

International Anti-Corruption Conference
Athens
31 October 2008, 11.00 – 13.00

Papers for Workshop Session 2.1

on

‘Tackling corruption in the defence and security sector’

Co-ordinated by Dominic Scott and moderated by Mark Pyman of
Transparency International UK’s ‘Defence against Corruption’ programme



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Development of a training module for building integrity and reducing corruption risk in defence institutions

Liliana Serban, Director of the Research Department, NATO School, Oberammergau, Germany

Building Integrity Initiative - Background

Building Integrity in Defence Establishments, promoting best practices and reducing corruption is part of NATO's programme of cooperation highlighted in the Partnership for Peace (PfP) Framework Document in 1994 and further elaborated in the Partnership Action Plan on Defence Institution Building (PAP-DIB) in 2004.

In 1994, NATO invited nations to cooperate and thus partner with the Alliance, with the aim of promoting defence reforms based on transparency in planning and budgeting, thus ensuring an effective democratic control of defence forces, maintenance of their capabilities and readiness to contribute to operations, the development of cooperative military relations with NATO, and, over the long term, the development of forces that are better able to operate with those of the NATO members.

Ten years later, in 2004, at the Istanbul Summit, NATO's efforts to promote defence reforms received a new focus through endorsement of PAP-DIB by the Euro-Atlantic Partnership Council (EAPC) Heads of State and Government. PAP-DIB provides a definition of defence reform and a framework for planning reform, exchanging experiences, and giving practical advice on achieving ten specific objectives in the defence and security sector, out of which more than half stress the need for transparency or other openness measures. In order to successfully implement PAP-DIB, partners were encouraged to give high priority to education for defence reform.

In 2008, at the Bucharest Summit, NATO reiterated its commitment to effective cooperation within EAPC and PfP programme and gave priority to several new practical initiatives, which include building integrity in defence institutions. Finally, it reiterated its support to the engagement of partners in programmes that support defence and broader reforms.

Work on developing practical aspects on fighting corruption in defence establishments started on July 2007 with the advanced Research Workshop on "Building integrity and reducing corruption in the defence sector" organized jointly by NATO, the UK Defence Academy, and Transparency international (TI) UK. Among the recommendations, the fifty participants from NATO, PfP and Mediteranean Dialogue (MD) nations agreed to initiate the development of a training module for senior defence officers and officials opened to both NATO and partners and to start building a community of international experts in order to improve transparency, building integrity, and reducing corruption in defence establishments.

An initial Report setting out an approach to building integrity in defence establishments was prepared jointly by the Political Military and Security Committee (PMSC)/Euro-Atlantic Partnership Council (EAPC) and PC/EAPC and agreed by EAPC Ambassadors on 21 November 2007.

Following the EAPC endorsement, an open ad-hoc group led by International Staff (IS) of NATO HQ developed practical proposals in support of the Building Integrity Initiative: a Training Module, a Self Assessment Questionnaire and a Compendium of Best Practices (November 2007- February 2008). All the three aspects were developed by separate steering committees.

On 28 March 2008 the Trust Fund Project on Building Integrity, led by Poland, Switzerland and UK, the first one to be developed within the PAP-DIB framework was launched with the aim of developing these three practical tools. The project will be developed throughout 2008-2009.

On 9 April 2008 Poland's and UK's ambassadors to NATO announced the co-led of the Building Integrity Trust Fund and on 8 May 2008 the Project was presented to the PMSC/EAPC format, together with the registration form for three pilot courses in 2008.

Institutional and inter-governmental practitioners have met in Geneva on 5-7 May 2008 during a workshop organized by Geneva Centre for Security Policy (GCSP) in collaboration with TI (UK) and DCAF in order to identify current anti-corruption efforts, to establish a level of common interest across defence and development institutions, and to propose specific actions. Developing a Training Module and an International Network of defence officers and officials committed to high standards of integrity were amongst the first actions to be taken.

Practical tools in support of Building Integrity Initiative

1) Self Assessment Tool

The Self Assessment Tool was developed by an ad-hoc team led by Poland, with the participation of Croatia, Georgia, Norway, FYROM, TI(UK), IS, and NATO School. The focus of the Tool is on helping nations' defence reform efforts and to meet their international obligations within the United Nations (UN) framework and it has three elements: a questionnaire, a guidance to complete it, and modus operandi for a follow up expert team visit. In its implementation nations will make use of the existing tools and mechanisms such as Euro-Atlantic Partnership Work Programme (EAPWP), and 26+1 programmes such as Individual Partnership Action Plan (IPAP) and PfP Planning and Review Process(PARP). The Self Assessment Tool covers areas such as democratic control and engagement, national anti-corruption laws and policy, anti-corruption policy in defence, personnel behavior, policy, training and discipline, defence planning and budgeting, procurement and other financial processes, and engagement with defence

companies. A few nations volunteered to conduct trials in 2008 and results are to be presented to the EAPC in early 2009.

2) Building Integrity Training Module

Based on the outcomes of the Shrivenham and Geneva Workshops, on the work of the ad-hoc group led by IS, and on the work of a steering committee, a foundation training module was developed over the past year by five different institutions with the UK Defence Academy in the led: GCSP, National Defence College of Sweden, NATO School and TI (UK).

The aim of the module is to strengthen foundation for leadership, integrity, good governance and management within the defence and security sectors by sharing experiences, challenges, and best practices between nations, whether established, transitional, or developing, to enhance professionalism. And its objectives are to enhance knowledge and understanding on how to strengthen integrity and reduce corruption, on the concept of transparency and good governance, on how to integrate corruption reducing strategies into management and how to engage appropriately with the public and civil society. The 5 days, which combine presentations with discussions and exercises, cover Introduction to Building Integrity; Leadership, Ethics and Personal Integrity; Integrity in Defence Budget and Procurement; Change Management; and Educating the Educators as a Tool for Building Integrity.

The course is open to civilian and military personnel in the security sector, at Head of Section or colonel equivalent level.

60 students (20 students per course) are going to test the foundation module in 2008 through three courses (with the same content) taught at Shrivenham (21-25 July), NATO School (8-12 September) and Peace Support Training Centre (PSOTC) of Bosnia and Herzegovina (BiH) (15-19 December).

3) Compendium of Best Practices

Geneva Center for Democratic Control of the Armed Forces (DCAF) currently leads the effort of compiling a Compendium of Best Practices on fighting corruption. The focus of the Compendium is on resource management issues and includes contributions from Subject Matter Experts from Government, International Organizations and Non-Governmental Organizations. The Compendium will be part of the Training Module Syllabus and includes an Introduction (Definitions, Principles, Mechanisms, and Practices of Good Governance); Corruption vulnerabilities with three different sections on Defence Management, Building Integrity and Reducing Corruption in Military Operations, and Building Integrity and reducing corruption in countries with frozen conflicts; Reducing corruption potential in defence establishments (the role of Government, Parliaments, Ombudsman, civil society, media, International Organizations); and Conclusion. Both hard copies and electronic copies will be published in early 2009.

