Overview of the United Nations Convention against Corruption with Focus on International Cooperation

Summer School for Junior Magistrates from South Eastern Europe: International Standards and Cooperation in the Fight Against Corruption
7 June 2011, Slunchev Bryag, Bulgaria
The United Nations Convention against Corruption

- Prevention
- Criminalization
- Law Enforcement
- Asset Recovery
- International Cooperation
Use of Terms (Art.2)

No Definition of Corruption

Broad and Comprehensive Definition of Public Officials

1. Any Person Holding a Legislative, Executive, Administrative or Judicial Office
2. Any Person Performing a Public Function or Providing a Public Service
3. Any Other Person So Defined in the Domestic Law of State Party
UNCAC

Prevention (Articles 5-14)

Criminalization
Law Enforcement

Asset Recovery

International Cooperation

UNITED NATIONS CONVENTION AGAINST CORRUPTION

UNITED NATIONS Office on Drugs and Crime
Anti-Corruption Policies and Bodies

Requirements

Art. 5
Implement Effective and Coordinated Anti-Corruption Policies

Art. 6
Ensure the Existence of Anti-Corruption Bodies
Preventive Measures (Art. 5-14)

- Codes of Conduct (Art. 8)
- Public and Private Sectors Civil Society (Art. 9)
- Integrity of Judiciary and Prosecution Service (Art. 11)
- Prevention of Money-Laundering (Art. 14)
Preventive Measures in Private Sector

- Enhanced Accounting and Auditing Standards
- Effective, Proportionate and Dissuasive Civil, Administrative or Criminal Penalties
- Prohibition of Off-the-Book Account and other Acts
- No Tax Deductibility of Expenses Constituting Bribes
Other Preventive Measures

**Participation of Society**
- Ensure Active Participation of Civil Society (Art.13 (1))
- Provide Public Access to Anti-Corruption Bodies (Art.13 (2))
- Encourage Citizens to Report on Offences (Art.39)

**Prevention of Money-Laundering**
- Establish Comprehensive Regulatory and Supervisory Regime
- Ensure Internal and International Cooperation (Art.14)
UNCAC

Prevention

Criminalization
Law Enforcement
(Articles 5-14)

Asset Recovery

International Cooperation
Mandatory and other criminal offences

5 Mandatory Offences
- Bribery of National Public Officials (Art.15)
- Active Bribery of Foreign Public Officials (Art.16)
- Embezzlement, Misappropriation and Other Division of Property (Art.17)
- Money Laundering (Art.23)
- Obstruction of Justice (Art.25)

6 Other Criminal Offences
- Passive Bribery of Foreign Public Official (Art.16)
- Trading in Influence (Art.18)
- Abuse of Function (Art.19)
- Illicit Enrichment (Art.20)
- Bribery in Private Sector (Art.21)
- Embezzlement in Private Sector (Art.22)
Money Laundering (Art.23)

**Mandatory Offences**

- Conversion or Transfer of Proceeds of Crime
- Concealment or Disguise of Proceeds of Crime

**Acquisition, Possession or Use of Proceeds of Crime**

- Participation, Association, Conspiracy, Attempt…

**Subject to Basic Concept of Legal System**

**Good Practice:** Coordinated AML / Corruption Investigations
Introduction

• UNCAC Requirements

• International Good Practices

• Regional Good Practices

• Open Discussion
International Cooperation

Mandatory Offences

Optional Offences

Question of Dual Criminality

Narrow Dual Criminality Requirements In MLAs
Ensure that All Convention Offences are Extraditable Offence between States Parties

Either “Extradite or Prosecute” Own Nationals

Conditional Surrender of Nationals to be Returned to Serve Sentence

Grounds of Refusal
- Human Rights
- No Refusal on Sole Fiscal Ground
- Consultation before Refusal

Harmonization with Existing Treaties and Domestic Law
Mutual Legal Assistance (Art. 46)

Widest Measures of Mutual Legal Assistance in Investigations, Prosecution and Legal Proceedings in relation to Convention Offences

- Designate **Central Authority** to Receive, Execute and Transmit Request
- No Refusal of MLA on the Ground of Bank Secrecy
- MLA can be Provided in the Absence of Dual Criminality for Non-Coercive Measures
Cooperation in Inquiries

Channels of Communication and Information Exchange (Art.48)

Special Investigative Techniques (Art.50)

Joint Investigation (Art.49)
MLAT Requests

Discussion

- How many participants have had cases that used MLATs?
Establishing international cooperation

- UNCAC Articles 46 and 55

- UNCAC works as a multilateral treaty
Establishing international cooperation

• **UNCAC Article 46(15) Requirements**

  – Establish the identity of the authority making the request and the subject matter and nature of the investigation
  
  – Summarize the relevant facts and describe the assistance sought
  
  – Mention the identity of the people involved
  
  – Establish the purpose for the information
  
  – Sent in a language acceptable to the authorities of the requested party

• **The lack of any of these requirements is reason enough to refuse assistance**
# International Good Practices

- **Informal Coordination is crucial**

- **Always call a contact in the requested country first, prior to submitting the written MLA request.**

- **Must be aware of law in requested country, or informally coordinate with contact in advance.**
Other Relevant International Treaties

- 1959 CoE Convention on MLA
- UNTOC
- Bilateral Agreements
Other Forms of Cooperation

- Police to Police Cooperation
  - UNCAC / Regional Agreements

- Prosecutor to Prosecutor Cooperation
  - UNCAC / Regional Agreements
  - PROSECO
  - SEEPAG

- FIU to FIU Cooperation
  - UNCAC / Regional Agreements
  - Egmont Group
  - AML Procedures
Cooperation with Intl. Organizations

- ICTY
- EUFOR / KFOR / NATO
- OLAF
- EUROPOL, EUROJUST, and other EU Bodies
Joint Investigations

- UNCAC Article 49
- Parallel Joint Investigations
- Joint Investigations Team
- Joint Investigations Body
Available Tools

- UNODC MLA Request Writing Tool
  - Has been translated into several regional languages
Will discuss in next presentation
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