to criminalize foreign bribery in compliance with new OECD norms, German government officials granted TI a direct role in drafting the actual legislation. This pattern of acceptance, endorsement, and collaboration suggests that business and government in Germany accepted TI as a highly legitimate advocate for anti-corruption.

At the same time, the shift from early resistance to full acceptance suggests that far from being automatically accepted, TI was able to *construct* this legitimacy. It did so through two key means: elite social networks, and a non-confrontational strategy.

Elite Social Networks

TI's presence in Germany, and indeed its organizational development and rise from a small operation to a prominent international TNGO, benefited from the activities and personal, elite connections of at least three key German individuals: Peter Eigen, Hansjoerg Elshorst, and Michael Wiehen. Peter Eigen is known as the founder of TI. Retired in 1993 after 25 years with the World Bank, including two years in Kenya as director of operations for East Africa, Eigen left the Bank in frustration over its failure to address the problem of corruption in international development.³⁵ With support from Elshorst, former head of the German Agency for Technical Cooperation (GTZ), and Wiehen, another former World Bank executive, Eigen first established TI's presence in Germany in a one-room Berlin office and with no financial support.³⁶ Thus TI's early leaders, working on a volunteer basis and committed to the cause of anti-corruption reform, began building a dynamic TNGO that by 2001 would have total revenues of over DM 10 million (USD 4.5 million) from more than three dozen state-agency donors, private foundations, private businesses originating in at least ten different countries, and a

³⁵ Raymond Bonner, 'The Worldly Business of Bribes: Quiet Battle in Joined', *New York Times* (8 July 1999)

³⁶ Transparency International History, available at: {http://www.transparency.org/about_ti/history.html}.

network of national chapters in 85 countries.³⁷ As one observer noted about TI, “the beginning of the new organization can be characterized as an affair centred around and carried by a few personalities.”³⁸ In large part due to these personalities, and their elite professional and personal connections, TI — both the German national chapter and the international movement headquartered in Berlin — enjoyed a high level of legitimacy among – and access to – Germany’s business and political elite.

As former director of the GTZ, Hansjoerg Elshorst used his contacts there to keep TI afloat in the early years. Noting that TI was not always the popular, publicly lauded organization it would become, for instance, Elshorst said: “In the phase before the OECD Convention, they wanted to kill TI. I protected TI via my old job in the aid system by keeping them alive financially and politically.”³⁹ Just as important during this early period, TI was able to attract an elite transnational network of experts to its leadership ranks, including to its international board and advisory council. Lending expertise and legitimacy to its internationally-oriented anti-corruption agenda, for instance, early advisory council members included such prominent world personalities as Luis Moreno Ocampo, Olusegun Obasanjo, and Oscar Arias Sánchez.⁴⁰

TI-Germany also managed over the span of a few years to develop from a small group led by academics on a volunteer basis to a high-profile national non-profit group with corporate support from over 25 “world class” German corporations.⁴¹ Close observers have attributed much of this development to the personal skills and contacts of Michael Wiehen. Peter Eigen noted, for instance, that (especially in contrast to the national chapter in France) TI-Germany “was particularly strong under the leadership of

³⁷ Transparency International 2001 Audited Report, available at: {http://www.transparency.org/about_ti/finance_report/index.html}. On TI’s origins and early successes, see also Frederick Galtung and Jeremy Pope, *The Global Coalition Against Corruption: Evaluating Transparency International*, in Andreas Schedler, Larry Diamond, and Marc F. Plattner (eds), *The Self-Restraining State*, (London: Lynne Rienner, 1999).

³⁸ Werner Van Ham, *Transparency International (TI) – The International TNGO Against Corruption: Strategic Positions Achieved and Challenges (A Case Study)*, Dissertation (Anglia Polytechnic University: Masters of Business Administration), 1998.

³⁹ Elshorst, Interview

⁴⁰ During his term as Chair of TI’s advisory council, Obasanjo was elected President of Nigeria; Ocampo is a renowned independent human rights lawyer and anti-corruption activist, based in Argentina, who in 2003 became the first chief prosecutor of the International Criminal Court at the Hague; Sánchez, former President of Costa Rica, won the Nobel Peace Prize in 1987.

⁴¹ Michael Wiehen, Chairman: Transparency International – Germany, Interview (Berlin 17 July 2001). For a critical account of the relationship between TI-Germany and its corporate supporters, see Claudia Eltermann, ‘Feigenblatt der Großindustrie’ (A fig leaf for big business), *Der Spiegel* (4 November 2003).

