

The UN General Assembly Special Session on Corruption: Opportunities and Challenges

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Twenty years ago, nations across the world came together to begin negotiations on the first global convention on fighting corruption. It only took two years for negotiations to complete and it went into force in 2005 with 30 countries. Today, that convention – the UN Convention Against Corruption (UNCAC) - has been ratified and joined by 187 countries. It requires (but too often only encourages) member states to take a large number of measures to adopt anti-corruption laws and practices and cooperate with other nations to

In 2018, the General Assembly, led by Colombia, Peru and Norway, as well as Nigeria, Belize and Saudi Arabia called for a Special Session on Corruption (UNGASS) in Resolution 73/191 to address “challenges and measures to prevent and combat corruption and strengthen international cooperation” with a mandate to “adopt a concise and action-oriented political declaration” while stressing the importance of the 2030 Agenda for Sustainable Development. The UNGA subsequently adopted Resolution 74/276 in June 2020 also recognized the regional efforts on anti-corruption, as well as the importance of the 2030 Agenda in setting out the modalities of the UNGASS.

The UN General Assembly Special Session on Corruption gives a unique opportunity for countries to review the Convention and assess where it has been working and where it needs further work.

Some problem areas

Review mechanism.

In 2009, the Conference of State Parties (CoSP) meeting in Doha agreed in Resolution 3/1 to create a review mechanism to assess Member States implementation of the Convention. The discussion was contentious with many states resisting efforts to make the process more effective or open. The agreement created a peer review mechanism where each country would submit a self-assessment of their implementation. Peer review countries will visit the country and make recommendations. A detailed country review report and executive summary are then produced by the review team in cooperation with the country. An Implementation Review Group was set up in Vienna for countries to meet to discuss progress. So far, nearly all countries have completed the first cycle of the review process, which covered measures on the criminalization of corruption and international cooperation. A second cycle on preventative measures that should be adopted and asset recover began in 2015 but is badly behind schedule and is not expected to be completed for several years. There is no agreement so far on what will happen when it is completed and if additional review cycles will go forward.

The review mechanism has significant weaknesses compared with other anti-corruption including those operated by the Council of Europe, Organisation of American States, and the Organisation for Economic Cooperation and Development.

- A major problem is the lack of any follow-up mechanism. States are not required to implement the mechanisms. From the first cycle review, which ended a few years ago, there are some reviews that are now almost 10 years old that have nobody has ever gone back and looked to see if any of the recommendations have been actually implemented. There's no mechanism for that.
- The full reports are not required to be made public - only the executive summaries are required to be made public. In the first cycle, over 100 countries have not made their reports public. Only a dozen have made their self assessments available. How can a country's assessment on how they have implemented an international convention be secret?
- Civil society engagement is limited. While Article 13 of the Convention requires states to cooperate with civil society, the review mechanism only give weak guidance to states. The UNODC reports that the overwhelming number of states have been involving civil society in the process, the process is superficial at best. At the international level, states have blocked civil society from even being allowed in the room of the Implementation Review Group.
- Another problem is the substantive weakness of the Convention itself. Approximately 40% of all of the provisions are not mandatory and most of the provisions are subject to being implemented "in accordance with the fundamental principles of its legal system" in which independence or even basic corrupt practices are not prohibited. So many are not implemented by countries. For instance, whistleblower protection in Article 33 is just a suggestion for countries. The impact shows when that only about 30 countries around the world that have comprehensive whistleblower protection laws.
- The Conference of State Parties (CoSP) held every two years has not yielded much benefits. The resolutions tend to be repetitive with little progress or advances and are not widely known or used. Only occasionally has there need any new concepts adopted such as recently on environment and sport.
- There is limited stakeholder engagement in the entire process. ECOSOC accredited organisations can get into some meetings, but not any of the working groups including the review mechanism. So the input is mostly limited to delegations and whatever they're being told by capital rather than trying to bring in broader stakeholders.

