The United Nations convention against corruption: a successful example of international action against economic crime

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This article briefly outlines the progress made in recent years in the development of an international legal framework to combat economic crime, with a specific focus on the United Nations Convention against Corruption. The author notes the impressive progress made by the international community in both the creation and implementation of the Convention, particularly through the adoption of the Implementation Review Mechanism.

Keywords: economic crime, UN, convention.

Introduction

Great progress has been made in recent years towards the realization of an effective international normative framework for combating economic crime. A series of international agreements and initiatives addressing issues such as organised crime, corruption and human trafficking have produced a blueprint for action and a framework for cooperation amongst States in their collective efforts to combat these corrosive phenomena.

Progress in the development of this international legal framework has reflected increasing awareness amongst all levels of society of the crippling impact of economic crime on the ability of governments to carry out their role

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effectively. Awareness of the effects of corruption, in particular, has increased dramatically in recent times and there has been a rejection both of the cultural arguments previously used to justify it and of the idea of corruption as a harmless or victimless crime. The international nature of economic crime and, more specifically, of corruption has also now been recognised, with their effects being felt across borders and many of those responsible for grand acts of economic crime seeking to escape punishment through the transfer of proceeds across jurisdictions.

A phenomenon with such diverse sources, complex effects and global impact called for an equally comprehensive, detailed and international framework to fight it. Building on the momentum created by the adoption of the United Nations Convention against Transnational Organised Crime (UNTOC), agreement was reached in December 2003 on the United Nations Convention against Corruption (UNCAC). In adopting this instrument, the international community responded to the unique challenges that such a widespread and complex issue brings and took a decisive step forward in the fight against corruption.

The adoption of the UNCAC Implementation Review Mechanism by the Conference of the States Parties to the Convention in 2009 represents a further landmark in the collective efforts of the international community to combat economic crime. While still in its formative stages, the review mechanism has already both enhanced the ability of the international community to assess progress in implementation of the provisions of the Convention and created a framework in which States are able to share best practices and identify thematic areas where further cooperative action may be beneficial.

The agreement of a comprehensive and innovative instrument such as the United Nations Convention against Corruption shows the international community at its most dynamic and relevant. The broad scope of the Convention and the measures adopted to implement it have also demonstrated how, when the will is there, the international community can come together to develop a meaningful and effective international regime aimed at addressing economic crime. Thanks to the tireless efforts of people like dr Dušan Cotič in both raising awareness of these issues and working towards an international solution, significant steps have now been taken towards a future in which corruption and economic crime are a thing of the past.
The United Nations Convention Against Corruption: A comprehensive framework for combating corruption

The UN Convention against Corruption is the world’s first global, comprehensive and legally binding anti-corruption instrument. Calls for a truly global anti-corruption instrument followed a wave of regional and international instruments aimed at addressing the issue of corruption including the Inter-American Convention against Corruption, the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions, and the Council of Europe’s Criminal and Civil Law Conventions on Corruption. While these instruments provided an excellent basis for action in relation to specific forms of corrupt conduct or in relation to specific regional areas, an appetite had grown in the international community for a global anti-corruption instrument to reflect the global nature of the corruption epidemic.

It was, however, amidst the negotiations for the United Nations Convention Against Transnational Organized Crime that the idea of a specific international instrument addressing corruption began to crystallise. Capitalising on the momentum built following the agreement of UNTOC, the General Assembly established the United Nations Ad Hoc Committee for the Negotiation of a Convention Against Corruption, tasking them with drafting a Convention with an ambitiously broad range of components.

Little more than eight years after the official signing of the Convention in Merida, Mexico on 9 December 2003, 159 States are now parties to the Convention and it is hoped that steady progress will continue towards universal ratification.

The geographic range of States that have signed up to the Convention is also matched by its substantive breadth. The Convention takes a holistic view of the actions that are necessary from States in order to combat corruption. Rather than merely focusing on the criminalization of particular forms of conduct, the Convention also contains provisions relating to prevention, international cooperation, asset recovery and the provision of technical assistance. It is this comprehensive approach to combating corruption that has led the Convention to be recognised as the key standard by which State actions against corruption shall be measured.

1 GA Res. 55/61 of 4. December 2000
In the area of prevention, the Convention requires States to develop and implement or maintain effective coordinated anti-corruption policies, with a particular focus on encouraging the proper management of public affairs including the importance of transparency, the independence of the judiciary and the inclusion of the private sector and civil society in efforts to combat corruption. States Parties are also required to institute a comprehensive regulatory framework for financial institutions with the aim of combating all forms of money-laundering.

