

Chapter 1

Sources of International Standards

In the mid-1990s the problem of corruption was recognised as a subject of international concern and drew the attention of numerous global and regional inter-governmental organisations. The last decade witnessed a growing constellation of international “hard law” (treaties and conventions) and “soft law” (recommendations, resolutions, guidelines and declarations) instruments elaborated and adopted within the framework of organisations such as the United Nations, the Council of Europe, the OECD, the Organization of American States, the African Union, and the European Union. The multitude of international legal instruments on corruption varies in scope, legal status, membership, implementation and monitoring mechanisms. However, all aim to establish common standards for addressing corruption at the domestic level through its criminalisation, enforcement of anti-corruption legislation and preventive measures. In addition, international legal instruments also aim to identify and promote good practices, and to facilitate co-operation between member states.

From the very beginning of this process it was apparent that merely strengthening legislation would not be sufficient to effectively control corruption. The complex, multifaceted phenomenon of corruption signals a failure of public institutions and good governance. There is consensus within the international community that anti-corruption legislation and measures need to be implemented and monitored through specialised bodies and/or personnel with adequate powers, resources and training. Mechanisms need to be in place to secure a high level of structural, operational and financial autonomy of institutions and persons in charge of the fight against corruption to guard them from improper political influence. As stated in the *Conclusions and Recommendations of the First Conference for Law Enforcement Officers Specialised in the Fight against Corruption*, which took place in Strasbourg in April 1996, “corruption is a phenomenon the prevention, investigation and prosecution of which need to be approached on numerous levels, using specific knowledge and skills from a variety of fields (law, finance, economics, accounting, civil engineers, etc.). Each State should therefore have experts specialised in the fight against corruption. They should be of a sufficient number and be given appropriate material resources.”

In the European context, one of the first sources of “soft” international standards that highlighted the need for specialised institutions and persons in the area of detection, investigation, prosecution and adjudication of corruption offences were the Twenty Guiding Principles for the Fight against Corruption, adopted in 1997 within the Council of Europe. In 1998 most of these standards were translated into the Council of Europe Criminal Law Convention on Corruption. Anti-corruption instruments initially focused on promoting specialisation of law enforcement and prosecution bodies, aiming at more effective enforcement of anti-corruption legislation. It was the United Nations Convention against Corruption (UNCAC) adopted in 2003 that put prevention in the spotlight and, as the first global international treaty in the area of corruption, required

member states not only to ensure specialisation of law enforcement, but also to establish specialised preventive anti-corruption bodies. A few key articles of these international instruments are listed below.

Twenty guiding principles for the fight against corruption¹

Principle 3. Ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;

Principle 7. Promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.

Council of Europe Criminal Law Convention on Corruption²

Article 20 – Specialised authorities

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

United Nations Convention against Corruption³

Article 6 – Preventive anti-corruption body or bodies

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and co-ordinating the implementation of those policies;
 - (b) Increasing and disseminating knowledge about the prevention of corruption.
1. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.
 2. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 36 – Specialised authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

There are other regional instruments that include provisions relating to specialised institutions. These include the following:

African Union Convention on Preventing and Combating Corruption⁴

Paragraph 5 of Article 20

State parties are required to “ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.”

Southern African Development Community (SADC) Protocol against Corruption⁵

Article 4

Amongst other preventive measures “an obligation to create, maintain and strengthen institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption” is listed.

Inter-American Convention against Corruption⁶

Paragraph 9 of Article III

Calls are made for “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

The sources of international standards, although different in scope, contents and objectives, define a clear international obligation for the countries to ensure institutional specialisation in the area of corruption. It is worth noting that the obligations on institutional specialisation under the Council of Europe Criminal Law Convention on Corruption and the UNCAC are mandatory. The UNCAC further requires that countries ensure the specialisation in two areas, prevention (including education and public awareness) and law enforcement. States are therefore obliged to secure the existence of

- Specialised bodies in charge of prevention of corruption; and
- Specialised bodies or persons in charge of combating corruption through law enforcement.

There is, however, a notable difference between the two areas. According to the UNCAC, prevention needs to be addressed at the institutional level, by creation or dedication of a specialised body (or bodies) with anti-corruption prevention and co-ordination functions. Criteria on specialisation in the area of law enforcement, according to the UNCAC and the Council of Europe conventions, can be fulfilled either by creation of a specialised body or by designation of an adequate number of specialised persons within existing institutions.

The international standards also set basic benchmarks for specialisation. The main benchmarks are the following: independence and autonomy, specialised and trained staff, adequate resources and powers.

Finally, international standards neither offer a blueprint for setting up and administering a specialised anti-corruption institution, nor advocate a single best model or a universal type of an anti-corruption agency. From this perspective, provisions of international law relating to the institutional framework for prevention and suppression of corruption are considerably less developed and precise than, for instance, provisions relating to the elements of corruption offences, such as active and passive bribery or offences concerning trading in influence and abuse of official position. However, the aforementioned conventions define features and set important benchmarks according to which anti-corruption institutions should be established. Furthermore, international monitoring mechanisms have developed a valuable body of assessments and recommendations, which provide a useful set of best international practice in this area.⁷

Notes

1. Resolution (97) 24 on The Twenty Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers of the Council of Europe on 6 November 1997.
2. Council of Europe, Criminal Law Convention on Corruption, adopted on 4 November 1998, entered into force on 1 July 2002.
3. United Nations Convention against Corruption, adopted on 31 October 2003, entered into force on 14 December 2005.
4. African Union Convention on Preventing and Combating Corruption, adopted on 11 July 2003, entered into force on 5 August 2006.
5. Southern African Development Community Protocol against Corruption, adopted on 14 August 2001, entered into force on 6 July 2005.
6. Inter-American Convention against Corruption, adopted on 29 March 1996, entered into force on 6 March 1997.
7. See, for example, GRECO's first evaluation round reports in 2000 - 2002 focused on compliance with Guiding principles 3, 6 and 7, www.greco.coe.int; Esser, A. and M. Kubiciel (2004).

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