Mike Wiehen and quite a number of companies.” Another TI colleague commented further, “it took a while, but ... after Michael became chairman of TI-Deutschland, he began to get good contacts, establish very good contacts with German industry.”⁴²

TI’s German leaders also had close contacts within the opposition Social Democratic Party (SPD) which was the leading opposition party in Germany until it successfully formed a coalition government with the Greens, under the leadership of Gerhard Schroeder in 1998. Under TI’s influence, the party first took up the issue of tax deductions for bribes as the opposition, and TI subsequently “reminded” the new SPD government in 1998 that ending tax deductibility needed to be done.⁴³ Subsequently, TI-Germany played a direct role in the drafting of the legislation. The Chairman of TI-Germany, Michael Wiehen, saw the draft law before it was passed by Parliament. In Bonn, Wiehen met with a government representative and took the opportunity to explain why in TI’s view the law was inadequate. The representative indicated that if Wiehen could draft proposed changes within 48 hours, there was a chance these changes could be incorporated into the government’s legislation. According to Wiehen, “We got her a draft in 47 hours and she changed the law. And what we proposed became law in Germany.”⁴⁴ In this case, due to its elite contacts in government, TI-Germany had a direct impact on German policy.

“For all its cosmopolitan ambitions,” noted the *Economist* magazine in 1998, “the governing elite of German business is still made up almost entirely of men in their 50s and 60s ...”⁴⁵ This homogeneity of the German business and political elite had helped to maintain the taboo surrounding the topic of corruption in Germany long after the United States first introduced its anti-foreign corrupt practices stance on the international agenda, in the late 1970s. This homogeneity also helps to explain the success of TI’s anti-corruption interventions in the mid-1990s: the leaders of TI in Germany were essentially part of this same elite. Peter Eigen, explaining the difference in perceived legitimacy and effectiveness of TI in Germany as opposed to France, noted:

Because we are closer to the [establishment] ... I have a lot of personal contacts to big business, you know, I know these people ... the head of Siemens is a

⁴² Eltermann, ‘Feigenblatt der Großindustrie’.

⁴³ Eigen, Interview

⁴⁴ Wiehen, Interview

⁴⁵ ‘Deutschland uber alles?’, *Economist*, (4 July 1998) p. 59

relative of mine. Mike Wiehen, when he goes, enters a room with some big shots, you know, they respect him, because he has worked as a director of the World Bank, he knows how to deal with powerful business people.⁴⁶

Non-Confrontational Strategy

In addition to its access to elite social networks, TI owes much of its legitimacy in Germany to its allegiance to non-confrontational, “consensus-building” strategies for promoting anti-corruption among its target audiences in business and government. From the outset TI eschewed scandal, public muckraking, or the “outing” of particular firms engaged in corrupt practices. Rather the strategic approach of the organization was to raise awareness about the harmful effects of corruption, to develop and disseminate practical anti-corruption tools for business and government, and to build collaborative anti-corruption coalitions among business, government, and civil society. TI-S also supported the work of TI’s national chapters around the world by facilitating exchanges of information throughout its international network, coordinating activities on a variety of international and national-level anti-corruption initiatives, and promoting the cause of international anti-corruption on the global governance agenda, in general.

Among TI’s flagship activities that initially accorded it an international profile were its annual Corruption Perceptions Index and related Bribe Payers’ Index; Global Corruption Report publication; annual general meeting and biannual International Anti-Corruption Conference; annual integrity awards; and its flagship program for transparency in international procurement practices, the Integrity Pact. The group produced a comprehensive anti-corruption “source book” and specialized anti-corruption “tool-kits” to support the work of anti-corruption activists in a variety of contexts and translated these materials into several languages, including Albanian, Portuguese, Romanian, Serbian, Spanish, and French.⁴⁷ They also disseminated research on corruption through independent and joint publications, and through its web-based ‘corruption on-line research information services’, which compiled and published a list of “daily corruption news” items from a variety of international news sources. Notably, TI

⁴⁶ Eigen, Interview

⁴⁷ For a critical review of TI’s anti-corruption activities, and its Source Book in particular, see Barry Hindess, *International Anticorruption as a Program of Normalisation*, Paper presented at the Annual Meeting of the International Studies Association (Montreal, 2004)

generated no such news on its own. Explicitly eschewing the investigation of alleged corruption or any attempt to “name and shame” corrupt actors, TI’s non-confrontational “inside-the-tent” approach to international anti-corruption lent it credibility and trust among the multinational corporations, governments, private foundations, and other like-minded public interest groups it engaged to build consensus and anti-corruption progress through persuasive means.

This non-confrontational strategy was at the fore when, during the second part of the 1990s, TI’s shifted the focus of much of its international activity to the promotion of the anti-bribery initiatives promulgated by the OECD.⁴⁸ In Germany TI worked especially hard to persuade business and policymakers to its stance that German businesses and citizens ought not to export corruption and corrupt business practices to foreign countries. Michael Wiehen described TI-Germany’s activities on behalf of the OECD anti-corruption program as follows:

We articulate the demand. We were I think the only organization that took an interest in the German law changes to implement the Convention. We have our position on the TI website, we talk about it regularly ...the *Handelsblatt*, one of the leading business papers in Germany, quotes me on this point. ... We perform a function to start the debate, to keep the debate going, and to make sure that from time to time the public is informed about the issue.’⁴⁹

Thus on the OECD Convention in particular, TI’s main strategy was simply to articulate the norm of anti-corruption in a variety of elite fora, including private meetings with business leaders and government officials, semi-public conferences, government agencies, as well as in media publicity.

