

20th UNAFEI UNCAC TRAINING PROGRAMME (24-Nov)
Dr. Eduardo VETERE

THE ROLE OF THE UNITED NATIONS IN THE FIGHT AGAINST CORRUPTION

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Authorities



The 20th UNAFEI UNCAC Training Programme
24 November 2017

Corruption --- *Multi-dimensional Challenge*



Human Rights



Democracy

*Sustainable
Development*

Rule of Law

CORRUPTION

Stability

Peace



Good governance



Corruption: a global threat

Cost of corruption exceeds by far the damage caused by any other single crime



- World Bank – More than 1 trillion US\$ is paid in bribes every year and the harm exceeds their proceeds: US\$ 1 bribe = US\$ 1.7 damage
- Asian Development Bank: Cost of corruption may amount up to 17% of countries' GDP

CASES OF GRAND CORRUPTION

Mobuto, Zaire
US \$ 5 billion

More than the foreign debt

**87% of the Annual
Government Budget**

Duvaliers, Haiti
US \$ 500 million

Nigerian kleptocrats
US \$ 100 billion

More than double the DGP
3-4 times the foreign debt



Origins

Paving the ground for international action

- Fourth U.N. Congress (Kyoto, 1970): Declaration of the Fourth Congress (Report: UN Pub. Sales No. E/71.IV.8)
- Fifth U.N. Congress (Geneva, 1975): "Crime as business" (Report: UN Pub. Sales No. E/76.IV.2)
- Code of Conduct for Law Enforcement Officials (GA Res. 34/169 of 17 December 1979, annex: see, in particular, the commentary on article 7, which makes reference to a definition of corruption)
- Sixth U.N. Congress (Caracas, 1980): "Crime and abuse of power" (Report: UN Pub. Sales No. E/81.IV.4)
- Seventh U.N. Congress (Milan, 1985): Guiding Principles (Report: UN Pub. Sales No. E/86.IV.1)

Origins

Setting international standards

- Interregional Seminar on Corruption in Government (The Hague, Netherlands, 11-15 December 1989) (Report: TCD/SEM.90/2-INT/89/R56)
- Eighth U.N. Congress (Havana, 1990): Resolution 7 on "Corruption in government" (Report: UN Pub. Sales No. E/91.IV.2)
- Manual on Practical Measures against Corruption, International Review of Criminal Policy, 1993 (Report: UN Pub. Sales No. E/93.IV.4)
- Versailles Ministerial Meeting on the Creation of an Effective U.N. Crime Prevention and Criminal Justice Programme (21-23 November 1991): Establishment of the Commission on Crime Prevention and Criminal Justice (Report: A/46/703 and Corr.1)
- Statement of Principles and Programme of Action approved by the General Assembly in its resolution 46/152, annex, of 18 December 1991
- Various sessions of the Commission devoted to matters related to corruption

Origins

Setting international standards

- World Ministerial Conference on Organized Transnational Crime (Naples, 21-23 November 1994): corruption as characteristic feature of organized crime (Report: A/49/748)
- Naples Political Declaration and Programme of Action, approved by the General Assembly in its resolution 49/159 of 23 December 1994)
- Ninth U.N. Congress (Cairo, 1995): Special session on corruption involving public officials (Report: A/CONF.169/16/Rev.1)
- Regional Ministerial Workshop on Follow-up to the Naples Declaration: Buenos Aires, 27-30 November 1995 (Report: E/CN.15/1996/2/Add.1, annex)
- GA Res. 51/59 of 12 December 1996: Adoption of the International Code of Conduct for Public Officials, as recommended by the Crime Commission at its fifth session (Report: E/1996/30)
- GA Res. 51/60 of 12 December 1996: Adoption of the U.N. Declaration on Crime and Public Security, as recommended by the Crime Commission at its fifth session (Report: E/1996/30) (prevent and combat corruption and bribery –art. 10)
- GA Res. 51/191 of 16 December 1996: Adoption of the U.N. Declaration against Corruption and Bribery in International Commercial Transactions, as recommended by the Second Committee of the General Assembly

Origins

Building political momentum for more effective international action

- African Regional Ministerial Workshop (Dakar, 21-23 July 1997) – Report: E/CN.15/1998/6/Add.1
- Asian Regional Ministerial Workshop (Manila, 23-25 March 1998) – Report: E/CN.15/1998/6/Add.2
- GA Res. 52/87 of 12 December 1997 on “International cooperation against corruption and bribery in international commercial transactions”, as recommended by the Crime Commission at its sixth session (Report: E/1997/30)

Exploring the viability of an international instrument against corruption

- Expert Group Meeting on Corruption (Buenos Aires, 17-21 March 1997) - Report: E/CN.15/1997/3/Add.1
- Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March-1 April 1999) – Report: E/CN.15/1999/10
- GA Res. 53/176 of 18 December 1998 on “Action against corruption and bribery in international commercial transactions”

Ad Hoc Committee for the negotiations of the UNTOC

- Inclusion of provisions targeting corruption in the public sector (art. 8-9)
- Attesting the need for a new comprehensive international instrument against corruption: GA Res. 54/128 of 17 December 1999, as recommended by the Ad Hoc Committee, 7th session, Vienna, 17-28 January 2000 (Report: A/AC.254/25) and by the Crime Commission at its 8th session (Report: E/1999/30)
- GA Res. 54/205 of 23 December 1999 on “Prevention of corrupt practices and illicit transfer of funds”

