



Archived at the Flinders Academic Commons:

<http://dspace.flinders.edu.au/dspace/>

'This is the peer reviewed version of the following article:

Joutsen, M., & Graycar, A. (2012). When Experts and Diplomats Agree: Negotiating Peer Review of the UN Convention Against Corruption. *Global Governance*, 18(4), 425-439.

*Global Governance*, vol. 18, no. 4. Copyright © 2012 by Lynne Rienner Publishers, Inc. Used with permission of the publisher.'



# When Experts and Diplomats Agree: Negotiating Peer Review of the UN Convention Against Corruption



*Matti Joutsen and Adam Graycar*

*The UN Convention Against Corruption is the only truly global convention in corruption control. Separate and rather difficult negotiations were conducted on a mechanism for the implementation of the treaty. These negotiations broke ground by providing, for the first time, peer review of a United Nations treaty. This article, which is based on the authors' close observations and interviews with key participants, seeks to show how the dynamics between technical experts and diplomats led to a resolution that would not have occurred if either the technical experts or the diplomats had acted alone. KEYWORDS: corruption, peer review, United Nations, negotiation impasse, experts, diplomats.*

THE UN CONVENTION AGAINST CORRUPTION (UNCAC) ENTERED INTO force in 2005.<sup>1</sup> As of February 2012, it had been ratified by 159 states parties, making it the only truly global convention on the prevention and control of corruption.<sup>2</sup> As such, it allows for cooperation between industrialized and developing countries as well as South-South cooperation. It therefore can assist countries that have extensive corruption in developing an anticorruption framework. It also offers a comprehensive framework that may help them to receive targeted technical assistance. Additionally, UNCAC can provide a framework for bringing pressure to bear on countries that have so far chosen to retain a hands-off policy toward corrupt practices in international trade and development.

UNCAC contains both mandatory and nonmandatory provisions. Among the mandatory provisions (“each State Party shall . . .”) are those requiring the criminalization of active and passive bribery, embezzlement by a public official, and money laundering. There also are several mandatory provisions on extradition and mutual legal assistance. States parties are obliged, for example, to “afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences” covered by UNCAC.<sup>3</sup> Given the fact that kleptocratic officials have siphoned off billions of dollars from developing countries, and that large sums of money have been transferred to bank accounts abroad,<sup>4</sup> it is not surprising that developing countries have worked to ensure that many of the provisions on asset recovery are mandatory.



However, the impact of UNCAC is potentially weakened by the fact that it is not self-executing. Each state party has to take domestic action (legislation, policy formulation, allocation of resources) in order to implement the provisions of UNCAC, both mandatory and nonmandatory. While the objectives of UNCAC are specified throughout the treaty, agreement could not be reached (with one exception) during the negotiation phase on how to review this implementation, on how the states parties could ascertain that implementation in their own country and elsewhere was on track and in line with the objectives, and on how that success was in fact being achieved.

The one exception is Article 63 of UNCAC, which simply provides for a Conference of States Parties (CoSP) that is to “promote and review” implementation of UNCAC. However, the CoSP meets for only five days biennially. It does not have the capacity to collect and analyze information on implementation. The CoSP realized quite quickly that a supplementary review mechanism is needed to do this work and prepare recommendations for the CoSP.

Peer review offers one tried-and-true supplementary review mechanism.<sup>5</sup> The review of the implementation of the recent anticorruption treaties prepared by the Council of Europe and the Organisation for Economic Co-operation and Development (OECD) has shown that direct consultations among experts doing an on-the-ground review provide an effective learning experience.<sup>6</sup> Talking with experts from other systems often helps experts understand their own system better and realize that there are other—and perhaps more effective—ways to deal with an issue.

Despite many observers seeing this as an obvious way forward in connection with UNCAC as well, initially the concept of peer review was not widely embraced in Vienna where the negotiations on the supplementary review mechanism were held. Peer review had not previously been used in connection with the implementation of any UN treaty and, thus, there was no UN precedent. As recently as the second session of the CoSP held in 2008, there appeared to be firm and widespread opposition to peer review. Less than two years later at the third session of the CoSP, agreement was reached on a peer review mechanism. How was implacable opposition turned into tacit agreement and what can we learn from this exercise?

