

Module 5

International Anti-Corruption Framework

Chapter 1

United Nations Convention Against Corruption

The advent of globalization has brought about greater cooperation and economic interdependence between nations. However this has also led to an increase in the prevalence of transnational economic crimes. As most domestic legislations suffer from limitations in tackling transnational economic crimes, the United Nations Convention against Corruption, 2003 (UNCAC) was formulated. It creates clarity by enacting a set of general norms for the identification and punishment of corrupt conduct, including the active and passive bribery of foreign public officials.

The UNCAC is an international anti-corruption treaty adopted by the UN General Assembly in October 2003. It is the only legally binding universal anti-corruption instrument.

It has a worldwide coverage and currently there are 189 State Parties (countries that have ratified the Convention). India signed the UNCAC on 9 December 2005 and subsequently ratified it on 9 May 2011.

It lists out a series of offences that should be criminalised and covered by legal provisions in every jurisdiction covered by UNCAC. It also places obligations on the State Parties to assist each other help each other in preventing and combating corruption. It seeks the participation of citizens and civil society organizations in the accountability processes and stresses upon the importance of citizens' access to information.

The UN Office on Drugs and Crime (UNODC) in Vienna serves as the Secretariat for the UNCAC

The UNCAC has eight chapters and 71 articles. It covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as

bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.

While many of its provisions are mandatory, some measures carry an obligation to consider adopting a provision, and others contain optional provisions. In addition, many provisions of the Convention make a reference to working within the principles of a State's domestic law, which allows significant room for different interpretations of the Convention's requirements in any given country.

Main Goals

- a) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b) to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- c) to promote integrity, accountability and proper management of public affairs and public property.

Interestingly, the UNCAC does not define corruption but rather defines a series of offences that should be criminalised and covered by legal provisions in every jurisdiction covered by UNCAC. These include bribery of national and foreign public officials and in the private sector, embezzlement, money laundering, concealment, and obstruction of justice. As far as agents of corrupt practices are concerned, UNCAC uses a functional definition of the term "public official", which covers anyone who holds a legislative, administrative, executive or judicial office, or performs a public function or provides a public service.

Preventive Measures enjoin upon State Parties to have policies to prevent corruption as well as bodies or agencies to coordinate and oversee their implementation. They further require to have in place transparent and competitive public procurement systems as well as transparency and

accountability in the management of public finances, a merit based civil service with frameworks to prevent and address conflicts of interest, enhanced transparency in the public administration auditing and accounting standards for the private sector, independence of the judiciary and prosecutors, active involvement of civil society, non-governmental organisations and community-based organisations in efforts to prevent and combat corruption, as well as measures to prevent money-laundering.

Under **Criminalization and law enforcement** measures, States Parties are required to criminalise bribery as well as embezzlement of public funds. Other offences that require to be criminalised include obstruction of justice and the concealment, conversion or transfer of criminal proceeds. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Then there are certain acts that states are encouraged – but not required – to criminalise include acceptance of bribes by foreign and international public officials, trading in influence, abuse of function, illicit enrichment, bribery and embezzlement within the private sector, money laundering and the concealment of illicit assets. State Parties are enjoined upon to address other issues related to enforcement and prosecution, including protection of whistle blowers and witnesses in corruption cases, as well as remedies for corruption, such as freezing assets and compensating victims.

International Cooperation provisions mandate State Parties to assist each other in cross-border criminal matters including in prevention, investigation, and the prosecution of offenders. This includes gathering and transferring evidence of corruption for use in court. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Cooperation in criminal matters is mandatory. In civil and administrative matters, it must be considered.

Asset Recovery is a fundamental principle of the Convention and involves the return of proceeds from corruption to its country of origin is one of the core objectives and States Parties are required to “afford one another the widest measure of cooperation and assistance in this regard.” The UNCAC provisions lay a framework for countries to adapt both their civil and criminal

law in order to facilitate tracing, freezing, forfeiting, and returning funds obtained through corrupt activities. The requesting state will in most cases receive the recovered funds as long as it can prove ownership. In some cases the funds may be returned directly to individual victims.

UNCAC provisions obligate **Technical assistance and information exchange** among State Parties. Technical assistance refers to support aimed at helping countries comply with the UNCAC's provisions. These include provisions on training, material and human resources, research, and information sharing. The Convention encourages trainings for personnel responsible for preventing and combating corruption on topics such as investigative methods, planning and developing strategic anti-corruption policies, preparing requests for mutual legal assistance, public financial management, and methods used to protect victims and witnesses in criminal cases. States Parties, based on their own capacity, shall consider providing technical assistance to others, especially to developing countries, and shall consider helping each other conduct evaluations and studies on the forms, causes, and costs of corruption in specific contexts, with a view to developing better strategies and action plans for combating corruption. States Parties should also consider helping each other conduct evaluations and studies on the forms, causes and costs of corruption in specific contexts, with a view to developing better policies for combating the problem.

Structure

The Conference of the States Parties (COSP) is the main policy-making body of the Convention. It supports States parties and signatories in implementing the Convention and provides policy guidance to UNODC to develop and implement anti-corruption activities.

All States that have ratified the Convention are part of the COSP, while signatories are entitled to participate as observers in the Conference. Non-signatories, inter-governmental and non-governmental organizations can apply for observer status at its sessions.

The Conference meets every two years and adopts resolutions and decisions to further its mandate.

The Conference has created subsidiary bodies to assist in carrying out its work. The Implementation Review Group is an open-ended intergovernmental group of States Parties, which provides them with an opportunity to report on the implementation status of UNCAC provisions as well as to share information on best practices and establish dialogues on emerging issues.

The Working Group on Prevention is responsible for advising and assisting the Conference in regards to preventive measures referred to above. The Working Group on Asset Recovery is responsible for advising the Conference and assisting the implementation of provisions on the return of proceeds of corruption.

UNCAC provides an international legal basis for cooperation along with universally agreed concepts of corruption and ways to address it within one framework. It has helped foster international exchange of expertise, good practices and lessons learned, and it can be instrumental in coordinating international assistance.