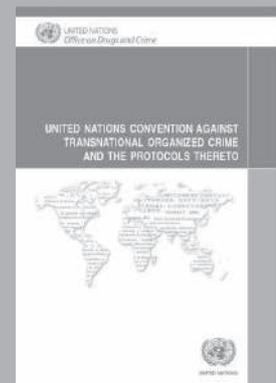
Origins

The process - Mandates

- Tenth U.N Congress
 - Workshop on “Combating corruption”
 - High-level segment: need for an independent international instrument on corruption
 - Vienna Declaration on Crime and Justice (GA Res. 55/59 of 4 December 2000) and Plans of Action for its implementation (GA Res. 56/261 of 31 January 2002): enhanced international action against corruption and steps to develop an effective international legal instrument against corruption
- Thematic debate on new instruments against corruption, 9th session of the Crime Commission (Report: E/2000/30)
- Adoption of the United Nations Convention against Transnational Organized Crime (GA Res. 55/25 of 15 November 2000)
- Decision to create an Ad Hoc Committee for the Negotiation of a new Convention against Corruption (GA Res 55/61 of 4 December 2000)
- Intergovernmental expert group meeting on the preparation of draft terms of reference for the negotiation of the instrument (Vienna, 30 July-3 August 2001) - Report: A/AC.260/2
- Resumed session of the Commission on Crime Prevention and Criminal Justice: Vienna, 6-7 September 2001- Report: E/2001/30/Rev.1
- GA Res. 56/260 of 31 January 2002: Adoption of terms of reference for the negotiation of the instrument

United Nations Convention against Transnational Organized Crime and its Protocols

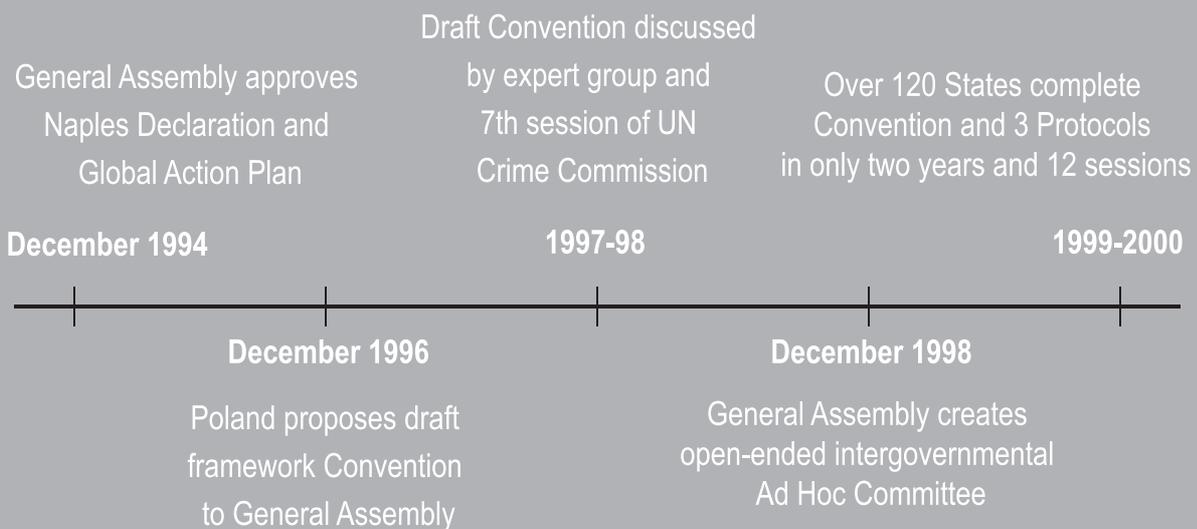
- From the Naples Declaration and Global Action Plan
- to the Polish proposal of the Draft Framework Convention
- to the establishment of the Ad Hoc Committee



“With the signing of the United Nations Convention against Transnational Organized Crime, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement...If the enemies of progress and human rights seek to exploit the opportunities of globalization, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings...The Convention gives us a new tool to address the scourge of crime as a global problem. With enhanced international cooperation we can have a real impact on the ability of the uncivil society to operate successfully and help the civil society in its often struggle for safety and dignity...”.

Kofi Annan
High-level Political Signing Conference, Palermo, Italy, 12 December 2000

Negotiation of the instruments: 2-year process



Adoption of the instruments (G.A. Res.55/25 of 15Nov.2000 and 55/255 31 May 2001), with High level Signing Conference in Palermo

- United Nations Convention against Transnational Organized Crime (TOC)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (Trafficking Protocol)
- Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrants Protocol)
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and Components and Ammunition (Firearms Protocol)

Proceedings

Ad Hoc Committee Negotiating UNCAC in action

- Informal Preparatory Meeting of the Ad Hoc Committee for the negotiation of the Convention (Buenos Aires, 4-7 December 2001) – Report: A/AC.261/2
- Draft consolidated text reflecting proposals and contributions from Governments submitted to the Ad Hoc Committee at its first session (A/AC.261/3-Parts I-IV)
- First session: Vienna, 21 January-1 February 2002 - Report: A/AC.261/4
- Second session: Vienna, 17-28 June 2002 - Report: A/AC.261/7
- Third session: Vienna, 30 September-11 October 2002 - Report: A/AC.261/9
- Fourth session: Vienna, 13-24 January 2003 - Report: A/AC.261/13
- Fifth session: Vienna, 10-21 March 2003 – Report: A/AC.261/16
- Sixth session: Vienna, 21 July 8 August 2003 – Report: A/AC.261/22
- Seventh session: Vienna, 29 September-1 October 2003- Report: A/AC.261/25
- Report of the Ad Hoc Committee on the work of its first to seventh sessions: A/58/422, with an addendum containing interpretative notes for the official records (see the official publication of the *Travaux Préparatoires of the UNCAC*, Sales No. E.10.V.13)

