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List of Abbreviations

CCPCJ	Commission on Crime Prevention and Criminal Justice
CIME	Committee on International Investment and Multilateral Enterprises
CoE	Council of Europe
CoSP	Conference of the State Parties
COW	Committee of the Whole
ECOSOC	Economic and Social Council
EU	European Union
FCPA	Foreign Corrupt Practices Act
FStAR	Friends of StAR
GAC	Governance and Anticorruption Strategy
GRECO	Group of States Against Corruption
IACA	Inter-American Convention Against Corruption
IBRD	International Bank for Reconstruction and Development
ICJ	International Court of Justice
IDA	International Development Association
IFC	International Finance Corporation
IMF	International Monetary Fund
MDB	Multilateral Development Banks
MDTF	Multi-Donor Trust Fund
MESICIC	<i>Mecanismo de Seguimiento de su implementación</i>
NGO	Non Governmental Organisation
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
SEC	Security and Exchange Commission
StAR	Stolen Asset Recovery
TI	Transparency International
UN	United Nations
UNCAC	United Nations Office
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
WBG	World Bank Group

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1 Introduction

In recent years, the number of researchers investigating topics related to the field of corruption has been constantly rising. Corruption has become a dominant subject matter in the media, and especially in Western European states, the newspaper articles on corruption cases are no longer exclusive to African or Post-Communist states but have become domestic affairs. This has also led to an increased interest in anti-corruption efforts and the organisations and governing bodies involved in this area. As a worldwide organisation, the United Nations plays a crucial role in the fight against corruption. The phenomenon has existed since the dawn of mankind but it was not always considered to be entirely negative. In some contexts, for instance, corruption in developing countries was even believed to be beneficial to a certain degree by some researchers in the 1970s.

My personal interest in the issue began several years ago. As a student I had the privilege to be able to do two internships closely linked to the field discussed in this thesis. First, very early on in my studies, in the summer of 2008, I completed an internship with the UNODC, to be precise with what at that time was the section for Economic Crime and Corruption at the Treaty and Legal Assistance Branch, which was part of the Division for Treaty Affairs of the UNODC. This internship was conducted under the supervision of Crime Prevention Expert Erik N. Larson. During this time I worked on the Institutional Integrity Initiative and, more importantly, came into first direct contact with the UNCAC while assisting in the implementation of the Pilot Review Programme. This launched my interest in the United Nations' efforts in the fight against corruption. Later on, in spring 2011, I was an intern at the United States Mission to the International Organisations in Vienna at the UN

Affairs section, where I had the opportunity to assist the incoming delegation from Washington during the 20th session of the CCPCJ, as well as the 2nd Session of the Implementation Review Group for the UNCAC, amongst others. All of these experiences also gave me the opportunity to conduct scientific observations as to how the meetings function, and how the decision-making processes in reality might differ from the purely technical parameters.

The aim of this thesis is to closely examine the anti-corruption efforts of the United Nations. The questions at hand is whether we can study the United Nations' anti-corruption efforts solely by analysing the UNCAC, whilst regarding all previous anti-corruption efforts as stepping stones, and if not stepping stones, then at least as one big entity which comprises a unified United Nations anti-corruption regime? In this thesis I will argue that it might be more useful to take a different approach and see the United Nations' efforts regarding anti-corruption as two, three or maybe even four closely linked regimes.

The United Nations has other entities that also play or have the potential to play an important role in anti-corruption efforts. I will argue that the UNCAC is indeed a significant anti-corruption regime, but that equally, the UN houses one or more other regimes which either deal partially with corruption issues or with specialised aspects of corruption.

The guiding hypothesis of this thesis is that the Crime Congress, the Commission on Crime Prevention and Criminal Justice, the United Nations Convention against Corruption, and the Stolen Asset Recovery Initiative are each a regime of their own standing, if they differ significantly in their norms and principles (cf. chapter 2). If the norms and principles of two or more entities are identical, then those entities belong to the same regime. Thus it would be possible to identify four different regimes, but also to have no more than one, depending on

the outcome of the analysis. Although the other two features of a regime, namely the rules and decision-making processes, are important for the description of a regime, they are not key elements to distinguish between regimes (cf. chapter 2).

On a technical note, concerning political correctness in this paper, I would like to state that because it increases readability, I will only use the male form when referring to a person, scholar, etc. in general. However, I do not intend to discriminate against anyone because of his gender by using this form.

1.1 State of the art

Corruption as a topic of academic research has recently become increasingly popular. Scholars from a broad range of academic fields including political science, social science, cultural studies and others have shown a heightened interest in the subject. The topic was first taken up in modern times by researches such as Samuel Huntington and Joseph S. Nye in the 1960s and 1970s, especially with regards to its effect on developing states. Thirty years later, at the beginning of the 21st century, corruption reappeared on the radar of scholars worldwide. Not only do different scientific disciplines concern themselves with corruption, but they also look at a broad number of aspects of corruption, and phenomena that can be linked to corruption. One of the very early, but still frequently quoted and discussed, works on a theoretical conception of corruption is Arnold Heidenheimer's *Political Corruption: Readings in Comparative Analysis* (1970).

In the German-speaking community, two important works on the topic are Ulrich von Alemann's *Dimensionen politischer Korruption* from 2005

and Ilan Fellmann's *Vademecum der Korruptionsbekämpfung* from 2010. In Austria an important scholar, especially in the area of party funding, is Hubert Sickinger, and his best-known publication on this matter is a very comprehensive work on party funding in Austria called *Politikfinanzierung in Österreich*, also from 2009. A recent publication with an interdisciplinary approach is *Korruption als globale Herausforderung*, edited by Lukas Achathaler, Domenica Hofmann and Matthias Pázmándy, published in 2011. It is not only comprised of articles by researches emerging from different fields, but also offers a number of insights from practitioners. Coming directly from what could be called the "front line" is *The Corruption Monster – Ethik, Politik und Korruption* (2009a) by Martin Kreutner, the former director of the Austrian Federal Bureau for Internal Affairs.

Regarding anti-corruption regimes, especially Holger Moroff's article "Internationalisierung von Anti-Korruptionsregimen" in Alemann's work presents an important insight into the field. Another publication worth mentioning in this context is *Anti-Corruption Regimes in Europe* edited by Sebastian Wolf and Diana Schmidt-Pfister in 2010.

It can be assumed that research in the area of corruption will continue to expand because of several reasons. On the one hand, corruption scandals are receiving more and more media coverage, especially when public officials are discovered to have been involved in corrupt practices – such as the Austrian EU Parliamentarian and former Minister for the Interior Ernst Strasser, South African former police chief Jackie Selebi or Norihiko Akagi, former Japanese Minister for Forestry and Fishery. On the other hand, the groundwork for corruption research has been done, which makes the topic more easily accessible for young academics and students. Lastly, it is noteworthy that more institutions are being created which deal specifically with corruption research,

such as, for example, the International Anti-Corruption Academy in Austria.

1.2 Terminology

There is no universal understanding of corruption, and scholars have not yet found a common definition for the phenomenon, in part also because the term is culturally dependent and determined. What in one culture is considered to be a corrupt act is not seen this way in others. A good example for this is nepotism, which is considered to be part of the social order in some cultures, while in others it is seen as an act of corruption. Even within a society the perception of what is considered to be corrupt changes over time.

That corruption is not a new phenomenon but that it has always existed can be shown by its thematisation in various historical works and cultural artefacts. For instance, in the Old Testament it is stated that “[y]ou shall take no bribe, for a bribe blinds the officials, and subverts the cause of those who are in the right” (Exodus 22:8). In the New Testament, we find bribery as a characteristic of “sinners” and “bloody men”: “Do not sweep me away with sinners, nor my life with the bloodthirsty, those in whose hands are evil devices, and whose right hands are full of bribes” (Psalm 26:9-10 “Plea for Justice and Declaration of Righteousness”). In Dante's *Divine Comedy*, fraud is discussed in *Inferno Canto: XI* “But because fraud is man's peculiar vice,/ More it displeases God; and so stand lowest/ The fraudulent”. Another example comes from William Shakespeare's *Julius Caesar*, where Brutus argues that because Cassius's name is connected with corruption in the minds of the public, corruption becomes

unpunishable: "The name of Cassius honours this corruption,/ And chastisement doth therefore hide his head" (Shakespeare, 4.3.15-16).

However, this is not only the case in the tradition of cultures influenced by Abrahamic religions, but, for example, corruption is also the topic of the book *Arthashastra* written by Kautilya, an Indian politician 2000 years ago (cf. Tanzi 1998: 559).

The word "corruption" originates from the Latin word "corrumpere" (to spoil, to taint, to rot), which itself derives from "cor" (heart) and "rumpere" (to break). However, while corruption has always had a negative connotation, this was not necessarily the case with other terms connected with corruption. The word "bribery," for instance, is "munus" in Latin, which is synonymous for both "gift" and "bribe".

For the purpose of research it is important to distinguish between corruption as a socio-economic term, in which case its meaning is flexible and socially constructed, and corruption as a legal term, where it is very much limited to rule of law principles in each nation, and the respective narrow definition of the term in the criminal law of the state in question. Thus, even if the definition is not worded as such, the definition of corruption in a legal context establishes itself by the sum of the single phenomena it is composed of, for example bribery, which is in fact frequently criminalised in this context. Therefore, it is not always necessary to define corruption, because the definition in most cases becomes self-evident. Furthermore, there is a simple way of adjusting the definition of corruption by modifying, adding or eliminating one or more single phenomena. The following discussion, however, will focus on the socio-economic aspect of the term.

Among scholars one of the most frequently quoted definition is the one Heidenheimer provided in the 1970s, where it is distinguished between *public opinion*, *public office* and *public interest* definitions of the term.

Heidenheimer offers very broad definitions which are also utilised as categories for other definitions of corruption. The first category, *public opinion*, defines corruption as all acts which are considered to be corrupt by the public, however, as Kurer points out, this would prerequisite an agreement by the entire public on which acts are corrupt and which are not, which is not given in modern societies. The *public interest* definition is that everything that is detrimental to the interest of the public is considered to be corrupt. Here again, the key point of criticism lies in the questionable concept of a commonly agreed-upon interest of a supposedly united public. Lastly, the *public office* definition, in contrast to the other two, does not include subjective notions of a united public, but defines corruption as committing an offense against formal rules of a public office for a private gain. At this point in time, the *public office* definition is the most popular one, as we will see later in this chapter (cf. Kurer 2003: 41-50).

The probably best-known definition of corruption is the one used by Transparency International (TI hereafter), a worldwide NGO dedicated to the fight against corruption. It defines corruption the following way:

Corruption is the abuse of entrusted power for private gain. It hurts everyone whose life, livelihood or happiness depends on the integrity of people in a position of authority. (TI 2011).

A similar definition is used by Martin Kreutner, who defines corruption as "Missbrauch einer übertragenen Macht- oder Entscheidungsbefugnis zu eigener (oder eines Dritten) Vorteilsnahme"¹ (Kreutner 2006b: 209). The World Bank defines corruption as "abuse of public office for private gain" (Kaufmann 1997: 1). Nye proposes the following definition, "behaviour which deviates from the formal duties of the public role because of private regarding" (Nye 1967: 284). All abovementioned

¹ Abuse of an assigned power or decision-making authority for personal advantage (or the advantage of a third party).

definitions fall into Heidenheimer's category of *public office* definitions. They all consider the public role or office, and in all cases the objective of the corrupt person is personal benefit or enrichment. As Sickinger points out, the fact that these definitions limit themselves to a public role is problematic as they effectively exclude similar acts in the private sector, which can have the same effect on the general public (cf. Sickinger 2009: 67). Sickinger himself, however, does not provide his own definition, but explains that he prefers to use the definition of corruption as the "abuse for private gain", as this definition gives him the possibility to include the private sector (ibid.). Alemann follows the same train of thought, and emphasises that corruption should not be reduced to political corruption, but he rather considers political corruption to be a part of the entire phenomenon, as corruption in the private sector can have consequences for the overall society, just like corruption in the public sector (Alemann 2005b: 20).

The keyword in every single definition provided here is "power". It appears to be the case that the underlying principle of corruption is some sort of misuse or abuse of power and power-relationships.

1.3 Methodology

The guiding methodology used in this thesis was a content analysis of relevant documents and primary sources. Secondly, two expert interviews with officials of the Corruption and Economic Crime Branch of the United Nations were conducted in order to answer a small number of questions which were left open by the document analysis. Thirdly, especially regarding processes and the flow of work, I used the personal experience which I gained in the course of the two internships mentioned in the introduction.

Content analysis in the social sciences goes back to the beginning of the 20th century and was developed in the beginnings of what is now considered to be media and communication studies, as well as linguistics. The aim, as the name already states, of this form of analysis is to look closely and qualitatively at a text. In content analysis, a text is not only the written word, but can also refer to a picture or a motion picture (cf. Alemann and Forndran 1995: 172f.). Thus we can categorize it as a qualitative research methodology. In contrast to a pure quantitative analysis, where we would, for example, count how often the word “corruption” appears in a given text, or how often it is used in a headline, in qualitative analysis we also look at issues such as the historical context, under which category the issue of corruption might be subsumed, or in which context it is discussed and why. Furthermore, we also try to analyse potential consequences and so forth (Patzelt 2007: 147-150). Consequently, it was only reasonable to use content analysis for this thesis, as the primary sources available form a vast amount of official documents, reports, conventions and manuals.

The expert interviews were especially necessary in order to assess a possible outlook into the future, but also to reach a better understanding of the work being done by the specialists, which is directly related to the topic. The experts chosen came from both sections of the Corruption and Economic Crime Branch of the UNODC and have both been working on issues related to corruption for a long time. Although it would have been exciting to hold more interviews, it unfortunately was not possible on account of several reasons, mainly because of the geographical distance – for instance, direct experts from the StAR Initiative are located in Washington, D.C., and are therefore not available for interviews in Vienna.

