

Chapter 2

The Universal Approach of the United Nations Convention Against Corruption

John Sandage

The role of the United Nations Office on Drugs and Crime (UNODC) is to build a world safer from drugs, crime, and terrorism. In doing so, one of our key targets must be corruption.

Corruption has a devastating impact on development. It is estimated that up to US\$ 40 billion is stolen from developing countries every year, robbing citizens of better education, better health care, and better lives, and denying them hope for a better future. Corruption breeds more corruption and facilitates other crimes. It undermines democracy and weakens good governance and the rule of law. It squanders precious resources and talent, keeping countries from fulfilling their potential. And in the worst case, it costs lives.

The impact of corruption on the private sector is also considerable. Corruption stifles economic growth, distorts competition, and presents serious legal and reputational risks. It keeps investors away, acting as a hidden “tax” or illegal overhead charge, and thereby increasing costs for companies and further down the chain, their consumers.

But during the last decade, we have experienced a positive change in the attitudes towards corruption. Whereas once the question was to bribe or not to bribe, there is now a broad consensus that bribery and corruption are no longer acceptable forms of doing business. The world has embraced the notion of a level playing field for all, and more and more people and societies are rejecting individual gains, in favor of universal principles of accountability, fairness, transparency, and equality.

One reason for this change is the existence of the United Nations Convention Against Corruption (UNCAC). UNCAC is the only universal legal anticorruption instrument. It embodies innovative and globally accepted anticorruption standards applicable to both the public and private sectors and provides a comprehensive approach to preventing and combating corruption. With 164 states parties, UNCAC has great potential for universal adherence in the not-too-distant future. Calls encouraging countries that are not yet parties to the convention to ratify or accede to

J. Sandage (✉)

United Nations Office on Drugs and Crime-UNODC, Vienna, Austria

e-mail: john.sandage@unodc.org

it have been made by all major fora, including the General Assembly, the G8, and the G20.

While ratification is essential, it is only the first step. Governments around the world are engaged in earnest in the implementation of the convention. There has also been significant progress with the landmark implementation review mechanism, which was introduced in 2010. Countries are treating the review process very seriously, and with considerable enthusiasm. One hundred and fifty-seven countries have been involved in the review mechanism, either as reviewing countries or under review themselves. Furthermore, the majority of the countries have demonstrated their willingness to take full advantage of the review mechanism, including its optional features, and to carry out the reviews in a transparent and inclusive manner. For example, to date a large number of states have involved the private sector in reviews: seven in the first 2 years involved the private sector in the self-assessment stage, 21 involved the private sector in the country visit stage.

Yet governments cannot win the fight against corruption alone. Preventing and combating corruption is the shared responsibility of every sector of society, and UNODC welcomes the fact that the private sector has added its own powerful voice to those who wish to eradicate this crime. Already during the Second conference of the States Parties to UNCAC, held in Bali in 2008, representatives of the business community, including the United Nations Global Compact, the International Chamber of Commerce, the World Economic Forum/Partnering Against Corruption Initiative, and Transparency International, adopted the so-called Bali Business Declaration. The declaration recorded the business community's commitment to work towards the alignment of existing business principles with the fundamental values enshrined in UNCAC; to ensure that anticorruption policies and strategies include effective whistle-blower protection; to ensure due diligence in the selection of agents and intermediaries and to address effectively facilitation payments; to work towards developing mechanisms to review companies' compliance with realigned business principles; and to strengthen public-private partnerships for combating corruption in business.

The role of the private sector is thus critical. And the private sector has come to realize that the fight against corruption is a win-win situation: By developing strong internal anticorruption policies and measures and by supporting countries in developing and strengthening their public anticorruption infrastructure, the business community can help create a transparent and strong global economy and prosperous societies, which contributes toward a level playing field.

Business thrives where laws are defined clearly and applied all-inclusively. We are currently seeing that the desired *level* playing field is becoming a *legislated* playing field. Again, one of the main reasons is the UNCAC, which requires states parties to take a series of measures that, together, lay the foundation for free and fair markets and sustainable economic development.