Current Status and way ahead of Building Integrity Training Module

To date, the foundation training module was taught in two different locations: Shrivenham (UK Defence Academy) in July 2008 and NATO School, Oberammergau, Germany, in September 2008.

Both NATO and Partner nations are interested in the already existing Training Module. So far, 37 officers and civilians from 18 different nations (6 NATO and 12 partners including Afghanistan) were trained and other 20 students are expected to be trained in PSOTC BiH in December this year.

NATO School, in its capacity of chairing the PfP Training Centres Working Groups and the Annual Commandants' Conference took stock on offers of these institutions in support of the Building Integrity Initiative.

So far, five different PfP Training Centres, such as GCSP, Naval Postgraduate School (NPS), PSOTC BiH, Regional Department of Defence Resources Management Studies (DRESMARA), Romania, UK Defence Academy and NATO School expressed interest in developing programmes in support of the Building Integrity Initiative, either by teaching the entire course, or by including different modules in existing courses, and organizing round tables, conferences and workshops on the subject. Furthermore, Mobile Education and Training Teams are planned for 2009 in partner countries.

In-class training on this subject is complemented with e-learning and some institutions, such as GCSP or NATO School launched online courses ("Building Defence Institutions") or communities of practice (on the NATO School Unclassified Portal), with the aim of bringing together practitioners from Governmental, Non-Governmental or International Institutions, training centres or national defence academies.

Furthermore, other five online courses on Building Integrity and Contracting are under development.

In 2008 all the three tools, The Self Assessment Questionnaire, the Training Module and the Compendium of Best Practices are tested, and next year, based on the received feedback they will be further developed and adapted.

Building integrity and reducing corruption risk in defence institutions in Poland

Maciej Wnuk, chief expert in Department of International Security Policy of Polish Ministry of National Defense, former organiser and director of Anti-corruption Procedures Bureau (e-mail: mwnuk@mon.gov.pl)

1. Integrity Reforms in the Polish Ministry of Defence

The start point - 2005

According to the Corruption Perceptions Index (CPI), in 2005 Poland was the most corrupt country of the 25 members of the European Union. In the same year the new Minister of National Defence appointed an adviser on anti-corruption and started integrity reforms.

At this stage anti-corruption activity in the ministry was very inefficient.

On the positive side, many institutions were involved in counteracting corruption in defence: the Control Department, the Military Police, the Military Prosecutor, the Counter-intelligence Service, the Audit Bureau, as well as the state Supreme Chamber of Control. Many corruption schemes were uncovered, a few officers and civilians were charged and even a special report on corruption in defence was prepared for the previous minister.

On the negative side, the anti-corruption activity of so many institutions was absolutely uncoordinated. Knowledge of corruption schemes was not used to carry out systematic changes. No unit of the ministry was responsible for preventing corruption. There was no anti-corruption policy and no integrity building activity. In such conditions, anti-corruption measures were ineffective.

2006 – Anti-Corruption Procedures Bureau created

In 2006, the Anti-Corruption Procedures Bureau was founded as a new body responsible for prevention, and with the mission of improving procedures for integrity and creating anti-corruption policy in the Ministry of Defence.

The bureau is directly subordinated to the Minister of Defence. 4 civilians are employed, all from outside the defence sector and industry in order to preclude possible conflict of interests. Most of them have an anti-corruption background from NGOs, local administration or the judiciary.

Main reforms

Starting with practical reforms, we decided to tackle corruption from the top. The area where high corruption risk meets great potential losses for the tax payers and possible involvement of high rank officials is defence procurement.

Reform of the procurement system comprised several elements, including:

- introducing more transparency, by putting more information on planned and finished procurements onto the web,
- extending the use of electronic auction,
- enhancing quality assurance by reliable testing,
- preventing conflict of interest of tender committees members through additional regulations,
- promoting more competition through limitation of single source procedures to well justified cases.

Additional supervision of key points of the procurement process was introduced by the anti-corruption bureau. This includes preliminary audit of key documents, such as technical requirements, tender conditions, bid evaluation and contract draft as well as supervision of testing of new arms in some cases.

As a positive result of the introduced reforms we can list the achievement of better “value for money” output, meaning we made progress in buying equipment of better quality for less money. Procurements are better prepared and more focused on the holistic approach of buying capabilities and not only goods.

On the other hand, the focus on accountable money spending led to problems related to spending the entire budget during the fiscal year. As a result, at the end of year the pressure to spend money is heightened, which increases corruption risk.

Another main area for reform was prevention of conflict of interests, not only among members of tender committees, but also among all uniformed and civilian officials. We introduced a code of conduct for military & civilian personnel in their relations with the defence industry, which regulates such issues as acceptance of gifts and other benefits, participation in industry sponsored events, presentations of defence goods and services and renting of military property for external events.

New regulations relating to professional military service prohibit taking up of additional work for the defence industry, obligate all officers to submit asset disclosures and introduce a 3 year moratorium for employment in defence industry after the end of the military service.

We also started cooperation with Transparency International, introducing some elements of Defence Integrity Pacts – methodology elaborated by TI – into a tender for VIP jets.

2. Integrity Reforms – Lessons learned

How to start and continue?

Let me present now some thoughts on how to start and continue anti-corruption reforms in defence (and I believe many of them are valid also for non-defence institutions). I list the advices in a road map.

First, you need to know “where is the enemy”, where are the issues in need of reform. So, carry out a self assessment of corruption risks. NATO offers a tool, namely Integrity Self-Assessment Questionnaire and also subject matter experts.

When you have assessed areas of corruption you should define your priority areas. I strongly believe that if you want to start reliable reforms you ought to tackle corruption from the top. So the priority areas should be the ones where high corruption risk meets heavy potential losses and high ranks officials.

Next, you are ready to prepare your strategy: define priorities, find key points for change, and prepare the action plan, budget and staff.

The implementation of the action plan should be based on activities of fully-paid staff, designated for this job. This means officials for whom prevention of corruption and building integrity are the main tasks of their job description.

Do not hesitate to engage new people from outside the defence establishment and defence industry. This way you can protect your activity against conflict of interests.

In preparing your reforms, concentrate on substantial changes. This means change the law and procedures first, and the personal changes afterwards. Substantial changes are more durable then the personal ones.