The interviews were conducted orally with a semi-scripted questionnaire that was provided to the experts before the interviews. Thus the interviewees knew about the questions they were going to be asked and had a chance to prepare themselves, but it also left the possibility open to expand on questions, or go into more detail if I felt that this was necessary (cf. *ibid.* 153-154). Furthermore, the experts were given the opportunity to elaborate on topics that needed more explanation in their opinion.

Lastly, my own experience was included into this thesis. We can subsume this under participatory scientific observation, as my role in most cases, like in the CCPCJ, was to observe, assist delegates and take notes. I had the opportunity to get to know work flows, witness first hand how the decision-making process was conducted in the case of resolutions in the CCPCJ, how StAR Donor meetings are organised, and so on. Of course, some of these experiences were incorporated into the work of this thesis. Furthermore, this form of research also provided me with the opportunity to observe behaviour which is not categorised or discussed in primary or secondary literature, as for example the concept of the Vienna Spirit, which I will elaborate upon in chapter 5.2.1.

2 Theoretical framework

In order to be able to analyse the different bodies involved in the anti-corruption efforts of the United Nations, it is immanent to use a theoretical framework which provides the opportunity to analyse the structure of such an institution and also provides criteria for such an analysis.

Regime theory has been used as a basis for the analysis of anti-corruption bodies in the past and has been proven to be the most fruitful approach. In this context, the word *regime* is not used to define a form of government, but is seen as a concept to describe efforts in a problem area. The approach first was developed in the United States in the 1970s.

The most quoted definition of regimes is provided by Robert Keohane and Joseph Nye, where regimes are defined as “sets of governing agreements [comprised of] networks or rules, norms and procedures that regularize behaviour and control its effects” (Keohane and Nye 1977: 19). This first definition was subsequently expanded and revised.

As Ernst Haas points out, the purpose of regimes has, especially its early phase, been to administer the international efforts and collaboration on a single topic, rather than focus on a whole area of related topics (cf. Haas 1980: 380-81). One of the most significant revised definitions of regime theory is provided by Stephen Krasner. He uses a slightly different definition, and although he argues that it is “consistent with other recent formulations” of regimes (cf. Krasner 1982: 186), he defines regimes as

sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of

fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision making procedures are prevailing practices for making and implementing collective choice.
(ibid. 186)

In the case of international anti-corruption regimes, those decision-making procedures also include review mechanisms.

According to Krasner, principles and norms are fundamental for change. Therefore, a change in principle and norms would mean a regime change and thus a new regime, while changed rules and decision-making procedures are only seen as a change within the regime itself (cf. ibid. 187). Krasner defines norms, rules, procedures and decision-making processes very explicitly. The terms are clearly defined and therefore easier to apply to a certain issue and make it easier to analyse a regime or regimes, in contrast to the applicability of Keohane/Nye's definition.

It should be noted that, like any other approach, regime theory is not immune to criticism. A key aspect in regime theory criticism is the lack of empirical analysis of the effectiveness of regimes (cf. Zellner 1998: 14). He argues that this is not accidental but caused by weaknesses in the theoretical construct.² An interesting expansion of Krasner's approach to regime theory is Volker Rittberger's observable behavioural orientation (cf. ibid. 13). This aspect implicates that only those bodies should be considered which actually have an impact on the area it concerns and this impact should be evident. However, Rittberger's criterion of observable behavioural orientation will not be taken into account in this thesis, as it is my belief that Krasner's definition is more applicable to anti-corruption regimes in the UN context.

² For a comprehensive criticism on regime theory, see Zellner 1998.

3 Anti-corruption regimes – a historical overview

3.1 *The development of international anti-corruption regimes*

In order to understand the development of the United Nations anti-corruption regimes, one first has to take a close look at how anti-corruption regimes came into existence on a global scale. In his article "Internationalisierung von Anti-Korruptionsregimen" (Internationalisation of anti-corruption regimes; 2005), Holger Moroff explores how corruption became a concern for international relations, and also tracks the historical development of norm-building processes in the context of anti-corruption measures.

Moroff proposes a subdivision of the process of norm-building into three historical stages. The focus is on the investigation of how international anti-corruption politics can be achieved; however, the goal is not to measure the efficiency but the realisation of international cooperation in the field. The first stage of globalisation was between 1870 and 1914, during which, however, no norm-building processes took place yet. The second stage was the phase of norm-building from 1970 onwards, and the last one is the stage of the implementation of norms starting around 1990.

In the first wave of globalisation, several major reasons for the lack of effort to enforce anti-corruption measures can be identified. The first is that corruption and bribery was a common practice in international business, because it was routine that entrepreneurs would bribe local officials to obtain contracts, and therefore it was not seen as an offence. Furthermore, in this golden age of imperialism, the idea that trade produces wealth was prevailing, and therefore successful trade relations were seen as one of the top priorities. Penalising tradesmen

who could establish working relationships with trading partners, even if it was by means of bribery, would have been seen as counterproductive, because the result was the desired one. The next reason is that the nations at this time were not as directly involved in commerce as it is the case nowadays, but the economy rather was dominated by private investors. Therefore transnational corruption was not seen as a problem the state would have to concern itself with. Another reason why no functioning anti-corruption procedures were introduced is that it would not have been possible to prosecute persons who engaged in corrupt actions abroad, because there was no working system of international judicial cooperation in place at that time. In addition to that, there were no international organisations yet who could have provided a framework to implement and execute efficient anti-corruption measures. The last reason is that at that time, politics and finances were very closely interwoven, because, amongst other things, political influence was determined by one's wealth. Moreover, the consensus was that the people who funded the state with their taxes were also entitled to have much more political influence than the people who did not contribute (cf. Moroff 2005: 445-448).

More than fifty years and two World Wars would pass until serious attempts to develop international anti-corruption measures were undertaken. In the 1976, the involvement of top politicians of both the United States and Japanese governments in the Lockheed bribing scandal, where \$1.8 million were paid to the Japanese prime minister by the Lockheed corporation to be assigned with an important commission, were discovered (cf. Mabrey 2007: 175-177). In addition, the Security and Exchange Commission (SEC), which had uncovered the Lockheed scandal, exposed a number of other instances of bribery and corruption public officials had been involved in. To counteract the

loss of image produced by these scandals, the United States passed the Foreign Corrupt Practices Act (FCPA), under which the bribery of foreign public officials became a criminal offence. However, it was feared that the FCPA might lead to a competitive disadvantage for the United States, since just because US American companies could not (legally) continue to bribe foreign public officials, companies from other countries would not be stopped from doing the same, and thus acquire more commissions. Therefore, the United States tried to internationalise the FCPA by promoting the implementation of such an act in international organisations, such as the United Nations or the Organization of American States, and other industrial nations. These endeavours, however, proved to be ineffective. Although in the 1970s some efforts to put some anti-corruption measures into practice within international organisations were undertaken, this issue was often overshadowed by the arms race and the discourse of international security policies during the Cold War. Furthermore, it was feared that the more active enforcement of anti-corruption measures would be seen as an infringement of affairs internal to the sovereign countries – an issue that was especially sensitive during the Cold War. Another problem was that at this time it was still believed by some experts that corruption could have positive effects – also because often no injured party was immediately evident, and it was therefore assumed that one had reached a win-win situation (cf. Moroff 2005: 448-449).

The United States had always been an important actor in the promotion and development of international anti-corruption norms. However, during the administrations of Ronald Reagan and George W. Bush, Sr., the topic of international anti-corruption measures receded into the background which led to a stagnation of the proceedings within the international community. It was only under the Clinton

administration in the 1990s, that the fight against corruption returned to the agenda of international organisations. Several factors contributed to this renewed interest in the issue, which would ultimately lead to the implementation of international anti-corruption norms. Firstly, the dissolution of the Soviet Union and the end of the Cold War led to a redefinition and widening of the understanding of national security, and corruption and its prevention became part of the discourse of national security once more. In addition, in this time of increased awareness of the problems brought on by corruption, the non-governmental organisation "Transparency International" was founded in 1993, with the goal to further the fight against corruption.

As before, the United States were crucial to the development of the norms, and the interaction of several factors made the fight against corruption especially important for them. To begin with, their direct investments in developing countries increased, and because in these countries corruption and bribery were often common practice, they needed to find ways to combat this problem. Furthermore, they established relationships with new target countries, and for instance became an export partner for China. In China, however, corruption was also widely spread, and for the United States in order to expand successfully, ways of fighting corruption in the target country had to be found. Lastly, among the big emerging sectors during the 1990s was also the infrastructure sector, which was an area of business where the contracts are commonly issued by the government itself. However, in many countries, especially emerging or developing countries, the chances of being given a contract without bribing the official in charge were very low. Therefore the United States urged to promote the development of international anti-corruption measures, in order to

be able to compete with investors from other countries (cf. *ibid.* 450-451).

Other aspects which contributed to the formation of international anti-corruption measures were that not only the United States, but also other industrial countries increased their direct investments in, on the one hand, various industrial countries, but on the other hand, also in developing or transitioning countries. In order for these business relationships to be successful, corruption in the target countries had to be prevented. Another aspect is the increased scandalisation of corruption. In, for instance, the former Soviet Union countries, freedom of press increased, and although corruption had been very common before, these practices suddenly became publicly known, and therefore turned into scandals which needed to be addressed by the government. Yet another reason why anti-corruption efforts were increased can be found in the development of the European Union in the 1990s. With the removal of borders and with them, border control, in the Schengen area, it was at the same time easier for businesses to trade across borders, but it also became much easier to engage in transnational criminal action, corruption and money laundering among them. Therefore, measures to prevent this form of criminal action had to be found. Especially in the course of the European Eastern Enlargement many people were concerned that there would be a strong increase in criminal action, therefore ways to prevent this had to be found (cf. *ibid.* 452).

To conclude, it can be said that the success in the establishment of international anti-corruption norms can, amongst others, be traced back to the fact that from the 1990s onwards, corruption was publicly ostracised and also given greater importance in the media, which then

led to more public recognition of the detrimental effects of corruption (cf. *ibid.* 452).

3.2 Overview over international anti-corruption regimes

Although the United Nations is in a unique position as the single global organisation which operates on a world wide basis, other entities have also created their own regimes to fight corruption. In this chapter an overview over two regional anti-corruption regimes, namely the Inter-American Convention Against Corruption (IACA) regime of the Organization of American States, and the Council of Europe will be provided. In addition, the Organisation for Economic Co-operation and Development as an international anti-corruption regime will be presented.

The OECD has had corruption issues on its agenda since the late 1970s. Especially the United States were a driving force in the organisation, as they had already criminalised the bribery of foreign public officials in their Foreign Corrupt Practises Act (FCPA 1977). The first measures against this aspect of corruption developed by the OECD were non-binding (cf. Jakobi 2010: 93), and the OECD "Recommendation on Bribery in International Business Transactions" (C(94)75/FINAL) was adopted in 1994. Among a number of requests for member states to actively take actions against bribery, it also requested the OECD's Committee on International Investment and Multilateral Enterprises (CIME) to report on the progress of those recommendations within three years (Posadas 2000: 378). In 1997, the OECD received a "Revised Recommendation on Bribery in International Business Transactions" by the CIME, which again encouraged the OECD to pursue a way to a treaty on this topic. Six months later, the OECD member states adopted

the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD 2011). It came into force in 1999 and is a legally binding international instrument which is focused on the 'supply side' of the bribery transaction.

The OECD also has a monitoring system in place called the "OECD Working Group on Bribery in International Business Transactions," which is not only responsible of overseeing the implementation of the Convention, but also of the "Recommendation on Further Combating Bribery of Foreign Officials in International Business Transactions," which is the OECD's second legal instrument in the fight against corruption. The Working Group is composed by representatives of signatory states, and all signatories of the Convention have an obligation to be members of the Working Group (cf. Jakobi 2010: 95). This Recommendation was adopted in 2009, and the key difference between the Recommendation and the Convention is that the recommendation is not legally binding.

There is also a monitoring mechanism in place, which is a peer-review system and is mandatory. Furthermore, states cannot block the publication of country reports. Those two aspects in particular probably make the mechanism the strongest review mechanism for a legal anti-corruption instrument in place today.

A pioneer among anti-corruption regimes is the Organization of American States (OAS). The Inter-American Convention Against Corruption (IACA) was the first internationally binding comprehensive anti-corruption instrument. It was signed in 1996 and entered into force in 1997. Until now, 33 nations have ratified the Convention and 34 signed it (Barbados has not ratified the Convention yet)³ (OAS 2011). This convention came into existence at an uncharacteristically fast

³ December 2011

pace for an international instrument. In December 1994, the OAS agreed to commit to tackle corruption with a new instrument in the "Declaration of Principles and Plan of Action". In March 1996, not even two years later, the Declaration the Inter-American Convention Against Corruption was adopted in Venezuela and opened for signature (cf. Posadas 2000: 382-383). There was no form of review mechanism included in the original convention, but was later included in the Resolution AG/RES. 1784 titled "Mechanism for follow-up of implementation of the Inter-American Convention Against Corruption" in 2001. This document set the basis for the *Mecanismo de Seguimiento de su implementación* (MESICIC). The participation in the mechanism is voluntary and has currently 31 member states, thus covering 94% of the member states to the IACA (the two exceptions are St. Lucia and Dominica), and 89% of all member states of the OAS.

One of the most effective Anti-Corruption Regimes in existence today is the Council of Europe. It all began at the Malta Conference in 1994, where it was recommended to pursue a common anti-corruption strategy which could include an international convention (Jakobi 2010: 96). The Council of Europe, although it is limited in range in comparison to the United Nations, is a powerful instrument in its region, covering 47 nations. Its key norms are the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. Although one can say that other anti-corruption regimes are more comprehensive, especially its "Twenty guiding principles against corruption" (CoE Res (97) 24) provide clear guidelines for member states. They form a crucial basis for the regime's monitoring institution GRECO (Group of States against Corruption) (cf. Hofmann 2011: 98-106). GRECO was established in 1999 and has at the moment 49 member states, including the United States, who are a signatory of the Criminal Law convention.

