

International Mechanisms for Combating Corruption: The United Nations Convention against Corruption as an Example

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Abstract

Corruption affects all States, as it has become a complex social, political, and economic phenomenon that affects countries throughout the world. Since corruption is no longer confined to a particular State and its manifestations have spread globally, reforms and international efforts to combat corruption offences have become necessary. This contribution therefore raises the question of how corruption can be fought and combated internationally. It examines the concept of corruption and the international mechanisms for combating it, taking the United Nations Convention against Corruption as an example.

Keywords: corruption; international corruption; phenomenon; combating corruption; corruption offences; international mechanisms for combating corruption; United Nations Convention against Corruption.

Introduction

Following the technological revolution that emerged in the eighteenth century and the appearance of the term globalization, a new phenomenon began to spread: corruption. It expanded alongside developments and globalization and may be regarded as a criminal phenomenon that has affected most countries of the world.

International corruption is a global problem affecting humanity. This has prompted all States to act to limit and combat it and to attempt to eliminate it through a body of laws, provisions, and conventions.¹

After international corruption had been considered a national problem, it became a problem affecting most States, and States now assist those affected by it.²

In the past, corruption was considered a difficult phenomenon that posed an obstacle to progress and development and was difficult to resolve. In recent years, however, efforts have improved and noticeable results have emerged, particularly after the United Nations adopted a convention

1 Al-Anbaki, N. (2010). *International Humanitarian Law* (1st ed.). Wael Publishing House, Amman, p. 101.

2 Al-Jawhari, Al-Sayyid M. H. (2018). *Administrative Corruption and Its Impact on Economic Development* (1st ed.). Dar Al-Fikr Al-Jami'i, Alexandria, p. 3.

providing for international cooperation to limit this phenomenon and the serious consequences it produces.

International and national organizations have also played a role in addressing this phenomenon. Non-governmental organizations, including transparency organizations, have likewise contributed by encouraging States to make greater efforts and bringing them together in major international conferences.

Accordingly, the following research question was raised:

“What is the concept of corruption, and what are the international mechanisms for combating it, with the United Nations Convention against Corruption as an example?”

To answer this question, two approaches were adopted: the descriptive approach to describe corruption and its characteristics, and the analytical approach to analyze the United Nations Convention against Corruption as an international mechanism for combating international corruption. A methodological plan consisting of two main sections was therefore adopted, each section containing two subsections. The first section addresses the concept of corruption, while the second examines the United Nations Convention against Corruption as one of the mechanisms for combating corruption in international law.

1. The Concept of Corruption

Given the impact of the term corruption on societies and the expansion of its effects across all fields, there has been disagreement over a unified definition. Several definitions of the term have therefore emerged. The first subsection examines the definition of corruption, while the second addresses its characteristics.

1.1. Definition of Corruption

This subsection examines the concept of corruption in linguistic usage and in Islamic law.

1.1.1. Linguistic Definition of Corruption

Linguistically, the Arabic term for corruption (*fasad*) is derived from the verb *fasada*. It means that something departs from its proper condition and correct course, whether the departure is major or minor.

1.1.2. Definition of Corruption in Islamic Law

Islamic law contains verses that indicate the meaning of corruption. The Almighty says: “The penalty for those who wage war against Allah and His Messenger and strive to spread corruption in the land is that they be killed or crucified, or that their hands and feet be cut off on opposite sides, or that they be banished from the land. That is a disgrace for them in this world, and in the Hereafter they will have a great punishment.”³

1.1.3. Definition of Corruption in International Conventions

International conventions have not provided a fixed definition of corruption; rather, they have described it as a phenomenon affecting the territory of States and requiring cooperation among States in order to limit it.⁴

³ The Qur'an, Surah al-Ma'idah, verse 33.

⁴ Preamble to the United Nations Convention against Corruption (2003).

The African Union Convention defined corruption as “activities and acts within the framework of crimes.”⁵

1.1.4. Definition of Corruption in Domestic Legislation

Tunisian legislation in 2011 defined corruption as “the pursuit of personal interests by departing from rules, provisions, and laws, including obtaining bribes, stealing and appropriating State funds or using them for purposes other than those intended, and breach of trust.”

According to Article 1 of the Iraqi law of 2011, corruption is “a criminal case that is investigated and includes bribery, breach of trust, improper conduct, and employees exceeding the limits of their authority under certain legal provisions.” From a legal perspective, corruption is the violation by citizens or employees of the laws established by the State under its legal provisions.⁶

Dr. Ali Shata defined corruption as a means of achieving personal objectives, attaining a particular goal, or obtaining a particular position in society through violating laws and breaching ethical standards. Accordingly, corruption constitutes a violation of the law.⁷

1.2. Characteristics of Corruption

Corruption has several characteristics, the most prominent of which are the following:

1.2.1. Secrecy

It is well known that corruption is an unlawful phenomenon. Persons who commit this offence conceal it and carry it out in secrecy. The manner in which it is practiced differs according to the body involved; at higher levels, for example, corruption may be practiced as though it were an obligation in the public interest.

