

1A.I The United Nations Convention against Corruption

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“The world of the 21st century needs new rules to become a better place for all peoples.”

The new United Nations Convention against Corruption has enormous significance. It proves that destructive practices as old as history can no longer be tolerated. It manifests the realization that the world of the 21st century needs new rules to become a better place for all peoples. It demonstrates that core values, such as respect for the rule of law, probity, accountability, integrity and transparency must be safeguarded and promoted as the bedrock of development for all.

People around the world, in developing and developed countries alike, have become increasingly frustrated at witnessing and suffering from the injustice and the deprivation that corruption brings. On a daily basis, people face head-on the effects of corruption on areas such as the administration of justice and the provision of adequate medical care. They watch with anger as corrupt leaders amass immense fortunes and enjoy a luxurious lifestyle while their own people toil to scrape a living and are denied the most basic of services. That anger becomes resignation and cynicism when people discover that the money stolen by corrupt leaders cannot be recovered because it has been transferred abroad. To these people,

diatribes about good governance, sustainable development, the benefits of a free market and the liberalization of trade ring hollow.

Therein lies one of the most serious threats posed by corruption: the loss of confidence in institutions and the de-legitimization of Government. Such a situation has destructive consequences that can span generations. The best and brightest will eschew local political and economic life or even flee abroad.

Negotiating the Convention was not an easy undertaking. The negotiators had to tackle many complex issues and concerns from different quarters. It was a formidable challenge to maintain the quality of the new Convention while making sure that all of these concerns were properly reflected in the final text. Although compromise was not easy, all participating countries made concessions. The result—made possible by their flexibility, sensitivity, understanding and, above all, strong political will—should be a source of pride to all of them.

At a special conference in Merida, Mexico, to open the Convention for signature, expectations were exceeded when 95 countries signed on and one country deposited the first ratification of the new instrument. Since then, the

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The Convention—a closer look

The new Convention offers good reason to look at the future with optimism. It is itself an act of faith. Only a decade ago, speaking of the possibility of such an instrument and saying it would be negotiated in such a short time would have brought ironic smiles to the faces of most people. Yet, today, this remarkable achievement is a reality.

It became a reality because of the vision, determination and commitment that all Governments displayed throughout the negotiation process. And it is a remarkable achievement because it is innovative, balanced, strong and pragmatic.

These qualities, together with its universality and functionality, make the new Convention a unique platform for effective action and an essential framework for genuine international cooperation.

The Convention offers all countries a comprehensive set of standards, measures and rules that can strengthen their legal and regulatory regimes to prevent and control corruption. It includes a comprehensive chapter on preventive measures, which are intended to cover both the public and the private sectors, in recognition of the multidisciplinary approach that is necessary to fight corruption. In particular, the Conven-

tion includes measures on public procurement and management of public finances, and asks States to put in place measures to prevent corruption involving the private sector and enhance accounting and auditing standards in this sector. The Convention also contains a chapter on criminalization, coupled with an extensive chapter on international cooperation. And it makes a major breakthrough with its provisions on asset recovery, which are the first of their kind and offer hope for the cooperation needed to help developing countries recover assets that often represent large percentages of their domestic product.

number of signatories has risen to 133 and 30 Member States have ratified the Convention, which entered into force on 14 December 2005.

While we should all rejoice with the adoption of the new Convention, we must guard against complacency. This new instrument must be only the beginning of our redoubled efforts to prevent and control corruption. We must all make sure that the momentum that made its negotiation possible is not allowed to dissipate. The collective political will that permitted these innovative and groundbreaking solutions must continue unabated.

We need to outline a vision for what lies ahead. But before doing that, we require clarification of a point of crucial importance. We are concerned that some people mistakenly think that the new Convention does not take into account the monitoring of its implementation. Nothing can be further from the truth. The Convention contains provisions for a vigorous, robust and effective mecha-

nism to ensure and follow up on its implementation. That mechanism is the Conference of the States Parties, which will be convened and become operational before December 2006, within one year of the entry into force of the Convention, in accordance with its relevant provisions. The terms of reference of the Conference of the States Parties were carefully negotiated and, while inspired by similar provisions in the United Nations Convention against Transnational Organized Crime, go considerably beyond that Convention both in detail and potential impact. We are trying to dispel the misperception about the new Convention and, instead of engaging in theoretical discourses on how it should read, we must concentrate on the formidable task at hand.

Our initial task is to organize our efforts around some key elements that we must always keep in mind.

