



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

Comments from ICC's Commission on Anti-Corruption on the draft UN Convention against Corruption

Prepared by the Commission on Anti-Corruption, 9 January 2003

Introduction

ICC, as the leading world business organization, has a lengthy history of promoting anti-corruption initiatives, including ICC's Rules on Extortion and Bribery in International Business Transactions which were first published in 1977 and subsequently revised on a number of occasions, most recently in 1999. ICC's Standing Committee on Extortion and Bribery was established in 1994 to undertake the first revision of its rules. The Committee participated constructively in discussions with the Organization for Economic Cooperation and Development (OECD) not only on its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions but also in relation to general issues related to corruption, both before and after the Convention's drafting. In January 2002 the Commission on Anti-Corruption was formed out of this Standing Committee. The Commission presents in this paper its views on the draft UN Convention against Corruption. The following comments are based on analysis of the draft negotiating texts by experts from the Commission.

General Comments

ICC welcomes international efforts to coordinate the fight against corruption. Corruption undermines public and business confidence in the fair and efficient operation of markets and distorts competition. Therefore, business has good reasons to support international efforts to fight against corruption. Many efforts have already been undertaken: OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Organization of American States (OAS)'s Inter-American Convention against Corruption and the three Council of Europe Conventions on Corruption. ICC welcomes the enlargement of these regional efforts to a worldwide scale by the negotiation of a binding instrument under the auspices of the UN.

Based on the experience with previous instruments and recognizing the different conditions in UN member states, ICC is convinced that efforts to combat bribery have to be focused on major issues and should not be over-detailed. ICC believes that the Convention would most appropriately address elements of particular global importance and which necessarily should be dealt with by the UN due to their broad impact. ICC identifies the issues of mutual legal assistance and repatriation of proceeds of corruption transferred to other countries as areas which a prospective UN Convention should cover.

Member States should agree on fundamental issues to be implemented into national legislation based on the principles of functional equivalence and mutual recognition. The Convention should also fit into established government structures and refrain from including responsibilities which may unduly interfere with the internal organization of participating states while the monitoring of the efficiency of implementation mechanisms has to be fully ensured.

ICC fears that a too detailed approach would hinder adoption and efficient implementation of the convention. If too much is envisaged, nothing will be achieved. Therefore, ICC suggests that the Convention should set out objectives to be achieved and principles to be respected.

A core concern to business is the establishment of a level playing field. Therefore, ratification and implementation of the convention should take place simultaneously in as many countries as possible.

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It is of critical importance that main trading partners establish equivalent rules in parallel. To ensure this, the Convention should only enter into force after a substantial number of signatory States have ratified the Convention. To assure this level playing field through a sufficient number of ratifications providing for substantive application of the Convention, a relatively high threshold is called for.

Implementation and Monitoring

The setting up of an efficient monitoring process is of prime importance to ensure efficient implementation of the Convention. Without such a process, the instrument would lose credibility among all actors and the envisaged level playing field will never be achieved. To be carried out efficiently, such a monitoring process should take into account results from monitoring existing instruments. Such an approach would save resources and reduce the burden on all participating institutions. Joint efforts in monitoring implementation of various instruments against corruption are the only way to get an overall coverage on a broad scale and within reasonable time limits. Furthermore, an effective monitoring process requires a review of the implementing legislation followed by a review of its enforcement.

It is crucial that participation in the monitoring process is not limited to governments and governmental institutions. The involvement of business organizations is a proven mechanism to inject practical knowledge into the process and to obtain a complete picture. In selecting participants from civil society, sufficient consideration has to be given to the representations of invited organizations, particularly those representing stakeholders such as the business community who are directly affected by official corruption. ICC, as the leading world business organization, stands ready to assist the engagement of the business sector.

Specific Comments

Below are ICC's specific comments on articles of the draft UN Convention against Corruption articles (as per the revised draft convention of March 2002 and July, as presented to and discussed at the third session, 30 September - 11 October 2002).

Art. 5bis Anti-corruption bodies

ICC suggests the deletion of this article. Depending on the specific situation in a member state, the setting up of a specific authority may appear too bureaucratic. In general, the Convention should not intervene in internal organization.

Art. 10 Funding of political parties

Different political systems make implementation of such an article very difficult at world-level. The efficient implementation is already a serious problem at national level in countries having such legislation.

Art. 13 Civil society

It is questionable whether such an objective should be included in a legal instrument.

The protection of whistle-blowers should not be dealt with in this context but under the heading of witnesses.

Art. 19 Criminalization of corruption involving a foreign public official

ICC welcomes strong recognition of the important issue of solicitation. Without effective action to address the "demand side" of corruption, the fight against corruption cannot be won.

Art. 21 Trading in influence and Art. 35 Traffic in influence

ICC suggests the deletion of this article. This problem can be dealt with under the aspect of indirect corruption. As the term "influence" would be difficult to define clearly, it is to be feared that legitimate activities could be endangered such as lawful lobbying - practised and recognized in many countries. On the other hand, indirect corruption is already covered by other articles.

Art. 25 Unlawful enrichment

A reversal of proof would not be acceptable as a violation of the fundamental principles of law. Therefore, a solution would have to be found by elaborating the alternative proposals. The Inter-American Convention already contains a similar provision that is qualified by making it subject to the "fundamental principles" of each country's legal system.

Art. 53 Mutual legal assistance

The usual procedural formalities and rights will have to be respected.

Art. 58 Banking secrecy

As banking secrecy is now lifted in criminal investigations, there is no need, in ICC's opinion, to deal with it in a separate article. The usual procedural formalities and rights should apply, in a manner comparable to article 9 of the OECD Convention.

Art. 59 Special investigative techniques

The essential rights of individuals concerned (privacy rights, right to be informed etc.) will have to be respected.

Art. 76 Conference of the parties

ICC believes that the business community should be invited to participate in these discussions including the right of making proposals.

About ICC

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations from over 130 countries.

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