Resolution (99) 5, defines the function of GRECO as follows:

- i. monitor the observance of the Guiding Principles for the Fight against Corruption as adopted by the Committee of Ministers of the Council of Europe on 6 November 1997;
- ii. monitor the implementation of international legal instruments to be adopted in pursuance of the Programme of Action against Corruption, in conformity with the provisions contained in such instruments; (Res (99) 5 art. 2)

An important development happened in 2003 when the Council adopted the “Additional Protocol to the Crime Law Convention on Corruption” (CoE 2003) as it criminalises the bribery of judges of arbitration courts as well as members of a jury (cf. Hofmann 2011: 106). As of now, 28 States have ratified the additional protocol.⁴ As a side note, the Conventions, as well as GRECO itself, are not only open to member states of the Council of Europe, but to all nations.

The differences between those three regimes are immense. At a special position, we have the pioneer of anti-corruption instruments, the OAS's IACA, which marks a first attempt in creating a legally binding international instrument. However, as it one of the oldest regimes on the issue, it lacks some crucial features, especially an efficient review mechanism.

This review mechanism is present at the anti-corruption regime of the Council of Europe, as GRECO has an elaborate review mechanism which has already undergone three evaluation rounds according to the rules of procedure (Greco (2010) 9E) and the fourth evaluation round is due to start in 2012.

⁴ December 2011

The significant difference between regimes of the OAS and the Council of Europe and the OECD lies in the fact that the OECD almost exclusively deals with one aspect of corruption, namely the bribery of officials. Furthermore, compared to the other two regimes, the OECD provides the best review mechanism in order to ensure the implementation of its norms. We can therefore argue that the OECD is an important and strong anti-corruption regime regarding one aspect of corruption.

4 The United Nations

After the League of Nations had failed to prevent another global war, the Allied Nations started to develop ideas on a new global organisation during World War II. This organisation would ideally be able to prevent another war of the dimensions of either World War I or II, and the project was started by analysing why the League of Nations had been unsuccessful in their efforts.

The first agreement that drafted the duties of a future global organisation was the Atlantic Charter, which was presented by Winston Churchill and Franklin D. Roosevelt in the fall of 1941 (cf. Gareis and Warwick 2006: 23). However, it did not concern itself with a possible organisation directly, but rather hinted at it by stating “pending the establishment of a wider and permanent system of general security” (Atlantic Charter 1941 §8).

The Declaration by United Nations signed on New Year's Day 1942 was the agreement of 26 states. Not only was it an agreement to fight against the Axis Powers, but also the states committed “to a common program of purposes and principles embodied in the Joint Declaration [...] known as the Atlantic Charter” (Declaration 1942).

Other key Declarations were agreed upon at the Moscow Conference and the Teheran Conference in 1943. The preparations for a worldwide organisation became more concrete at the Dumbarton Oaks Conference in 1944, where an expert meeting agreed on a number of proposals, including a possible organisation structure. At the Yalta Conference in 1945, Stalin, Churchill and Roosevelt agreed upon the voting system of the Security Council, including the veto-right for the permanent members (cf. Cede 1999: 6).

At the United Nations Conference on International Organization in San Francisco in 1945, fifty nations spent two months drafting the United Nations Charter which was signed on June 26, 1945. It entered into force on October 24, 1945, after all five permanent members and a majority of members ratified the charter (cf. *ibid.* 7).

This event marked an important point in history, as for the first time, all great powers of the world were part of an international organisation dedicated to peacekeeping.

According to the UN Charter, the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat were established as the six principal organs of the UN (UN Charter chapter III art. 7 §1). The Trusteeship Council, the only organ of the United Nations to have completed its assignment, suspended its operation in 1994 (cf. Trauttmansdorff 1999: 41). The future of the Trusteeship Council remains undecided, as it could either be completely eliminated, or its function might be changed. As a result, the UN effectively has only five active principal organs.

The composition, functions and powers of the General Assembly are described in Chapter IV of the UN Charter. The General Assembly consists of all Member States of the UN (cf. UN Charter chapter IV art. 9 §1). According to article 10 of the Charter, the General Assembly may concern itself with "any matters within the scope of the present Charter or relating to the powers and functions of any organs." Resolutions of the General Assembly generally non-binding, yet decisions of budgetary or administrative issues are binding (cf. Trauttmansdorff 1999: 29). The annual meeting of the General Assembly traditionally begins in September. However, special sessions can be scheduled if requested by the UN Security Council or the majority of UN members. Furthermore,

Emergency Special Sessions, which meet within 24 hours of the request, can be convened if a majority of the members of the General Assembly, or nine members of the Security Council call for it (cf. *ibid.* 30). According to chapter IV, article 18 of the UN Charter, each member of the General Assembly has one vote, and decisions on important issues need a two-thirds majority. Those questions include

recommendations with respect to maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council [...], the admission of new Members to the United Nations, the suspension of the rights and privileges of membership [and] the expulsion of Members (Chapter IV, art. 18, §2).

All other decisions are made by a majority, however *de facto* most decisions are made by consensus. The General Assembly is assisted by six main committees, namely the Disarmament and International Security Committee, the Economic and Financial Committee, the Social, Humanitarian and Cultural Committee, the Special Political and Decolonization Committee, the Administrative and Budgetary Committee and the Legal Committee (cf. Trauttmansdorff 1999: 31). Additional subsidiary organs of the General Assembly include a number of Working Groups, Commissions and Councils.

The Security Council originally consisted of six non-permanent members and five permanent members, namely the Republic of China, France, the Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and the United States of America (UN Charter chapter V, art. 23, §1). Those permanent members also have the power of veto and can thus singlehandedly block a decision. Since 1971, the People's Republic of China is a member of the Security Council (cf. A/RES/2758), and the Russian Federation entered the Security Council

as the legal successor of the Soviet Union. Furthermore, in 1965 the number of non-permanent member states was increased in order to achieve a better distribution among geographical regions (cf. Gareis and Varwick 2006: 44). The main function of the Security Council is to maintain peace. The decisions of the Security Council are binding if they fall under chapter VII of the UN Charter, and nine of the fifteen members of the Security Council have to be in favour in order to make a decision on substantive matters. Although the UN Charter states that decisions have to be made by a majority of affirmative votes, including all permanent members (cf. UN Charter chapter V art. 27 §3), in practice a majority of votes is sufficient, even if a permanent member abstains from voting, or is absent (cf. Trauttmansdorff 1999: 35). Decisions on procedural matters need a majority vote.

The International Court of Justice (ICJ) in Den Haag consists of 15 independent judges. It is responsible for settling legal disputes which are submitted by states (therefore, individuals or private organisations cannot call upon the ICJ). In addition it is an advisor in legal matters for other UN entities (cf. Gareis and Varwick 2006: 48-49).

The Secretariat is composed of the Secretary-General and his staff. The Secretary-General is appointed by the General Assembly on the basis of a recommendation by the Security Council. The Secretary-General is appointed for a five-year term, which is renewable without limitations, however, in practice the position is renewed only once. The tasks of the Secretariat include servicing the other principal organs of the UN, as well as documenting the work of the organisation and reporting it to the General Assembly on an annual basis. Additionally, it can convene extraordinary sessions of the General Assembly (cf. Trauttmansdorff 1999: 41-45).

The Secretariat includes the Executive Office of the Secretary-General, a great number of offices and departments, including the UN Offices Away From Headquarters in Geneva, Nairobi and Vienna, and most important for the topic of corruption, the United Nations Office on Drugs and Crime (UNODC). The UNODC is structured into an Independent Evaluation Unit and four Divisions, including the Division for Treaty Affairs, which itself is composed of the Organized Crime and Illicit Trafficking Branch, Terrorism Prevention Branch and the Corruption and Economic Crime Branch.

The Economic and Social Council (ECOSOC) consists of 54 member states (originally only 18, 27 since 1965, and 54 since 1971), distributed among the regional groups as following: 14 members from Africa, 11 from Asia, 10 from Latin America, 13 from Western European and other States, and six from eastern European States. In principle, all five permanent members of the Security Council are part of the ECOSOC without interruption (cf. Trauttmansdorff 1999: 37). The relationship of the ECOSOC and the General Assembly is a hierarchical one. According to article 66 of the UN Charter, the ECOSOC is under the authority of the General Assembly, and can therefore be seen as an auxiliary body of the General Assembly (cf. Verdross and Simma 1984: §168). Since 1991, the ECOSOC only meets once a year instead of twice. At the meetings also member states of the UN who are not members of the ECOSOC at that point are allowed as observers (cf. Gareis and Varwick 2006: 47).

The bulk of the work of the ECOSOC is carried out by a number of subsidiary bodies, which include five regional commissions, three standing committees and a number of other committees, a changing number of ad hoc bodies, and most importantly its currently nine functional commissions, which namely are the Statistical Commission,

the Commission on Population and Development, the Commission for Social Development, Commission on Narcotics and Drugs, the Commission on the Status of Women, the Commission on Science and Technology For Development, the Commission on Sustainable Development, the United Nations Forum on Forests and the Commission on Crime Prevention and Criminal Justice.

Furthermore, a great number of NGOs have a consultative status with the ECOSOC and its subsidiary bodies. While it started out by including 41 NGOs in 1948, nowadays more than 3000 NGOs have a consultative status (cf. Keppler-Schlesinger 1999: 255). According to ECOSOC Resolution E/1996/31, the NGOs have to meet a number of criteria in order to be granted consultative status. Among others, the NGOs' objectives have to conform to the UN Charter, and, if possible, the NGOs should be equally distributed among all Regional Groups (cf. E/1996/31 part 1, §5), and NGOs from developing and transition states should be encouraged to become actively involved (cf. *ibid* §6-7).

5 Anti-Corruption Regimes of the United Nations

In this chapter, first a chronological overview over the anti-corruption efforts of the four UN bodies is provided. This is deemed necessary as the decisions and the development is essential to determine the norms and rules of those bodies. Secondly, the UN body is described according to the characteristics of a regime as presented in chapter 2.

5.1 The Crime Congress

5.1.1 Crime Congress Overview

Since 1955, the United Nations Congress on Crime Prevention and Criminal Justice has been held quinquennially in various cities around the world, and its first meeting was held in Geneva under the title “United Nations Congress on the Prevention of Crime and the Treatment of Offenders.” The name has been changed for the eleventh Congress, and is now “United Nations Congress on Crime Prevention and Criminal Justice.” The original title shows the focus on prisoners and the environment of correctional facilities of the early congresses. As was stated in the course of the Eleventh Crime Congress, the main objective is the setting of standards and the provision of guidelines regarding the prevention of crime and criminal justice. Every congress has a theme around which most discussions and sessions are arranged (cf. BKK/CP/10).

The first significant discussion of corruption in the course of the Crime Congress took place in Kyoto at the Fourth Congress in 1970 in discussions on Social Defence Policies in relation to development

planning, especially in the context of technical assistance in crime prevention. A point of criticism was the limited view of crime, which disregarded, among other things, corruption (A/CONF.43/1 §139).

This discussion was then resumed and more closely examined at the Fifth Congress in Geneva in 1975. Under Agenda item 5 *Changes in Forms and Dimensions of Criminality* – Transnational and National, the topic of *Crime as business: organized crime, white-collar crime and corruption* was closely inspected. It was mentioned that especially representatives of developing states stated that corruption, among other new forms of crime, were a threat to the economic development at the state of the nation itself. In addition, problems of definition were discussed in the paper, as well as the lack of research on the topic. It was concluded that “special studies on corruption and smuggling in view of their extremely detrimental effect on national economies and international trade, particularly in developing countries” (A/CONF.56/10 §58(e)) should be conducted (ibid. §51-59 and 301-371). Furthermore, the Congress advised that all parties involved with criminal policies should

develop greater awareness of the significance of economic crimes, particularly of corruption and damage to environment within a developmental context and of the effects of such crimes on the development process. (ibid. §24(i))

Corruption was also discussed under the aspect of social consequences, as it was stated that “the fear of crime, together with corruption, had in some countries resulted in social, economic and political instability” (ibid. §318). Corruption was now also viewed as being largely damaging to developing countries and it was agreed upon that “criminal codes should identify those crimes which had a bearing on the developmental process – for example, corruption [...] with appropriate alternative strategies designed to reduce the effect

of such crimes" and that as a result "economic growth could be accelerated" (ibid. §349). To sum up, corruption was generally viewed as a big problem that had to be tackled internationally. It was recognized that it was a problem which existed in the developing, as well as, the developed world. However, its detrimental effects were considered to be more damaging for developing countries. In addition the lack of information about corruption became clear, and thus the Congress called for more research, data and gathering of knowledge.