The first step is to secure the highest possible number of ratifications of the Convention within the short-

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est possible time. Implementation would be a word devoid of meaning if the Convention does not become the global standard that it was intended and negotiated to be. The best way to achieve implementation is to ensure the widest possible participation in the Conference of the States Parties and make sure it functions effectively. This means exercising all the influence we possess to bring the matter to the top of the domestic political agenda in every country around the globe.

Implementation rests firmly in the hands of States—and for good reason. First, effective action against corruption is the responsibility of Governments. Only through their commitment and determination can we see tangible results. Second, the Convention is the first truly global instrument of its kind. This distinguishes it from the very commendable initiatives and instruments that preceded it at the regional level. This global nature is also the source of special attributes that we must not ignore. Mechanisms for implementation that were developed for, and are functioning in the context of, regional legal instruments cannot be readily emulated at the global level. We can learn from the experience gained by those mechanisms, and we fully intend to continue strengthening close working relationships with the international organizations that are supporting those mechanisms. However, we must also take into serious consideration the legitimate concerns of our constituency and, most importantly, the gaps in capacity that exist in many developing and least developed countries. On that basis, and remaining faithful to the letter and spirit of the Convention, we must nurture its implementation mechanism and support the widest possible participation in the development and functioning of that mechanism, particularly through providing well-targeted technical assistance to developing countries.

While guided by these considerations, we must not underestimate the role that civil society and the private sector can and must play. Governments must be prompted, encouraged, supported and held accountable. And both civil society and the private sector can help in all of these efforts.

For many years, businesses have generally portrayed themselves as the unwilling victims of greedy public officials rather than as accomplices in illegal transactions designed to obtain unfair advantage. However, the private sector has come to realize that corruption distorts fair competition and the rules of a free market economy, has a negative impact on the quality of products and services, weakens the prospects for economic investment and undermines business ethics. Bribe payments shift money away from potentially productive investments. Non-economic transaction costs keep the level of enterprise development low in relative terms.¹ Corruption is detrimental to business for all types of company—large and small, multinational and local. It is, however, the smaller businesses that are more likely to be negatively affected.

Recent scandals have shown that, in the long run, business cannot prosper without appropriate and responsible corporate governance. Large off-the-books payments to public officials or intermediaries can throw a company's finances into turmoil and call into question the performance of its duties versus its stakeholders. The negative impact on the company's reputation from following adverse publicity exposure is incalculable.² Even if the corrupt deals remain undiscovered, short-term gains are made at the cost of long-term profitability. Over time, companies that spend their resources on financing corrupt deals rather than investing in the development, manufacturing and marketing of quality products and services will increasingly lose their competitiveness, thus becoming even more dependent on bribery as a means of maintaining their market share.³

Private-to-private sector bribery has become particularly dangerous in recent years, since Governments have started to privatize many functions and services that were previously carried out by public sector agencies. Also, just as in the public sector, if individual employees take decisions that are not in the best interest of their company, the internal decision-making process is distorted, with detrimental effects on the company and its shareholders.

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The International Chamber of Commerce has for more than two decades been promoting the anti-corruption agenda in the corporate world, starting first with the so-called *Shawcross Committee*,⁴ which in 1977 called for rules of conduct to serve as a basis for corporate self-regulation. Since then, numerous initiatives by international organizations and advocacy groups have led to an array of international instruments addressing, in particular, the role of the private sector in corrupt practices. Such instruments include the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organization for Economic Cooperation and Development in 1997 and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, as well as the production of guidelines and manuals providing businesses with the necessary tools to ensure that employees comply with both regulatory frameworks and principles of sound business practices.⁵ Also featuring prominently are the Council of the European Union Framework Decision 2003/568/JHA on combating corruption in the private sector and the United Nations Convention against Corruption, which is the first global legally binding instrument explicitly requesting State parties to consider criminalizing bribery in the private sector.

Examples of anti-corruption programmes

At the same time, several other initiatives have emanated from the corporate world itself. In 2000, the Conference Board, a global business membership organization, asked companies worldwide about their anti-corruption programmes. The survey found compliance-style programmes in 42 countries, with 40 per cent of the respondents being based outside North America and Western Europe.⁶

- The Extractive Industries Transparency Initiative of 2002, involving Governments, com-

panies and civil society, aims to increase transparency concerning payments made by companies in the extractive industries and revenues received by Governments.

- The Equator Principles of 2005 provide a common baseline for financial institutions in determining, assessing and managing environmental and social risks involved in project financing.
- The Wolfsberg Anti-Money-Laundering Principles for Private Banking of 2000 were adopted by a number of the largest commercial banks, which committed themselves to the principle of due diligence and a code of conduct based on compliance with international anti-money-laundering standards.
- The International Council on Mining and Metals adopted in 2002 a Sustainable Development Charter that expresses the commitment of its members to principles of sustainable development in four key areas: environmental stewardship; product stewardship; community responsibility; and general corporate responsibilities.