Proceedings

Ad Hoc Committee in action: Rolling texts of the convention

- First session: A/AC.261/3-Parts I-IV
- Second session: A/AC.261/3/Rev.1/Add.1
- Third session: A/AC.261/3/Rev.2
- Fourth session: A/AC.261/3/Rev.3
- Fifth session: A/AC.261/3/Rev.4 + A/AC.261/L.232 + A/AC.261/L.254
- Sixth session: A/AC.261/3/Rev.5
- Seventh session: A/AC.261/L.257 (Final text of the Convention, as approved by the Ad Hoc Committee)

Outcome and political follow-up

- Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions: A/58/422
- Adoption of the Convention by GA Res. 58/4 of 31 October 2003
- High-level Political Conference for the Purpose of Signing the UNCAC: Merida, Mexico, 9-11 December 2003
- Report of the High-level Political Conference: A/CONF.205/2 (procedural), A/59/77 (substantive)
- Entry into force of the Convention: 14 December 2005
- 8th Session of the Ad Hoc Committee (draft rules of procedure for the COSP): Vienna, 25-26 January 2006 – Report: A/AC.261/28-CAC/COSP/2006/2
- Draft rules of procedure for the COSP: A/AC.261/29-CAC/COSP/2006/3

Outcome and political follow-up

*“The adoption of the new Convention is a remarkable achievement.
But let’s be clear: it is only a beginning...*

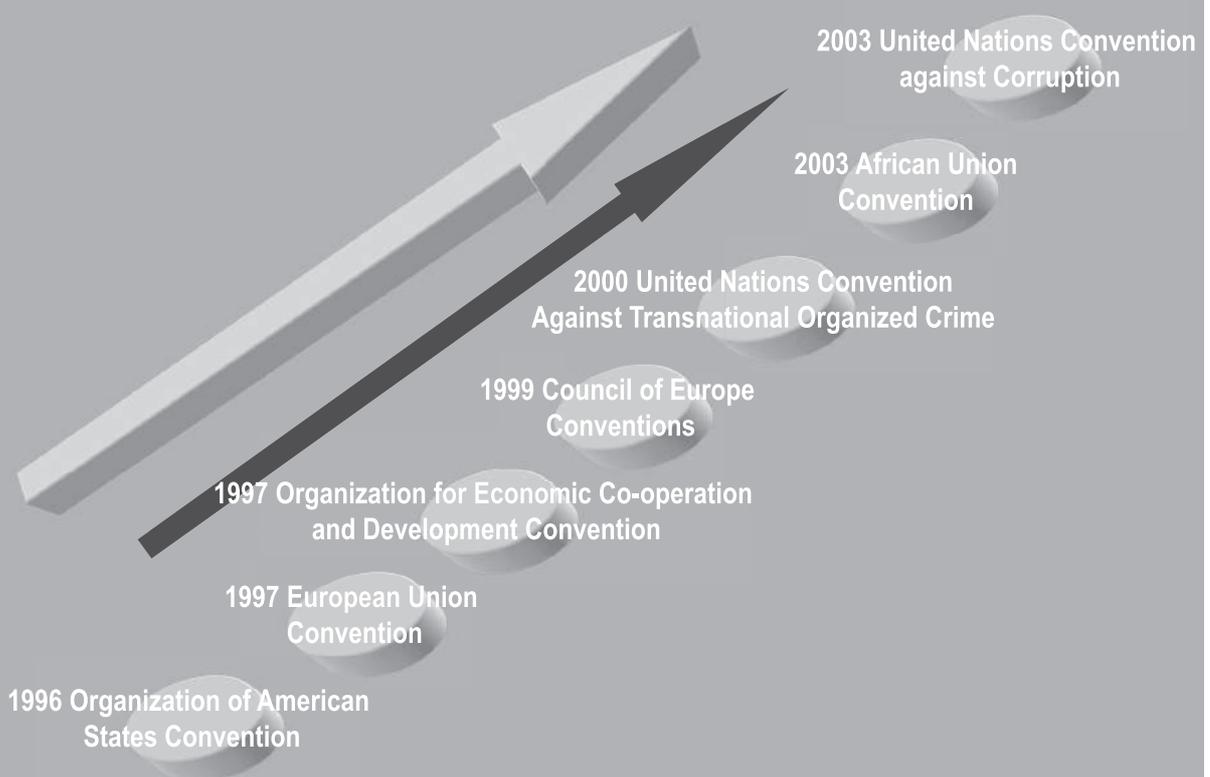
*If fully enforced, this new instrument can make a real difference to the
quality of life of millions of people around the world...*

*It is a big challenge, but I think that,
together, we can make a difference”.*

*Kofi Annan, Introductory statement before the
Plenary of the General Assembly
adopting the Convention on 31 October 2003*



A Brief History of International Anti-Corruption Treaties



The United Nations Convention against Corruption

Adopted by the General Assembly: Resolution 58/4, 31 October 2003,
with High level Signing Conference in Merida