Perhaps the most important venue for this norm articulation was a series of private “closed-door” meetings with top executives of major German multinational corporations that took place in Berlin in the mid-1990s.⁵⁰ These meetings, convened by TI, attracted influential policy-makers and proved the key to TI’s success in leading a

⁴⁸ Although TI-S did not devote significant material resources to the OECD anti-corruption program, several TI leaders pursued a very active OECD-focused campaign on a volunteer basis. TI’s “point men” on this portfolio were Michael Wiehen of TI-Germany, Peter Rooke of TI-Australia, and Fritz Heimann of TI-USA.

⁴⁹ Weihen, Interview. See also report in ‘UNTERNEHMEN Schmierer und Schmierer Lassen’, *Handelsblatt* (17 July 2001).

⁵⁰ Hugh Williamson, A Battler Against Bribery – Interview with Peter Eigen, *Financial Times* (13 October 2003)

shift in attitude in Germany on transnational bribery. Richard Weizsacker, the much respected former German President, presided over several of these meetings and was a key figurehead. Through the course of these meetings, Peter Eigen personally made the case to leading German multinationals that they ought to change their approach to foreign corrupt practices and agree to curb bribery in their international business activities.

Eigen argued to the business leaders that bribery in their international business transactions simply was not necessary and, moreover, that it was possible to eradicate it and effectively solve the competitive dilemma that induced companies to employ such practices. He also argued that German companies should take an active leadership role in promoting and supporting international efforts to curb bribery in international business. They were to do this in two steps: first, by adopting TI's "Integrity Pact" model for cooperation among businesses to mutually reject foreign bribery in competitive contracts; and, second, by pushing the German government to take a leadership position at the OECD to help prevent bribery internationally, by getting competitor states to adopt functionally equivalent anti-bribery policies.

As presented by Eigen in these meetings, TI's normative arguments proved successful in shifting the dominant attitudes of several of Germany's top chief executives with respect to foreign bribery and corruption. In 1996, some of the largest German companies adopted TI's Integrity Pact. They then began to lobby the government to adopt firm anti-bribery rules through the OECD. In May 1997 the leaders of some of Germany's most prominent multinational corporations sent an open letter to the OECD Economic Ministers, calling on all European governments to criminalize international corruption and to end the tax deductibility of bribes paid to officials abroad. Noting widespread scandals relating to bribery "all over Europe," the business leaders confirmed their active support for Transparency International and endorsed political and legislative actions against transnational bribery. The open letter demanded that European Union countries agree on "united action to prohibit bribery beyond the EU's borders" and "eliminate tax deductibility of foreign bribes." The letter concluded,

As businessmen, we call on the EU states to eliminate the scourge of bribery from international as well as domestic transactions. This means implementation without

delay of the OECD Recommendations. Effective monitoring mechanisms should be put in place to ensure that these essential measures are effectively enforced.⁵¹

Almost immediately following publication of this letter, OECD states began the negotiations for the Convention on combating bribery of foreign public officials in international business transactions.

Therefore, once Germany adopted the OECD Convention, ratified the treaty and implemented domestically the criminalization of foreign bribes, there was general support among German multinationals for this change in policy. German companies, prompted by the norm articulation of TI, played a key role in initiating this change. Peter Eigen's description of the course of these events is worth quoting at length:

Now TI managed to change this, managed to really change this consensus. And we mainly worked with big business in Germany. We had confidential meetings with leaders of German large companies ... three leaders in four years. Some of them were chaired by Richard Weizsacker, the former President, therefore we were able to attract some really high level policy makers in these meetings. And we gradually led to a recognition by these people that what they were doing was corruption. And more importantly, that this type of corruption was extremely destructive in the economies in which they operated, and that it was very risky to them — at the time, some German companies had been caught [bribing] in Singapore, and places like this — and that, in our opinion, it was possible to stop bribing without losing business. And this squaring the peg was something which we managed to convey to them. [...]

[...] and at that time we made the leaders of these companies sign an open letter to their ministers who were in charge of the OECD negotiations. And that open letter has been signed by around 20 people, including Siemens — this was the chairman of the board of Siemens — including Daimler-Chrysler, including Lufthansa, including Bosch, including Deutsche Telecomm, and including also a few American companies.