At the Sixth Congress, which was held in Caracas in 1980, the topic of corruption was dealt with in agenda item 5 *Crime and the abuse of power: offences and offenders beyond the reach of the law*. In the working paper *New perspectives in crime prevention and criminal justice and development: The role of international co-operation*, the Secretariat presented the problem of international trade-partners of "developing countries in particular" (A/CONF.87/10 §59), who "appear to operate outside and above the law" (ibid.) by affecting national economy through corruption, among other things. In the working paper *Crime and the abuse of power: offences and offenders beyond the reach of the law*, the Secretariat pointed out that one of the major problems of prosecuting the abuse of power is the unclear line between "what is legal and ethical, what is legal and unethical and what is illegal and unethical" (A/CONF.87/6 §27). In addition, the figure of the public official was taken under scrutiny, and the problems that might arise when a public official abuses his power, as he might be "protected, or because the act by its very nature is hard to detect and prosecute" (ibid. §31) was discussed. The role of the public, and especially also that of the media was put at the centre of discussion, although the question whether the increased medial presence of corruption would trigger a change remained open (ibid. §34). The most

striking fact about this document is, however, that the issue of a possible positive effect of corruption for developing societies, which was promoted at that time by some researches, was dealt with and this presumption was also criticised (ibid. §48). Among others, negative consequences of corruption, which affect the society as a whole – such as increased living costs or the loss of social cohesion and the trust in the law and public institutions – are highlighted (ibid. §49). The document also provides the first request for “minimum rules” for economic crime and “guidelines and norms aimed at the prevention and control of transnational abuses of economic power” (ibid. §88). The Congress agreed on a number of issues which were considered to be urgent, such as the need to “gather and exchange information on the various aspects of offence relating to the abuse of power”, “to broaden and improve machinery for combating illegal abuses of power” and “to strengthen international co-operation [...] in policy formulation and the implementation of effective action strategies particularly as regards economic crimes” (ibid. chapter I, C, 5. (1), (3), (5)). Although at this congress the discussion was focused on corruption in developing states, as well as corruption in the context of economic crime, the issue itself was still further developed in several respects. The term *public official*, as well as the phrase *the abuse of power*, had entered the language of the Congress and were frequently used in documents. The latter is, as discussed in Chapter 1.2, an integral part for every definition of corruption. Lastly, as already mentioned, the request for minimum rules can be considered to be a significant step in the Congress's efforts to combat corruption.

At the Seventh Congress in Milan in 1985 there was no longer a discussion whether the negative impact of corruption was stronger than any possible positive effects, but at that time a common

agreement that all new forms of crimes, including economic crime and corruption, had a “profoundly negative impact [...] upon socio-economic development” (A/CONF.121/22/Rev.1) had been formed. Especially its severe consequences in developing countries were stressed as “national development programmes were being seriously hindered by the proliferation of economic crime such as embezzlement, fraud, [...] rampant corruption, bribery and abuses of economic power” (ibid. §61). Under Agenda item 3 *New dimensions of criminality and crime prevention in the context of development: challenges for the future*, national and transnational economic crime, together with illicit drug trafficking, terrorism and international organized crime were not only identified as new emerging forms of crime (ibid. §55), but also as being especially harmful (ibid. chapter 1, sect. B, annex, §8). The list of “Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a new International Economic Order” provided guidelines for states regarding economic crimes. It requested states to provide training for judges and officials in dealing with the investigation, prosecution, and the prevention of economic crime to ensure that the penalty for economic crimes were equal in severity to the penalty of conventional crimes, and in addition, to grade penalties in a way that they would be equally exemplary for wealthy and poor offenders (ibid. chapter 1, sect. B, annex, §8-§11). In the broader context of the Seventh Congress, corruption, bribery or other closely linked offences were not dealt with in such depth but there was a stronger focus on economic crime in general. Interestingly enough, however, it was pointed out in a report by the Secretariat titled “New dimensions of criminality and crime prevention in the context of development: challenges for the future – Second United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies”, that there was an

apparent discrepancy in the reported data among economic crimes. While "white-collar crime", including fraud and embezzlement, was reported as frequently as conventional crime, data on corruption and bribery was provided by fewer countries (A/CONF.121/18 §51). This underlines the problem that it is still a problem to acquire reliable figures on the instances of corruption.

For the Eighth Crime Congress, which was held in 1990 in Havana, the Secretariat prepared a working paper titled *Crime prevention and criminal justice in the context of development: realities and perspectives of international co-operation* (A/CONF.144/8 and A/CONF.144/8/Corr.1). It expressed concern that corruption had, although present in all societies, more severe consequences in developing countries, but also pointed out that in some cases corruption is "linked to survival" (A/CONF.144/8 §20). The paper also disagreed with the widely spread opinion of the earlier decades, that corruption could have a positive effect on development and it was argued that "experience has shown the opposite: funds go to foreign banks in hard currencies and are used for personal enrichment" (ibid.). International cooperation was strongly encouraged in the paper, as well as preventive measures against money laundering and provisions for the "confiscation of the proceeds of corrupt practices" (ibid. §25). Furthermore, the Congress discussed a manual on "Practical measures against Corruption" (A/CONF.144/5), which covered a broad number of matters connected to corruption, including penal law issues and its limits, suggestions for the investigation of corrupt officials and provisions for the forfeiture of funds, as well as property acquired from corrupt practices. It is noteworthy that already at this early stage of the UN process of introducing soft law, an important distinction between anonymous informants, who would nowadays be considered to be a

type of whistleblowers, and witnesses, is made. This is later also apparent in the UNCAC, where it is distinguished between “reporting persons” and “witnesses” (cf. Djokic 2011: 170). In the manual, whistleblowers are listed under “Other Sources”, and it is recommended that they “should only be considered as investigative intelligence of unknown reliability” (A/CONF.144/5 §19). The Congress also adopted a resolution on “Corruption in Government” (A/CONF.144/28/Rev.1 chapter I, sect. C, res. 7). In this resolution the Congress recommended a number of measures for the prevention of corrupt practises, such as giving high priorities to anti-corruption strategies, increasing public awareness, and improving financial regulations (ibid. chapter I, sect. C, res. 7 § 1(a)-1(e)). It also requested the Crime Prevention and Criminal Justice Branch to draft an international code of conduct for public officials for the Ninth Congress.

At the Ninth Congress in Cairo in 1995, a special session was held on “Experiences in practical measures aimed at combating corruption involving public officials” (A/CONF.169/16/Rev.1 chapter V, sect. A). This discussion gave the Congress a chance to exchange opinions and experiences beyond the scope suggested in the title, as, for example, the definition of “corruption”, or the occurrence of corruption outside of the political sector were also covered (ibid. chapter V, sect. A 248 & 251). Furthermore, the Congress adopted a resolution on “International cooperation and practical technical assistance for strengthening the rule of law: promoting the United Nations crime prevention and criminal justice programme” (ibid. chapter I, res.1). In this resolution, the Congress requested further cooperation of its member states in “identifying specific measures against corruption, bribery and the abuse of power,” as well as further international cooperation on a number of crime issues, and called on member states to establish

monitoring mechanisms for economic crime, including corruption (ibid. chapter I, res.1 chapter II §8, §4 & §11). The active use of bilateral or multilateral agreements and the pursuit of further research in areas such as transnational organised crime, economic crime, environmental crime and corruption were also encouraged (ibid. chapter I, res.1 chapter I §4).⁵

At the Tenth Congress in 2000 in Vienna, the Congress adopted the "Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century" (A/Conf.187/4/Rev.3). In this declaration the Congress called for further efforts against new forms of crime, and, in paragraph 16 calls for a legal instrument to fight corruption "independent[ly] of the United Nations Convention against Transnational Organized Crime".⁶ Furthermore, the Congress considered issues of corruption under Agenda item 4 titled *International cooperation in combating transnational crime: new challenges in the twenty-first century*. It was noted that for an anti-corruption strategy to be successful, four requirements had to be met, namely economic development, democratic reform, a strong civil society and rule of law (A/CONF.187/9 §45). Moreover, the connection between corruption and other aspects of organized crime was stressed (ibid. §30), and the Congress once more called for an international legal instrument against corruption, but in this case it was left open whether the instrument should be ancillary to the UNTOC, or of an independent nature (ibid. §68). At the workshop titled "Combating Corruption", the discussion was focused on deliberating and suggesting different measures to fight corruption (A/ONF.187/15 §152-§160).

⁵ For clarification: The Resolution (A/CONF.169/16/Rev.1 chapter I, res.1) does enumerate corruption independently of economic crime in chapter I §4 but uses it as part of economic crime in chapter II §11.

⁶ Corruption is covered in the UNTOC in Art. 8 "Criminalization of corruption".

At the Eleventh Congress, which was held in 2005 in Bangkok, Corruption was dealt with under substantive item 3. In addition, corruption-related issues such as economic and financial crime were considered under Agenda item 4 (A/CONF.203/PM.1). It was highlighted that corruption had an effect on a wide range of areas, among them political stability and the economy, but also that it promoted other crimes such as money-laundering or terrorism (A/CONF. 203/18 §157). At the Congress the UNCAC was a highly discussed topic, especially the innovative inclusion of asset recovery, as it was seen as a tool for helping developing countries in particular, which could profit from this aspect of the Convention (ibid. §161). The Convention was praised as a “milestone in the efforts of the international community to establish an international legal framework against corruption” (ibid. §169). Another item of discussion was the inclusion of external entities in the fight against corruption, such as the civil society, non-governmental organizations, the media or the private sector. Especially the last was considered to be of high importance, as a great number of enterprises and companies conducted business in developing countries and could have a great effect there. It is interesting to see that the Congress also felt the need to encourage the “involvement of women in designing, implementing and monitoring anti-corruption strategies” (ibid. §162). The Congress also addressed the matter of the ratification process of the Convention, as it was seen to be problematic that only developing states had ratified the Convention at that point in time, and it was felt that this might have negative consequences, therefore member states were urged to accelerate the process (ibid. §158).

At the Twelfth Congress in Salvador in 2010, for the first time in years corruption was neither an item on the agenda (A/CONF.213/1), nor

appeared in a chapter title in the official report of the Congress (A/CONF.213/18). However, subjects that are closely related to corruption, such as money laundering were discussed, yet no substantial discussion on corruption was undertaken. States who had not yet done so were merely encouraged to sign and ratify the Convention and it was stressed as being an important legal instrument also to fight other crimes, such as terrorism (A/CONF.213/5).

An interesting fact to consider is the development of the categorization of corruption, and corruption related issues, in the course of the forty years the Congress dealt with this matter. At the beginning, corruption was merely mentioned to be absent from the discussion, and it was then frequently subsumed under economic crime, or white collar crime. We can see this from formulations like “economic crimes, including corruption.” From the Tenth Congress onward, however, corruption was generally considered to be an issue in its own right, and other economic crimes, such as fraud, embezzlement and money laundering were considered to be related crimes.

We can see that the importance of the issue of corruption in the context of the Congress has increased steadily from the Fourth until the Eighth Congress, but has since then given way to new emerging issues, such as cyber criminality, and slowly corruption started to become less present at the Congress, as the CCPCJ, the UNTOC and the UNCAC were formed and have taken over most of the substantial work in this area. This is underlined by the fact that no discussion on corruption took place at the Twelfth Congress. It is interesting to notice that the “sister-issue” with the “sister-convention”, namely organized crime, has stayed on the agenda. One could argue that one reason for this is the lack of a comprehensive review mechanism. Furthermore, transnational organised crime is a constantly and rapidly changing issue, thus the

topic has not been entirely subsumed under the Convention mechanisms.

5.1.2 The Crime Congress as a regime

The guiding principle of the Crime Congress is “standard-setting in crime prevention and criminal justice” (BKK/CP/10), which includes the fight against corruption.

Its key norms regarding corruption are the resolutions and declarations which were developed and adopted by the Congress. The most important among them are “Corruption in Government” (A/CONF.144/28/Rev.1 chapter I, sect. C, res. 7) and the “Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century” (A/CONF.187/4/Rev.3).

The rules of the Crime Congress regarding corruption are rather widely spread, as we not only have to consider the content of the resolutions by the Congress itself, but, as the it works closely together with the ECOSOC and the General Assembly, the resolutions adopted in those two bodies have to be taken into consideration as well.

Regarding the decision-making processes, this aspect of the regime is performed by the Congress at its sessions. However, as the CCPCJ is preparatory body for the Congress, it must also be included into the decision-making process of the Crime Congress. Furthermore, as the General Assembly and the ECOSOC adopt resolutions which directly impact the Crime Congress, they also have to be considered to be part of the decision-making process.

The impact of the Crime Congress is more difficult to elaborate upon than it is the case with other bodies in the fight against corruption. The

Crime Congress prefaces its report and all resolutions with the words "We the States Members of the United Nations," indicating that the decisions and agreements which were established in the course of those congresses were agreed upon by all members of the United Nations. Before the Tenth Congress, the common phrase was "The (1st-9th) United Nations Congress on the Prevention of Crime and the Treatment of Offenders". This indicates that especially from the 10th Congress onwards, by using the phrase "We the states members of the united nations", the Crime Congress viewed itself as being representative for all 193 UN member States.

Therefore, the standard setting of the Crime Congress, and its guiding principles, although they are not binding in any way, have a de facto global reach. However, as it is merely a standard setting institution which does not have any sort of review or follow-up mechanism, it is nearly impossible to track whether its rules regarding corruption have been implemented.

However, some rules, such as the call for an independent legal instrument to fight corruption at the Tenth Congress (A/CONF.187/4/Rev.3 §16) have been fulfilled, at least by those member states which are also States Parties to the UNCAC.

5.2 The Commission on Crime Prevention and Criminal Justice

5.2.1 CCPCJ Overview

The Commission on Crime Prevention and Criminal Justice (CCPCJ) is a functional commission of the Economic and Social Council, and it was established in 1992 by the ECOSOC in the ECOSOC resolution 1992/1 (E/RES/1992/1) and replaced the Committee on Crime Prevention and Control, which was dissolved in the same resolution.

The CCPCJ is the governing body of the UNODC, it approves the budget of the United Nations Crime Prevention and Criminal Fund, and also works closely together with the Crime Congress, as the Commission takes on follow-up measures from Congress decisions in between congresses. It is composed of representatives of forty governments elected by the ECOSOC for a three-year term and distributed among the five regional groups. In the ECOSOC Resolution E/RES/1992/22 it is stated that the Commission should be responsible for “facilitating the planning, coordination and implementation of practical activities in the field of crime prevention and criminal justice” (ibid. part I §1). In addition, the Commission was requested to work together with national agencies, non-governmental organizations and other institutions on a number of activities. It was also decided that until 1996, the Commission should focus, among others, on “[n]ational and transnational crime, organized crime, economic crime, including money laundering” (ibid. part VI §1 (a)). Although corruption is not explicitly mentioned in this decision, it must be assumed that this decision was made at a time when corruption was still generally subsumed under the under the subject of economic crime within the Congress.