Cooperate with anti-corruption institutions, in and outside the defence sector. Law enforcement agencies could be the source of warning knowledge on new corruption schemas, demanding improvement of procedures. Civil society organisations can be an excellent source of advice, such as through the before-mentioned Defence Integrity Pacts of Transparency International.

Train your staff and educate defence personnel. NATO offers a tool, namely the education module on integrity building in defence.

In searching for solutions, learn from the best practices of other countries and institutions. NATO is preparing a compendium of best practices on integrity building in defence.

When you start your activity you will be asked to deal with many specific issues. Because of limited resources you can not deal with all of them effectively. My advice is: concentrate on priorities.

Many institutions remember anti-corruption actions start loudly but quietly finish shortly after. So, my last advice here is: be consistent in your activities. To be not only effective but also efficient you need to supervise implementation of new introduced rules.

3 levels of political will

At the end of my presentation I want to share with you some thoughts on political will, as an important factor of successful reforms.

I distinguish between three levels of political will:

- high: when decision makers are focusing on reforms and its implementation, on creation of new institutions, new procedures and improvement of law,
- medium: when decision makers are focusing mainly on implementation of reforms undertaken and its updating,
- low: when decision makers do not pay attention to anti-corruption activity.

It is a well known phenomenon that the level of political will of anti-corruption reforms oscillates over time, even of honest governments, as changes in internal and external political situation change the governmental priorities.

My personal advice is: use momentum of high political will to introduce substantial reforms. Then reforms will be implemented in period of medium political will too. And even in times of low political will some of the reforms will be continued.



Government Tools to Encourage Ethical Conduct of its Contractors

Steven A. Shaw, Deputy General Counsel, US Department of the Air Force

Governments have obvious influence over the conduct of their corporate and individual citizens, exercised traditionally by criminal and civil prosecutions to incarcerate wrongdoers, and to impose monetary penalties. By those actions it is felt that those considering corruption will be deterred, and will behave responsibly. Those remedies are generally effective as to a limited number of persons, and only in those nations that have the resources and motivation to aggressively pursue wrongdoers.

This paper will discuss a number of economic incentives and disincentives that nations can offer to encourage citizens to behave honestly and ethically. The tools discussed in this paper are examples of those used by the US Government, in connection with its defense contractors. But there is no reason that these and similar tools cannot be used by all nation states to influence behavior in all industries.

Examples of some of the most effective features of ethics and compliance programs in the US defense industry will be discussed, and the paper will conclude with a call to action, to make values-based ethics a national priority within Government, to improve the ethical cultures of nations and their contractors.

1. Tools Governments Can Use to Discourage Corruption

The success of corruption in government contracting depends upon both the intent of contractors to make unlawful payments, and government officials' willingness to accept those payments. Actors on both sides of such transactions have committed unethical, if not unlawful acts, and need to be deterred, both internally within their organizations, and by external forces such as governments.

The tools discussed here address some external incentives that can be applied by governments to discourage wrongdoing by their contractors, and to encourage contractor organizations to implement programs and processes to improve the cultures of their organizations so as to mitigate the risk of their employees acting improperly in the government contracting arena.¹

A. Debarment of Contractors From Eligibility For Government Contracts

In one sense, the “hammer” of debarment can be viewed as a punishment similar to criminal and civil penalties intended to deter future misconduct. But in a broader sense, the fear of debarment by contractors – particularly those with significant revenues

¹ Governments also need to act to improve the ethical cultures of their own departments and agencies. A “call to action” for governments to address those issues is set out below.

dependent upon government contracts – acts to encourage organizations to improve their ethical cultures in order to mitigate the risks that their employees will commit misconduct that would subject their companies to debarment.

In a nutshell,² debarment is the process by which the Government places the name of a company or individual on a public internet site which has the effect of prohibiting the award of any new contract to that person, effective throughout the US government. Every contracting officer in the federal government is required by law to check that internet site prior to awarding any contract. If the person’s name is on that site, the contract may not be awarded.

Every US government agency and department has a “debaring official,” who has the authority to enter a debarment (generally three years) against contractors, and to place their names on the internet. Such actions can be taken upon evidence of a broad range of misconduct establishing; (i) any criminal offense; (ii) any serious failure to perform, or history of failure to perform a government contract (whether intentional or negligent); or (iii) any other cause the debaring official determines to be so serious or compelling as to effect the responsibility of the contractor to be trusted with government contracts.

Prior to entering the final debarment, the official sends notice to the contractor advising him of the nature of the alleged misconduct, and provides an opportunity for the contractor to respond with information and argument, both in writing and in person. If the contractor raises a genuine dispute of material fact as to the information stated in the notice, the debaring official will then refer the matter to a judge who will determine the facts, based upon his review of testimony under oath, cross examination of witnesses, and other due process procedures. In the event a debarment is entered, the debarred contractor may contest the action in US federal courts, by alleging that the official abused his discretion, or otherwise acted contrary to law.

Following debarment, or in appropriate cases in lieu of debarment, the debaring official may terminate or defer the action, in consideration of the contractor’s agreement to change its business processes, create or improve its ethics program and take other remedial actions to mitigate the risk that the misconduct will recur. Such is frequently reduced to writing in an “Administrative Agreement,” requiring outside, independent oversight by a monitor or ombudsman who reports to the debaring official.

Debarment and the threat of debarment create significant incentives to companies concerned with the potential misconduct of their employees to employ systems and programs improving the organizations’ ethical cultures.

B. Debarment Regulations Encourage Compliance

² A more detailed description of the US debarment process may be found in my paper, “Suspension and Debarment in a Nutshell.”

The greatest impact of a debarment process is its ability to alter behavior of contractors, even where misconduct has not occurred and the contractor is not on the radar screen of the debarring official. In exercising discretion to debar or not to debar a contractor, the debarring official considers a number of “mitigating factors” set out in the US Federal Acquisition Regulation (“FAR”). Knowing that such factors will be considered in the future in the event the company gets into trouble, most sophisticated companies conform their behavior in advance so as to get “credit” for one or more of those factors.

The most significant factors in this context are:

- Whether the contractor had effective standards of conduct and internal control systems in place at the time of the misconduct, and prior to the time the government learned of the misconduct;
- Whether the contractor has instituted review and control procedures and ethics training programs;
- Whether appropriate disciplinary action has been taken;
- Whether the contractor has eliminated the circumstances within its organization that lead to misconduct; and
- Whether management recognizes the seriousness of this misconduct, and has implemented programs to prevent recurrence.

C. Government Policy on Charging Companies for Crimes Committed by Their Employees

An important feature of US federal law is that any organization may be charged and convicted of any criminal offense that was committed by any employee, so long as the criminal act benefited or was intended to benefit the company. This is a fearsome standard, as any organization, particularly large ones, will routinely have errant employees who cut corners.