This is an open letter which has been signed by the business community and sent to the various ministers, in which they basically urged the ministers to sign the Convention. And that must have been in 1997 ... And from then on, the companies helped us to push the Convention. Partly, it was the assumption that it will probably not succeed to get a Convention. But each of the countries wanted to be seen to push it, and probably most of them were surprised that the

⁵¹ Transparency International, Press Release: '*Business Leaders call on OECD Ministers to "Act Against International Corruption"*', Berlin/Paris (21 May 1997) The business leaders that signed the letter included chairmen, chief executives, and board members of the following German companies: Robert Bosch GmbH, Siemens AG, Haas Consult, Asea Brown Boveri AG, Daimler Benz AG, Hartmann & Braun, Krone AG, and Metallgesellschaft AG.

Convention was actually signed in December 1997. And I was surprised. I have never seen a Convention signed so quickly.⁵²

In sum, TI in Germany played a key role in changing business attitudes and government policy towards foreign bribery. Considering the social and political barriers to discussing corruption in German business circles in the early 1990s, this was not an easy feat. In 1997 Eigen noted that “just five years ago you couldn’t even get German companies to admit they gave bribes in the developing world. ... The subject was taboo to the same extent that the practice was widespread.”⁵³ The change in attitude in Germany about international corruption is especially noteworthy, considering that German businesses, in contrast to American, British, and even French business cultures, have tended to retain “bad habits” largely eradicated from most international business, such as corruption in purchasing, territorial and strictly formal hierarchies, and relative homogeneity among the governing business elite.⁵⁴

Because of their membership in elite social networks and their commitment to a non-confrontational strategy for promoting anti-corruption policies, TI’s German leaders were able to get the conversation started in Germany about curbing the supply-side of transnational bribery and, ultimately, the tide in Germany changed. Michael Wiehen of TI-Germany noted:

... the OECD Convention wasn’t exactly invented by us. But we took it as a godsend that somebody had thought of drafting it and we put all our weight behind getting the Convention passed. Without us in the critical summer of ’97, without our pressure through business, the Convention would not have passed.⁵⁵

Transparency International in Germany *led* business. Having originated independently of major national companies — indeed, in spite of opposition from them — and in the face of a strong taboo against the topic of corruption, TI eventually changed the dominant attitudes about corruption in business among Germany’s leading corporations. Subsequently, the German government responded to business demands for

⁵² Eigen, Interview

⁵³ Peter Eigen, quoted in Neil Jr. King, *Coming Clean: EU Firms Await Pact on Banning Bribery with Mixed Feelings; As OECD Prepares Treaty, Members Fear Losses and Lax Enforcement*; World Bank, IMF Join In, *Wall Street Journal (Europe)* (23 September 1997).

⁵⁴ *Economist* 1998, “Deutschland uber alles?”

⁵⁵ Wiehen, Interview

international, “united action” against bribery in international business. Clearly, TI’s role in this shift was critical.

TI was able to play such a critical role because its target audiences in business and government conferred sufficient legitimacy on the group to grant them access and the opportunity to persuade. TI’s leaders in Germany were able to sit down, in person, in closed meetings with business and government elites to present their anti-corruption arguments. As students of administrative behaviour have noted, “administrators manifest a markedly more moral attitude in those cases in which they have to explain and defend their decisions in person — to someone sitting just a cross a desk from them, rather than to someone reading their bureaucratese thousands of miles away.”⁵⁶ TI’s legitimacy among and personal access to its target audience for norm articulation in Germany was crucial.

5. Transparency International in France

In stark contrast to the case of TI in Germany, both the transnational TI organization and the national chapter of Transparency International in France (TI-France) lacked legitimacy in French intellectual, government, and business circles as well as in the media. These target audiences did not accept TI as a legitimate advocate on international anti-corruption, nor on France’s policies with regard to the OECD Convention. French business leaders and government officials objected to TI’s participation in the international processes surrounding the OECD Convention, did not include TI leaders in meetings on the matter, did not openly associate themselves with TI’s anti-corruption campaigns, and did not open themselves to the possibility of persuasion by TI. This evident lack of legitimacy persisted and kept TI largely on the sidelines of French policymaking on international corruption issues, both during the period of the anti-bribery Convention’s negotiation and conclusion (roughly 1996-1997) and throughout a drawn-out period of controversy during which France delayed its ratification and compliance with the Convention’s requirements (1997-2001). According to key French officials at the time, TI both lacked public visibility in France and had no

⁵⁶ Robert E. Goodin, *Motivating Political Morality* (Cambridge, MA: Blackwell, 1992), p. 130

significant influence on business or the government in France.⁵⁷ To the extent that TI figured anywhere in French public life during this time it was in disparaging portrayals of the organization in French newspapers, which explicitly asserted the non-legitimacy in France of this TNGO.