The proliferation of such major initiatives by the private sector is a welcome development that demonstrates increased awareness of the importance of concerted action against corruption and a willingness of the private sector to play its part. It also demonstrates a shift in attitude on the part of the private sector away from considering action against corruption as the sole responsibility of Governments towards the view that such action is a task to be shared with civil society and the private

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The United Nations Global Compact's 10th Principle

In connection with the involvement of the private sector in the fight against corruption, the role and potential of other international initiatives, such as the United Nations Global Compact, must be highlighted. In an address to the World Economic Forum on 31 January 1999, the Secretary-General invited business leaders to join an international

network, the United Nations Global Compact, that would bring companies together with United Nations agencies, labour and civil society to support certain principles in the areas of human rights, labour and the environment. The operational phase of the network was launched in New York on 26 July 2000. During the first United Nations Global Compact Leaders Summit, held in New York on 24 June 2004, the

Secretary-General announced the addition of a 10th Principle in the agenda of the network, according to which businesses should work against corruption in all its forms, including extortion and bribery, as part of the broader movement of corporate social responsibility (see also <http://www.unglobalcompact.org/Portal/>).

sector itself. The merit of such initiatives is significant, despite the scepticism voiced by some as to whether they reflect real commitment or are designed to obtain public relations dividends, pre-empting or deflecting more rigorous Government regulation.

Private sector debate

Such initiatives also introduce two interrelated issues that are key to the debate about the private sector.

- The first issue is how to achieve an appropriate balance between Government regulation and an environment that fosters the proper functioning of a free market;
- The second issue is how much one can rely on such initiatives when formulating an effective set of measures to prevent and control corruption.

The outcome of that debate will naturally depend on a number of factors and the particular attributes of a national economy. Suffice it to say, however, that striking the appropriate balance should be based on a critical evaluation of the initiatives, the consistency of their ap-

plication and the effectiveness of their results. It should also be based on recognition of the fact that voluntary initiatives cannot be considered a panacea, nor replace broader regulatory regimes. It is a matter of leading by example with consistency, credibility and efficiency.

That principle should apply to the private as much as any other sector. The private sector must realize and accept that its position and operations in a globalized economy bring great potential, but also great responsibility. Integrating and projecting transparency and using influence to help fight corruption are sound business practices. Just as businesses invest seriously in their own infrastructure, even so they must look very carefully at investing in the infrastructure of the environment in which they wish to operate. It is a sound investment, an investment in the future carrying very little risk, to support the efforts of countries to strengthen their systems in order to fight corruption, domestically and internationally. The returns may not be immediately quantifiable in a way that could be reflected in a balance sheet. But the results and returns are bound to show in the medium to longer term. This is why the United Nations Office on Drugs and Crime is an avid supporter of the United Nations Global Compact and stands ready to contribute to its efforts in any way it can. The United Nations Office on Drugs and Crime is also

committed to doing everything in its power to promote the ratification and implementation of the new Convention and welcomes the support of the private sector and the United Nations Global Compact.

Endnotes

- 1 Gaeta Batra, Daniel Kaufmann and Andrew H. W. Stone, *Voices of the Firms 2000: Key Findings of the World Business Environment Survey 2000* (World Bank Group, 2003).
- 2 Organization for Economic Cooperation and Development, *Fighting Bribery and Corruption: No Longer Business as Usual* (OECD, 2000).
- 3 Russ Webster, *Corruption and the Private Sector*, prepared by Management Systems International for the United States Agency for International Development, November 2002.
- 4 See Fritz Heimann, "The ICC Rules of Conduct and the OECD Convention", International Chamber of Commerce, *Fighting Corruption: a Corporate Practices Manual* (Paris, International Chamber of Commerce, 2003), pp. 13-21.
- 5 International Chamber of Commerce, *Fighting Corruption...*; OECD, *Guidelines for Multinational Enterprises, 2003*, and the *OECD Principles of Corporate Governance, 2004*; Transparency International and Social Accountability International, *Business Principles for Countering Bribery*, 2002.
- 6 Ronald E. Berenbeim, *Company Programs for Resisting Corrupt Practices: a Global Study* (Conference Board, 2000) (<http://www.conference-board.org>). For an example of such a programme, see Peter Kidd, "Facing up: how a multinational tackles corruption", in United Nations Office on Drugs and Crime, *Global Action against Corruption: the Merida Papers*, 2004.