Entry into Force: 14 December 2005

Signatories: 140, States Parties: 183

The content of the UNCAC

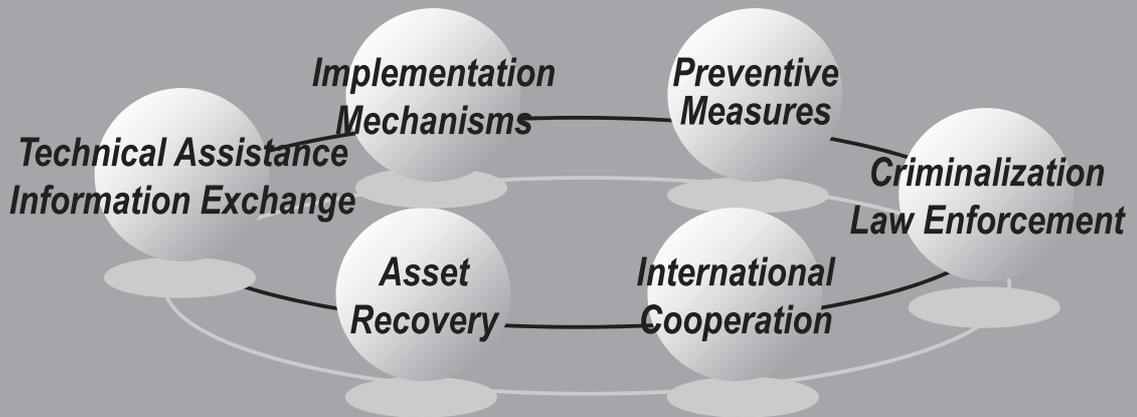
General Assembly resolution 58/4

- Preamble
- 71 Articles
- Eight chapters

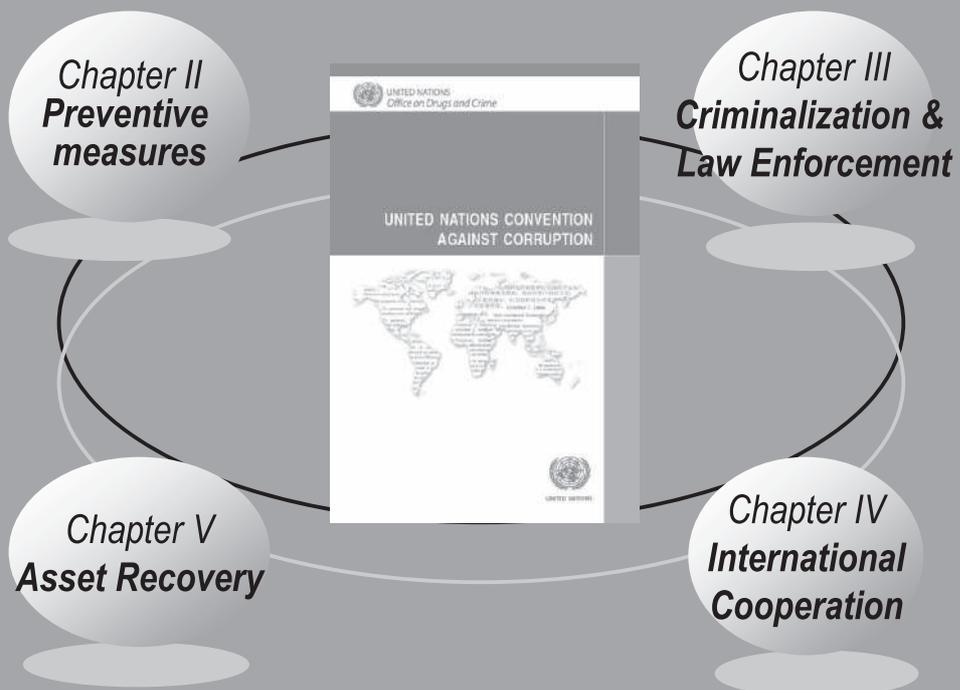
“Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligation under this Convention.” (Article 65, paragraph 1)

Aims and Structure of the UNCAC Convention

1. Prevent and Combat Corruption More Efficiently and Effectively
2. International Cooperation & Technical Assistance including Asset Recovery
3. Integrity, Accountability and Proper Management of Public Affairs and Property

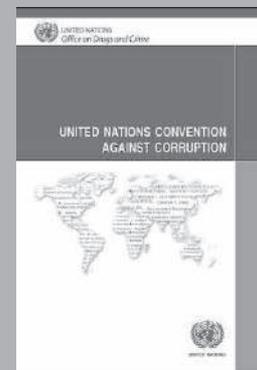


United Nations Convention against Corruption



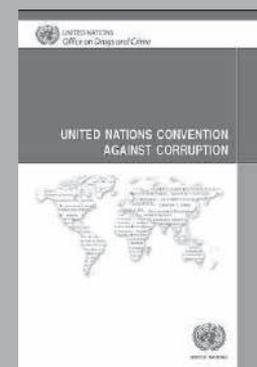
Chapter II – Preventive Measures (Arts 5 – 14)

- Anti-corruption policies and bodies
- Public Sector – Recruitment / Retention of Civil Servants
- Codes of conduct of Public Officials
- Public Procurement – Establishing a system with objective criteria
- Integrity of the Judiciary
- Private Sector
- Participation of society
- Measures to prevent money laundering



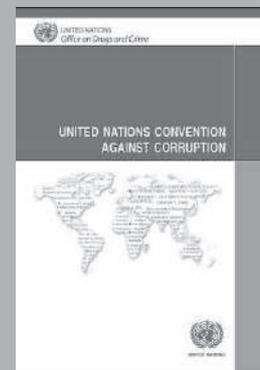
Chapter III – Criminalization and Law Enforcement (Arts 15 – 42)

- Criminalization of Specific Offences
 - Bribery of Public Officials
 - Embezzlement
 - Abuse of Functions
 - Illicit Enrichment
 - Bribery / Embezzlement in the Private Sector
 - Trading in influence
 - Laundering of proceeds of crime
 - Obstruction of justice



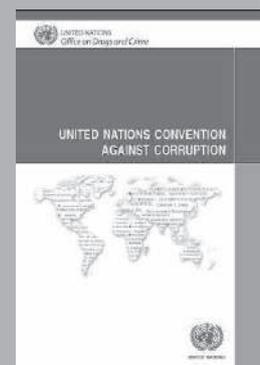
Chapter III – Criminalization and Law Enforcement (Arts 15 – 42)

- General Provisions relating to all Offences:
 - Liability of legal persons
 - Statute of limitations
 - Prosecution, adjudications and sanctions
 - Protection of witnesses, experts and victims
 - Freezing, seizure and confiscation
 - Bank secrecy
 - Specialized authorities
 - Various forms of cooperation
 - Jurisdiction