Both the widely-read satirical weekly publication *Le Canard Enchaîné* and the intellectual monthly *Le Monde Diplomatique* published damaging salvos in what Peter Eigen described as a “vicious campaign” against TI.⁵⁸ The pointed thrust of this “campaign” was to accuse TI of direct links with the CIA. *Le Canard Enchaîné* first made this allegation in the context of scathing criticism of TI in the fall of 1999. Calling TI’s anticorruption work “laughable,” the article personally attacked the President of TI-France, Daniel Dommel, as having been “close to the American right” during the Cold War and a CIA operative (“maintes fois accusé d’être un faux nez de la CIA.”)⁵⁹ A separate passage in the same article, moreover, proved to be especially damaging to the reputation and legitimacy of TI in France, suggesting that TI itself was a creation of the World Bank and under the influence of the CIA:

Créée en 1995, cette association a été animée, à ses débuts, par des dirigeants de la Banque mondiale. Puis, très vite, elle a été soupçonnée de subir l’influence de certains intérêts américains (en abrégé, CIA.)⁶⁰

A subsequent article in *Le Monde Diplomatique* in April 2000 cited *Le Canard Enchaîné* and reiterated its description — this time as a matter of record — of TI as an

⁵⁷ Official, French Ministry of Finance and Economics (Direction du Trésor), Interview (Paris 21 September 2001); Official, French Ministry of Foreign Affairs (Sous-direction des Affaires financières internationales), Interview (Paris 24 September 2001)

⁵⁸ Eigen, Interview. Though satirical, *Le Canard Enchaîné* has a longstanding pedigree and a respected place in the French media. Most recently, it prints roughly 700,000 copies per week and has been called “the only French paper that politicians in Paris truly fear.” Britta Samberg, “French weekly *Le Canard Enchaîné* ruffles feathers in Paris”, *Spiegel online international*, March 9, 2011.

<http://www.spiegel.de/international/europe/0,1518,749665,00.html> *Le Monde Diplomatique* has been a key tool in the anti-globalization movement in France. Its director-general, Bernard Cassen, was the leader of ATTAC, an anti-globalization group with broad public support in France and Europe. In the late 1990s *Le Monde Diplomatique* had a circulation of roughly 300,000 and an estimated readership of 900,000 in France alone, where 130 members of Parliament were members of ATTAC. See Philip H. Gordon and Sophie Meunier, *The French Challenge: Adapting to Globalization* (Washington, DC: Brookings Institution Press, 2001), p. 85

⁵⁹ Louis-Marie Horeau, ‘Les Chiffres de la Corruption Mondiale sont Impayables’, *Le Canard Enchaîné* (2 November 1999). The relevant passage reads: “Sa mesure de la corruption n’a peut-être pas grande signification, mais, à l’indice de l’humour, Transparency International mériterait d’être davantage reconnue.”

⁶⁰ Horeau, ‘Les Chiffres de la Corruption’. In translation: “Created in 1995, this association was driven in the beginning by leaders of the World Bank. Then, very quickly, it was suspected of being subject to the influence of certain American interests (in short, the CIA.)”

outpost of the CIA in France. The author, Christian De Brie, baldly called TI a “correspondante de la CIA” and furthermore suggested it was a lackey of major U.S. corporations.⁶¹

Le Monde Diplomatique repeated the allegations in November 2000. This time the paper suggested an even broader conspiracy having to do with the “suspiciously coincidental timing” of the WTO meetings in Seattle in December 1999 and TI’s release of its annual corruption indices, in which France scored relatively poorly, in late October 1999. In his skeptical review of TI and its activities, Pierre Abramovici wrote: “Les esprits soupçonneux remarquent l’étrange proximité entre la publication du mauvais classement [de la France] et la conférence de l’Organisation mondiale du commerce (OMC) à Seattle, en décembre 1999.”⁶² Although acknowledging in a separate article the lack of evidence linking TI to the CIA (“Rien ne permet d’affirmer que Transparency ait un quelconque lien avec la CIA”), the author continued in the same passage to re-affirm the suggestion that TI acted as a front for U.S. corporate interests and was at the very least loosely associated the CIA :

Mais certains de ses donateurs ont eu, par le passé, des liens avérés avec des organismes officiels américains (par exemple l’USAID), et un des membres de son comité consultatif appartient au National Endowment for Democracy qui a été impliqué dans l’action de la CIA en Amérique centrale dans les années 80. En revanche, il est indéniable que l’organisation est largement alignée sur les positions libérales américaines.⁶³

TI leaders in France and Berlin initially decided not to reply to *Le Canard Enchaîné*’s 1999 polemic. However, when they saw that other reports were citing that paper’s false information, their strategy changed.⁶⁴ Yet despite efforts by TI leaders in

⁶¹ Christian De Brie, ‘Etats, mafias et transnationales’, *Le Monde Diplomatique* (April 2000), p.4. The relevant passage describes TI as an “association de lobbying, correspondante de la CIA et financée par des gouvernements et des entreprises, surtout américaines, expertes en la matière, telles Lockheed, Boeing, IBM, General Motors, Exxon, General Electric ou Texaco.”