During a session, the work of the Commission is generally split into two parts which take place simultaneously. In the plenary sessions the official agenda and other issues are discussed. In the Committee of the Whole (COW) the delegations consider draft resolutions, which are then submitted to the plenary for adoption towards the end of the session. Although de jure the adoption of a resolution does not need to be unanimous, the CCPCJ has a de facto policy of only adopting resolutions unanimously. This aspect of the decision-making process of the CCPCJ is also present at the other functioning Commission of the ECOSOC that meets in Vienna, namely the Commission on Narcotic Drugs (CND). This phenomenon is commonly called the *Vienna Spirit* or *Spirit of Vienna*.

Sessions 1-3

At its first session in 1992, the Commission approached the topic of corruption mainly in the context of organized crime. Corruption was dealt with under the draft resolution II on Organized Crime and it was stated in the 12th preambular paragraph that it must be a priority to combat the corruption of public officials (E/CN.15/1992/7). In annex I of the session report it was asserted that efforts against transnational organised crime should find means for combating the abuse of power by public officials, as well as for other corrupt behaviour. Furthermore, law enforcement, as well as judges and prosecutors should be trained in fighting different areas of transnational organised crime, including corruption (ibid. annex I §7(k) & (m)). The lack of information on corruption was also mentioned, and therefore governments were encouraged to generate knowledge in the field of corruption. In general, it is noteworthy that during the first session of the Commission, corruption was almost exclusively dealt with under the aspect of

organised crime and is not treated separately in any operative paragraph of any of the resolutions.

At the second session, the Commission, amongst other topics, had the responsibility to carry out the preparations for the Ninth Crime Congress, and in this context it was agreed to have a one-day discussion on corruption at the Congress (E/CN.15/1993/9, chapter I, sect A, res III, §9). Although corruption was a topic that was present in various plenary sessions, it still remained in the broader context of organised crime.

The first time corruption was dealt with in a different context, namely the smuggling of illegal migrants, was at the third session of the Commission. There it was stated in preambular paragraph 9 that the smuggling of illegal migrants can trigger official corruption (E/CN.15/1994/12 chapter I, sect A, draft res III). Furthermore, as a result of a plenary session on corruption, the Commission once more recommended to include the topic at the Ninth Congress.

Sessions 4-7

The first draft resolution on corruption was agreed upon at the fourth session in 1995 and it was titled "Action against corruption" (E/CN.15/1995/13). On the one hand, the requests addressed to the Secretary-General to "study the effects of anti-corruption strategies" (ibid. chapter I, sect B, draft res VII §9) and to inform the Commission on the implementation of this resolution (ibid. §10) in two years time were covered. On the other hand, it urged states to take a broad number of measures against corruption, including "to develop and implement specific and comprehensive anti-corruption strategies" (ibid. §1), to "increase their capacity for the prevention, detection, investigation

and prosecution of corrupt practices" (ibid. §2), and to "increase and improve international cooperation for the prevention and control of corruption" (ibid. §3). This resolution was drafted for adoption by the ECOSOC and was later adopted by the General Assembly.

At the subsequent session, the Commission submitted a follow-up resolution, also titled "Action against corruption" (E/CN.15/1996/24 chapter I, sect. A, draft Res. I), as well as the "United Nations Declaration on Crime and Public Security" (ibid. chapter I, sect. A, draft Res. II) with a request to be recommended for adoption by the General Assembly by the ECOSOC. The resolution requested the Secretary-General to "continue collecting information" (ibid. §4), to provide "assistance to requesting Member States" (ibid. §9), "intensify his efforts to closely cooperate with other entities of the United Nations system" (ibid. §8) and "to elaborate an implementation plan" together with "relevant intergovernmental and non-governmental organizations" (ibid. §5), which should then be submitted to the Commission at the next session. Furthermore, states were urged to "consider problems posed by the international aspects of corrupt practices" (ibid. §7).

In addition to this, also the United Nations Declaration on Crime and Public Security entailed an article on corruption (Article 10). There it is stated that there is an agreement among member states to "combat and prohibit corruption and bribery," and that therefore concrete measures in the area of international cooperation should be developed. The declaration was adopted by the General Assembly in Resolution A/RES/51/60.

The Commission also considered a report of the Secretary-General titled "Review of Priority Themes – Action against corruption." The report summarised comments from governments regarding a draft of the "international code of conduct for public office holders"

(E/CN.15/1996/5.) and provided suggestions for further steps the Commission could take, including the request to adopt the draft.

The momentum kept going, and at the sixth session of the Commission in 1997 another draft resolution on corruption was adopted, that time, however, with a different focus. The resolution was titled "International cooperation against corruption and bribery in international commercial transactions" (E/CN.15/1997/21 chapter I, sect. A, draft res. IV), and urged states, among other things, to "criminalize [...] the bribery of public office holders of other States in international commercial transactions," to "prevent and combat bribery and corruption", and to "develop and implement standards of good governance" (ibid. §3). The resolution was submitted to the ECOSOC for recommendation for the adoption by the General Assembly, and it was adopted as General Assembly resolution A/RES/52/87.

At the seventh session the commission drafted and adopted a draft resolution titled "Action against corruption" (E/CN.15/1998/11 chapter I, sect B, draft res I), which dealt with the manual "International Review of Criminal Policy" and asked the Secretary-General to add a passage referring to "recent developments in combating corruption" (ibid. §1).

Sessions 8-10

At the eighth session of the Commission a number of far-reaching draft resolutions were put forward to be recommended by the ECOSOC for adoption by the General Assembly. Among them was draft resolution II "Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto" (E/CN.15/1999/12), which dealt with corruption under article 8 "criminalization of corruption" (UNTOC 2004, art. 8).

A draft resolution titled “An effective international legal instrument against corruption” (E/CN.15/2000/7 chapter I, sect. A, draft res. III) was negotiated at the ninth session of the Commission in 2000 and addressed to the General Assembly. The resolution clearly states that

- an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Crime is desirable, (ibid. §1)
- [decides] to establish an ad hoc committee for the negotiation of such an instrument to start its work (ibid. §7)

At the tenth session of the Commission a draft resolution was negotiated for adoption by the ECOSOC titled “Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption including the laundering of funds, and in returning such funds” (E/CN.15/2001/13/Rev.1 chapter I, sect. B, draft res. III). This resolution requested to include, among others, the following aspects of the discussions on a new legal instrument against corruption (cf. ibid. §1):

- Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds of illicit act and promoting ways and means of enabling the return of such funds (ibid. §1a)
- Developing the measures necessary to ensure that those working in [...] financial institutions contribute to the prevention of the transfer of funds of illicit origin or derived from acts of corruption (ibid. §1b)
- Defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption may be a predicate offence in relation to money-laundering (ibid. §1c).

The resolution was adopted by the ECOSOC under resolution 2001/13 (E/2001/13/).

Furthermore, a thematic discussion on the worldwide measures against corruption, titled "Progress made in global action against corruption" (E/CN.15/2001/13/Rev.1 chapter II), was held. The deliberations were split into two main topics, firstly, on effective action against corruption and secondly, on asset recovery. At the former, states deliberated upon issues of the inclusion of the civil society and the private sector, but also on the need for a reformed cultural acceptance of corruption, as well as the need to establish civic morality. Transparency was also identified as an integral part of the fight against corruption. Regarding asset recovery especially the problems that arose when states attempted to recover funds called for stronger cooperation.

Session 11-12

At the eleventh session, the Commission continued its efforts regarding the UNCAC and drafted a resolution for recommendation by the ECOSOC for adoption by the General Assembly titled "High-level conference for the purpose of signing the United Nations Convention against Corruption" (E/CN.15/2002/14 chapter I, sect. A, draft res. II). The resolution presented the offer by the Mexican government to hold such a conference to initiate the signing of the UNCAC (ibid. §2-7) and also requested the Ad Hoc Committee to attempt to finish its work on the Convention by the end of 2003 (ibid. §1).

Furthermore, the Commission commenced the preparations for the Eleventh Congress and suggested in a draft resolution to include "Corruption: threats and trends in the twenty-first century" (ibid. draft res. IV §3b) into the agenda for the Congress. Additionally, a workshop

on "Combating corruption" (ibid. §4h) should be considered. In the discussions and draft resolutions concerning international cooperation, corruption was frequently listed as an area of importance.

In addition, the Commission also considered a report by the Secretary-General on the "Implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions" (E/CN.15/2002/6). In this document, the Secretary-General concluded that "it is difficult to ascertain whether the adoption by the General Assembly of the [Declaration] has had direct impact on domestic legislation" (ibid. §68). This report was part of a number of reports by the Secretary-General for the Commission to review the use of United Nations rules in the fight against corruption.

At the end of the twelfth session of the Commission it became even more apparent that the members of the Commission had great interest in finishing the work on the UNCAC by 2003. Apart from stressing the importance of international cooperation in the context of anti-corruption efforts, and praising the work of the Ad Hoc Committee for the negotiation of a Convention against Corruption, speakers also requested that the Committee should "further efforts to finalize its work, so that the new instrument could be approved by the General Assembly [...] by the end of 2003" (ibid. §72).

Sessions 13-20

In 2004 and 2005, the work of the commission regarding corruption mainly dealt with the UNCAC once again. Among other things, it urged Member States to sign the Convention (E/CN.15/2004/16 & E/CN.15/2005/20).

Since the 15th session of the Commission in 2006, corruption has neither been discussed in the course of a thematic discussion, nor has it been an integral part of any resolution drafted by the Commission, except for cases when a resolution called for further international cooperation. Only in preambular paragraphs the Commission recommends those members, who are not yet states parties, to sign and ratify the Convention.

5.2.2 The CCPCJ as a regime

The CCPCJ, like the Crime Congress, is primarily concerned with fighting crime on a global scale and thus includes corruption in its agenda. Its guiding principle is the work on crime related topics, which include anti-corruption measures, and it is a subsidiary body for the ECOSOC.

The resolutions of the CCPCJ are in fact only drafts which then have to be adopted by the ECOSOC or the General Assembly – and in general all are adopted unanimously due to the Vienna Spirit. However, those resolutions still form the basic norms for the CCPCJ. Some of the key resolutions drafted by the CCPCJ and later adopted by the ECOSOC and/or the General Assembly, which form the set of norms of the Commission, were prepared by the Crime Congress, the ECOSOC, or the General Assembly.

Thus, the key norms of the CCPCJ are its resolutions on the topic of corruption, which were later adopted by the ECOSOC or the General Assembly. The individual provisions of those resolutions can be seen as the rules of the CCPCJ.

The CCPCJ is composed of 40 Member States which are selected by the ECOSOC and are distributed among the Regional Groups. Although the term of office is only three years, it is renewable;

therefore, the five permanent members of the Security Council are customarily always represented at the CCPCJ.

The decision-making process of the CCPCJ is driven by the Vienna Spirit and thus decisions are always made unanimously. To reach this unanimity, the work of the CCPCJ is divided between the Plenary, where the agenda is carried out, and the Committee of the Whole, which works on all draft resolutions and is frequently the forum where heated discussions to find an agreement take place. The draft resolutions which pass the Committee of the Whole are then adopted in the Plenary.

It is rather difficult to define the impact of the CCPCJ itself, as its decisions are passed on to the ECOSOC or the General Assembly and then adopted there. However, the Commission provides a forum for discussion and exchange of experience and information.

In the future, the topic of corruption could easily be picked up and further discussed in the Commission. If one or more member states feel the need to introduce a draft resolution on corruption or a related topic, or include the issue in a resolution on a different topic, corruption as a topic would re-enter the forum of the CCPCJ.

5.3 *The United Nations Convention against Corruption*

5.3.1 UNCAC Overview

The United Nations Convention against Corruption was adopted by the General Assembly in resolution 58/4 in 2003 (A/RES/58/4). The Convention has since then been seen as a milestone in the fight against corruption worldwide, as it is by far the largest (and at least partially legally binding) legal instrument against corruption with 159 State Parties.

Between 2002 and 2003, the Ad Hoc Committee for the Negotiation of the Convention against Corruption drafted the convention. However, the attempts of the United Nations to establish a legal instrument against corruption reach further back in time, and were driven in part by the Congress and the Commission.⁷ There were a number of approaches and attempts that were not directly taken by the Congress or the Commission, which is why this chapter will address and elaborate on anti-corruption efforts of the United Nations, while excluding the actions taken by the Congress and the Commission.

The earliest attempts to tackle corruption in the context of the United Nations date back to the 1970s and 1980s. However, in most cases they proved to be unfruitful, mostly due to different opinions of developing and developed states. For example, a number of nations drafted and submitted resolutions on corruption to the General Assembly in 1975, but later withdrew those proposals (cf. Posadas 2000: 365). The same year the Assembly adopted a resolution titled "Measures against corrupt practices of transnational and other corporations, their intermediaries and others involved" (A/RES/3514), which "condemns all

⁷ see Chapters 3.1 and 3.2

corrupt practices, including bribery by transnational and other corporations" and asked states to take measures against corrupt practises in accordance with their national laws (ibid. §2). Furthermore, the ECOSOC was advised to "direct the Commission on Transnational Corporations to include in its programme of work the question of corrupt practises" (ibid. §6). Home and host governments were asked to cooperate on the issue, but "within their national jurisdictions" (ibid. §5). This resolution marks the first international recognition of corruption in at least one aspect of trade.

In 1976, the ECOSOC continued the United Nations efforts regarding corruption by establishing the Ad Hoc Intergovernmental Working Group on Corrupt Practises (cf. Posadas 2000: 367). The Working Group finished its work in 1978 and submitted a draft for an international instrument against illicit payments in international transactions. It is interesting to note that the ECOSOC's first concern was the code of conduct and that "the conclusion of an international agreement on illicit payments should in no way interfere with or delay that priority" (ibid.). Therefore, no further actions in this direction were taken until the late 1980s, although it has to be said that it was not for lack of trying. For example the United States submitted a resolution regarding illicit payments to the ECOSOC in 1977, but withdrew it again after it became apparent that at this point in time no agreement would be found among states. To summarize, the efforts of the United Nations in the 1970s and 1980s were mostly hindered by a conflict between developing and developed states. While developed states longed for an international agreement on illicit payments, the developing states regarded a code of conduct on transnational cooperation as a prerequisite (cf. ibid. 368).