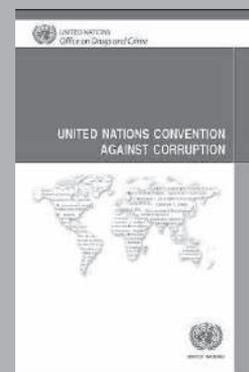
Chapter IV – International Cooperation (Arts. 43 - 50)

- Extradition
 - Addresses the issue of 'double criminality'.
 - If a State does not extradite its nationals, it must seek to prosecute or enforce a sentence that has already been imposed .
 - Encouragement of cooperation and the agreement of bilateral treaties
- Mutual Legal Assistance
 - MLA to be provided in relation to investigations, prosecutions and judicial proceedings
 - Requirement for States to designate an MLA authority
 - Outlines a template for an MLA request



Chapter IV – International Cooperation (Arts. 43 - 50)

- Transfer of sentenced persons
- Transfer of criminal proceedings
- Law enforcement cooperation
- Joint investigations
- Special investigative techniques

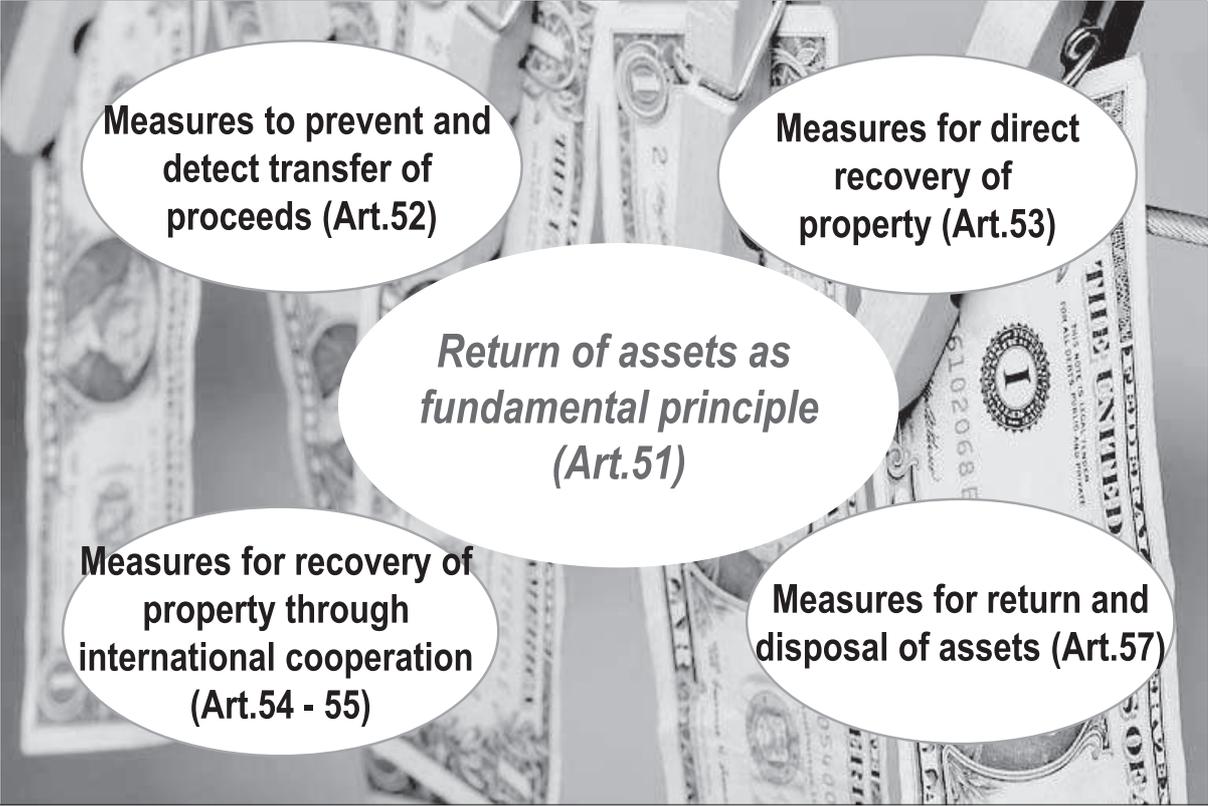


Use of Chapter IV of the UNCAC as legal basis for international cooperation

- Extradition subject to the conditions provided for by the provisions of domestic law of requested State party or applicable extradition treaties (article 44, paragraph 8);
- Mutual legal assistance: Article 46, paras. 9-29
 - Applicable if States parties are not bound by other MLA treaty;
 - If other treaty exists, its provisions shall apply unless States parties agree to apply paras. 9-29;
 - UNCAC strongly encourages States parties to apply paras. 9-29 if they facilitate cooperation.
- Law enforcement cooperation: Article 48, paragraph 2
 - In the absence of ad hoc agreements or arrangements, States parties may consider UNCAC as basis for cooperation

Chapter V – Asset Recovery (Arts. 51 – 59)

- Return of Assets a fundamental principle of the Convention (Art 51).
- Prevention / Detection of transfers of proceeds of crime
 - Requirements on Financial Institutions to identify customers
 - Enhanced scrutiny of accounts of public officials
 - Prevent banks with no physical presence
- Recovery of Property through Int. Cooperation
 - Give effect to confiscation orders from another SP including freezing orders
 - Assets to be returned to requesting State Parties



Measures to prevent and detect transfer of proceeds (Art.52)