The policy of the US Department of Justice (“DoJ”) is not to charge the corporation every time one of its employees commits a criminal offense. In essence, DoJ in determining whether to charge a company with a crime will consider whether the company had an effective compliance and ethics program in place at the time the employee committed the federal crime and, most importantly, whether (i) the program was adequately designed for maximum effectiveness in preventing and detecting wrongdoing, and (ii) management is enforcing the program.

The Government does not take the company’s word for the existence of such a program. DoJ demands evidence that (i) the company has provided sufficient staff, including audit and program management resources, (ii) the employees are informed of the program and are convinced of management’s commitment to it; and (iii) the program is sufficient to detect and disclose wrongdoing. If the Government determines that, among other things, the company has an effective program, it will charge only the employee, and will not

criminally prosecute the company. This is a significant benefit to the company, in terms of its liability, resources and reputation.

D. US Law on Sentencing Organizations

Even where DoJ determines to charge and criminally prosecute a company for the criminal acts of its employee, the company, if convicted, may still benefit from having had an effective ethics program at the time of the commission of the crime.

Federal judges, in imposing criminal sentences upon organizations must choose a penalty within a monetary range set forth by US law in the “US Sentencing Guidelines.” The range is computed mathematically, based upon a number of factors, such as the dollar loss suffered by the victim, the company’s criminal history, and whether the company had an effective ethics program. Points are added to the calculation for crimes causing large dollar losses, and are subtracted from the calculation where it is found that the company had an effective ethics program.

Again, as with DoJ’s decision whether to charge companies, US courts in this context also refuse to take a company’s word for the effectiveness of its program. The following are a few of the factors judges consider in determining whether to lower a company’s Guidelines score, so as to lower the range of the sentence that may be imposed:

- Board of Directors is responsible for the program;
- Ongoing compliance and ethics training;
- A process for employees to report violations;
- Management response upon learning of violations,
 - Discipline, disclosure to and cooperation with the Government
 - Evaluate sufficiency of ethics program and other processes;
- Monitoring the effectiveness of the program, by
 - Audits
 - Employee surveys, and
 - Risk management systems
- Management must actively promote an ethical culture, by
 - Having it be an element of performance ratings
 - Disciplining violators, and
 - Exhibiting ethical role modeling

Because of the large sentencing benefit that is given to organizations with effective ethics programs, companies are incentivized to insure the existence of such programs, even where there is no evidence that a criminal offense has been committed. By planning ahead in this way, companies will be prepared to make a strong case to the judge in the event of conviction at some future date.

E. Mandatory Clauses in Government Contracts

For several years the US Department of Defense has included clauses in large defense contracts, encouraging contractors to have “effective” ethics programs. Although the Defense Federal Acquisition Regulation stated only that the contractor “*should*” have such a program, many companies chose to implement what their customers suggested.

The US Government as a whole decided earlier this year to go beyond what had been requested by the Department of Defense. The FAR now *requires* all US government agencies to include clauses in all large contracts, requiring contractors to have “effective” ethics programs. The description of the programs contractors are required to maintain is similar to that stated in the US Sentencing Guidelines; including requirements for training, procedures to detect and correct improper conduct, high-level management responsibility, commitment of sufficient resources, periodic reviews of the effectiveness of the program, a risk management process, and a reporting mechanism, such as an internal “hotline.”

The most controversial provision of the new FAR requirement is one which essentially tests the effectiveness of many of the mandated features of an ethics program. Contractors will shortly be required to disclose to the Government all offenses committed by employees related to the contract containing the FAR-mandated clause. Failure to do so will subject the contractor to debarment. Many in industry view this as onerous, and unnecessary. The Government views this as required in order to further deter contractor misconduct, and to augment the Government’s limited resources.

The importance to this discussion is that companies that don’t have effective programs that will enable them to detect and report wrongdoing will be hard pressed to argue to the Government later that their failure to report their employees’ violations to the Government was an innocent mistake. This is a strong incentive to insure that internal control systems and programs are in place and working, well in advance of the commission of any criminal violation.

2. An Overview of “Best Practices” of US Defense Contractors

Volumes have been written detailing the elements thought to be important to have in effective ethics programs, with little consensus, either between the Government and Industry, or within the Industry itself. The Government has attempted to list elements it considers important in a number of contexts, most notably in the US Sentencing Guidelines, DoJ charging policy and FAR clauses discussed above. It is useful in light of those detailed elements to consider three broad themes that incorporate many of those elements.

First, of greatest importance is the notion that no program can be effective unless it is designed to address the culture of the organization (“values”), rather than to merely train employees on the rules (“compliance”). Twenty years ago US companies that had programs of any kind, limited those programs to compliance. Attorneys trained employees to comply with US laws and regulations. Those programs have evolved over

the years into, “values-based ethics programs,” that address culture through a holistic program that does more than train, and is not limited to rules. While it is important to encourage employees to obey laws and regulations, such is only a sub-set of the need to encourage employees to “do the right thing,” through values based training, and other important program features. The Government today gives little credit to companies having compliance-only training programs. In fact, evidence of such programs is more frequently used by Government prosecutors and debarring officials against companies, as evidence of intentional wrongdoing and deliberate ignorance.

Second, the best companies exhibit a real commitment by Management to the program. Unless senior executives, including the Board of Directors, truly “get it,” and sincerely communicate their commitment to employees, the program will fail, and the organization’s culture will be one that will effectively encourage unethical behavior. Management commitment can be evidenced in a number of ways. Among other things, leaders lead by example. This includes the decisions they make, and the inclusion of notions of ethics in speeches, and in all they do throughout their daily activities.

Finally, another theme found in companies with effective ethics programs is whether the company has ethics officers empowered to further values within their organizations, and how those officers are used. Many US defense contractors today have designated ethics officers at every facility that can answer employee questions, provide advice on compliance and ethics, investigate complaints, and conduct training. The companies that are truly “best-in-class” do more.

The best companies’ ethics officers don’t do the training; they assist managers and supervisors at all levels to do the training themselves, so that employees will know that the person that matters to them – their immediate boss – truly wants them to behave ethically. Ethics officers are also used by the best companies to “sit at the business table” and to contribute their perspectives to all business decisions, not just those thought to relate to ethics. Lawyers have for years become imbedded into all business discussions, and have made valuable contributions even on issues not initially thought to require legal opinions. Companies that see the value to including ethics officers in business decisions receive similar benefits, and evidence affective ethics programs.