Our argument in this article is twofold. Negotiations require both technical experts and diplomats. The technical experts can set out the substantive issues and identify the options. The diplomats can identify the political sensitivities (in this case, the concept of peer review), thus showing where compromises might be needed. As long as one side viewed the need for a UNCAC review mechanism as primarily a technical matter, the negotiations drifted. It was not until both sides understood the political dimensions that progress could be achieved, which allowed for the negotiators to break through what appeared to be an impenetrable barrier.<sup>7</sup>



## Deadlocks

In the literature, the *negotiation process* has been described as “a sequence of actions in which two or more parties address demands, arguments and proposals to each other for the ostensible purpose of reaching an agreement and changing the behaviour of at least one actor.”<sup>8</sup> There is significant literature on negotiation strategies and on the breaking of deadlocks.<sup>9</sup> A *deadlock* occurs when parties stand firm on inconsistent positions.<sup>10</sup> James Sebenius, for example, maps the field comprehensively in his examination of negotiation analysis.<sup>11</sup> By building on experiences and strategies, he takes us from game theory to statistical decision theory where analysts rely on objective probabilities. Sebenius says that negotiation analytic prescriptions typically expect intelligent, goal-seeking action by the parties whereas negotiation analysis seeks to decompose the problems into characteristic elements. Throughout the rest of this article, we find this mode of analysis to be very useful.

John S. Odell demonstrates how negotiations that seem to have landed in an impasse can be turned around.<sup>12</sup> Looking for the causal mechanisms that tip the process one way or another, he explores two case studies, the World Trade Organization negotiating rounds of 1999 and 2001.<sup>13</sup> The 1999 round held in Seattle was spectacularly unsuccessful while the 2001 round held in Doha achieved results. After description and empirical analysis, Odell concludes with three propositions:

1. If a party perceives that its alternative to agreement has worsened, it will shift strategy in the integrative direction, and vice versa.
2. The odds of breaking a deadlock will be greater if parties use some integrative tactics than if they use strictly distributive strategies.
3. The odds of breaking deadlocks will rise when a good mediator is involved.<sup>14</sup>

In this article, in turn, we present original evidence regarding how the UNCAC negotiations that ultimately resulted, for the first time in connection with any UN treaty, in the adoption of peer review moved from impasse to agreement.

## The First Session of the Conference of States Parties

When the first session of the CoSP was held in Amman, Jordan, in December 2006, the discussions on a review mechanism were long and convoluted. Nonetheless, this dialogue resulted in the crucial political agreement that CoSP itself was not enough and that a supplementary review mechanism was needed.

The difficulties were in pinning down exactly what such a mechanism should look like. The delegates agreed on some of the key features of this



mechanism: it should be transparent, efficient, nonintrusive, inclusive, and impartial; it should not produce any form of ranking; it should provide opportunities to share good practices and challenges; and it should complement existing international and regional review mechanisms in order to avoid duplication of effort. The formulation of more specific terms of reference for the mechanism was delegated to an “open-ended intergovernmental expert working group.”

Even though at first glance these are rather bland characteristics, there was vigorous debate over them in Amman, which revealed that in some key respects the different sides understood certain concepts differently. For example, *transparency* was understood by some to mean that all the states parties would be involved throughout the process. In effect, the review was to be carried out by a plenary body, as opposed to a smaller expert body. Others understood transparency to refer to the ability of all stakeholders (including, e.g., representatives of civil society) to follow and possibly even provide input to the review process. Still others understood transparency to refer to whether or not the reports that are produced as a result of the review process are available to all states parties or, indeed, are made public.

A second example was the concept of *nonintrusiveness*. The UN Charter stipulates that the United Nations may not “intervene in matters which are essentially within the domestic jurisdiction of any state.” The concept is generally used in international law to mean that the UN has no authority with respect to disputes that are essentially within domestic jurisdiction. There appeared to be different views as to what constitutes such intervention. At various stages in the negotiations, arguments based on nonintrusiveness and the protection of sovereignty were used to counter proposals for, *inter alia*, the use of independent experts, the arrangement of country visits, the use of any information not provided by the government of the state party under review, and the publication of the full report—all elements that other negotiators regarded as part and parcel of the peer review process.

### **Seeking Common Ground at the Second Session of the Conference of States Parties**

In preparing for the second session of the CoSP in Bali at the beginning of 2008, the Secretariat looked at existing review mechanisms and, on that basis, set out what it regarded as elements that could be incorporated into the UNCAC review mechanism:

- *self-assessment* (each state party would fill out a questionnaire on what implementation steps it had taken);
- *review* (by which the Secretariat meant that the process should be carried out by groups of experts or peers);



- *dialogue* (a “process of constructive dialogue” between the Secretariat and the country concerned, or between the experts or peer reviewers and the country concerned);
- *cooperation with existing review mechanisms*;
- *country visits* (the Secretariat carefully noted that “the approach taken by existing review mechanisms with regard to country visits ranges from no visits at all to visits only where necessary to compulsory country visits”); and
- *benchmarking and technical assistance*.<sup>15</sup>

Despite the efforts of the Secretariat to stake out common ground, the discussions at the second session of the CoSP can be characterized as drawn out and difficult. The elements identified by the Secretariat in its background report appeared to meet acceptance on a general level. Once the discussion entered into details, however, two opposing positions seemed to emerge. These two positions could be called the open review and the controlled review positions.