The Open-ended Working Group on the Prevention of Corruption has been tasked by the Conference of State Parties to the Convention with encouraging the implementation of the these provisions of the Convention. To date, the Working Group has provided a forum for the sharing of best practices in relation to issues such as public procurement, the role of the media in anti-corruption efforts, and the use of awareness raising initiatives, public reporting and codes of conduct in combating corruption.

Chapter III of the Convention requires States Parties to criminalise a range of corruption-related offences including bribery of national public officials, foreign public officials and officials of public international organisations. States Parties are also required to consider adopting measures so as to criminalise illicit enrichment, bribery in the private sector and trading in influence.

In line with its holistic approach, the Convention does not stop at merely requiring the criminalisation of specific forms of conduct but also places requirements on States regarding the effective implementation of sanctions where an offence is committed, the establishment of jurisdiction over corruption offences, and requires States to take measures to ensure cooperation between national authorities, financial institutions and law enforcement bodies in their anti-corruption efforts.

Cooperation at the international level is also a key theme and aim of the Convention and a detailed range of provisions in Chapter IV provide an international cooperation framework for State Parties, particularly in relation to extradition and mutual legal assistance. It is in these provisions that the

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2 CAC/COSP/WG.4/2011/2
3 CAC/COSP/WG.4/2011/3
4 UNCAC Article 30
5 UNCAC Article 42
6 UNCAC Articles 37 - 39
The influence of the UNTOC can most clearly be seen, with the excellent work from that Convention being replicated in the provisions of UNCAC, thereby ensuring a level of coherency between these complementary international instruments.

The provisions in Chapter V relating to asset recovery were one of the true innovations of the Convention; no other international instrument had previously addressed this issue. In addition to providing that the return of assets is a fundamental principle of the Convention, UNCAC obliges States Parties to introduce measures requiring financial institutions to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds and assets and to conduct enhanced scrutiny of the accounts of senior public officials. Furthermore, the Convention requires States Parties to take measures to facilitate the direct recovery of property that has been obtained as a result of corruption, particularly through international cooperation with other States Parties and through mutual recognition of confiscation orders.

The work of the Working Group on Asset Recovery, the longest-standing implementation group under the Convention having been established at the first Conference of State Parties in 2006, has provided impetus for States Parties in the implementation of the asset recovery provisions of the Convention. In particular, the Group has provided a forum for discussing new legislation introduced by State parties, encouraged deliberations amongst State parties regarding the practical aspects of asset recovery cases and is presently supporting the development of a global network of asset recovery focal points.

As a consequence of the recognition in the Convention of the increasing importance and relevance of asset recovery to the fight against corruption and economic crime more broadly the United Nations and the World Bank in 2007 launched the Stolen Asset Recovery Initiative (StAR) aimed at supporting international efforts to end safe havens for corrupt funds. Since its inception, StAR has played an active role in supporting States in their asset-recovery efforts, providing expert assistance to countries in relation to specific asset-recovery cases and acting as a centre of excellence, producing detailed publications and training materials including the Asset Recovery Handbook for Practitioners.

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7 See Articles 16–18 UNTOC and Articles 44–46 UNCAC.
8 COSP Res. 1/4 Establishment of an intergovernmental working group on asset recovery.
In addition to requiring a comprehensive range of actions from States, the Convention also provides a basis for the provision of technical assistance to those States who require help in meeting their obligations under UNCAC. Specifically, States Parties are called upon to afford each other the widest measure of technical assistance in their respective programmes to combat corruption\textsuperscript{10}, to assist each other in conducting evaluations and studies as to the causes of corruption\textsuperscript{11} and to make concrete efforts to enhance their cooperation with developing countries with a view to enhancing their capacity to combat corruption\textsuperscript{12}. These provisions also provide a basis for the provision of technical assistance by the United Nations Office on Drugs and Crime to developing countries. Last year, for example, UNODC provided technical assistance to a range of States through its global Anti-Corruption Mentor Programme. This programme provides specialized expertise through the placement of anti-corruption experts in government institutions. In 2011, regional mentors provided assistance in East Africa, Central America and the Caribbean, East Asia and the Democratic Republic of the Congo.

While UNCAC remains a relatively young instrument in international law terms, real results are already being identified as a result of its implementation. The growing body of knowledge that it is emerging through the Implementation Review Mechanism, and the vigour with which states have participated in that process, also demonstrates the seriousness and energy with which States Parties have sought to implement their obligations under the Convention and evidences the essential role that international cooperation can play in combating economic crime.

\textbf{The Implementation Review Mechanism:
A landmark in the fight against corruption}

The role of UNCAC as an innovative and comprehensive framework for action by States in the fight against corruption has been further enhanced by the recently-established Implementation Review Mechanism (IRM) which provides for the peer review of States Parties’ efforts in implementing

\textsuperscript{10} UNCAC Article 60, para. 2  
\textsuperscript{11} UNCAC Article 60, para. 4  
\textsuperscript{12} UNCAC Article 60, para. 7
the Convention. The adoption of the Terms of Reference of the IRM at the third Conference of State Parties in Doha marked a major step forward in the effective implementation of the Convention and in the fight against corruption more broadly.

