



Overview of the United Nations Convention Against Corruption

The new United Nations Convention against Corruption [hereinafter “UN Convention”]¹ was opened for signature in Merida, Mexico, on December 9, 2003. Once it enters into force, the UN Convention will become the first and the most comprehensive international legally-binding anticorruption instrument of truly global reach.²

The UN Convention applies “to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of [corruption] offenses.”³ According to Article 1, the Convention has a threefold **purpose** that includes:

- “(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...;
- (c) To promote integrity, accountability and proper management of public affairs and public property.”

The UN Convention sets forth **five fundamental principles** that are crucial for an anticorruption framework. Similarly to prior regional conventions, it requires the participating states:

1. To criminalize certain offenses covering acts of corruption, and
2. To cooperate internationally in preventing, investigating and prosecuting corruption offenses.

Unlike prior instruments, however, the UN Convention introduces new substantive elements into international anticorruption framework, requiring the participating states:

3. To undertake preventive measures – the first step towards tackling corruption, and
4. To aid each other in the recovery of illicitly acquired assets.
5. The final overriding theme of the UN Convention is **transparency**. Different aspects of transparency are addressed, *inter alia*, in the following Articles of the Convention:
 - Article 5.1 (general corruption prevention measures);
 - Articles 7.1(a) and 7.4 (preventing corruption in the public sector);
 - Article 9 (transparency in public procurement and management of public finances);
 - Article 10 (public reporting and transparency in public administration); and
 - Article 12.2(c) (preventing corruption in the private sector) of the Convention.

¹ Available at <http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf>.

² According to Article 68, the UN Convention will enter into force on the ninetieth day after the deposit of the thirtieth instrument of ratification. Experts estimate that the UN Convention may enter into force at the earliest at the end of 2005.

³ UN Convention, Article 3.1.

The UN Convention dedicates an entire chapter to **prevention**, calling upon the participating states:

- to implement preventive anticorruption policies and practices at the national level, both in the public and the private sectors (Articles 5, 7, and 12);
- to establish independent anticorruption agencies (Article 6); and
- to promote the participation of civil society in preventing public corruption and raise public awareness of corruption (Article 13).

The Convention outlines other measures, such as:

- the application of codes of conduct for public officials (Article 8);
- objective criteria for the recruitment and promotion of civil servants (Article 7.1);
- enhanced transparency in the criteria for candidates and in the financing of election campaigns and political parties (Articles 7.2-7.3); and
- measures to strengthen the independence of the judiciary and the prosecution (Article 11).

All preventive measures should “reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”⁴

The UN Convention complements this broad range of anticorruption preventive measures with provisions on mandatory or optional **criminalization** of certain acts.⁵ Preliminarily, the UN Convention does not provide a uniform definition of what constitutes *corruption* under international law, taking the approach that corruption is a fluid and constantly evolving concept. Instead, it adopts a descriptive approach and provides for criminalization of different forms of corrupt behavior that go beyond simple bribery of public officials (which the traditional international law has regarded as the basic paradigm of corruption and which is covered by Articles 15-16 of the Convention) and extend to:

- embezzlement (Article 17);
- trading in influence (Article 18);
- abuse of functions (Article 19);
- illicit enrichment (Article 20);
- laundering of proceeds of corruption (Article 23);
- private sector bribery and embezzlement (Articles 21-22);
- concealment of property obtained as a result of corruption (Article 24);
- obstruction of justice (Article 25); and
- participation in and attempt to commit corruption offenses (Article 27).

Further, legal persons must be held liable for participation in corruption offenses (their liability may be criminal, civil or administrative) “without prejudice to the criminal liability of the natural persons” (Article 26).

The UN Convention also calls for procedural measures that support criminalization. These are the provisions related to the prosecution of corruption offenses and enforcement of national anticorruption laws, such as:

⁴ *Id.*, Article 5.1.

⁵ Under the UN Convention, the participating states are under a legal obligation to establish as criminal acts only some of the forms of corruption; in other cases, the states must simply consider doing so. It should be noted that the UN Convention, in many respects, relies extensively on non-mandatory language, thus demonstrating the need to take into account the differences between the participating states and in their levels of development.