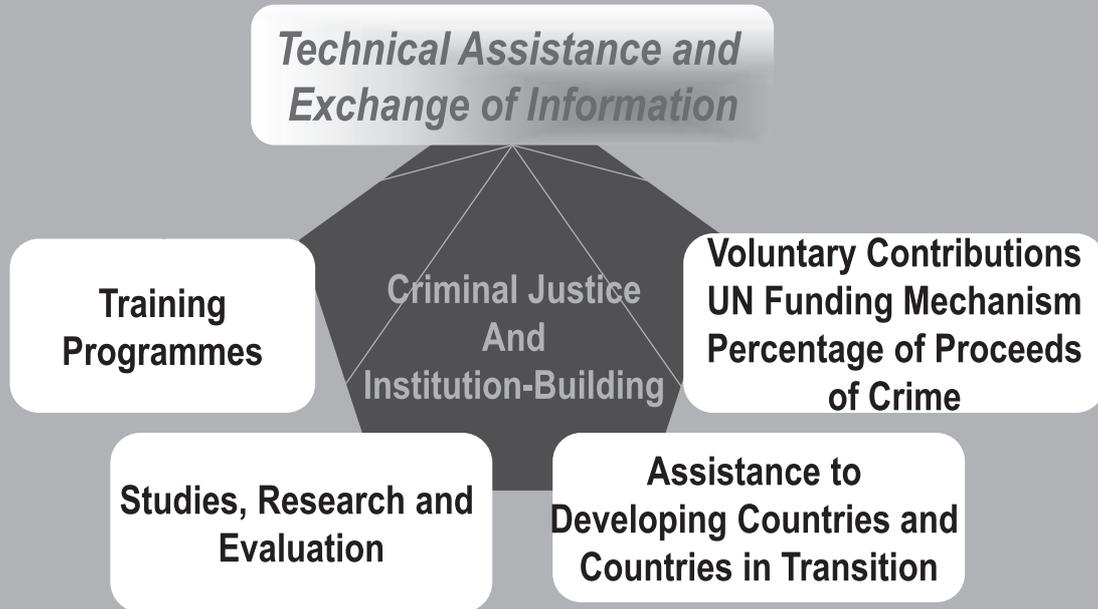
Measures for direct recovery of property (Art.53)

Return of assets as fundamental principle (Art.51)

Measures for recovery of property through international cooperation (Art.54 - 55)

Measures for return and disposal of assets (Art.57)

Technical Assistance & Information Exchange (Art.60-62)



Mechanisms for implementation (Art.63-64)

- Promote, Facilitate and Review Implementation
- Make recommendations
- Facilitate Information Exchange

COSPs

8th Ad Hoc Committee
Prepared Draft **25-27 Jan. 2006**
Rules of Procedure

Entry into Force
14 Dec 2005



IMPLEMENTATION OF THE CONVENTION

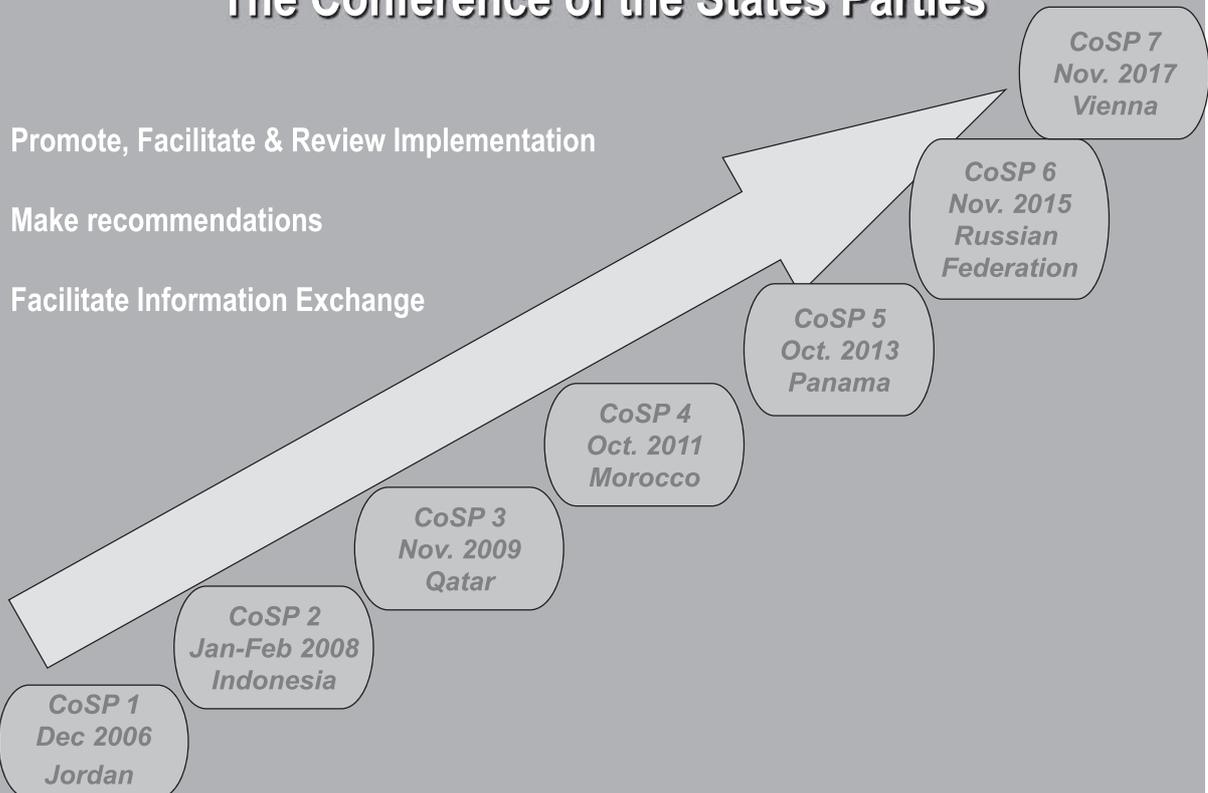
THE CONFERENCE OF STATES PARTIES AND ITS REVIEW MECHANISM

The Conference of the States Parties

Promote, Facilitate & Review Implementation

Make recommendations

Facilitate Information Exchange



Mechanism for the Review of Implementation of the United Nations Convention against Corruption