Corruption is an offence punishable by law. The punishment is not limited to imprisonment or a financial fine, but may extend to dismissal from employment or position and the confiscation of all movable and immovable property. The offender may also incur the dislike of others and a negative view from society.

Reliance on secrecy is intended to allow corrupt activities to continue for a longer period and to keep suspicion away. Perpetrators conceal the traces of the offence and devise new methods of corruption in order to avoid detection, and they also operate in the shadows to escape attention.⁸

1.2.2. Spread

Following the Industrial Revolution, which was characterized by development, corruption began to spread like a malignant and contagious disease. This made corruption a phenomenon requiring containment and intensive international efforts. If it finds an environment that receives it, it continues to spread.

1.2.3. Global Character

Corruption may be a global phenomenon that extends beyond State borders through the effects it produces. Some offences do not cross borders, such as embezzlement and theft. The global character of this phenomenon is attributed to conflicts of interest and the interaction of corrupt

⁵ www.auanticorruption.org.

⁶ Article 1 of Iraqi Commission of Integrity Law No. 30 of 2002.

⁷ Daghmash, M. S., op. cit., p. 24.

⁸ Suwaylim, M. A., op. cit., p. 30.

desires, while its effects extend to humanity and the corruption of society. For this reason, States combine their efforts to limit the phenomenon.

In recent years, corruption offences have become ordinary offences committed in many regions, particularly because of the spread of the persons responsible for them.

The principal difference between an international crime and a global crime is that, although most global crimes are regulated by international conventions, the authority to punish them remains with the domestic authorities of each State under the domestic law of the State in which the offence occurred, even where the provisions of domestic law are based on the provisions of international treaties.

Examples include the offence of money laundering and the smuggling of funds obtained from corruption offences or other organized crimes. Because of the serious risks they pose to the international community, national legislation should reduce restrictions on the application of the principle of universal jurisdiction to criminal provisions in terms of place, in order to close any gap that corrupt persons may exploit by committing corruption offences and moving to another country to evade criminal responsibility. Accordingly, most corruption offences fall within the universal jurisdiction of national criminal courts, meaning the application of criminal law to perpetrators of such offences who are arrested in the territory of a State after committing offences outside that State.⁹

1.2.4. Corruption as a Serious Phenomenon

Corruption is a serious phenomenon because of its effects on society, whether socially or morally. These are offences in which a material result is realized; it may also be said that a result is realized in its abstract legal sense, namely the infringement of the interest protected by criminal law.¹⁰

However, most of the conventions that have emerged since corruption became a global phenomenon have sought to confront the danger before it reaches the core of the problem. This is what must be taken into account: the phenomenon must be limited before it spreads and before its effects become widespread.

2. The United Nations Convention as an International Mechanism for Combating Corruption

The danger that emerged after corruption became widespread was evident in society, particularly in the economy. Consequently, a number of international conventions were adopted to confront this phenomenon, foremost among them the United Nations Convention against Corruption. The first subsection examines the establishment of the United Nations Convention against Corruption, while the second addresses its provisions.

2.1. Establishment and Objectives of the United Nations Convention against Corruption

This subsection examines the establishment of the United Nations Convention against Corruption and its objectives.

9 Al-Majali, N. T. (2017). *Explanation of the Penal Code: General Part* (6th ed.). Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, p. 164.

10 Al-Qalhwaji, A. A. (2008). *Explanation of the Penal Code: General Part* (1st ed.). Al-Halabi Legal Publications, Beirut, Lebanon, p. 321. Al-Anbaki, N., *Unpublished Lectures in International Criminal Law*, op. cit., p. 50.

2.1.1. Establishment of the United Nations Convention against Corruption

The United Nations Convention was adopted in 2003, after all States and parties within the United Nations system had become fully convinced of the importance of unifying international efforts to combat corruption. As a continuation of the United Nations' efforts to perform its functions under the Charter of the United Nations, the United Nations Convention against Corruption was concluded in 2003. The Convention is considered the principal source of rules for combating corruption and occupies the leading position among international anti-corruption rules, after international custom had previously occupied that position at the international level.¹¹

It is also a multilateral convention negotiated by United Nations Member States and is the first legally binding instrument for combating international corruption.

The Convention contains 71 articles divided into eight chapters, and States Parties are required to implement a number of anti-corruption measures that may affect laws, institutions, and practices.

2.1.2. Objectives of the United Nations Convention against Corruption

The Convention aims to achieve the following:

1. Prevent corruption and criminalize certain forms of conduct.
2. Strengthen law enforcement and international judicial cooperation.
3. Provide effective legal mechanisms for asset recovery, technical assistance, and the exchange of information, as well as mechanisms for implementing the Convention, including the Conference of the States Parties to the United Nations Convention against Corruption.

2.2. Areas and Provisions of the United Nations Convention against Corruption

This subsection examines the issues covered by the Convention and the extent and limits of the obligation to implement the United Nations Convention against Corruption through an examination of its provisions.