The *open review* position incorporated many elements found in peer review within the framework of the OECD or the Council of Europe: a team of experts collects information from a variety of sources; the team then visits the country under review in order to meet a wide range of stakeholders; the team prepares a country report that contains recommendations; the team submits this draft report to the country under review for comment; the amended country report together with recommendations is sent to a plenary body for discussion and adoption; the report is published; and there is some mechanism for follow-up by the plenary body to see whether the recommendations have been implemented.

According to the *controlled review* position, a team of experts (who, according to some who espouse this position, also includes experts representing the country under review) uses information received from the government to prepare a country report; the report is finalized on the basis of a dialogue between the experts and the representatives of the country under review; and the Secretariat prepares a general report for the plenary body that does not contain references to individual countries. The plenary body decides by consensus on the publication of the general report; whether or not the country report is published is decided by the country under review.

At the start of the second session of the CoSP, the open review position was articulated by Portugal, speaking on behalf of the European Union, but it was also espoused, for example, by the United States and Canada.<sup>16</sup> The delegations of many countries consisted of a mix of experts from the capitals and of career diplomats who in many cases had come to Bali from their current posts at the UN headquarters in Vienna. The experts tended to be familiar with the workings of such an open review model within the frame-



work of the OECD, the Council of Europe, and the Financial Action Task Force (FATF).

The controlled review position was articulated by Pakistan, speaking on behalf of the Group of 77 and China.<sup>17</sup> According to the official report of the session, the statement by Pakistan “highlighted that the Conference should be the only body responsible for the review and that any mechanism or body to be established should be subsidiary to the Conference.” Further the Pakistani delegate indicated that the review mechanism should base its reports exclusively on information provided by states parties and that the conference should be the competent body to approve and issue reports on the review of the implementation of the convention.<sup>18</sup> Most of the delegations from the Group of 77 and China were small, with a heavy preponderance of career diplomats from Vienna.

Due to the deadlock between the open review and controlled review positions, little progress could be achieved at Bali. The resolution that emerged began by essentially repeating what had been decided two years earlier: if indeed a supplementary review mechanism was to be established, it should be transparent, efficient, nonintrusive, inclusive, and impartial; it should not produce any form of ranking; it should provide opportunities to share good practices and challenges; and it should complement existing international and regional review mechanisms in order that the conference may, as appropriate, cooperate with them and avoid duplication of effort. The resolution continued with a number of general statements about effective implementation, a balanced geographical approach, the need to be non-adversarial and nonpunitive, and that implementation should be of a technical nature and promote constructive collaboration.<sup>19</sup>

### **The Governmental Working Group of 2008**

The debate shifted from Bali to the UN headquarters in Vienna, where an open-ended intergovernmental working group met in September 2008. By the time of that meeting, thirty-one countries had responded to the invitation of the Secretariat to submit proposals for the review mechanism.<sup>20</sup>

The submissions continued to reflect the divide between the open review and the controlled review positions. Proposals in line with the open review approach came from member states of the European Union, the United States, and several other countries. These proposals tended to repeat the following elements:

- each state party should be reviewed by experts from other states parties;
- the reviews should preferably involve on-site visits for direct discussions with a wide range of stakeholders;
- a variety of different sources should be used when gathering information;



- civil society and the private sector should be involved;
- the reports should be published; and
- there should be some type of follow-up on the implementation of any recommendations made.

Many proponents of the open review position tended to take a technocratic view of implementation and many delegations espousing this view included technical experts in addition to career diplomats. To these proponents, the review was a technical exercise in reporting and accountability, and the results should be transparent and available immediately for the world to see. The experts conducting the review should be free to gather information on implementation from a variety of sources in order to familiarize themselves with the situation and engage in discussions with a number of different stakeholders. Armed with this knowledge, they would be able to suggest best practice to the experts of the country under review.