3. A Call to Action: Making Ethical Culture a National Priority

It is no secret that we face a crisis of trust. The people have lost confidence in public officials and those contractors who support the work of their government. No single incident generated this loss. Rather, it is the result of a series of ethical lapses. Each scandal over the last few decades has taken its toll and the government has responded by writing yet another law or regulation without identifying the underlying reason for the ethical failure. This simplistic approach and the accompanying proliferation of rules have not worked. Indeed, the scandals not only have continued, but are increasing in frequency. Individuals like Mel Paisley, Darleen Druyun, Jack Abramoff, Duke Cunningham, and Dusty Foggo all knew the rules. These individuals simply chose to

ignore the rules, leading to a further erosion of confidence in government. The great tragedy is that too many people believe that a new law or regulation is the panacea.

While some rules governing conduct are necessary, governments unfortunately rely too heavily on rules to alter conduct rather than promoting a set of values that change behavior. As a result, governments and their suppliers have developed rules-centric environments rather than cultures based on values. This suggests that the problems we face today do not arise from a lack of rules. If we are to restore the confidence of the people in their governments, then our leaders must move away from this rule-reactive approach to one that instills a culture based on ethical values.

There are four fundamental values necessary to establish an effective ethical culture in any organization: integrity, trust, fairness, and respect. These fundamental values must become a way of life along with the complementary actions required to implement those values: responsibility, courage, and accountability. If governments and their contractors truly incorporate these values into everything they do and into every decision they make, they will create a culture that changes behavior and goes a long way to restoring the confidence and respect of the people.

Creating a more robust ethical culture is not easy. But our nations' leaders can create a new values-based ethical culture by taking ownership of this effort. Accordingly, I urge them to make the establishment of a new robust ethical culture a national priority. With this announcement must come long term dedication and commitment. This effort should not and must not become the obligation of one agency whose focus is on rules. National leaders must personally lead the effort to embed core ethical values in the daily life of every sector of their governments, and make the heads of their departments accountable to them for the success of the effort.

With such accountability, department heads must lead by example. A key element of this leadership includes ensuring that their managers and supervisors at all levels also lead by example and develop appropriate measures to incentivize their subordinates to act in an ethical manner. Furthermore, ethical behavior and efforts to promote organizational ethical culture must be factors in the performance appraisal of every government employee and the evaluation of contractors' performance. Finally, when the inevitable wrongdoing occurs, governments must first examine the culture for the underlying cause of the failure rather than presume a new law or regulation will solve the problem.

Over the last several decades, public confidence in government has continued to erode as each new scandal has resulted in a new round of rule-making. The solution is the creation and implementation of a values-based ethical culture. By making this a national priority heads of state will restore confidence in their governments and in their contractors.

Reform in Defense Sector & Role of Civil Society

Korean Experience of Enhancing Transparency in Defense Sector; DAPA & Ombudsman

Mr. Kang, Sung-Goo (sgk@ti.or.kr), Secretary General of Transparency International–KOREA (South) and Chief Ombudsman of Defense Acquisition Program Administration (DAPA) of the Republic of Korea

1. Transparency International – KOREA (South)

816 Korean NGOs organized “Citizen’s Coalition for Enactment of Anti-Corruption Law” on 24 August 1999, and this network changed into anti-corruption NGO. This network is the predecessor of TI-Korea.

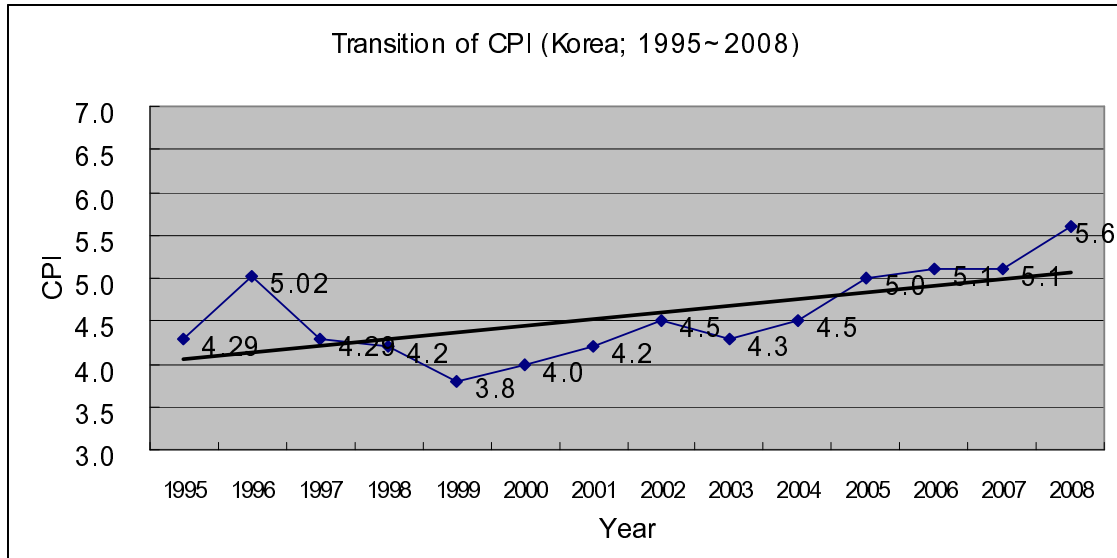
TI-Korea became National Chapter of TI on 30 September 2000, and has 3 local headquarters at Busan, Daegu, and Gwangju.

2. Corruption status of Korea

2008CPI Score; 5.6 out of 10, Rank 40th out of 180 countries surveyed, Rank 22nd out of 30 OECD countries

Most Representative Anti-Corruption Achievements of recent years

- Legislation of Anti-Corruption Law (2001)
- Establishment of national anti-corruption body (KICAC; Korea Independent Commission against Corruption)
- Launching of anti-corruption social pact (K-PACT; Korean Pact on Anti-Corruption and Transparency)
- Reform of Defense Sector and establishment of national defense program (DAPA; Defense Acquisition Program Administration)



Civil Society Initiative in Anti-Corruption

- Historical Background of Korean Civil Society
 - Democratization Movement over 40 Years (1960~)
 - Tradition and Asset : Devotion, Sacrifice, People's Trust

3. Overview of DAPA

Background

In Korea, as in many other countries, defense acquisition projects were perceived as one of corruption-prone areas. President Noh and his government organised a special committee under the PM to prepare reform in defense procurement system in 2003. The final proposal of this committee to promote transparency, fairness and efficiency was accepted by the President and embodied into a new system of **DAPA (Defense Acquisition Program Administration)**, based on the new Law on Defense Acquisition enacted in Dec. 2005.

