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**LEGAL FRAMEWORKS FOR INTERNATIONAL COOPERATION
AGAINST CORRUPTION: RETROSPECTIVE ANALYSIS**



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Abstract

Researchers and practitioners are showing an increasing interest in international legal cooperation against corruption, an issue that is frequently in the spotlight of international discussion, as corruption is the one factor that jeopardizes not only the economic development of a country, but also national welfare systems, governmental power, public trust, and political stability in general. For this reason, the goal hereof is to analyze international law against corruption. Research presented herein utilizes a set of general scientific methods and specific cognition techniques. This paper deals with a retrospective review of global and regional corruption treaties against corruption. The finding is that to date, there are four important conventions that many countries have joined. The research finding is that to date, there are four crucial anti-corruption conventions that most countries have joined. The paper will further highlight the 1999 OECD Convention on Combating Bribery, the 1999 Council of Europe Criminal Law Convention on Corruption, the 1999 Council of Europe Civil Law Convention on Corruption, which deals with civil law as means to combat corruption, and the 2003 UN Convention against Corruption. The conclusions hereto contain the opinion of the authors on how far international law must be invoked when combating corruption.

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1. Introduction

Whilst running procedures typical of this type of research, focus should be made on the specifics of criminological research that seeks to identify factors affecting the determinants of crime in general and of specific crimes in particular, with the intent of finding out how to combat such crime more effectively (Nikitenko et al., 2017). From the 1990s to the 2000s, regional and international legal frameworks for combating corruption emerged in the form of conventions of international organizations. By the end of this timeframe, a legal paradigm has been established to combat corruption by making corruption-inducing factors more transparent (Inkina, 2020). The globalization and expansion of international cooperation coupled with the spread of democratic and liberal principles contributed to the development of information communications, which enabled informing the society on the causes and consequences of corruption as well as on the new approaches to combating it. However, it should be noted that integration that promotes international ties has both positive effects, as it strengthens international cooperation, but also negative impact, as it might facilitate international crime (Vylegzhanin et al., 2020). International cooperation against corruption makes international law enforcement more efficient, as countries develop common frameworks for legal assistance in corruption-related investigations, limit corruption suspects' access to asylum, and deport corruption convicts if need be (Kobets & Nikitenko, 2020).

2. Problem Statement

Review of international agreements against corruption suggests that when challenged to combat corruption, different nations and governments are on the same page even if they otherwise discord. Since as far back as the 1990s, corruption has been seen as an undesirable process that jeopardizes the economy, democratic institutions and values, and the rule of law. Today, international cooperation against crime needs a reliable legal framework, which is mandatory under the commonly accepted rules if such cooperation is to be legitimate. An integrated, holistic approach to crime prevention is arising in international and national legislation (Vylegzhanin et al., 2020).

3. Research Questions

Retrospective review of international cooperation against corruption leads to a conclusion that in order to optimize such cooperation, international multi-state institutions have been established and tasked to develop a set of agreements that lay the foundations to international legal frameworks for combating corruption (Salihu & Jafari, 2019).

4. Purpose of the Study

This paper seeks to create a holistic view of how legal frameworks for international cooperation against corruption emerge.

5. Research Methods

This research utilizes historical analysis, structural and logical analysis, extrapolation, content analysis, and comparative law.

6. Findings

The Organization for Economic Cooperation and Development was founded in 1989. It is an intergovernmental body that comprises 36 member states. It also has a task force that compares national laws of the member states. In 1994, they developed recommendations on combating bribery in international commercial transactions. This document was ratified on December 17, 1997 and came into force on February 15, 1999 (Additional Protocol..., 2003).

The Convention urges its parties to criminalize any acts associated with offering a bribe in the same manner as they criminalize extortion or bribery (Konventsiya ob ugolovnoy otvetstvennosti za korrupsiyu, 2002). Since the early 1990s, the Council of Europe (CE) has been showing an ever-greater interest in strengthening international cooperation against corruption. For instance, corruption shall not be a matter of criminal law and criminology alone; it shall also be addressed from the standpoints of civil, administrative, and sundry law. Thus, the CE began to play an important role in the development of anti-corruption measures backed by the 20 Guiding Principles for the Fight Against Corruption adopted by the Council of Europe Committee of Ministers on November 6, 1997 at the 101st session of the Committee. This act describes Principles #3 and #7, which lay the foundations for anti-corruption agencies responsible for coordinating the fight against corruption (Rezolyutsiya № (97)24 Komiteta ministrov Soveta Yevropy..., 1997).

The countries participating in the Convention on Combating Bribery have agreed to adopt a set of measures that will strengthen their efforts to identify and investigate cases of bribery of foreign officials with the adoption of the OECD Recommendation on Combating Bribery of Foreign Officials in International Commercial Transactions (OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 2020).