⁶² Pierre Abramovici, ‘Une ONG Contestée’, *Le Monde Diplomatique* (November 2000), p. 23

⁶³ Abramovici, ‘Une ONG Contestée’, *Le Monde Diplomatique*, p. 23. In translation: “But some of its donors had, in the past, proven links with official American organizations (for example USAID), and one of the members of its advisory board belongs to the National Endowment for Democracy which was implicated in the CIA activity in Central America in the Eighties. On the other hand, it is undeniable that the organization is largely aligned with American liberal positions.”

⁶⁴ Transparency International, *Internal Communication* (11 April 2000). As an aside, this document also reveals that, following some informal personal inquiries, TI officials in Paris discovered that the author of the November 1999 *Canard Enchaîné* article was the husband of one of the editors, who apparently had

Paris and Berlin to clarify through correspondence the record on TI's origins, purposes, and methods, rumours about TI as a creation of American interests persisted in the French media at least into the summer of 2001 — in *Le Monde Diplomatique* in particular.⁶⁵

TI's lack of legitimacy in France remained puzzling to TI's leaders in Berlin, who noted that the chapter there had “some very respectable people ... in our advisory council, and in our board.”⁶⁶ Indeed, TI-France shared the same elite social networks as TI's wider transnational advocacy organization as well as its same non-confrontational strategies for anti-corruption advocacy. Yet in France, in contrast to the case in Germany, these elite networks and strategies actually contributed to TI's *non*-legitimacy and *hampered* TI's advocacy efforts among French intellectuals, business leaders, and government officials.

Elite social networks

TI in France shared the same elite social network as TI's transnational organization. Additionally, the local membership of the French national chapter of TI included several prominent public figures, with elite credentials and who were active in elite social networks. The founding president of TI-France, Michel Bon, for instance, was the former CEO of France's major retail chain *Carrefour* and was the managing director of the ANPE, the French employment office, when he became chairman of the fledgling group in October 1994.⁶⁷ Bon resigned his position at TI-France in 1997, to become the Chairman and CEO of newly privatized France Telecom. His successor, Daniel Dommel, was an elite former bureaucrat, holding the title of Inspecteur Général des Finances Honoraire and part of the “aristocratie française ... très au niveau.”⁶⁸ Moreover, Dommel, Bon, and other TI-France officials were members of the prestigious and exclusive French political club *La Fondation Saint-Simon*, an elite policy think-tank comprised of the

connections to “people” in the defence industry; thus they suspected that these interests had probably inspired the original “attack” on TI.

⁶⁵ Bernard Cassen, (a) ‘Arrières pensées dans la lutte anticorruption’, *Le Monde Diplomatique* (May 2001) and (b) ‘Limites de la Transparence’, *Le Monde Diplomatique* (July 2001), p. 15; and Daniel Dommel, ‘Lutte Anticorruption’, *Le Monde Diplomatique* (July 2001).

⁶⁶ Eigen, Interview

⁶⁷ TI Newsletter, June 1995.

⁶⁸ Confidential interview.

French “cultural nobility” — intellectuals, journalists, elite civil servants, and captains of industry — on the (anti-communist) “new left” of the political spectrum.⁶⁹

However rather than conferring legitimacy on TI, these elites were not respected by TI’s target audiences in France as legitimate advocates on French policies of anti-corruption. To the contrary, their close ties to the transnational organization of TI (and to the same elites that conferred legitimacy in Germany) were the subject of personal attack.

Exporting businesses in France, especially in the defense sector, strongly opposed the anti-bribery rules proposed at the OECD and were especially protective of France’s longstanding policy of supporting the payment of bribes in foreign countries as part of international business competition.⁷⁰ Similarly, France’s legislators cautioned that if France implemented the Convention more strictly than its trade competitors, French exporters would lose foreign contracts to competitors whose home countries did not enforce their own anti-foreign bribery laws. The trade rival of utmost concern to France in this regard was the United States. In spite of the arguments made by U.S. companies that they were competitively disadvantaged by American restrictions on transnational bribery in the U.S. Foreign Corrupt Practices Act, French companies and officials were deeply skeptical about the extent to which the United States actually sanctioned foreign bribery. Thus TI founder Peter Eigen characterized TI-France as confronting “a strong resistance” of intellectuals, government, and business against TI, “which has partly to do with the fact that they feel we are too close to the Americans.” In particular,

They fear that we are more or less a secret brigade for corporate America. And they fear that there is a lot of support to us from USAID, from companies in the US, [and] that we are simply doing the dirty business of the Americans. So whenever something comes up, say a big scandal of the Americans’ use of secret intelligence [like] Echelon [or] the CIA and so on, then immediately they throw us mentally into the same bag. And it has been very difficult for us to overcome.⁷¹

In general, the attitude in business circles was that TI-France did not sufficiently criticize the United States for its perceived weak enforcement of the Foreign Corrupt Practices Act. In contrast to the position of TI in relation to business interests in

⁶⁹ Laurent 1998; *Réseau Voltaire.net* 1998; Boneau 2004.

