

New UN corruption treaty requires return of dirty money to victimized nations

Ninety-four countries attending the UN Convention Against Corruption during December 9-11 in Merida, Mexico, have signed a first-of-its-kind United Nations worldwide anti-corruption treaty that would allow nations victimized by corruption to more readily recover the funds extorted, stolen or received in bribes by corrupt public officials – money which through the laundering process often finds its way into U.S. and European banks.

The initial signings of the “Merida Convention” is not the end of the process, but the beginning of ratification and eventual entry into force.

Entry into force will commence when a minimum of 30 countries complete the process of ratification. Ratification depends on countries developing legislative and administrative measures in accord with the provisions of the Convention, and giving final political approval. Once the Convention enters into force, a Conference of the States parties will be established to monitor compliance.

The provisions of the Convention require countries to criminalize a range of corrupt activities, take action to promote integrity and to prevent corruption; and to cooperate with other States Parties. It also establishes, for the first time, legal mechanisms for the return of looted assets that have been transferred to other countries.

By very rough but conservative estimate, income derived from illicit transactions is five per cent of the volume of total global output, World Bank Director for Global Governance Daniel Kaufmann said at the briefing. Bribes and graft make up at least half of that amount, he said. Given a gross world product of \$33 trillion, a low figure for the dollar amount paid out each year in corrupt transactions would be nearly one trillion dollars.

United Nations Convention against Corruption

Corruption hurts the poor disproportionately—by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”.

Kofi Annan, United Nations Secretary-General

in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption

Background

In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003.

The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. The General Assembly, in its resolution 57/169 of 18 December 2002, accepted the offer of the Government of Mexico to host a high-level political signing conference in Merida for the purpose of signing the United Nations Convention against Corruption. The Assembly invited all States to be represented at the Conference at the highest possible levels of Government.

Convention highlights

Prevention

Measures such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties address both the public and private sectors. Requirements are also established for the prevention of corruption in the judiciary and in public procurement. The Convention calls on countries to actively promote the involvement of nongovernmental and communitybased organizations, as well as other elements of civil society, to raise public awareness of corruption.

Criminalization

Countries are required to establish criminal and other offences to cover a wide range of acts of corruption. This includes not only basic forms of corruption, such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and "laundering" of the proceeds of corruption.

International cooperation

Countries agree to cooperate in the fight against corruption, including prevention and investigation activities, and the prosecution of offenders. The Convention also binds countries to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries must also undertake measures to support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Asset recovery

This is an important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Measures include the prevention and detection of transfers of illicitly acquired assets, the recovery of property, and the return and disposition of assets.

Implementation mechanisms

The Convention needs 30 ratifications to come into force. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention.

● Does the Convention define corruption?

The Convention has taken the approach that a comprehensive definition of corruption was neither necessary nor feasible. Corruption is a fluid concept, signifying different things to different people. More importantly, it is an evolving concept. The Convention is designed to function in a global environment and is geared towards the future. In light of those objectives, and in view of the multifaceted nature of the phenomenon and the consequent difficulty of constructing a legal definition, the Convention adopted a descriptive approach, covering

various forms of corruption that exist now, but also enabling States to deal with other forms that may emerge.

● Why do we need a global Convention against Corruption?

In many countries, applicants for drivers' licences, building permits and other routine documents have learned to expect a "surcharge" from civil servants. At a higher level,

larger sums are paid for public contracts, marketing rights or to sidestep inspections and red tape.

However, the consequences of such acts of corruption go further than fattening the bank accounts of a few public sector officials. Corruption causes reduced investment or even disinvestment, with many long-term effects, including social polarization, lack of respect for the rule of law and human rights, undemocratic practices and diversion of funds intended for development and essential services.

The diversion of scarce resources by corrupt parties affects a government's ability to provide basic services to its citizens and to encourage sustainable economic, social and political development. Moreover, it can jeopardize the health and safety of citizens through, for example, poorly designed infrastructure projects and scarce or outdated medical supplies.

Most importantly, corruption has the greatest impact on the most vulnerable part of a country's population, the poor.

● **Where does the United Nations step in?**

It is increasingly recognized that combating corruption is integral to achieving a more effective, fair and efficient government. More and more countries see that bribery and cronyism hold back development and are asking the United Nations to help them gain the tools to curb such practices.

Since the causes of corruption are different from one country to the next, preventive, enforcement and prosecutorial measures that work in some countries may not work in others. Also, some countries need help in implementing anti-corruption practises due to lack of resources.

● **What makes the Convention against Corruption different from others like it?**

The United Nations Convention against Corruption is the first global legally binding instrument. Other instruments that already exist are regional and designed to operate in a more limited environment. From a substance viewpoint, the new Convention breaks new ground with its provisions on asset recovery and prevention.

● **How does it work?**

Corruption impoverishes countries and deprives their citizens of good governance. It destabilizes economic systems, even of whole regions. Organized crime, terrorism and other illegal activities flourish. In many countries, corruption erodes basic public functions and the quality of life of people.

The treaty recognizes that the problem of corruption goes beyond criminal conduct. Therefore, the Convention contains a broad range of measures designed for preventive action at the national level or aimed at strengthening cooperation among countries in the area of prevention. The Convention complements these provisions with obligations that States Parties will undertake by ratifying the treaty to criminalize certain forms of conduct, such as bribery, embezzlement or money laundering.

An important part of the Convention is dedicated to fostering international cooperation with specific measures such as extradition and mutual legal assistance. An entirely new set of rules and measures contained in the Convention relates to asset recovery. Finally, the Convention includes provisions on technical cooperation to strengthen the capacity of developing countries in implementing its provisions.

- **What happens after the Convention is signed?**

The process of ratification by individual countries will start. The Convention will enter into force after 30 countries have ratified it. The work doesn't end once the Convention is ratified. A Conference of the States Parties has been established, which will promote and review implementation. The Conference will meet regularly and serve as a forum for reviewing the implementation by States Parties and facilitating activities required by the Convention.