

12th IACC
WORKSHOP LONG REPORT

Number and title of workshop

Private interest politics – much to do for the anti-corruption community?

Date and time of workshop

14.00-16.30, November 15, 2006

Moderator (Name and Institution)

Silke Pfeiffer, Transparency International Secretariat

Rapporteur (Name and Institution)

Amalia Kostanyan, TI Armenia

Panellists (Name, institution, title)

Marcela Rozo, Public Sector Area Coordinator, Transparencia por Colombia

Prof. John Brademas, President Emeritus, New York University

Elena Panfilova, General Director, Center for Anti-corruption Research and Initiative, TI Russia

Main Issues Covered

The workshop dealt with the influence of private interests into policy-making. While starting from the assumption that private interest group influence can (and should) be constructive and represent an intrinsic part of democratic interaction, the workshop particularly addressed the negative forms of private influence taking in policy making, i.e. situations in which the policy-making process is captured by private interests to the detriment of the common good. This phenomenon is commonly known and described as “state capture”, a situation where private interests not only influence and distort the application of the rules to their benefit, for example in the framework of a public procurement process, but actually capture the rule-making process of a country.

The stated **objective** of the workshop was to develop a better understanding of different patterns of state capture and to identify their causes and the circumstances under which they occur. Based on this analysis, the question was put on the table whether the concepts and approaches that the anti-corruption community has been using and applying so far are still appropriate to tackle these problems. If not, what kind of new tools and approaches are needed to tackle these challenges?

The workshop focussed on **two different forms of state capture**. In the first place, undue influence can be exercised at the interface between the public and the private sector. The influence of business lobbies has very much increased in connection with the currently prevailing development model which attributes a very important role to the private sector and which in many countries is accompanied by a weak capacity of the state to regulate economic activities. Here, undue private influence can take place via illegal transactions, such as bribery. Powerful business groups can bribe lawmakers to pass or not pass or change a bill. State capture can also happen based on the influence of illegal groups, such as organized crime, drug traffic etc. In those cases we usually look at the law enforcement agencies to tackle the problem

– which is obviously a challenge in many countries with high levels of impunity. Undue private influence can, however, also take place by ways of influence that remain within the legal framework but that still imply heavy distortions of public policies and as such can have a huge impact and social costs. We can think of different ways, that this kind of “legal state capture” can take place. Let us just think of benefits being granted to private interest groups in exchange for legal campaign contributions, in exchange for a future lucrative position in the private sector (revolving door phenomenon). Or to situations where benefits are granted based on the power of specific interest groups (economic power, power of information etc.).

Secondly, private interest influence can also take place within the public sector itself, this is public officials distorting public policies to serve their own interest.

Presentations from Marcela Rozo on the risks of undue influence of private interests in the law making process in Colombia and from Dr. John Brademas on the U.S. Congress and whether this institution is a servant of public or private interest focused on state capture at the public-private interface.

Ms. Rozo identified several structural factors as giving course to undue private interest influence in the law making process in Colombia. Among them, she mentioned the lack of systematic access to information, high levels of discretion of law-makers, loop-holes in the internal rules of the legislative body and lack of their enforcement, the insufficient definition of conflict of interest rules, technical weaknesses of congress people and their advisors as well as the lack of rules on lobbying. Beyond remedying these weaknesses, she called for increasing the levels of accountability in political finance systems, as well as in the law-making process itself by way of better sustaining bills and reasons for introducing modifications in the legislative process. In this she noted that legitimate and illegitimate influences could be distinguished in as far as the benefits received by a group of interest were fully quantified and it was established that this group would adequately compensate society for the particular benefit this group had received, thanks to the use of an influence. Ms. Rozo finally stressed the importance of increasing citizen participation in the law-making process and in monitoring the enforcement of relevant rules.