Policy

- 1) DAPA was launched in Jan. 2006. All defense acquisition programs are handled by this new agency and are subject to be reviewed by **Defense Acquisition Program Review Committee**, including civilian members.
- 2) DAPA adopted **Integrity Pacts** to promote transparency and accountability in the defense procurement process.
- 3) DAPA appointed **three civilian Ombudsmen**, who were recommended by Transparency International – Korea, PSPD(People's Solidarity for Participatory

Democracy), and an Organisation of Board of Audit and Inspection ex-officers. They **receive complaints** from companies as well as other related persons, **investigate** individual cases, if needed, and make **recommendations** to promote transparency and accountability in defense acquisition programs. Through this process they consequently **monitor** the whole process of defense acquisition, including the performance of Integrity Pacts.

Function

DAPA was established for defense force improvement, defense industry promotion, and defense material procurement.

DAPA's functions are to develop defense acquisition policy and execution plan, establish Mid-Term Defense Plan, make up and spend budget, manage defense science technology, establish R&D action plan, promote defense industry and international cooperation, and finally, procure defense materiel in time.

Organization

DAPA consists of 5 Bureaus and 4 Subordinate organizations. DAPA headquarters consist of 5 bureaus. Program Management Agency consists of 9 departments. Contract Management Agency consists of 6 departments.

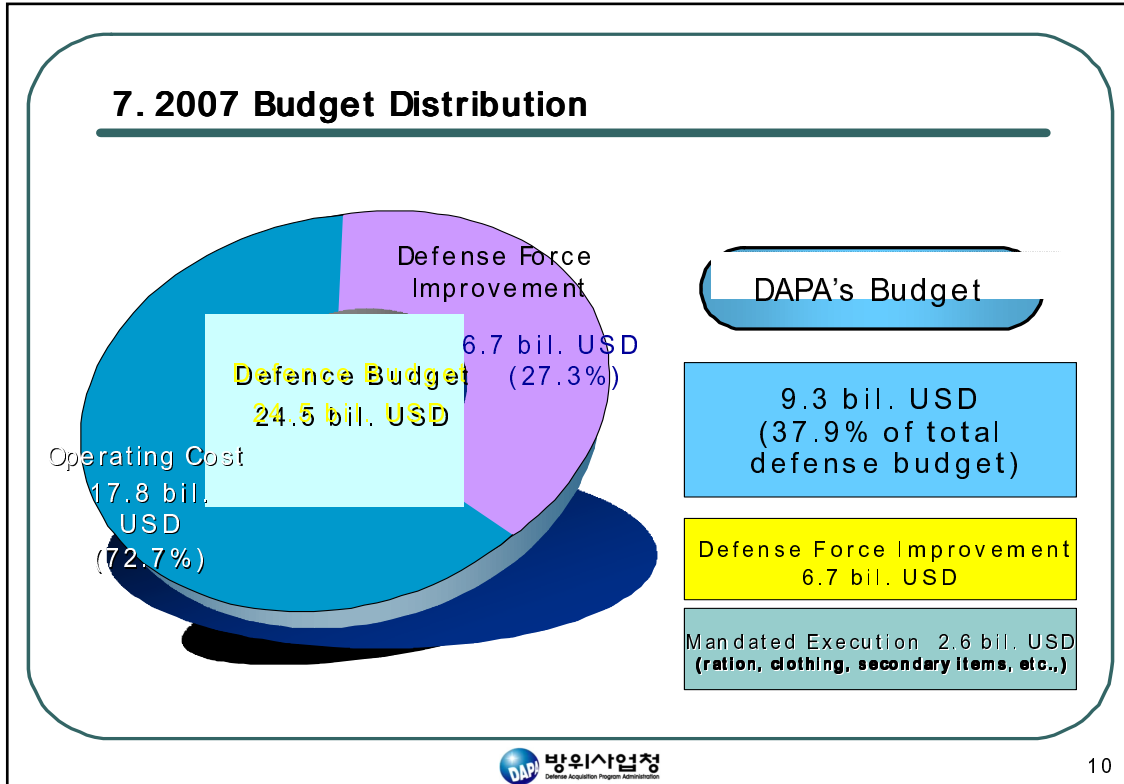
And DAPA has two government-funded institutions, which are “Agency for Defense Development” (ADD) and “Defense Agency for Technology and Quality” (DTaQ).

Human Resources

Total of 1,660 people are working at DAPA. Among these people, 853 are active duty soldiers and 807 are civilians. The ratio between active duty soldiers and civilians is 51 to 49, and the ratio between Army, Navy, and Air Force is 4 to 3 to 3.

Regarding DAPA’s subordinates, 2500 people are working at ADD, and 560 at DTaQ.

Budget



Mission

DAPA set its mission as “Let's contribute to the national interest by pursuing customer centric defense acquisition programs.”

And its vision is “to enhance twice the transparency, efficiency, expertise, and competitiveness by 2010.”

To achieve its mission and vision, DAPA has set 4 policy objectives. These are to promote trust, pursue efficiency, enhance expertise in defense acquisition programs, and to strengthen competitiveness in defense industry and defense R&D.

4. Enhancing Transparency and Promoting Trust

3. Promoting Trust

"Use of Real Name" Policy

- ◆ Introduced Real- Name system in decision making and execution phases of major policies
 - Documentation of personal record of participants, discussions and decisions
 - Permanent preservation of program management history in the form of electronic document after the termination of a program

Disclosure of information

- ◆ Principle to disclose decision making process and its contents
- ◆ Information Disclosure Committee (decisions on disclosure scope, time, methods, etc.)
 - Participation of outside experts to stimulate information disclosure

3. Promoting Trust

Integrity Pacts

- ◆ **Mandatory for defense acquisition- related personnel to submit written Integrity Pledge**
 - DAPA, subordinate institutions, bidding & contracted companies, etc
 - ※ Secured legal binding force by including this as a special term when signing contracts
- ◆ **Sanction on the violation**
 - Defense company's CEO & Executives : Cancellation of designation as a defense industry company
 - Defense company · general company : limited bid participation, contract termination or cancellation

3. Promoting Trust

Ombudsman

- ◆ Can investigate civil petitions raised from acquisition programs and demand for correction or audit
- ◆ Composed of 3 persons recommended by non-profit civil organizations and appointed by the Commissioner

Transparency Evaluation Committee

- ◆ Evaluate systems to assure transparency and demand for correction
- ◆ Composed of less than 7 persons including the chairman (Vice Commissioner)
 - Include more than 2 persons recommended by non-profit civil organizations

5. DAPA Ombudsman

- Appoint three civilian Ombudsmen recommended by
 - TI – Korea,
 - PSPD (People’s Solidarity for Participatory Democracy)
 - Organisation of Board of Audit and Inspection ex-officers.
- Process & Main Function
 - Receive complaints from companies as well as other related persons,
 - Investigate individual cases
 - Make recommendation or ask for auditing, if needed
 - To promote transparency and accountability in defense acquisition programs.
 - Through this process they consequently monitor the whole process of defense acquisition,
 - To include the performance of Integrity Pacts is needed
- Principles of Activity
 - Independency, Continuity, Participatory, Transparency, Neutrality
- Establishment
 - 12 July 2006
 - TI-Korea’s initiative; participation of civil society, introducing Integrity Pacts and Ombudsman
- Operation