One of the main provisions of the convention in this regard is Article 12, which calls on states parties to prevent corruption involving the private sector, to enhance accounting and auditing standards in the private sector, and to provide effective, proportionate, and dissuasive civil, administrative, or criminal penalties for failure

to comply with such measures. In Article 26, UNCAC makes it obligatory to establish criminal, civil, or administrative liability of legal persons and to make such liability independent of the criminal liability of the natural persons committing an offence of corruption. Furthermore, Article 39 calls on states parties to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector.

Four years ago, UNODC, in partnership with PricewaterhouseCoopers, collated the existing anticorruption practices and measures of the Fortune Global 500 companies. In this context, it became clear that greater harmonization is needed, in line with international standards, to protect businesses and their employees against corruption. For example, a facilitation payment is just a fancy word for a bribe, yet some companies still allow them up to a certain threshold or under certain circumstances—or even consider them tax deductible. Some companies provide whistle-blowers full anonymity while others promise that such employees will not be exposed to retaliation.

When Dimitri Vlassis, Chief of the Corruption and Economic Crime Branch of the UNODC, and Professor Stefano Manacorda of the International Scientific and Professional Advisory Council (ISPAC) discussed the findings of this report, they agreed that more analytical work was needed. The private sector is facing new innovations and challenges due to a complex and ever-evolving international regulatory anticorruption framework. On the one hand, it has become subject to direct liability for the commission of corruption offences. On the other, it is more and more called upon directly to engage in the prevention of and fight against international corruption. UNODC thus welcomes that ISPAC, with the support of ENI S.p.A., is now making a serious effort to collect the best practices of anticorruption policy at the international level. The research aims at assembling concrete experiences of bribery, misconduct, and anticorruption policies in the international fora, in order to achieve more satisfying results at the criminal policy level. This will also support the efforts to coordinate and harmonize anticorruption compliance programs at the international level. UNODC is delighted to support this important and timely initiative.

Preventive action in the private and public sectors is a key driver for change. There is a lot that we can and must do together. I conclude by providing some information on the work of UNODC in strengthening integrity in and with the private sector.

UNODC, together with the Organization for Economic Cooperation and Development (OECD) and the World Bank, is developing a practical handbook for businesses that will bring together guidelines and related material on private sector anticorruption compliance.

We are implementing a number of public–private partnership projects. These projects aim at reducing vulnerabilities to corruption in public procurement systems; creating legal incentives for corporate integrity and cooperation; and developing an outreach and communication program for UNCAC, targeted at the private sector.

We are also about to launch a certificate course and different language versions of the e-learning tool for the private sector, which was developed jointly with the

UN Global Compact. The e-learning tool is publicly accessible from our website free of charge, and has already had 600,000 hits in the first year of its use.

UNODC is addressing the issue of corruption in the context of major public events, such as the Olympic Games. The private sector has a major role to play in this regard, both as service providers and through sponsorships and hospitality arrangements. Through UNCAC, we are identifying good practices and helping organizers mitigate the risk associated with such events.

Another fundamental area for UNODC is education. We need to educate the young on fairness and integrity today, so that we can have ethical leaders tomorrow. Our approach is twofold: First, focus on tertiary education through the development of anticorruption curricula for law schools and business schools. Second, embed the values and ethics of UNCAC in younger children by teaching the values that are the bedrock of the convention. The Anticorruption Academic Initiative, which brings together academics and other practitioners from around the world, will launch a menu of topics and academic resources on anticorruption on our website by the end of 2012.

UNODC is also closely involved in both the G20 and the B20 process. I am pleased to note that UNCAC has received a lot of recognition in both contexts, and just recently the G20 governments reiterated their commitment to the ratification and full implementation of the convention against corruption. They also welcomed continuing engagement from the B20 in the fight against corruption and, in accordance with the Terms of Reference of the review mechanism, committed to involve the private sector and civil society in the UNCAC review process.

We all share the same world, the same values—and the same problems. Therefore, UNODC considers public–private partnerships crucial to preventing and combating corruption. To tackle the problem effectively, we must also share the same solutions.



<http://www.springer.com/978-3-319-04479-8>

Preventing Corporate Corruption

The Anti-Bribery Compliance Model

Manacorda, S.; Centonze, F.; Forti, G. (Eds.)

2014, XIV, 533 p. 2 illus., Hardcover

ISBN: 978-3-319-04479-8