At the end of the 1980s, the world order began to change, which was in part due to the changes in the Soviet Union and its subsequent collapse. Thus, the issue returned to the agenda of the United Nations in the context of organised crime. In the ECOSOC resolution of 1989/70 (E/RES/1989/70), the Council stated that organised crime had caused “the spread of such negative phenomena as [...] corruption” (ibid.). In the General Assembly resolution 45/107 (A/RES/45/107) nations are asked to take measures against corruption, and the Crime Prevention and Criminal Justice Branch of the Secretariat was directed to draft a manual regarding approaches on combating corruption (cf. Posadas 2000: 371).

In 1992, the deliberations on the Code of Conduct, which the Commission on Transnational Corporations had still been working on, finally failed and gave way for a new approach to corruption in international commercial transactions (cf. ibid. 372).

In 1996, the “U.N. Declaration Against Corruption and Bribery in International commercial transactions” (A/RES/51/191) was adopted by the General Assembly. This resolution, which was not legally binding, was essential for defining the way the United Nations viewed issues of corruption. Among other things, it distinguished between active and passive bribery, requested states to develop standards that could help fight corruption and asked for mutual legal assistance (cf. Posadas 2000: 375).

The same year, the General Assembly adopted a significant resolution which was prepared by the Crime Congress and the CCPCJ, namely the “Action against corruption” (A/RES/51/59), which adopted the “International Code of Conduct of Conduct for Public Officials.”

Although both resolutions were not legally binding, they were proof of the commitment and the effort the member states had towards combating corruption in the 1990s.

In 1997, the United Nations Office on Drugs and Crime was established as the United Nations Drug Control Programme and the Centre for International Crime Prevention were merged. The UNODC was established by joining the Centre for International Crime Prevention and the United Nations International Drug Control Programme (cf. A/51/950, Action 8).

A big step towards a convention on corruption was marked by the United Nations Convention against Transnational Organized Crime (UNTOC), as it covers corruption in articles 8 and 9. The UNTOC was adopted in 2000 and entered into force in 2003. It is supplemented by three protocols which were adopted in 2001 and entered into force between 2003 and 2005.

Article 8 of the Convention titled "Criminalization of corruption" requested states to define the following as criminal offences:

- The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (UNTOC 2000: § 1a)
- The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. (ibid. § 1b)

Paragraph 1 of article 8 therefore not only attempted to criminalise active, but also passive bribery. According to the Convention, those offences should also be valid for foreign officials and international civil servants (cf. *ibid.* §2).

Article 9 dealt with “[m]easures against corruption” and requested states to “adopt [...] measures to promote integrity and to prevent, detect and punish the corruption of public officials” (*ibid.* §1). However, calls to establish an independent instrument designed specifically for the fight against corruption arose shortly after the UNTOC was adopted (cf. A/CONF.187/15).

In 2001 an informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption took place in Buenos Aires. In the General Assembly resolution A/RES/56/186 entitled “Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,” the Assembly requested the ECOSOC to present Draft Terms of Reference for the Negotiation of a Convention Against Corruption (*ibid.* §5). In resolution A/RES/55/61 the Assembly came to the conclusion that an independent international legal instrument against corruption was necessary and decided to establish an Ad Hoc Committee for the Negotiation of a Convention against Corruption, which was to meet in Vienna (*ibid.* §7). Consequently, the Ad Hoc Committee met in Vienna seven times between the beginning of 2002 and the end of 2003 to develop a Convention Against Corruption. The Ad Hoc Committee approved a draft version at its last session from 29 September to 1 October 2003, which was then adopted by the General Assembly in its resolution A/RES/58/4.

5.3.2 The UNCAC as a regime

At the moment, the UNCAC is the anti-corruption regime of the United Nations which is most frequently described in research, mainly because it is often the only anti-corruption regime of the UN to be discussed at all. To put it in other words, the United Nations' anti-corruption regime is regularly summed up as being the UNCAC. This classification might prove useful when comparing a number of anti-corruption regimes of an international nature; however, a close analysis shows that another classification is possible, namely to see the UNCAC as a regime of its own (among other anti-corruption regimes within the UN system).

The central principles of the UNCAC regime are outlined in the preamble to the Convention, where it is stated in preambular paragraph 1 that corruption poses a threat to “the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law” (UNCAC 2003). Corruption is therefore seen as a crime that affects almost all aspects of a state, and needs to be addressed on a global level.

The central norm is, of course, the Convention itself, but it is supplemented by the resolutions of the Conference of the States Parties, and here especially the Resolution 3/1 (cf. CAC/COSP/2009a) has to be emphasised, as it establishes the Review Mechanism for the Convention.

The rules of the UNCAC regime are the binding as well as the non-binding provisions of the four chapters of the Convention, and the provisions of the resolutions of the Conference of the States Parties

The decision-making processes for the UNCAC are centred on the Conference of the States Parties (CoSP), which is anchored in article 63

of the Convention. Its objectives should be to “achieve the objectives set forth in this Convention and to promote and review its implementation” (UNCAC 2003, chapter VII, art. 63 §1).

According to article 63 §4, the CoSP should facilitate

- activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;⁸ (ibid. §4a)
- the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article, (ibid. §4b)

as well as work together with governmental and non-governmental organisations, use work previously done by other anti-corruption mechanisms, review the implementation process periodically, try to improve the Convention and its implementation, and help with issues of technical assistance requirements (ibid. 4§c-g).

At the first CoSP it was decided to establish an Expert Working Group to recommend the mechanism for reviewing the implementation of the Convention at the second CoSP (cf. CAC/COSP/2006a). In its resolution 3/1, the CoSP adopted the mechanism for the Review of the Implementation of the Convention and established the Implementation Review Group (cf. CAC/COSP/2009a). The Group functions as an open-ended intergovernmental group and meets on an annual basis to oversee the review process.

⁸ art 60 and 62 cover the topics “training and technical assistance” and „implementation of the Convention through economic development and technical assistance“

In the “Terms of Reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption” it was decided that the Working Group should

have an overview of the review process in order to identify challenges and good practices and to consider technical assistance requirements in order to ensure effective implementation of the Convention. The thematic implementation report shall serve as the basis for the analytical work of the Implementation Review Group. On the basis of its deliberations, the Implementation Review Group shall submit recommendations and conclusions to the Conference for its consideration and approval. (UNODC 2011 chapter IV, sect. C §44)

Furthermore, the decision-making aspect of the UNCAC regime is comprised of two more Working Groups, namely the Open-ended Intergovernmental Working Group on Asset Recovery, established at the first CoSP session in 2006, and the Open-ended Intergovernmental Working Group on Prevention, established at the third CoSP session in 2009.

According to Resolution 1/4 of the first CoSP session (CAC/COSP/2006b), the Working Group on Asset Recovery had the responsibility to assist the CoSP

- in developing cumulative knowledge in the area of asset recovery, especially on the implementation of articles 52-58. (ibid. §2a)
- in encouraging cooperation among relevant existing bilateral and multilateral initiatives and to contribute to the implementation of the related provisions. (ibid. §2b)
- in identifying the capacity-building needs. (ibid. §2f)

In addition, the Working Group was asked to

- Facilitat[e the] exchange of information among States (ibid. §2c)

- [Build] confidence and encourage[e] cooperation between requesting and requested States by bringing together relevant competent authorities and anti-corruption bodies and practitioners involved in asset recovery (ibid. §2d)
- Facilitat[e] the exchange of ideas among States on the expeditious return of assets (ibid. §2e).

The Resolution 3/2 of the third session of the CoSP (CAC/COSP/2009b) not only established the Working Group on Prevention, but also defined its functions as being responsible to assist the CoSP

- in developing and a cumulating knowledge in the area of prevention of corruption. (ibid. §3a)
- in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption. (ibid. §3d)

and facilitate

- the exchange of information and experience among States on preventive measures and practices. (ibid. §3b)
- the collection, dissemination and promotion of best practices in corruption prevention. (ibid. §3c).

Furthermore, it was decided that in the case the Implementation Review Group established thematic sub-groups, the Working Group on Prevention should be subsumed under those (ibid. §4).

At the moment, the UNCAC has 158 States Parties, thus covering approximately 82% of all United Nations Member States. The most prominent States not to have ratified the Convention yet are Germany, the Czech Republic, New Zealand, Japan, Saudi Arabia, and Syria.

5.4 StAR Initiative

5.4.1 The World Bank

As the StAR Initiative is a joint initiative of the World Bank and the UNODC, it is imperative to describe the structure of the World Bank and its efforts in the fight against corruption.

To begin with, it is important to distinguish between the World Bank and the World Bank Group. The former consists of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), while the World Bank Group, in addition to the IBRD and the IDA, also includes the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID).

The World Bank was established at the Bretton Woods Conference together with the International Monetary Fund (IMF) in 1944. Traditionally, the President of the World Bank is a US-American national, while the IMF's Managing Director is a European. The bank was created "as an institution for funnelling capital to the war-torn global periphery in the face of liquidity constrained capital markets" (Gilbert, Powell, and Vines 2000: 42). However, this very narrow view of the World Bank's responsibilities is not no longer valid, researchers nowadays argue that the World Bank "is an institution whose objective is the promotion, world-wide, of sustainable economic development and poverty reduction" (Gilbert and Vines: 2000: 10).

In comparison with other international organisations, the World Bank's first anti-corruption efforts came fairly late. The main reason for this is that, according to its statutes, the World Bank has to remain non-

political, and not get involved with a political agenda in any way (cf. Marquette 2004: 414). This was the excuse for not participating in the global fight against corruption the World Bank used for a very long time.

For years, former World Bank director, and later founder of the NGO Transparency International, Peter Eigen, unsuccessfully attempted to “convince the Bank to pursue an overt anti-corruption approach” (Jakobi 2010: 91). Only in the 1990s, after the end of the Cold War, the World Bank started to engage in the international discourse on corruption. In 1990, Ibrahim Shihata, a former General Counsel, circulated a memorandum in which he clarified which features of governance the Bank could not get involved in due to its mandate:

- the Bank cannot be influenced by the political character of a member;
- it cannot interfere in the domestic or foreign partisan politics of a member;
- it cannot act on behalf of donor countries to influence a recipient member's political orientation or behaviour;
- it cannot allow political factors to influence its decision unless there is also an “obvious” economic effect and
- its staff must not build their assessment on the possible reactions of a particular Bank member or members

(Marquette 2001: 398)

However, Shihata did not rule out a possible World Bank involvement in governance. On the contrary, he left the possibility to engage in anti-corruption measures open for the Bank, as long as they did not contradict the governance features mentioned above.

In 1996, the president at that time James David Wolfensohn affirmed the World Bank's goal to "fight the cancer of corruption" (World Bank 2000: 1).

The World Bank's efforts can be described on four different levels. Firstly, it aims to prevent corrupt acts within Bank-financed projects. The second is to assist nations who request support in the fight against corruption. The third level is to consider the issue of corruption more carefully, both in the planning of projects, but also in forms of national assistance. Lastly, the World Bank aims at supporting international efforts to combat corruption (cf. Leeuw, Van Gils, and Kreft 1999: 194-195).

The work on the first level not only focuses on external partners but also on internal practices (Jakobi 2010: 91). A key figure in this area is the manager for Business, Ethics, and Integrity, whose tasks mainly consist of ensuring that the Code of Professional Ethics and other Bank standards are known to the staff, improving the possibility for whistleblowers to report misconduct, and encouraging staff members to make such reports (cf. World Bank 2000: 19). Furthermore, in 1997 the Bank "implemented monitoring systems used in other lending institutes and surveyed smaller procurement contracts by external auditors" (Jakobi 2010: 91, and in 2001 it started to publish data on firms and individuals who were proven to be involved in corruption (ibid). The Department for Integrity was launched in 2001, and it was aimed at "discovering corruption and monitoring internal and external activities in the search for fraud and corrupt practises" (ibid. 92). However, its establishment was not without obstacles, as there was no broad consensus on the matter within the Bank, which also led to a less effective Department and tensions with borrowing countries (ibid.).

The Bank's strategy of helping countries requesting assistance is driven by the belief that corruption is caused by dysfunctional public sector institutions. The strategy in this case is split up into five different aspects, namely, economic policy reform, administrative and civil service reform, legal-judicial reform, financial controls, and public oversight. Firstly, it aims at an economic policy reform, such as simplifying rules, fighting monopoly powers and strengthening transparency and accountability of public institutions. Secondly, an administrative and civil service reform is deemed necessary in some cases, especially decentralisation and the ensuring of government accountability. The promotion of a more efficient legal and judicial system is seen as essential, as it helps to ensure the rule of law. Crucial for a well-functioning government are also aspects such as transparent revenue raising and expenditure managements, and thus, fiscal controls are indispensable. Lastly, public oversight, including parliamentary oversight, the existence of a civil society and independent agencies as well as NGOs, are mechanisms to improve accountability and performance, which is why the World Bank seeks to strengthen those aspects (cf. World Bank 2000: 21-22). In addition to those five aspects, the Bank also has a governance and public sector strategy which, among other things, tries to develop innovative approaches to lending in order to reform the public sector (cf. World Bank 2000: 29-31).

The Bank's aim to mainstream corruption considerations into the Bank's operational work is essential for two reasons. The first is that resources of the Bank should be focused on the areas where they are most effective regarding poverty alleviation, while the second is that the Bank is obligated to ensure its funds are used for poverty reduction and the assistance of economic development (cf. *ibid.* 37). The presence of corruption within a country was therefore included in project design,

management and lending decision as an essential factor, if country analyses proved the effects corruption had on the country's development (cf. Jakobi 2010: 92).