The IRM consists of two review cycles, each of 5 years. In the first review cycle each State Party will have their implementation of Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation) of the Convention assessed. In the following cycle (beginning in 2015) the focus will be on Chapter II (Preventive measures) and chapter V (Asset recovery). Each State party is reviewed by two other States parties.

The review process began in July 2010, with 26 States subject to review in the first year of the cycle. In July 2011 a further 41 reviews began and it is anticipated that the first round of reviews will be completed in the coming months.

The process followed during a review begins with an initial document-based stage during which the State Party under review must complete a comprehensive self-assessment checklist in relation to their implementation of Chapters III and IV of the Convention. State parties are encouraged to view this as an opportunity to engage in a broad national consultation with relevant stakeholders such as the private sector and civil society and to include the input from such groups in their responses. The use of the self-assessment checklist as a basis for the review process has been a success with all twenty seven States under review in the first year having provided their responses. From the second year, complete responses to the checklist have already been received in well over half of the reviews.

On the basis of the completed self-assessment checklist, the reviewing States then produce a desk review of the implementation of the Convention by the State Party under review. This desk review provides the basis for a stage of interactive dialogue between the State under review and the reviewing States, during which a detailed discussion of the relevant legislation, policies and practices of the State under review takes place, including exploration of specific challenges and successes. Following completion of the desk review and interactive dialogue stages the reviewing States then produce a report, outlining the best practices and potential areas for improvement as regards the implementation of the Convention by the State party under review. An executive summary of each country report is made publicly available. To date, eleven reports from the first year of the review mechanism have been concluded.
While the review mechanism is still in its early stages, States Parties have shown an encouraging commitment to participating actively in the process. This has been evidenced by the number of State Parties who have invited reviewing States to carry out a country visit as part of the review process, with twenty one States choosing this method of interactive dialogue in the first year and at least a further twenty one country visits already anticipated in the second year of the review cycle. This is a further demonstration of the continued momentum and energy which has marked the efforts of the international community throughout the process of first negotiating the Convention, then agreeing its implementation modalities and now participating in the mechanisms that have been established.

Furthermore, in addition to allowing for the identification of best practices and challenges at country-level, the IRM also provides an excellent tool for the identification of general trends amongst State parties. The information gathered from the review process and the key thematic challenges of implementation that emerge will be crucial in assisting States Parties, UNODC and other international organisations in focusing their work and technical assistance programmes in areas that will most effectively help States to combat corruption.

Conclusion

In the last ten years there has been a recognition amongst the international community both of the importance of addressing the issue of corruption and of the need to take a comprehensive, international and cooperative approach in order to combat it effectively. The United Nations Convention against Corruption has rapidly been accepted as the international standard to guide States anti-corruption efforts and the recently established Implementation Review Mechanism provides States with an opportunity to identify common areas in which further international cooperation will yield even better results. This represents an impressive change from only fifteen years ago when the first calls for an international anti-corruption instrument began to be heard, and serves as an example of how States, with support from the United Nations, can rise to meet common challenges. As such, the United Nations Convention against Corruption may act as a model for future developments in the international normative framework as it relates
to economic crime. The rapid agreement and implementation of the UNCAC demonstrates how much can be achieved when a sense of momentum amongst the international community is harnessed and combined with the energy and expertise of those in academia, civil society and international organisations such as the United Nations.

While such developments and the sense of momentum we presently have should be applauded, we must also recognise that there is much left to do. In particular, the information obtained from the Implementation Review Mechanism should now provide a platform for the provision of targeted and effective assistance to States in their efforts to implement the provisions of the Convention. This is an opportunity that must not be lost if we are to continue the excellent progress that has already been made.

References


UN Doc. CAC/COSP/WG.4/2011/2
UN Doc. CAC/COSP/WG.4/2011/3
UN Doc. COSP Res. 1/4
UN Doc. GA Res. 55/61


Konvencija Ujedinjenih nacija protiv korupcije: uspešna intervencija međunarodne zajednice protiv ekonomskog kriminala

Članak kratko skicira progres u razvijanju međunarodnog zakonskog okvira koji se odnosi na ekonomski kriminal i to sa posebnim naglaskom na Konvenciju Ujedinjenih nacija protiv korupcije. Autor zapaža značajan uspeh međunarodne zajednice kako u pogledu stvaranja, tako i u pogledu implementacije Konvencije, naročito kroz prihvatanje mehanizma za razmatranje implementacije.

**Ključne reči:** ekonomski kriminal, Ujedinjene Nacije, konvencija.