2.2.1. Areas Covered by the United Nations Convention against Corruption

The Convention covers the following five main areas:

1. Preventive measures.
2. Criminalization and law enforcement.
3. International cooperation.
4. Asset recovery.
5. Technical assistance and information exchange.

The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.

One of the most prominent features of the Convention is the inclusion of a dedicated chapter on asset recovery, with the aim of returning assets to their legitimate owners, including States from which they were unlawfully taken.

¹¹ Daghmash, M. S., op. cit., p. 285.

The vast majority of United Nations Member States are also parties to this Convention.¹²

2.2.2. Provisions of the United Nations Convention against Corruption

The United Nations Convention against Corruption is a multilateral international treaty. The rules applicable to international treaties therefore apply to it with regard to international obligations, the manner of their implementation, their entry into force in domestic law, and the extent to which States Parties are bound by its terms and provisions.

Priority is therefore given to the rules of international treaties as a principal source of international law whose provisions and rules take precedence over domestic law when they are to be implemented within national legislation. This is the view of the majority of international-law scholars who support the monist theory, such as Jorsilo, Borkan, and Kelsen, which affirms the primacy of international law, with international law taking precedence over national law. This is regarded as a logical process confirmed by judicial and international practice. Some provisions may be accepted for automatic implementation, while others may require the enactment of legislation in order to incorporate the Convention or some of its provisions into the national legal system.¹³

A. The Convention places an obligation on States Parties to adopt the legislative and executive measures necessary to put the Convention into effect, as provided for in Article 65. The application and enforcement of the Convention by investigative and trial authorities are carried out in accordance with national laws.

B. The provisions of the Convention contain the minimum measures that must be followed and implemented to combat corruption. They also allow States Parties to adopt supplementary measures beyond those contained in the Convention, whether through national legislation or by entering into other bilateral or multilateral agreements and treaties. The Convention also emphasizes respect for the sovereignty of States and the principle of equality among them, as provided for in Article 31 of the Convention.

C. The Convention is binding on all States Parties, and the rules of responsibility apply in the event of non-compliance with its provisions in accordance with international law. In the event of a dispute between States Parties, Article 33 provides a method for resolving disputes, beginning with arbitration and, if that fails, referring the dispute to the Court. States Parties apply the Convention by adopting a set of legislative and administrative measures, and the national judge's obligation to comply with its provisions is fulfilled through the application of national laws that the State has become obliged to adapt in accordance with the provisions of the Convention itself.

D. The application of the Convention and compliance with its provisions must ensure respect for the sovereignty of States Parties. The judiciary has jurisdiction and authority over the territory of the State, while taking into account international cooperation in the field of mutual legal assistance and other mechanisms of international cooperation in combating corruption.

Conclusion

Through the contribution entitled "International Mechanisms for Combating Corruption: The United Nations Convention against Corruption as an Example," the following results were reached:

¹² Al-Anbaki, N. (2018). Unpublished Lectures in International Criminal Law, p. 50.

¹³ Al-Anbaki, N., op. cit., p. 41.

1. The effects of corruption are not limited to the domestic level of States; they have extended beyond it, making corruption a global cross-border crime that affects the international community and humanity in general.
2. Corruption is a phenomenon that cannot be ignored. International efforts have therefore converged at both the domestic and international levels to combat corruption and limit its destructive economic, social, security, and political effects.
3. Efforts at the domestic level consist of States enacting legislation specifically designed to combat corruption and establishing specialized oversight institutions responsible for combating corruption.
4. Efforts at the international level are reflected in the conclusion of bilateral and multilateral international treaties, the development of strategies for combating corruption, and the strengthening of cooperation in this field.
5. The United Nations Convention against Corruption is a multilateral convention negotiated by United Nations Member States and contains 71 articles divided into eight chapters.
6. The objective of the United Nations Convention against Corruption is to prevent corruption, criminalize certain forms of conduct, strengthen law enforcement and international judicial cooperation, and provide effective legal mechanisms for asset recovery, technical assistance, and information exchange.

The contribution also reached the following recommendations:

1. Strengthen means of international cooperation in pursuing perpetrators of corruption offences and referring them to the courts so that the sanctions provided for in international conventions and national legislation may be imposed where they are proven to have committed offences involving the embezzlement of public funds or unjustified enrichment.
2. Enact national legislation and establish and adopt preventive measures to reduce and prevent corruption offences.
3. Make the United Nations Convention against Corruption binding on all Member States and seek to attract the greatest possible number of non-member States to join it by providing incentives and explanations that demonstrate the importance of applying its provisions throughout the world.
4. Ensure the existence of effective international deterrence and emphasize it in international conventions, foremost among them the United Nations Convention against Corruption, so that penalties and sanctions are imposed on perpetrators of corruption offences and so that they serve as an example to others.
5. The application of the Convention and compliance with its provisions must ensure respect for the sovereignty of States Parties. The judiciary has jurisdiction and authority over the territory of the State, while taking into account international cooperation in the field of mutual legal assistance and other mechanisms of international cooperation in combating corruption.

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