

BUSINESS OBJECTIVES FOR UNCAC

Declaration by the business community to the Conference of States Parties to the United Nations Convention against Corruption

Representatives of the business community¹ participating in the first session of the Conference of States Parties to the United Nations Convention against Corruption (UNCAC) in Jordan, 10-14 December 2006, are pleased to submit the following statement on what business considers to be key objectives for the successful implementation of UNCAC.

UNCAC: leveling the playing field

The global business community has long demonstrated strong support for UNCAC, while keeping alert to the challenges that may arise from its application at country level. Business has played an active role in the consultative process leading up to the signing of UNCAC and continues to encourage all signatory countries to work towards its rapid ratification and transposition into national law, with a view to achieve its implementation as an economic reality.

From a business perspective, UNCAC holds the potential to become the global framework for combating corruption which will pave the way for the establishment of a *level playing field* for all market participants. A key objective of UNCAC is to bring a higher degree of uniformity in the formulation and application of anti-corruption rules across the world. For companies doing business in multiple jurisdictions, this will help improve legal certainty and facilitate their global compliance efforts, thereby allowing them to fully compete in open markets without being exposed to extortion or unfair practices by their competitors.

UNCAC prohibits all forms of corruptive practices: active as well as passive, national as well as international, public as well as private, direct as well as indirect. Business is sensitive to the fact that each and every form of extortion and bribery distorts free and fair competition and should therefore be equally and vigorously condemned.

Business recommendations

While business is in no doubt about the potential benefits of UNCAC, it is convinced that success ultimately depends on the capacity of the Conference of States Parties to establish an effective follow-up monitoring program and other mechanisms that will enable its effective and consistent implementation on the ground.

➤ *Monitoring*

No tangible progress will be achieved without a systematic and continuous review mechanism to ensure the effective implementation of the Convention by all signatory countries. The Conference of States Parties is urged to promptly establish a full monitoring program, based on self-evaluation and peer reviews, before the momentum created by the adoption of UNCAC is allowed to fade out. Such a program, which will require a strong secretariat and dependable funding from the UN

¹ Representatives of the following organizations have participated in the elaboration of this document: the International Chamber of Commerce, the World Economic Forum's Partnering Against Corruption Initiative, the Fédération Internationale des Ingénieurs Conseils (FIDIC), and the Global Compact.

budget, should be effective as from 2007 and begin with a survey of implementation and technical assistance needs.

Given the number of countries involved in UNCAC and the wide scope and complexity of its provisions, the review of country implementation of UNCAC should be based on given themes and specific articles, and should include clear conclusions and recommendations. This approach would allow for greater efficiency in the conduct of country assessments and would facilitate integration of the results from monitoring existing anti-corruption conventions.

Monitoring of UNCAC should cover both binding and non-binding provisions of the Convention, including the key issue of solicitation. This is the only way to ensure that UNCAC provisions are implemented and interpreted consistently across countries. Special consideration must be given to the Convention's pillar on "Preventive Measures" since without proper institutions, such as a fair and functioning criminal justice system, anti-corruption bodies, and a growing anti-corruption culture among the public and private sectors, there is no hope of seeing the Convention bring about change².

Monitoring should be seen as a continuous exercise and follow the implementation of the recommendations given in country reviews. The review mechanism should also monitor the steps that are being taken to ensure that the provisions of the Convention are not being abused or misinterpreted. In this respect, one of the objectives of monitoring should be to assure the availability of procedural safeguards to mitigate concerns about arbitrary actions.

An open and transparent review mechanism should help focus attention on corruption issues which are pervasive in all segments of society. Participation by business in the monitoring of UNCAC will be essential to provide a complete picture of country progress in implementing and enforcing the Convention. It also gives an opportunity for non-governmental stakeholders who are directly affected by corruption, such as the business community, to press for action when governments are lagging and to raise concerns about potential abuse of UNCAC provisions.

➤ **Technical assistance**

UNCAC covers no less than 71 articles, some of which are very complex and place heavy demands on participating countries, especially for those suffering from weak institutions and budgetary constraints. There is no doubt that the successful implementation of the Convention will require a high dose of technical assistance and that a special effort will be needed by the international community to provide the necessary financial resources to fund technical assistance schemes.

Funding should come from coordinated action by the UN, the World Bank and other international financial institutions, including regional development banks, as well as bilateral donors. For increased efficiency, technical assistance needs must be appropriately assessed, taking into account both the own demands of recipient countries and the early results from the implementation review. Such a process

² Articles of particular importance to business include Article 6 on establishing anti-corruption bodies, Article 9 on open procurement and transparency and accountability in the management of public finances, and Article 12 on the private sector.

would also benefit from business input, both to focus aid and to determine if the specific objectives of UNCAC are being achieved in a specific jurisdiction.

Technical assistance should go beyond financial aid to cover training packages and the sharing of expertise between countries. In this context, business organizations, and enterprises themselves, constitute a valuable source of expertise and first-hand experience to be put into play.

The granting of financial aid and other technical assistance must be linked to an obligation of action, and where appropriate, an obligation of results. Where required, technical assistance should be linked to results achieved in meeting the objectives identified in the course of the monitoring process. Targeted technical assistance should also be provided to encourage countries to implement non-binding provisions of the Convention.

It is important however to recognize that technical assistance schemes should not be developed in isolation. Effective and sustained improvement requires a holistic approach to the strengthening of the political, legal and administrative framework to fight corruption. For example, it is of little value improving the legal basis of anti-corruption regulations if the judicial system is not effective.

➤ **Asset recovery**

The global business community recognizes asset recovery as a “fundamental principle” of the Convention which will lead countries to explore new grounds in mutual legal assistance and international cooperation. During the negotiations for UNCAC, it was agreed that the implementation of provisions covering asset recovery should take into account not only the demands of the countries that seek to recover assets, but also the legal and procedural safeguards of the countries where these funds have been deposited.

Today, as the Conference of State Parties is invited to look at the practical implications of the asset recovery principle, governments are urged to ensure that due process is applied at all times and to provide business with adequate mechanisms of protection against arbitrary and unwarranted actions that may result from the implementation of UNCAC provisions. Such an approach will help build a system which will gain the confidence and thus secure the support of all the parties with legitimate interests in the matter, including home as well as host governments.

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