- Weekly Meeting (90 times during 20 months)
- Receiving complaints, allocation, investigation, decision making, recommendation or ask for auditing, publication of results
- Among 41 cases, 29 finished, 12 undergoing
- Made 17 recommendations, 9 corrections
- Meaning & Significance
 - First case of Ombudsman based on the Law (Law on Defence Acquisition, article 6; to raise transparency and fairness)
 - First case of participation of civil society in monitoring defense procurement
 - Changes are beginning in old practices for the first time
 - Raise the possibility and necessity of cooperation with and participation of civil society

Object

In order to investigate civil appeal arisen from the process of defense initiative in the position of citizens and request rectification and audit to the commissioner of DAPA to strengthen outside observatory system on defense industry to improve transparency.

Basis

- [Defense Acquisition Program Act] Article 6 (Integrity Pledge System and Ombudsman System)
- [Enforcement Decree of The Defense Acquisition Program Act] Article 5~9 (Integrity Pledge System and Ombudsman System and Etc)
- [Defense Acquisition Program Code] Article 10 ~ 12 (Entrusting Ombudsman and Etc)

Organization

- Ombudsman should be formed with no more than 3 people. With the Article 2 of Non Government Organization and Non-Profit Organization Act, ombudsman will be nominated by Non-Profit Organization and Non-Government Organization and chosen by Commissioner of DAPA.
- Representing Ombudsman and managing all affairs and others, in order to efficiently manage Ombudsman, Ombudsman will sustain itself and the chief of Ombudsman will be mutually elected by the Ombudsmen.

Criteria

- A person who have or had positions as at least as an associate professor in schools designated in Higher Education Act, Article 2 in the areas of defense, accounting, law or public administrator.
- A Person who is qualified as a lawyer, an accountant, a technicians or a patent attorney and have had experience in one of these areas for at least 3 years.
- A person who has worked as at least as a head of department in State Administration with high integrity.

- In addition, a person with great experience and expert knowledge in defense sector with high scholarship and morality.

Term of Office

- The terms of office will be 2 years, and a person can be reelected only once.

Duty and Power

- Investigation on Petitions: hearing statements of related staff, peruse related document, initiate spot search and etc.
- Request rectification and audit to Commissioner of DAPA.
- Announcement on contents of rectification or audit and management results.

Support

- Approve the access of Level 2 Top Secret in order to investigate petitions
- Provide allowance for the Ombudsman investigation in the areas of collecting data, and investigating activities through budget in the guidance of Annual Expenditure Execution Guide.
- Provide traveling allowance for the business trips for the investigation based on the regulation of Public Service Traveling Expenses Provision.
- Supply office and operation administrators for the smooth operation of Ombudsman.

Activities

- Progress of Entrustment of DAPA Ombudsman
 - Request of DAPA Ombudsman candidates from Civil Groups and NGOs: March 20, 06.
 - Register of candidates from Civil Groups and NGOs: March 21, 06. ~ April 4, 06.
 - Formation of Qualification Commission in order to examine qualification of candidates. April 13, 06.
 - Formation of Criterion Commission in order to examine expertise of candidates.
 - Request Security check to the National Police Agency on the candidates. April 25, 06.
 - First entrustment of DAPA Ombudsman and open up of the office; July 12, 06.
 - Second entrustment of DAPA (all of them were reappointed); July 11. 08.
- Investigation of Petitions: Of 20 of August 2008, 41 petitions were registered, 28 of them were completed and 13 of them are still being investigated.
- Holding of Regular Meetings: Total of 107 meetings held (of September 30, 08)
 - Every Wednesday 15:00 ~ 18:00
 - The meeting takes in order of distribution of petitions, discussions on investigation, and arrangement on the results of investigation.
- Arrangement of Operation Regulation: Enactment of Operational Guideline of Ombudsman.
- Education of DAPA staffs

- Education on Morality/ Lecturer: Ombudsman Kang-Wook, Choi/
Training Date: May 28th 2007
- Education on Anti-Corruption: Lecturer: Ombudsman Sung-Goo Kang/
Training Date: June 11 2007
- Education on Basis of Audit: Lecturer: Ombudsman Jung-Moo Han/
Training Date: February 11 2008 ~ February 15th 2008
- Participating in international and national conferences in order to promote, propagate and introduce results of Korea's transparency in the defense sector.
 - International Workshop on National Integrity System (September 2006, Seoul)
 - 12th International Anti-Corruption Conference (November 2006, Guatemala)
 - OECD workshop on the Improvement of Transparency in Public Procurement (2006 Paris); The success of DAPA Ombudsman was introduced as an excellent case at the workshop. Moreover, in OECD's report, "Integrity in Public Procurement," Korea's transparency enhancement was included as a successful case.
 - EARM (East Asia sub-Regional Meeting) (Ulaanbaator, Mongolia August 2007)
 - Transparency International Asia-Pacific Conference (Manila, Philippines May 2008)
 - UN Global Compact Anti-Corruption Symposium (Seoul March 2008)
 - UN Global Compact Asian Dialogue on Corporate Governance (Seoul, June 2008)
 - Transparency International Asia-Pacific Regional Forum on Transparency in Public Procurement (Manila May 2008)
 - Public Management and Governance Conference (Sungkyunkwan University, Seoul March 2008)
 - Spring Conference of Korea Administration Institute (April 2008)
 - Workshop on National Anti-Corruption Network Activists (June 2008)
- Printing and distribution of DAPA Ombudsman brochure
 - 3000 copies were distributed including Transparency International-Korea and Anti-Corruption and Civil Rights Commission.
- Holding of DAPA Ombudsman led Open-Debate
 - Topic: The function of Ombudsman and transparency in defense sector
 - Date/Place: September 18th 2007 / Air-Force Hall
 - Invites: Defense Industries, related organizations, civil societies and 150 personnel.
- Awarded grand-prize of the 4th, Ombudsman
 - Award Criteria: It was nationally carried out based on the performance of 580 administrative organizations in Korea. The one with most active and exemplary was organization or a person was chosen to remember its/her/his contribution.
 - Date/Place: November 1st 2007/Korea Press Centre
 - Organizer: Seoul Newspaper and Ombudsman of Korea.