⁷⁰ Jean-Pierre Neu, “Les industriels de l’armement montent au créneau contre la future loi anticorruption.” *Les Echos*. 10 February, 1999.

⁷¹ Eigen, Interview

Germany, TI-France was “not as strong.”⁷² When the powerful French employers’ group MEDEF and French government officials met to discuss France’s position on the OECD anti-bribery Convention, at least one official from TI-France was prevented from entering, apparently because he was suspected of being a spy for the United States.⁷³

Finally, although they did not necessarily believe the rumours that TI had explicit links to the CIA, French government officials also thought that the organization was “too close” to U.S. interests and that in its anti-corruption efforts TI represented the interests and arguments of the United States and American multinational corporations. Government officials directly involved acknowledged “tense relations” between TI and the government on the matter of the Convention.⁷⁴ And TI routinely was referred to both in media reports and in the French National Assembly as an *American* organization.⁷⁵ TI — both the international organization headed in Berlin and the French national chapter headed in Paris — was throughout the 1990s coolly received in French government circles. To wit, when in Paris in the summer of 2001 to promote the launch of TI’s 2001 Corruption Perceptions Index, Peter Eigen experienced “the most unpleasant meeting” of his trip when he met with France’s “roving ambassador” in charge of corruption, Pierre Charasse. One active member of TI-France described this official in particular as openly “hostile” to TI. Furthermore, a government official said, opinion in government circles about the French officials of TI-France in particular is “not high.”⁷⁶

In sum, TI’s elite social networks could not confer the slightest legitimacy for TI in France, nor overcome French opposition to international anti-bribery rules. Crucially, its values were directly opposite those of its target audiences in business and government — and the values of these actors rather than the properties of TI proved determinant of non-legitimacy. In France the elite networks themselves created the sense of non-

⁷² Member, Transparency International – France, Interview

⁷³ Member, Transparency International – France, Interview (Paris 22 September 2001)

⁷⁴ Official, French Ministry of Finance and Economics, Interview

⁷⁵ Jean-Pierre Neu, ‘Les industriels de l’armement montent au créneau contre la future loi anticorruption’, *Les Echos* (10 February 1999); France, *Assemblée Nationale* (1999), especially comments by Socialist Party member François Loncle, who noted : “Une organisation nord-américaine, ‘Transparency international’, fournit tous les ans le tableau des pays les plus affectés. Je n’aurai pas le mauvais goût de les citer. Beaucoup ont vivement contesté leur classement ou leur présence sur cette liste.”

⁷⁶ Eigen, Interview; author’s confidential interview with a member of TI-France, Paris, September 19, 2001; Official, French Ministry of Justice, Interview (Paris 24 September 2001)

legitimacy, a different outcome than what TI experienced in Germany with the *same* elite networks.

TI also lacked legitimacy in government circles, for reasons other than its rumoured links to the CIA. Specifically, TI's target audience in the French government did not accept TI's key strategies for raising awareness about international anti-corruption, nor its central "coalition-building" approach to advancing anticorruption strategies in partnership with business and government.

Non-Confrontational Strategy

It was the position of the French government that the OECD Convention and its related processes — especially the follow-up and monitoring functions of the OECD working group — were strictly state-based initiatives. One bureaucrat explained, "the basic position of the government is to distinguish between the two: the OECD, and TI."⁷⁷ Following its dismaying experience with the scuttling of the Multilateral Agreement on Investment (MAI) due to civil society interference in 1999, the French government wanted to downplay the role of civil society in its intergovernmental projects. In the context of the OECD Convention and France's anti-bribery policy, TI was not a welcome partner. There were, furthermore, reports of "strong resistance from the French side" to suggestions that "organizations like TI" be involved in additional state-led anti-corruption initiatives, for instance at the United Nations. TI's Berlin leadership considered reports like these in 2001 as "a further confirmation that the French have launched a concerted action against TI."⁷⁸ Peter Eigen described the situation as follows:

... there is still tremendous resistance in France against the role of civil society... the concept that a coalition of civil society with the private sector and with the government [would be] required [in order] to have a credible anti-corruption strategy, this concept is now very widely accepted everywhere in the world except the French. They just don't see it, at least they don't think that TI is a very good partner. So they use every excuse to attack us, to badmouth us, and it was again

⁷⁷ Official, French Ministry of Finance and Economics, Interview

⁷⁸ Transparency International, *International Communication* (15 June 2001). The reports are also consistent with Gordon and Meunier's observation that "NGOs had never been very prominent in statist France." Gordon and Meunier, 'The French Challenge', p. 96. This is rapidly changing. See also John T.S. Keeler and Peter Hall, 'Interest Representation and the Politics of Protest', in Alain Guyomarch, Howard Machin, Peter A. Hall and Jack Hayward (eds), *Developments in French Politics 2* (Houndsmills, Basingstoke, Hampshire, UK: Palgrave, 2001), pp. 50-67

quite clear at the conference in the Hague, and therefore there is still a tremendous battle in France.⁷⁹