- Adopted by 3rd session of the CoSP in Qatar in Nov 2009
- Peer review process
- Drawing of lots One phase = two cycles of five years
 - 1st cycle: chapters III & IV
 - 2nd cycle: chapters II & V
- Sources of information: self-assessment reports, supporting documentation, constructive dialogue
- Countries to aim for broad consultations at the national level with all relevant stakeholders, including business representatives

Terms of Reference – Main Elements

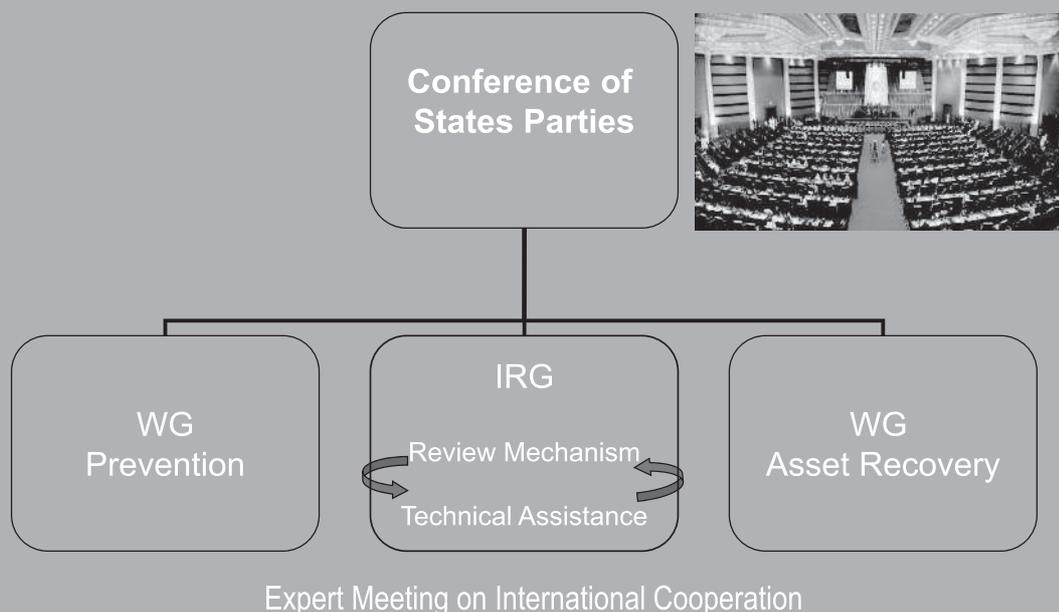
- Peer review process
- Drawing of lots for each year of the review cycle
- One phase = two cycles of five years
 - First cycle: chapter III (Criminalization and law enforcement); and IV (International cooperation)
 - Second cycle: chapters II (Preventive measures); and V (Asset recovery)
- Desk review of self-assessment reports
- Dialogue between State under review and reviewing States
- Possibility of direct dialogue
- Outcome of review process (report) and executive summaries
- Role of the Secretariat
- Funding

Review Mechanism - Structure

- I. Introduction
- II. Guiding principles and characteristics of the Mechanism
- III. Relationship with the Conference of the States Parties
- IV. Review Process
 - A. Goals
 - B. Country review
 - C. Implementation Review Group (IRG)
 - D. CoSP
- V. Secretariat
- VI. Languages
- VII. Funding
- VIII. Participation of Signatories in the Mechanism



Open-ended Intergovernmental Working Groups on Prevention and Asset Recovery



UNCAC Implementation Review Mechanism

Mandatory peer-review process for all States parties

Two Cycles of Review

2009 – 2014: Chapters III and IV

2015 – 2020: Chapters II and V



Executive Summaries of the reports from all reviews available on UNODC Website.

Documents for the Review Mechanism

- UNCAC
- COSP resolutions
- Terms of Reference of the Review Mechanism
- Guidelines for governmental experts and the secretariat, adopted at CoSP III and finalized by the Implementation Review Group
- Blueprint for country review reports



Guidelines – Main Elements

- General and specific guidance
- Indicative timelines
- General guidance: purpose of the review and confidentiality
- Specific guidance:
 - Process to follow during the different stages of review
 - Self-assessment
 - Outcome of desk review
 - Dialogue including direct dialogue
 - Draft report
 - Agreement on country review report
- Blueprint for country review reports and executive summaries



The Implementation Review Mechanism – Impact

Emerging trends following analysis of country reviews in first 4 years

Implementation of Chapter III (Criminalization and Law Enforcement)

Examples of challenges :

- adoption of measures to criminalize bribery in the private sector,
- introduction of procedures regarding the protection of witnesses and the protection of reporting persons (whistle-blowers)

Implementation of Chapter IV (International Cooperation in Criminal Matters)

Examples of challenges :

- Need for appropriate training, access to information, language skills to enhance international cooperation
- Need to strengthen channels of communication between competent anti-corruption authorities
- Need to further develop special investigative techniques in relation to corruption offences

Impact of the Implementation Review Mechanism

Translating commitment into results

- Dialogue and momentum generated as a catalyst for anti-corruption reforms

- Evidence:
 - ✓ 183 parties (incl. the EU)
 - ✓ More than 1,500 anti-corruption practitioners trained, creating a global community
 - ✓ More than 40 States have received UNODC support to amend legislation
 - ✓ Near 100% response rate
 - ✓ Widened inclusion of stakeholders, e.g. private sector and civil society organisations