- Award Content: As a group, Anti-Corruption and Civil Rights Commission was awarded, Special Award. As an individual, Ombudsman Operation Analyst was awarded with the grand prize.
- Awarded the 7th Transparent Society
 - Award Criteria: Among State Administrative Organizations, Public Agencies, Corporations, Broadcasters, Press, Civil Societies and about 1,000 institutions were candidates and as for grand prize, an individual, anti-corruption program or an institution that contributed to the areas of anti-corruption and transparent society was chosen.
 - Date/Place: November 30 2007. National Assembly Hall
 - Organizer/Sponsor: Transparency International – Korea and Korea Independent Commission Against Corruption.
 - Award Content: Was given to Ombudsman Operation Analyst who have contributed to the establishment of DAPA Ombudsman

6. Challenges

- New Government
 - Presidential election in December 2007 and change of regime
 - Pro-Business Policy
 - Reforming government organizations
 - Closing KICAC
 - Integrating KICAC, The Ombudsman of Korea, Administrative Appeals Commission into “Anti-Corruption & Civil Rights Commission” (ACRC)
 - Setback of Anti-Corruption Policy
 - Restriction of Participation of Civil Society
 - Lack of communication with civil society & Bad-Governance
 - Denial of anti-corruption achievements of precedent government and setback of anti-corruption policy
 - The Council for the Korean Pact on Anti-Corruption and Transparency (K-PACT Council) is undergoing dissolution
 - Trying to set-back DAPA under Ministry of Defense
 - Pursuit of privatization of public corporations
 - Lessen/removal of several business related regulations
 - Restriction of civil society participation and disappearance of governance systems
 - Drastic and simultaneous abolition of committees
-



International Anti-Corruption Conference

**Anti-Corruption Standards
of the EU Defence Sector**

October 31, 2008 - Athens

ASD Common Industry Standards 



A proactive answer from the European industry

- Preliminary discussion between BAE, Dassault, EADS & Thales in 2002
- Talks and debates with our US competitors and Transparency International UK

... Setting up a dedicated structure

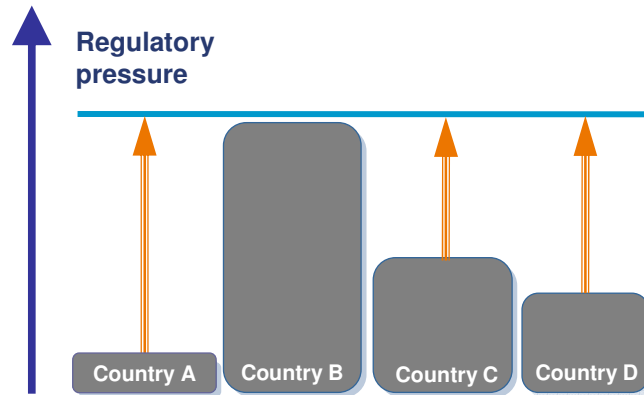
- An Anti-corruption task Force put in place in 2006
- Chaired by Professor Carbone
- Gathering representatives of major European Industries

... producing standards

- A benchmark process among several policies and procedures
- A document built up by François Vincke

October 2008

Responsibilities of MNCs



October 2008

Company compliance needs to be shared

- Distortion of competition can not be tolerated
- A level playing field is essential
 - shared norms: OECD, UNCAC, etc.
 - shared by all exporting countries and by emerging competitors
 - shared by all companies, to start with OECD countries

An appropriate answer: developing a sectorial approach

- Some major initiatives had already been launched:
 - 'Publish what you Pay in the Extractive Industry
 - Equator Principles in the Financial Sector
 - Partnering Against Corruption Initiative (PACI) within the WEF

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Ethics and Corporate Responsibility



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**Common Industry Standards for
European Aerospace and Defence**

October 2008

4

Ethics and Corporate Responsibility



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A comprehensive set of standards

- A zero tolerance commitment
- Clear statement from the General Management: '*give the tone at the top*'
- Defining basic procedures particularly for the management of consultants and intermediaries: appropriate organization, empowerment, due diligence, payment rules, ...
- Training and awareness
- etc.

What has been done:

- June 07: adoption by the ASD Council
- October 07 : presentation to National Associations
- 1st semester 08: signed by all National Associations (more than 30)

What is underway

- Requirement for each company to endorse the CIS
- An Ethics Forum organized in October 08 to monitor the process

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Ethics and Corporate Responsibility



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An important awareness process under the responsibility of each National Association

- To give information and awareness to companies, particularly SMEs
 - ⦿ Organisation of dedicated seminar, publication of appropriate documentation
 - ⦿ Translation of the CIS in national language, etc.
- To provide help so that 'MDs are not frightened'
 - ⦿ Elaboration of a user friendly tool-kit
- To encourage companies to sign the CIS
 - ⦿ Sending a letter from the head of each NA
 - ⦿ Some of them will need more information / time to implement a compliance process

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Ethics and Corporate Responsibility



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An important instrument: The 'tool kit'

- An exchange of best practices among the Task Force members
- A set of materials, easy to handle by SMEs
- The content:
 - ⦿ simplified compliance program and "commitment from the chairman" example
 - ⦿ application forms and due diligence templates for consultants
 - ⦿ confirmatory clause for intermediary's agreement to introduce the consultant contract
 - ⦿ frequently asked questions
 - ⦿ targeted employees training slides

**The tool kit is available
on the ASD website for its members**

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Ethics and Corporate Responsibility



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Next on the agenda

- To set up an International Forum on Business Ethics
- Outcome expected for the June 2009 Le Bourget Air Show

What is to be done: to develop worldwide standards

- A Working Group has been launched during EU-US CEO meeting during Farnborough Air Show between ASD and AIA
- This first step of US-EU standards should be extended to the ICCAIA and any other country (Russia?)

Final objective

- To force every exporting countries to abide by the same anti-corruption standards
- To pressure democratic governments not to buy from countries which have not adopted similar rules: 'label concept'

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Ethics and Corporate Responsibility



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Every actors need to be compliant

- Corruption practices need two actors:
 - A process between an 'active' corruptor and a 'passive' corrupted!
 - To date, preventing corruption is only enforced by supplying companies
 - This unbalanced situation explains that bribery is still endemic
 - Despite 30 years of FCPA and 10 years of OCDE regulations
 - Corporations are in the front line and victims of corruption
- ➔ **It is time to stop requesting business 'full repression' and / or 'beauty contest'**

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A new compliance paradigm!

- Priority must be given to the improvement of Public Procurement process requiring:
 - precise, detailed and publicly known procedures
 - transparent and clearly motivated decisions
 - efficient audits with real sanctions
- Minimum set of procedures to be defined
 - high legitimate experts (UN, OECD, World Bank, ICC, NGOs, etc.)
- Companies should compete only if
 - these minimum set of procedures are enforced...
 - ... and audited by third parties (international specially trained officers)

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