Lastly, the World Bank's aim to cooperate with other actors in the field of anti-corruption included Multilateral Development Banks (MDB), international and regional organisations, NGOs, businesses, and the IMF. The World Bank's cooperation with other MDBs covers four different aspects of which one is directly concerned with corruption, namely the aim to evaluate anti-corruption activities and procedures. Concerning international organisations, the World Bank holds an observer status in a number of cases, including the quarterly meetings of Interpol, the meetings of the OECD Working Group on Bribery in International Business Transactions, and the Financial Action Task Force meetings, which is an initiative to fight money laundering (cf. World Bank 2000: 48). Most importantly, the World Bank cooperated with the UNODC to launch the StAR Initiative.

The most notable cooperation between the World Bank and an NGO is surely its cooperation with Transparency International. However, the World Bank also makes an effort to work together with other NGOs, such as the Global Coalition for Africa (cf. World Bank 2000: 48).

In March 2007, the World Bank and the World Bank Group adopted their Governance and Anticorruption (GAC) Strategy, and later that year also an Implementation Plan.

The GAC Strategy has three levels of activity. The first is concerned with country engagements, the second level with corruption in Bank Group operations, and the third with Global Partnerships on Governance and Anticorruption (cf. Jakobi 2010: 93). The Strategy is based on seven principles.

- The WBGs focus on GAC is based on its mandate to reduce poverty [...].
- The WBG's GAC work must be country driven.
- Implementation is adapted to individual country circumstances.
- The WBG will remain engaged even in poorly governed countries [...].
- The WBG aims to engage in its GAC work with a broad array of stakeholders.
- The WBG [will] strive to strengthen, not by-pass country systems.
- The WBG will work with governments, donors and other actors at the country and global levels to ensure a harmonized and coordinated approach. (World Bank 2007: 1)

To sum up, since the 1990s the World Bank has attempted to catch up with the anti-corruption discourse, it developed internal measures to strengthen its institutional integrity, has started to take aspects of corruption into account when giving loans, has put a lot of effort into corruption research, and has an approach to combat corruption not only in individual projects in specific countries, but also to combat corruption in a country as a whole. It tried and succeeded to play an essential role in the global fight against corruption.

5.4.2 Stolen Asset Recovery Initiative Overview

The Stolen Asset Recovery (StAR) Initiative is a tool for aiding developing countries in recovering stolen assets. It was launched in 2007 as a joint action between the World Bank and the UNODC (cf. Larson 2011: 15-16). Its aim, as defined in the Partnership Charter

(UNODC and World Bank 2008a: 1), is to “help ensure that there are no havens for the proceeds of corruption.”

The first attempts for asset recovery within the context of the CCPCJ can be found in the draft resolution of the tenth session titled “Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption including the laundering of funds, and in returning such funds” (E/CN.15/2001/13/Rev.1).⁹

StAR does not use the World Bank's definition of corruption, but does follow lead of the UNCAC by not defining corruption explicitly, but indirectly as

corrupt conduct [defined] in Articles 15 to 22 of the Convention: bribery of national public officials; bribery of foreign public officials and officials of public international organizations; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; and bribery in the public sector. In addition, UNCAC Articles 23 through 25 identify the following ancillary crimes: laundering the proceeds of crime; concealment (of property which is the product of a crime); and obstruction of justice (StAR 2011).

Asset recovery plays an important role in the UNCAC, as an entire chapter (chapter V) is dedicated to this aspect of corruption. Furthermore, it is one of the global goals of the World Bank's Governance and Anticorruption efforts, as it aims at “[h]elping enhance a country's ability to track, freeze, and confiscate the proceeds of corrupt behavior, including through technical assistance for asset recovery and monitoring of use of recovered assets” (World Bank 2007: ix).

⁹ see Chapter 5.2.1 CCPCJ Overview

Since its establishment in 2007, the priorities of StAR have shifted. Originally, its two priorities were to lower the barriers for asset recovery in major financial centres, and to build technical capacity and facilitate asset recovery (cf. UNODC and World Bank 2008b: §1). However, within the first year of its establishment, the conclusion was reached that StAR had to be more proactive and that it would take some time before the Initiative could assist in a large number asset recovery cases (cf. *ibid.* §3).

Thus it was decided that StAR had better chances of success, if the focus was shift towards its first priority – i.e. the lowering of barriers for the recovery of stolen assets – and more effort was put into this aspect (*ibid.*). Furthermore, StAR should focus on providing practical tools for practitioners (cf. *ibid.* §11) and actively advocate the issue at international conferences (cf. *ibid.* §16).

In cooperation with the World Bank's legal department, StAR has developed rules of engagement for country engagements (cf. *ibid.* §25) and is working on establishing a “consultative process to help identify opportunities for collaboration with civil society organizations” (cf. *ibid.* §33).

5.4.3 The StAR Initiative as a regime

As the StAR Initiative is a joint effort of the World Bank and the UNODC, its guiding principle can also be seen as their agreed upon approach towards asset recovery, which is that “theft of public assets from developing countries is a huge and serious problem” (UNODC and World Bank 2007: 1).

The key norms are the chapter V of the UNCAC – Asset Recovery, which also constitutes the legal foundation for the Initiative, and the Governance and Anticorruption Strategy paper “Strengthening World Bank Group Engagement on governance and anticorruption”. (World Bank Group 2007)

Its rules are thus the asset recovery related provisions of those two documents.

The governance structure is comprised of the Management Committee, the StAR Secretariat, the Donor Consultative Group and FStAR (Friends of StAR). The Management Committee consists of two permanent members from the Bank and the UNODC each, and is additionally chaired by the Bank’s Vice President for Poverty Reduction and Economic Management (cf. UNODC and World Bank 2008a: §10). Additionally, members of the Bank and the UNDOC can be asked to be present if this is deemed necessary by the Chair. The meetings are held annually, however, according to the Charter, it is possible to meet more often. The decisions made have to be reached without objections by any permanent member and by consensus (cf. *ibid.* §11-12).

According to §3 of the Charter, the Management Committee is in charge of

- (i) Setting overall policies and priorities for StAR.
- (ii) Overseeing StAR activities.
- (iii) Approving the annual StAR work plan and its amendments.
- (iv) Allocating the StAR Multi-Donor Trust Fund (MDTF) between components and indicative allocations to individual activities.
- (v) Designating activities financed by the Trust Fund as either Bank-managed activities or UNODC-managed activities.

- (vi) Approving specific activity proposals and the allocation of StAR MDTF funds to the activity, consistent with the StAR work plan, as reflected in the Concept Note submitted by the Secretariat.
- (vii) Approving StAR strategies for country engagement and the allocation of StAR MDTF funds to the country strategy, assessing risks of proposed and ongoing StAR activities and ensuring that adequate risk mitigation measures are put in place.
- (viii) Approving the StAR annual report.
- (ix) Appointing the members of FStAR and selecting its Chair, as well as determining the Terms of Reference for FStAR.
- (x) Approving appropriate evaluation benchmarks and methodologies to assess the impact of StAR activities and commissioning any independent evaluations.
- (xi) Adopting this Charter and approving any amendments" (ibid. §13).

However, the day-to-day work of the Initiative is covered by the Secretariat. The Secretariat also supports the StAR mandate and is bound by "the Bank's standard operational and administrative policies and practices" (ibid. §14). It is also important to note that the Secretariat is operated under Bank rules and is also conducted this way (cf. ibid §15).

Some of the functions of the Secretariat include:

- (i) Preparing the annual StAR work plan and budget and any amendments;
- (ii) Preparing specific activity proposals, consistent with the StAR work plan, including specific budgets for each StAR activity, for Management Committee approval.

- (iii) Coordinating implementation of the work plan across the Bank and UNODC, with clear deliverables and accountability for results.
- (vii) Helping ensure that the Bank's and UNODC's country representatives are informed of requests for StAR assistance, consulted regarding the scope and nature of StAR assistance, and informed of progress in StAR activities and substantive discussions with national authorities.
- (viii) Acting as the central point of contact in the Bank and UNODC for countries seeking or receiving support under StAR and to Donors.
- (ix) Reviewing proposed StAR activities for consistency with this Charter, including the Principles and Objectives.
- (xi) Designing appropriate methodologies to assess the development impact of StAR activities.
- (xvi) Preparing the agenda, minutes and background documentation and providing logistical support for the Management Committee, Donor Group and FStAR meetings. (cf. *ibid* §18)

Member States who contribute to the Trust Fund are organised in the Donor Consultative group. They are responsible for reviewing the Trust Fund implementation, they have a "consultative role regarding future plans and past activities", and can make recommendations to the Management Committee concerning the strategic direction of StAR (*ibid*. §19).

Lastly, FStAR is an advisory group consisting of experts from a number of different fields and different regions from all over the world. Their function is to provide "strategic guidance and set overall policies and

priorities for StAR" (ibid. §21). All members of FStAR are appointed by the Management Committee.

Those four entities constitute the decision-making process of StAR; however, it is important to note that the Donor Consultative Group and FStAR only have an advisory role.

While it is rather obvious why the Crime Congress, the CCPCJ and the UNCAC are analysed as regimes, it is not immediately apparent with the Initiative. Can the StAR Initiative actually be seen as a regime? It appears to be more of a practical application of provisions rather than a norm setting entity itself. As can be seen in this chapter, it does have all four distinguishing criteria for a regime. However, apart from those four concepts, Krasner's regime theory also calls for "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relation" (Krasner 1982: 186). We have established that there are sets of principles, norms, rules and decision-making processes, but what about the actors and the area of international relation?

I would argue that asset recovery indeed is an, albeit very narrow, area of international relation, but that the significant difference between the StAR Initiative and the other bodies lies in the fact that the "actors" are not states, but two international organisations, namely the World Bank and the UNODC.

6 Differences and Similarities

6.1 The Chart

	CC	CCPCJ	UNCAC	SIAR
Principles	fight international crime issues	fight against international crime issues	damaging effect of corruption	damaging effect of corruption
Norms	CC resolutions, GA and ECOSOC resolutions, on corruption ¹¹	CC resolutions, GA and ECOSOC resolutions, on corruption ¹²	UNCAC, CoSP resolutions	UNCAC, CoSP resolutions
Rules	provision of the above mentioned resolutions	provision of the above mentioned resolutions	provision of the Conventiona nd CoSP resolutions	provision of the Conventiona nd CoSP resolutions
Decision-Making Processes	CC, CCPCJ, GA, ECOSOC	CC, CCPCJ, GA, ECOSOC	CoSP & Working Groups	CoSP & Working Groups

fig. 1 Comparison Chart

¹¹ see resolutions mentioned in chapter 5.1.1, 5.1.2, 5.2.1, 5.2.2

¹² *ibid.*

6.2 The Comparison

From the data gathered, we can conclude that the presumption that four regimes are part of the United Nations' anti-corruption efforts is not accurate, but that the case is rather that the CCPCJ and the Crime Congress together form an anti-crime regime, which includes the fight against corruption. The Crime Congress and the CCPCJ can thus be seen as two decision-making mechanisms for the same regime. I would suggest labelling this regime the "General United Nations Regime." It can also be said that this particular regime has been immensely weakened by the establishment of the UNCAC mechanism, which took over most of the work in this area. However, compared to the UNCAC, the General United Nations Regime still has a bigger sphere of influence. Its major weakness is the missing possibility to review the implementation of all its rules by its members.

The UNCAC forms, as already elaborated upon in other literature, an anti-corruption regime of its own, with distinct norms, rules and decisions-making processes. It is by far the most comprehensive and strongest regime among the three described here. Although it is based on the General United Nations Regime, the UNCAC differs greatly from it regarding its norms and principles. Additionally, the definition of a regime requires "actors' expectations [to] converge in a given area of international relation" (Krasner 1982: 186). However, the actors involved in the General United Nations Regime and the UNCAC regime are not identical, as not all members of the UN are States Parties to the UNCAC.

For the StAR Initiative, which only deals with one aspect of corruption, I would argue that it is an anti-corruption regime which covers one aspect of corruption (similar to the OECD anti-corruption regime which only covers bribery). It is a regime in its own right, and its principles differ

greatly from the principles of the other two regimes, especially due to the influence of the World Bank. Furthermore, it differs in a key aspect, as its actors are not nations, but rather two international organisations.

To take a look into the future, it can be presumed that the StAR Initiative will take a leading role regarding its area of expertise, namely asset recovery, and become an even greater driving force in this field, provided that it also manages to establish itself as a mechanism to facilitate asset recovery procedures.

The Commission and the Crime Congress together form a working forum in which the world community can exchange views and set goals in the area of the fight against corruption. As corruption is a topic which reaches into all fields of major crime, it has to be taken into consideration when any other area of crime is tackled. Therefore, a further development of the anti-corruption agenda, especially in the case of the CCPCJ, possibly also with new rules, is conceivable in the future. This view is supported by Mrs Dorothee Gottwald, who stated that "the strength of the CCPCJ is that they have a broader field to cover, [...] it depends a lot on from which country a specific initiative comes, whether it can fly in the CCPCJ" (Appendix 2, question 4).

The UNCAC and its Conference of the States Parties is the strongest anti-corruption regime in place, and it is also the only one that deals exclusively with corruption and does not focus on one single issue. Its strength is derived from the Review Mechanism in place, which 20 years after its first cycle will provide a comprehensive review of the implementation of the entire instrument. This is not at all given at the General United Nations Regime. Furthermore, possible developments within the frame of the issues currently dealt with in the Convention could be covered by amending the Convention.

7 Conclusion

The discussions surrounding the topic of corruption within the context of the United Nations began in the 1970s, and were either subsumed under economic crime or organised crime for a long time. Only in the 1990s it became an issue of its own standing, which was necessary to face the broad range of issues related with corruption.