Impact of the Implementation Review Mechanism

Enhanced understanding of UNCAC and sharing experiences

- Discussion and dialogue has resulted in:
 - ✓ enhanced understanding for creating an enabling environment for businesses and private sector involvement
 - ✓ focus on misappropriation of public funds, bribery of foreign public officials and officials of public international organizations, bribery in the private sector, the liability of legal persons and their principals

- Encouragement to engage with the private sector to understand and address its needs

- Sharing experiences across regions and legal systems

JOINT PROJECTS AND TECHNICAL ASSISTANCE TOOLS

The Stolen Asset Recovery (StAR) Initiative

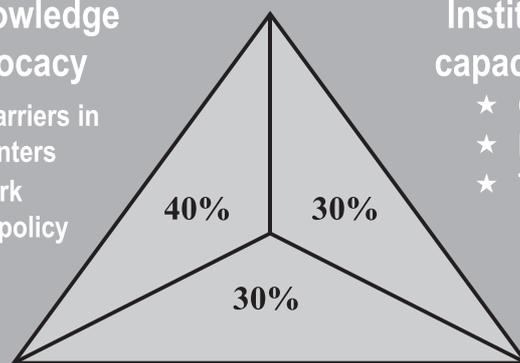


Global knowledge and advocacy

- ★ Lowering barriers in financial centers
- ★ Analytic work supporting policy
- ★ Guides and handbooks

Institutions and capacity building

- ★ Gap Analysis
- ★ Networks
- ★ Training



Country engagement: recovery of stolen assets

- ★ Honest broker
- ★ Preparatory assistance: capacity building on asset tracing and mutual legal assistance

Encourage and facilitate more systematic and timely return of assets stolen by politically exposed persons through acts of corruption

Judicial Integrity Resource Guide

Thematic Areas:

- Recruitment, Evaluation and Training
- Court Personnel: Function and Management
- Case and Court Management
- Access to Justice and Legal Services
- Court Transparency
- Evaluation of Courts and Court Performance
- Codes of Conduct and Disciplinary Mechanisms
- BANGALORE PRINCIPLES OF JUDICIAL CONDUCT



UNCAC Legal Library (TRACK)

➤ **Collection, organization and online availability of:**

- Corruption-related laws;
- National anti-corruption plans/strategies;
- Anti-corruption bodies;
- Corruption-related cases.

➤ **Added benefits:**

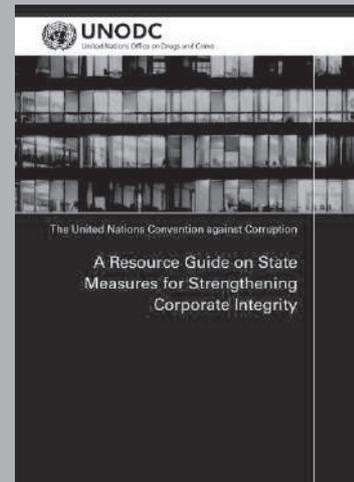
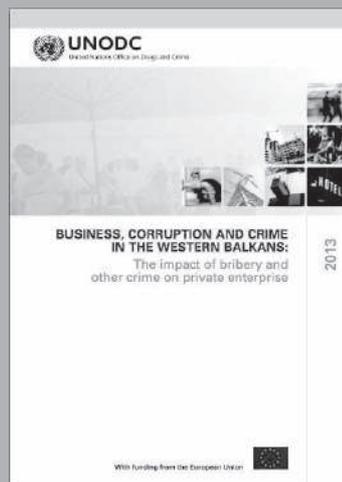
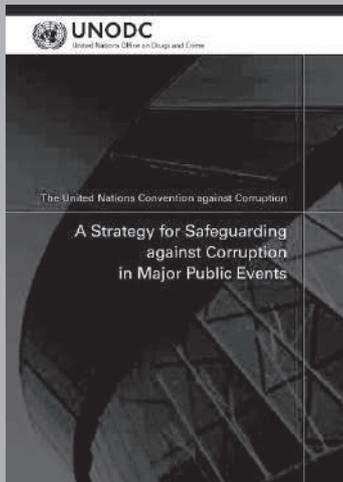
- Practical implementation guidance;
- Resource for national legislators, anti-corruption authorities, assistance providers;
- Supporting analytical efforts;
- Convertible into training and educational materials;
- Promoting innovation.



TRACK: Tools and Resources for Anti-Corruption Knowledge

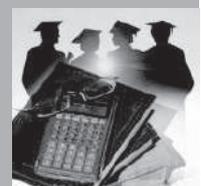
<http://www.track.unodc.org/Pages/home.aspx>

UNODC Publications and Technical Tools



Fighting Corruption through Education

- Increasing recognition of the need to ally institutional reform with education
- Article 13 UNCAC requires States parties to undertake public education programmes, including school and university curricula
- UNODC is assisting States in this regard through the Anti-Corruption Academic Initiative
- UNODC is also an active partner in other Building Integrity Initiatives with relevant partners such as the Global Compact, IACA and IAACA



ACAD – Anti-Corruption Academic Initiative

- **Idea:** to facilitate the integration of anti-corruption teaching into the curricula of universities and other institutes of higher education
- **Concept:**
“Menu of course topics” – wide choice of anti-corruption teaching subjects; annotated with bibliography, case studies, materials; textbook/teacher’s manual
- Open-source, free of charge, accessible online, module-based, across disciplines/jurisdictions
- Series of regional and interregional training seminars and workshops

SUSTAINABLE DEVELOPMENT GOALS



For additional information:

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>



Thank you for your attention.

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Vice President**



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