In 1999, the CE 173 Criminal Law Convention on Corruption was developed; it was approved in Strasbourg on January 27, 1999. (Mccoy & Heckel, 2001).

In November 1998, the 103rd session of the Committee of Ministers adopted the Criminal Law Convention on Corruption, which went into force on January 27, 1999. Experts noted that this Convention criminalized a broad range of corruption-related activities. Group of States against Corruption, which began operating on May 1, 1999, comprises representatives of 17 CE member states and is tasked to enforce the Convention and its provisions. GRECO is nowadays open to non-European states as well. The Convention sought to harmonize the laws of the signatory countries in order to ensure uniform criminalization of corruption and to promote additional measures for a stronger cooperation to prevent corruption (Administrative, civil and penal aspects, including the role of the judiciary, of the fight against corruption, 1994).

CE member states and any other signatories to the Additional Protocol to the Criminal Law Convention on Corruption, Strasbourg, May 15, 2003 believed this document would enable closer cooperation (Konventsiya ob ugovolnoy otvetstvennosti za korruptsiyu, 2002).

An important anti-corruption measure is that the Council holds conferences of its Ministers of Justice on a regular basis. These conferences provide a platform where parties can exchange their opinions and coordinate their lawmaking policies. It is one of the best-known forums to involve specialized ministers of the Council. Two reputable international organizations are collectively responsible for the arrangement of such events: the European Committee on Legal Co-operation and the European Committee on Crime Problems. Ministerial meetings in this format are annual. Each conference addresses one or more topics presented in the forum program. In 1994, Malta hosted the 19th Conference of European Ministers of Justice. The forum was attended by countries that proposed escalating measures to tackle corruption (Resolution no. 1, 1994).

The forum approved the *Resolution No 1 on civil, administrative and criminal law aspects of corruption*, which voiced an opinion that a comprehensive, integrated approach to combating corruption would be appropriate. This led to the Committee of Ministers' 1994 decision to establish the Multidisciplinary Group on Corruption that would report directly to the European Committee on Crime Problems and the European Committee on Legal Co-operation. The organization was empowered to coordinate the Council of Europe's anti-corruption efforts. One of the first meetings resulted in a list of priorities for intergovernmental cooperation; proposals were made on how to optimize efforts to improve criminal and criminal-procedural law. However, the organization is also actively involved in implementing its own initiatives (United Nations Conference on Trade and Development, 2001) *Illicit Payments*, UNCTAD Series on International Investment agreements).

Establishing the European Com on Legal Co-operation, an important and broadly-powered legislative body, was an important initiative for a more robust international legal framework against corruption. This organization makes proposals on recognizing the common priorities of the fight against corruption; it is also tasked to plan future anti-corruption measures and is responsible for organizing international forums on the topic. At one of the conferences hosted in 1994 in Malta, they proposed researching the implementation of international programs against corruption. In 1996, the Multidisciplinary Group on Corruption was tasked to carry out a feasibility study on the drawing up of a convention on civil remedies for compensation of damage resulting from acts of corruption (Resolution no. 1, 1994).

In 1999, the Chişinău-hosted conference adopted the *Resolution on the fight against corruption*, urging the Committee of Ministers to adopt the draft Convention on civil aspects of corruption. Thus, the Council completed its effort to develop an international legal instrument designed to combat corruption by means of civil law. Notably, using such means against corruption is a particular feature of the approaches to the problem, and this Convention furthered the interdisciplinary cooperation on international law against corruption. Said act sets forth the general international rules that define the civil law mechanisms for use against corruption. Article 5 of the Convention, State responsibility, states that persons who have suffered damage as a result of an act of corruption may claim compensation from the State in addition to compensation from the defendants (Koryakin, 2014).

Such progressive development of international cooperation against corruption increased the scale of such cooperation, which enabled the adoption of the United Nations Convention against Corruption in 2003. Thus, the legal framework of international cooperation against corruption was expanded even further and taken to an even more global scale, as all the UN member states were now able to join the effort. Draft Convention had been discussed two decades before it was ratified. However, the International Agreement on Illicit Payments was rejected by the General Assembly and thus could not be taken any further (Konventsiya o grazhdansko-pravovoy otvetstvennosti za korruptsiyu, 1999).

However, the Draft UN Convention against Corruption proposed in 2003 by the UN Office on Drugs and Crime was a success. Besides, the UN Convention against Torture was ratified in 2003 and adopted in 2005; it is an international law signed by 182 countries and four NGOs.