The original hypothesis of this thesis was that the United Nations' anti-corruption efforts can be seen not just one single regime, but as up to four, namely the Crime Congress, the CCPCJ, the UNCAC, and the StAR Initiative. This has been tendentiously partially verified. As has been elaborated upon in chapter 6, we can categorize the UN efforts in combating corruption into three regimes. Although the anti-corruption efforts of the United Nations can be seen as spreading across three different regimes, the UNCAC is the only regime in place that deals exclusively, yet comprehensively, with anti-corruption efforts. The general United Nations' anti-corruption regime does approach corruption from a collective anti-crime point of view, and also emphasises the way corruption is linked to other crime-related issues. Its potential, especially regarding the fight against corruption in relation to other forms of crime, lies very much in standard setting, and providing a global forum, which includes, even if not to its full potential, NGOs and the private sector.

The future will show how effective the review mechanism of the UNCAC is and which results it will provide. The first results were the executive summaries of the findings of the first Review Cycle of Finland, Mongolia, Spain, and Uganda, and have been presented at the Resumed Second Session of the Implementation Review Group in September 2011 in Vienna.

The StAR Initiative can be seen as a regime of the broader UN family, as it is a collaboration between the World Bank and the UNODC. Furthermore, it focuses on one specialised aspect of corruption, namely asset recovery, which is a novelty. The StAR Initiative has filled an important void in the global fight against corruption. Apart from this, it is an excellent example for the possibilities which exist when two international organisations as important as the World Bank and the United Nations commit to a project together, and it could thus become a role model for future cooperation in other areas.

To conclude, it can be said that the United Nations, as the only global organisation, plays a key role in the international fight against corruption. As we can see, there are three different regimes of the United Nations to fight corruption. Still, the efforts should be continued and expanded. Corruption is the fuel for a great number of forms of crime, such as cybercrime and drug trafficking, and I believe that the role corruption plays in those forms of crime have to be tackled specifically as well. The future will eventually bring new challenges in the field of the fight against corruption, and the United Nations will have to decide how and with which methods at their hand they are going to take them on.

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9 Appendices

9.1 Appendix 1

Meeting with CEB (Demosthenes Chryssikos) 21.5.11

1. How did the CEB develop, and how did it come into existence?

Exists since 2003. The UNODC used to have a small crime conventions section in '03, then came the decision to separate. The Corruption Branch became a branch. The result of the Doha conference was an increase in mandates.

2. How does the financial situation of the CEB look like and does it have an advantage over other branches, because the UNCAC Review mechanism is not subject to voluntary contributions?

There is a multiplicity of mandates. It is always an expanding area of work. The special thing about the review cycle is that it is long term [1st cycle: 5 years, 2 Chapters findings in 6 years, whole convention 20 years].

3. The term "corruption" is not defined in the UNCAC, does the lack of definition have any impact on the work of the CEB?

It is not a problem: there are arguments in favour of not including it. The concept of corruption is fluid and evolving, a definition would be counterproductive. After some years, new issues could arise which might not be covered by a definition. The alternative of a definition is to deal with concrete issues and include a broad range of offences. [Note: another example for terminological difficulties] Art 33: an issue

was that “Whistleblower” is not a term in all legal jurisdictions therefore “reporting person” is used, furthermore, in some countries whistleblower has a negative connotation. Reporting persons is neutral.

4. Is there cooperation between CEB and TPB or/and OCB and how does this cooperation look like?

Before the political mandate everything was done by the crime commission. Ad Hoc Committees were established. CCPCJ was mainly a policy body. CCPCJ renews mandates on an annual basis all mandates for corruption until the next IRG. Since corruption is seen related to other fields, the scope has expanded: corruption and organised crime internally coordinate in order to produce reports. There is also cooperation with the OCB on training issues. There is less cooperation with the TPB, but we are all under the DTA umbrella.

5. How does the CEB deal with the various bodies which provide guidance? (UNCAC COSP, Working Groups, CCPCJ, Crime Congress)

Governmental bodies [CND, CCPCJ, Crime Congress + other governmental bodies like IRG (COSP TOC; COSP CAC plus IRG, WG, etc.)] can all give mandates.

6. How does the involvement of CEB and CEB personnel in the CCPCJ look like?

We help organize the agenda for next year. The reports by the UNODC are done by our personnel. The report is substantive documentation. Report may entail results on corruption: see mandates. Duty to collect

information (Note Verbale) and include information in report. During Sessions: Serving CCPCJ on agenda item notes, reflect views of member states, we are also present at informal consultations.

AD Resolutions: The commission adapts draft resolutions for ECOSOC in July (and GA at the end of year), then it is a mandate. Sometimes only ECOSOC adapts a resolution, depends on the content.

9.2 Appendix 2

Meeting with Dorothee Gottwald – 16.12.2011

1. How is the CEB structured? And who has what responsibilities?

The CEB is structured in two sections: the Conference Support Section and the Implementation Support Section. I think we are still in process to exactly structure the responsibilities. In theory it's easy. In theory, the Conference Support Section services the conference, and it takes the lead in servicing the Asset Recovery Working Group, the Implementation Review Group, the Secretariat for the Review Mechanism and the StAR Initiative. The Implementation Support Section takes the lead in servicing the Prevention Working Group, that's all the work on prevention, and also the work with the private sector, the civil society, and it follows up on specific technical assistance projects. The Technical Assistance as such is a cross-cutting issue, the CSS will take the lead more on the technical assistance that comes out of the Review Mechanism, and ISS takes the lead more in specific projects. In practice, however, since the beginning of the separation two sections, a year more or less, we have seen that staff members of both sections support staff members in the other sections. Why? I think, first out of pragmatism, because people have specific skills, people have specific knowledge and expertise on specific fields that should not be lost to the other sections, and people also have language skills that can be very helpful in different settings. But then also out of deep conviction that the things are very closely linked. Especially if you see the Review Mechanism and Technical Assistance, there is absolutely no way that we can separate them, and that is also one of the main guiding

principles of the Review Mechanism as such – that it is a constructive mechanism that can lead to technical assistance.

2. How does the cooperation within the UNODC, so with other branches, but also with regional offices work, when you are dealing with corruption issues. How does that work?

That's a very good question. Maybe I'll start with the regional offices. Are you referring to field offices in general? – Or specifically the regional hubs? Because we have different categories. We have regional offices, we have country offices and we have project offices. The correct denomination is the Field Office Network. Also, let's differentiate between the work that they are doing for the Conference of the States Parties and the Review Mechanism, and the Technical Assistance Projects. They kind of interact but they are very different. And maybe I should add a third category, which is the work which we contribute to the regional and country programmes. So let's start with the Conference of the States Parties and the Review Mechanism. Once a year we do the drawing of lots of the countries in the Review Mechanism, and of course all of these countries that come out of the boxes fall under the responsibility of one of the field offices – be it a country office or a regional office. Then, after the session where we have the drawing of lots, we send a note to the field representative to inform them that this or that country under their responsibility is undergoing review or is reviewing another country. In many cases this comes with a request for help to follow up with counterparts for the nomination of experts or focal points, or sometimes also supporting the progress in the completion of the self-assessment checklist. In the first contact, normally, is the nomination of experts, that's a very concrete request. Then, further on there may be different kinds of assistance a

country needs. One is the already mentioned help in the progress of the self-assessment checklist, that is of course a more complex thing that comes with more time which is needed, and sometimes also resources, if a consultant is needed. Sometimes it's also more a punctual request like the translation of documents. Maybe a general remark on the translation of the review mechanism, the translation is fully organised through our field office network, because translation here in Vienna is quite costly and quite time-consuming, and we are very grateful for the help of our Field Office Network through which we can efficiently organise our translation. Next point, in the Review Mechanism, when we have country visits to specific countries, it is when the Field Offices come in more than before and take a very active role. In general I would say if we talk about communication, the Review Mechanism is a bit of a specific situation in our work, because here we have very strong working relationships directly with the counterparts in the countries, because this is an intergovernmental progress. It is not some Technical Assistance Project which we are implementing through our Field Office Network, where we are more in a backstopping role, but this is completely an intergovernmental and headquarter organised activity. However, we copy the field representatives to all the important communications and many times we happily rely on their expertise and their contacts in the country to make the whole thing work.

The second block that I mentioned before is the Technical Assistance. Here it depends very much on a specific case whether the bulk of the work is done in Headquarters or in the field. We have anti-corruption projects that are completely field driven and we are copied in and sometimes comment on documents, for example, how it fits in with the Convention and what we are doing, but we also have projects that are

implemented with a great part of expertise from Headquarters and the Field Offices are more in a supporting role, so here it depends very much on the specific case. Same thing with the regional and country programs, this should also, ideally, be a field driven exercise, but of course each part of the house gives their input. It's something that a country or regional program is developed in cooperation between the Integrated Programme and Oversight Branch here in Headquarters and the Field Offices, but not so much with the substantive offices like corruption or Organised Crime, but of course when they have a draft they send it to us and we give our input. So here we are more in a supporting role and we give our input based on our knowledge of the Convention and of the implementation of the Convention in specific countries.

With other parts of the house we first have a cooperation in the preparation of these country programs, because everybody is pulled together. Then we have specific reporting obligations together with other parts of the house, for example the reports to the CCPCJ that's together between Corruption and Organised Crime on international cooperation and in the fight against Organised Crime. And of course we have specific activities that we implement together with other parts of the house, for example the Global Program for Money Laundering and we have some activities with the Justice Section, for example Judicial Integrity. I would say there is no one answer for all activities, but it depends a lot on the area we are working on.

3. In your opinion, do the CCPCJ, the UNCAC and the Crime Congress have different approaches to tackling corruption? Do they complement each other? Or isn't there much of a difference?

I would say it depends a bit on time. Right now they have very different functions. The CCPCJ is the governing body of the UNODC in crime matters, and they have a standing item on their agenda on corruption. Technically many of the mandates that we receive come from the CCPCJ, and the COSP has a different function, it's not so much giving mandate to UNODC but to the Secretariat of the COSP whose function is realised by UNODC. It is UNDOC in a different function. If you look at the resolutions of the CCPCJ and the COSP, they read completely different. The CCPCJ resolutions or the reports on corruption are very generic and they touch on some specific issue but they don't have the level of detail that the COSP has. The CoSP is the forum where all the State Parties of the Convention come together, which is also a different set of States than the States represented at the CCPCJ. So the mandate for the Secretariat really comes from the COSP – that's our day-to-day work. The mandate of UNDOC as an organisation comes from the CCPCJ. For now, I would take the Congress a bit out of that because in the last congress there was not so much discussion about corruption at all, I think especially now that we have the Convention and we have the COSP. It must have been different before my time, at the 8th congress where actually the first impulse to create the convention came. So that's really a different issue. Of course at the last congress in Brazil, there was discussion on related issues, especially on international cooperation on criminal matters and I will also put in there the issue of cybercrime but this is related issues, it's not corruption.

4. In your opinion, which institution – CCPCJ, Crime Congress or the Secretariat to the Convention, is more likely to adapt to future challenges of corruption? Maybe in five, ten or twenty years' time.

A: That's a difficult question – I don't really see that we can foresee that, because they have different functions. I think the strength of the CCPCJ is that they have a broader field to cover, and that they also, as we've touched before, have a different mandate, a different membership, and so on, so it depends a lot on from which country a specific initiative comes, whether it can fly in the CCPCJ. The strength of the Conference of the States Parties is that it already has a binding text and now, five years after entering into force, the text can also be amended. So if it is something that could be solved by amending the existing convention, I think the Conference of the States Parties would be the body, but we've never really had the case yet. But then in such a case the Conference of the States Parties would probably be the body that's more likely to move, if it's a new challenge that comes up in a more general discussion about crime prevention and criminal justice, then it would probably be the Commission. But honestly, there are so many factors, and also political factors – in terms of which country it comes from and which coalition of countries can support a certain movement, and so on – that I think it's a bit too difficult to say it now.

Abstracts

Korruption ist in den letzten Jahren immer stärker in den Blickpunkt der Öffentlichkeit gerückt. Maßnahmen der Korruptionsbekämpfung werden immer weiter entwickelt, sowohl auf regionaler, nationaler, aber vor allem auch internationaler Ebene. Die Vereinten Nationen haben seit den 70er Jahren Ansätze zur Korruptionsbekämpfung entwickelt, zunächst über den *Crime Congress*, dann auch in der *Commission on Crime Prevention and Criminal Justice*, und wohl am prominentesten im Rahmen der Konvention gegen Korruption der Vereinten Nationen (UNCAC). Ein Neuling auf dem Gebiet ist die StAR Initiative, die eine Kooperation der UNODC und der Weltbank in einem Spezialgebiet der Korruptionsbekämpfung darstellt, nämlich der Rückführung von Vermögenswerten, welche mithilfe korrupter Praktiken erworben wurden. Diese Arbeit untersucht diese Bestrebungen der Vereinten Nationen um zu bestimmen wie sich diese in verschiedene Regime einteilen lassen. Dazu wurde eine Inhaltsanalyse relevanter Dokumente durchgeführt, und diese Erkenntnisse durch Experteninterviews erweitert. Die Ergebnisse wurden in einer Tabelle vergleichend dargestellt.

In recent years, corruption has become a more and more prominent topic in the public eye. Actions against corruption are taken on regional, national, and especially international levels and are also being further developed. In the 1970s, the United Nations took its first approaches towards the fight against corruption, first in the context of the Crime Congress, later in the Commission on Crime Prevention and Criminal Justice and, most noteworthy, in the United Nations Convention Against Corruption (UNCAC). The newcomer in this area is the StAR Initiative, which deals with a specialised field of anti-corruption efforts, namely the recovery of assets that have been obtained by corrupt practices. It is a joint initiative of the UNODC and the World Bank. This thesis explores the United Nations' anti-corruption efforts with the goal to determine how they can be divided into individual regimes. To this end a content analysis of relevant documents was carried out. The insights were supplemented with expert interviews and the results were presented in a chart for comparison.

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