- cooperation between national law enforcement authorities, specialized anticorruption agencies, and the private sector (Articles 37-39);
- use of special investigative techniques (Article 50);
- evidentiary standards and rules for adjudicating corruption offenses (Articles 28, 30);
- protection of witnesses, victims and whistleblowers (Articles 32-33);
- allowing the freezing, seizure and confiscation of proceeds and instrumentalities of corruption (Article 31);
- overcoming obstacles that may arise out of the application of bank secrecy laws (Article 40); and
- addressing the consequences of acts of corruption (Article 34), including through compensating for damages caused by corruption (Articles 35).

Finally, recognizing that official immunity from prosecution may present a major obstacle to combating corruption, Article 30.2 of the UN Convention requires the participating states “to establish or maintain ... an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating [corruption] offenses...”.

The UN Convention recaps earlier provisions on *international cooperation* in preventing, investigating and prosecuting corruption, stating that participating states “shall cooperate in criminal matters ... [and] shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.”⁶ Such enhanced international cooperation may take forms of:

- extradition (Article 44);
- mutual legal assistance in gathering and transferring evidence for use in court (Article 46);
- transfer of sentenced persons (Article 45) and of criminal proceedings (Article 47);
- exchange of information and other forms of law enforcement cooperation (Articles 48, 61); and
- joint investigations (Article 49).

A related issue is training and technical assistance, the receipt of which is especially important from the perspective of developing countries that may not have the capacity to implement the provisions of the UN Convention effectively. This is also a signal to the donor community that anticorruption technical assistance should be one of the top priorities. Thus, participating states are required to develop specific training programs for their personnel responsible for preventing and combating corruption (Article 60.1). They should also “consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training ... and assistance and the mutual exchange of relevant experience and specialized knowledge...”⁷

Finally, in a major breakthrough in comparison with prior conventions, the UN Convention contains a separate chapter on *asset recovery*, the final “fundamental principle” of the Convention. Chapter V of the Convention seeks to reconcile the needs of countries seeking the return of illicit assets with the legal and procedural safeguards of the countries whose assistance is sought. First, financial institutions are encouraged:

- to verify the identity of customers and beneficial owners of high-value accounts; and

⁶ *Id.*, Article 43.

⁷ *Id.*, Article 60.2; see also *id.*, Article 62 (listing other measures to ensure the optimal implementation of the Convention by developing and transitioning countries through economic development and technical assistance).

- to avoid banks that have no physical presence and are not affiliated with a regulated financial group (Article 52).

The chapter further specifies:

- measures to be taken for the direct recovery of property acquired as a result of corruption offenses (Article 53);
- the mechanisms for doing so through international cooperation in confiscation (Articles 54-55); and
- the rules for return and disposal of confiscated assets (Article 57).

Establishment of a financial intelligence unit and use of bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation should also be considered (Articles 58-59).

Perhaps one of the most heavily criticized drawback of the UN Convention is the lack of explicit **mechanism for monitoring and implementation** of the Convention by individual states. Article 63 of the UN Convention establishes a Conference of the States Parties, to improve the participating states' capacity and cooperation in achieving the objectives of the Convention and to promote and review its implementation. However, more specific mechanisms or bodies that would assist the Conference in its activities may only be developed once the UN Convention is in force (this issue is left largely to the discretion of the Conference). To ensure the efficiency of these mechanisms, a well-crafted system of incentives and penalties will be required.

CEELI Countries – Signatories to the UN Convention:

Country	Signature Date
Albania	December 18, 2003
Armenia	n/a
Azerbaijan	February 27, 2004
Belarus	April 28, 2004
Bosnia and Herzegovina	n/a
Bulgaria	December 10, 2003
Croatia	December 10, 2003
Georgia	n/a
Kazakhstan	n/a
Kosovo	n/a
Kyrgyzstan	December 10, 2003
Macedonia	n/a
Moldova	n/a
Romania	December 9, 2003
Russia	December 9, 2003
Serbia and Montenegro	December 11, 2003
Tajikistan	n/a
Turkmenistan	n/a
Ukraine	December 11, 2003
Uzbekistan	n/a

This information is current as of September 3, 2004. For the most up-to-date information on the status of the UN Convention, see the Convention's official website at http://www.unodc.org/unodc/en/crime_signatures_corruption.html.