The COVID pandemic has exposed many of these weaknesses and raised the issues around why fighting corruption is important. Just to remind that the UN Secretary General in his report in April talked about how governments really do need to be more open and transparent and responsive and accountable to effectively fight COVID

One area where this has been extremely apparent is around public procurement. At the Friends of Governance workshop on this earlier in the year, some of the issues that have come up around procurement has been how to ensure the traditional controls which are required by UNCAC and other agreements. In many countries, the controls around procurement have been weakened considerably. The oversight mechanisms, whether it's Parliaments not being able to meet,

oversight bodies have not been able to obtain information, and public disclosure of information has been limited. Thus, there's been some real limitations on the traditional tools to fighting corruption because of the response to COVID. The results have been in billions of lost money, inadequate materials being produced and being given to people that don't necessarily protect them the way they should be, and resources funneled to places where they shouldn't be and not to the people that need the most.

UNGASS Big and Little Ideas

In the negotiations around the UNGASS, there have been some significant ideas have been raised by states and civil society.

Grand Corruption. In the text of the UNCAC, there is no mention at all of grand corruption, where those corrupt actors within a country are so powerful that the State's mechanism are not able to handle it. There has been some progress with the adoption of measures recently around "vast quantities of assets" because "grand corruption" was considered too controversial to say.

International Criminal Court. Another idea that hasn't gotten so much progress that was proposed by Columbia and other countries is around creating an international criminal court on fighting corruption that would address issues like grand corruption, where the state itself is unable to fight the corruption because the institutions aren't strong enough to fight whatever it is.

A possible solution would be for there to be an agreement that an expert working group be created that could discuss these ideas in more detail and come up with some frameworks that could be discussed by states for a protocol for the Convention in the future.

Action Ideas

A key idea that has been getting a lot of attention is around making the beneficial ownership of companies public. Beneficial ownership is a useful and practical idea. It's that that countries or jurisdictions like the British Overseas Territories that offer the creation of secret companies, that the people who actually control those companies have to be revealed and a huge amount of money goes through those secret companies. This is a main way that that that corrupt money is lost, that that money relating to transnational crime and terrorism is transferred. Making companies ownership public is a real possible way of fighting it. Unfortunately, the delegations seem to be mired in the idea that it's that it's sufficient that the countries themselves can share the information, but not make it public asset recovery and return. The best format would be for national-level online registers of beneficial owners of companies, foundations, trusts and other legal entities. These registers must be freely accessible to the public, timely, accurate, with effective verification, and sanctions for non-compliance.

Another is around enhancing public access to information. 121 countries have comprehensive access to information laws while over 60 do not. The released 2nd cycle reviews summaries from many countries report problems with this issue. All countries need to have a comprehensive law. This is already a commitment in the SDGs - 16.10, as well as under Article 19 of the International Covenant on Civil and Political Rights. There is strong synergy between anti-corruption, human

rights and sustainable development. All have found the essential importance of access to information.

Use of new technologies to fight corruption. The resolution should focus on technologies that work like open data requirements and portals, rather than speculative ones like blockchain. The draft resolution should reflect this progressive policy that many countries have already committed to. But a strong legal framework is essential to ensure that the technical measures are not manipulated.

The review mechanism is also being considered. However, a lot of delegations don't like the idea of a peer review mechanism that actually could criticize them and which is a little strange because any number of these countries are also part of the Council of Europe GRECO process or the OECD process. So, you know, it's really quite crucial that the review mechanism actually work and have reviews and publicity and so on.

Transparent, e-procurement, whether it's open contracting or other means of making procurement information more public has been discussed quite a bit. For public **procurement and public contracts**, full public access to all documents and all information related to these agreements, from planning to implementation, should be granted. Best practice approaches are the use of the open contracting data standard, and the requirement to fully publish contracts and procurement documents online for a contract to enter into force.

Conclusion

The Special Session is an unique opportunity to move forward the fight against corruption. However, to achieve this, it needs to look beyond the limited visions of the Vienna processes and CoSP agreements and take into account larger, bolder ideas and processes.