Interestingly, the UN Convention against Corruption has a broader scope than the Anti-Bribery Convention, as it applies not only to public officials, but also to corruption-inducing factors in the non-public sector. At the same time, the UN Convention against Corruption obliges all the parties to enable the establishment of specialized anti-corruption institutions. Articles 6 and 36 thereof oblige each signatory to enable an anti-corruption system consistent with the fundamental principles of its legal system, one that will operate under the guidance of specialized bodies and qualified specialists. The International Association of Anti-Corruption Authorities is a non-governmental organization established by a special meeting of UN office in Austria and tasked to monitor each of the signatories' compliance. This organization is headquartered in Beijing. The core task is to promote the effective implementation of the UN Convention against Corruption. At the same time, the Association provides information support to the international organizations involved in international programs against corruption, promotes constructive cooperation of all parties interested in the prevention and elimination of corruption risks.

7. Conclusion

In conclusion, we'd like to note that combating corruption is a priority for governments and international organizations. Many countries today seek to consolidate their efforts in the fight against corruption by establishing specialized international organizations. On the other hand, many initiatives remain purely declarative and see no furtherance. However, corruption has indeed drawn the attention of the international community, resulting in the adoption of international conventions. Today, the adoption and ratification of such conventions contributes to the development of the international legal system against corruption. In turn, many such international legal acts have been implemented in national law, and some have served as the foundation for the national anti-corruption laws.

References

- Additional Protocol to the Criminal Law Convention on Corruption Strasbourg. (2003). <https://rm.coe.int/168008370e>
- Inkina, M. V. (2020). Mezhdunarodno-pravovyye kriterii protivodeystviya korruptsii i ikh implemtatsiya v administrativnoye pravo Rossiyskoy Federatsii [International legal approaches to combating corruption and their implementation in the Russian administrative law]. *Journal of Foreign Legislation and Comparative Law*, 3, 147-162. [In Russ.].

- Kobets, P. N., & Nikitenko, I. V. (2020). Protivodeystviye korrupsii v sovremennoy Brazili: kriminologichesky obzor [Anti-corruption in Brazil today: a criminological review]. *Vestnik of Far Eastern Law Institute of the Ministry of Internal Affairs of the Russia*, 1(50), 44-50. [In Russ.].
- Konventsia o grazhdansko-pravovoy otvetstvennosti za korrupsiyu. (Nov 4, 1999). [Civil Law Convention on Corruption] (ETSN 174). Strasbourg. <http://docs.cntd.ru/document/901858911> [In Russ.].
- Konventsia ob ugolovnoy otvetstvennosti za korrupsiyu [Criminal Law Convention on Corruption]. (2002). http://www.consultant.ru/document/cons_doc_LAW_121544/ [In Russ.].
- Konventsia Organizatsii Ob'yedinennykh Natsiy protiv korrupsii [The United Nations Convention against Corruption]. (2003). http://www.consultant.ru/document/cons_doc_LAW_121140/ [In Russ.].
- Koryakin, V. M. (2014). Nekotorye voprosy nedeystvitelnosti sdelok v sfere gosudarstvennykh zakupok v svete polozheny konventsii soveta Yevropy o grazhdansko-pravovoy otvetstvennosti za korrupsiyu [Some issues of the invalidity of transactions under governmental contracts in the context of the Council of Europe Civil Law Convention on Corruption]. *Herald of International Institute of Economics and Law*, 3(16), 174-189. [In Russ.].
- Mccoy, J. L., & Heckel, H. (2001). *The Emergence of a Global Anti-corruption Norm. International Politics*, 38(1), 65-90.
- Nikitenko, I. V., Konovalenko, O. L., Reidel, L. B., Khabuda, E. S., & Lutsenko, E. L. (2017). Freedom of Conscience and Religion as an Object of Criminal Law Protection: The Problems of Theory, Legislation and Law Enforcement Practice. *Eurasian Journal of Analytical Chemistry*, 12(7B), 1435-1440.
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. (2020). <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>
- Resolution no. 1. (1994). *19th Conference of European Ministers of Justice: Administrative, civil and penal aspects, including the role of the judiciary, of the fight against corruption*. <https://www.coe.int/en/web/human-rights-rule-of-law/mju19-1994-valletta>
- Rezolyutsiya № (97)24 Komiteta ministrov Soveta Yevropy «O dvadtsati rukovodyashchikh printsipakh bor'by protiv korrupsii» [Council of Europe Committee of Ministers Resolution (97) 24 on the twenty guiding principles for the fight against corruption]. (1997). <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=9115#0286726711190196> [In Russ.].
- Salihu, H. A., & Jafari, A. (2019). Corruption and anti-corruption strategies in Iran. An overview of the preventive, detective and punitive measures. *Journal of money laundering control*, 23(1), 77-89.
- United Nations Conference on Trade and Development. (2001). *Illicit Payments, UNCTAD Series on International investment agreements*. <https://unctad.org/en/Docs/psiteiid25.en.pdf>
- Vylegzhanin, A. N., Lobanov, S. A., & Skuratova, A. Y. (2020). Suppression of Crimes Against the Security of Fixed Platforms Located in the Waters of the Russian Federation (International Law Basis). *Issues of journal Russian Journal of Criminology*, 4(2), 313-326.