In addition to concerns about the inappropriateness of civil society participation in anti-corruption politics, French government officials took particular exception to TI's main method of raising public awareness about corruption: the annual Corruption Perceptions Index and the Bribe Payers' Index. Echoing similar criticisms raised by *Le Canard Enchaîné*, government officials greeted France's regularly poor ratings on TI's corruption indices with a heavy dose of skepticism about the validity of the methods and conclusion of these surveys. In the words of one such official, "On pense que cette méthode de publicité n'est pas la bonne."⁸⁰

This lack of legitimacy in France mattered to TI's effectiveness: it limited its ability to persuade decision-makers and sway policy in the direction of international anticorruption. Because of its low level of legitimacy among and access to relevant decision-makers in business and government, TI-France had no discernible influence on the policy-framing context in which legislators framed their deliberations over the Convention. Instead, and in response to business concerns, the government defined its anti-foreign bribery policy in the context of strategic trade. In contrast to Germany, where TI promoted anti-bribery compliance by framing the Convention in the contexts of international development and the "enlightened self-interest" of Germany's major companies, in France debate about the OECD Convention emphasized its implications for France's competitive position in its export markets. Reflecting this focus, the Rapporteur of the National Assembly's foreign affairs committee noted that, rather than international development or any other policy area, "it is in fact [trade] competition that was the essential engine of state action" on bribery in international business.⁸¹

In sum, debate in France about the domestic implementation of the OECD Convention focused on France's strategic trading interests and promoted a cautious and reluctant approach to anti-bribery policies. In the absence of strong articulation of the international norm of anti-corruption by Transparency International, the strategic trade

⁷⁹ Eigen, Interview. The mention of the Hague is a reference to the Global Forum II on corruption, an international conference held there in July 2001.

⁸⁰ Author's interview with an official of the Ministry of Foreign Affairs, Paris, September 24, 2001.?

⁸¹ France, *Assemblée Nationale* (1999). The original quotation in French reads: "... c'est en fait la concurrence qui a été le moteur essentiel de l'action des Etats."

policy frame held sway, causing controversy and delay in compliance. This reluctance was particularly striking in comparison to Germany. Both Germany and France had long opposed international efforts to control transnational bribery. Then, Germany and France jointly proposed that the OECD conclude a binding international Convention to criminalize foreign bribes. Yet, while Germany responded to the new Convention quickly and, in the assessment of the OECD's peer review Working Group, complied satisfactorily with implementing legislation in the fall of 1998, France responded much more slowly and complied only moderately, and for reasons other than advocacy by Transparency International.

6. Conclusion

Transparency International emerged in the 1990s as a highly influential TNGO advocating for international anti-corruption and, in particular, new norms developed at the OECD against transnational bribery. This non-state actor proved especially influential on anti-bribery policies in Germany, where business leaders and government officials took meetings with TI leaders, affiliated themselves with the organization, provided financial support, and opened themselves to persuasion and policy change. They accorded TI legitimacy such that it had standing to advocate its anti-corruption arguments to them and play a key role in policy formulation. In short, in Germany the elite personal connections of its leaders and its non-confrontational strategy for advancing its aims accorded TI a high level of legitimacy among its target audiences in business and government.

In contrast, in France, where TI possessed the same elite networks and pursued the same non-confrontational strategies, its target audiences in business and government did not confer legitimacy. TI was derided in the press, excluded from important anti-corruption policy meetings, and dismissed by the government; it was not accepted as a legitimate participant with standing on the matter, or with the right or appropriate position to advocate, persuade, and be heeded. It was therefore an ineffectual policy advocate in France.

This comparison demonstrates that achieving legitimacy is not solely a matter of specific objective characteristics of the TNGO, nor of the tangible and intangible “sources” of legitimacy often identified in the literature. Rather, whether or not a specific TNGO will be accepted as a legitimate advocate on any policy depends also on the relationship of the TNGO with relevant target audiences and the acceptance of the organization by those audiences, as a function of the audience’s values and not the advocate’s.

The experience of Transparency International in Germany and France also shows that legitimacy matters. Although not necessarily sufficient, legitimacy is a necessary condition for the effectiveness of TNGO advocacy and norm entrepreneurship. Further, this legitimacy is best conceived as a subjective, relational, and sociological matter. What matters to the effectiveness of TNGO advocacy is not an objective measure of legitimacy. It is rather the extent to which relevant audiences confer that legitimacy. This analysis carries important implications for the strategies of TNGOS seeking to influence the policies of states and other actors in particular issue areas: TNGOs and policy advocates deficient in legitimacy need to recognize this liability and then strategically seek to acquire and build legitimacy by appealing to the specific legitimacy criteria valued by particular audiences. In addition to its subjective and sociological conception, legitimacy therefore is also conceived here as an endogenous variable, which actors can strategically manufacture and generate through their own activities.