Against the background of increasing cases and allegations of corruption in the US Congress with an important involvement of private sector lobbyists, **Dr. Brademas** presented the main ingredients of a forthcoming report of the Committee for Economic Development on “Making Washington Work”. Concerned by the sharp increase of registered lobbyists in the US, the ongoing rise of the industry’s spendings (2 billion US\$ annually, not counting the unreported expenses) and the industry’s capacity to negotiate significant Federal appropriations or tax benefits for their clients, the report calls for new rules for the lobbying industry, including better and more independent enforcement, such as by an independent Office of Public Integrity. According to Brademas, reforms should also address the fact that there have been in recent years efforts, especially in the House of Representatives, to deny the minority an opportunity to debate fully a piece of legislation or even to offer amendments. Another issue that has commanded considerable public attention is what in the United States has come to be called “earmarks” on the part of Congress, that is to say, writing into legislation specific appropriations for particular projects, authorizations of programs or tax advantages. Against the background that campaigns for Congress have become increasingly expensive, particularly because of the rise of television, Brademas put the question on the table on whether there were ways to reduce the cost of campaigning, whether to impose more restrictions on how contributions to congressional campaigns were made and whether it was possible to find new sources of money

that were easier to access, more transparent and that would reduce the role of lobbyists.

Speaking about the influence of new oligarchs in the decision-making in Russia, **Ms. Panfilova** portrayed a situation in which all main institutions are captured by the private interests of the political elite which also dominates the key economic activities of the country. In other words, in Russia, the State is captured from within. Ms. Panfilova explained how the first generation of Russian oligarchs was replaced by a new generation of former KGB officials who now occupy key positions in the state-owned enterprises which account for 40% of the Russian GDP. In this sense, political and economic power coincide with petrodollars feeding the machinery of kick backs, bank transfers etc. There is no separation of power – Ms. Panfilova mentioned the case of 84 laws being approved in one legislative session – and no rule of law. Social control and civil society activities are severely restrained. Against this background, Ms. Panfilova invited the audience to discuss the potential of different solutions, ranging from international sanctions, the withdrawal of foreign investors to the integration of Russia into international initiatives as a framework in which to call Russian leaders to certain commitments and/or the option of public outburst.

In the following discussion it became clear that different forms of state capture required in part different solutions but that the central issue consisted in increasing levels of accountability within the political system.

Main Outcomes

Common causes and characteristics of the state capture identified, along with some country specifics.

Shared concerns about the increasing spread of the state capture, its destructive effects on democracy and expressed interest in finding ways to prevent it.

Clear notion that anti-corruption community must look beyond the more “traditional” and narrowly defined types of corruption. Undue private influence taking can take place within the legal framework and still have devastating effects. There is a need to better understand the roots and patterns of state capture and to broaden the anti-corruption instrumentarium in order to tackle the problems more effectively.

Main Outputs

Three descriptions of different patterns of state capture in Colombia, US and Russia.

A conceptual introduction into the phenomenon of “undue influence of private interests in

policy-making”

Recommendations, Follow-up Actions

In-debt study of the phenomenon of undue influence (state capture) in developed, transitional and developing countries is needed to better understand its causes and consequences, and find possible solutions to cope with it.

At the moment, the state capture can be reduced by the following ways:

1. Ongoing improvement of relevant legislation (e.g. on campaign finances, lobbying, accountability of elected officials, transparency of the Parliament activities, etc.).
2. Stronger enforcement of relevant legislation.
3. Increase levels of accountability by requiring law-makers and high level public officials to better sustain their decisions. Increase access to public information.
4. Establish and empower institutional arenas for the deliberation on public policies; ensure their inclusiveness and accountability.
5. In those cases where state capture takes place at the public private interface, strengthen the capacity of the state to effectively regulate and control private sector activity.
6. More active engagement of civil society in policy processes, including civic monitoring of activities of basic state institutions.
7. Persistent use of international instruments (e.g. UN, OECD and other conventions) and constant pressure of international community on the member states to meet international anti-corruption standards.

Workshop Highlights (including interesting quotes)

Getting seats in the Parliament is becoming a very good investment, a tool for personal

enrichment, for ensuring privileges for economic activities.

IFIs must not create opportunities for the state capture in the countries to which they provide assistance.

The state can be captured not only by interest groups outside the state, by also by few people occupying high level positions within the state, as it happened in Russia.

“Is the US ready for democracy?”

Signed _____