The Group of 77 and China submitted a working paper to the September 2008 meeting, laying out in greater detail their vision of the controlled review model. Among the points made in that paper were the following:

- the reports should be based only on information provided by the states parties;
- the information provided by the states parties may not be disclosed to any person or entity without the prior consent of the state concerned;
- the information should be used only for analytical purposes and to promote effective implementation of UNCAC. In particular, this information should not be used for political or economic purposes;
- the mechanism should “avoid bringing about political difficulties, or some kind of selectiveness between Member States”;
- the mechanism should be consistent with the principle of the sovereignty of states;
- the mechanism should be transparent and participatory, with all states parties enjoying equal footing; and
- the operation of the mechanism should be paid on the basis of the regular UN budget.<sup>21</sup>

The proponents of controlled review tended to see the process as involving a number of serious political risks that had to be identified and defused. Since outside experts lack local understanding, they might receive a distorted view of how the legal and administrative system actually operates in the country under review. Information obtained during the review process could be misused for political purposes and, thus, there was a need to keep tight governmental control on what and how information is used. Non-governmental actors could in fact be hostile to government policy and might



use involvement in the review process for their own ends. If the reports produced as a result of the review process became construed as “UN-endorsed” assessments of the extent of corruption in a certain country, this could have a negative impact on foreign investments in that country: donors might seek to attach a variety of conditions on any offers of technical assistance. There were also considerable concerns about the expense of on-site visits and other aspects of peer review, and that the necessary funds would then not be available for direct technical assistance.

### **The Gulf Between the Open Review and the Controlled Review Positions**

It is clear, then, that there was a great gulf between the two positions. It seemed as if the two sides were in fact speaking different languages and represented quite different concerns that were not being openly addressed.

Part and parcel of the open review position seemed to be the view that any efforts to oppose such openness were nothing less than a wish to avoid scrutiny, and that the controlled review group was not really committed to the objectives of UNCAC.

The controlled review position seemed to regard proposals for conducting on-site reviews, contacting local civil society organizations, publishing the reports, and so on as politically based violations of sovereignty and as attempts to force countries to change their policies through naming and shaming.

The open review position seemed to revolve around technocratic, substantive interests that centered on finding the best way to collect and analyze information on implementation. The controlled review position seemed to revolve around political interests that focused on finding a politically legitimate way to evaluate implementation in a sovereign state.

The ensuing negotiations gradually saw the two rigid positions soften. The initial catalyst for this was that the apparently solid Group of 77 and China position in support of controlled review soon suffered from defections. The above-mentioned working paper submitted by the Group of 77 and China in September 2008 did not use the language of peer review at all. However, a number of developing countries did in fact have favorable experience with peer review. Most Latin American countries were using peer review in connection with the implementation of the 1996 Inter-American Convention Against Corruption. In addition, several developing countries were familiar with peer review in the context of the FATF. As a result, the debate could not be painted as a North-South one, in which the Western industrialized countries were opposed to the more numerous developing countries. Those supporting the controlled review position gradually realized that holding out against any form of peer review was



not a sustainable position, and that some workable format had to be found so that the long negotiations of UNCAC itself would not prove to be a waste of time and effort.

Once several developing countries began to express their support for some elements of peer review, they were understandably received with open arms by the other camp. The proponents of open review tried to leverage this trend by building a growing consortium of like-minded countries based on a fairly hard-line technocratic position. Their view remained that peer review should occur on their terms.

In the year following the September 2008 meeting of the intergovernmental working group, three more working group meetings were held. In addition, some informal meetings were held in Vienna, which were attended almost solely by the diplomats posted there. Progress remained achingly slow.

By the time of the last working group meeting in August–September 2009, the list of issues that had to be solved remained rather long. The next session of the CoSP was scheduled to be held in only two months, and consensus was not in sight. It was at this stage that movement could be discerned among the proponents of open review. What had originally been seen by many of them as essentially a technical exercise (how to collect and analyze information most effectively and how to encourage member states to take the necessary implementation steps) had obviously become imbued with political sensitivities. One or more informal meetings of the like-minded group supporting open review were held each week during those two months. At these meetings, the debate raged and the cohesiveness of the group began to break down. While some (primarily a few of those delegations that included technical experts) wanted to go to the wire, others (usually career diplomats) argued that the only way to reach the necessary consensus in Doha was by stepping away from the hard-line technocratic position. The talk shifted to the potential for compromise with the closed review proponents and to redlines that should not be crossed.

The stage was thus set for compromise.

### **Compromise at the Third Session of the Conference of States Parties**

The debate at the third session of the CoSP, in Doha in November 2009, took place not so much in the plenary room, but in a small room where about a dozen participants (primarily diplomats), who represented the two views, worked their way through the issues. In these discussions, the focus was on finding options that would allow for various elements of peer review (thus satisfying the concerns of the open review proponents) while defusing the political risks raised by peer review (thus satisfying the concerns of the controlled review proponents).



The outcome at Doha can be considered a delicate balance between the two views.<sup>22</sup> The elements of the mechanism are as follows:

- An implementation review group is set up for the review process. This body is, to use the UN parlance, intergovernmental and open, which means that any and all states parties may participate.
- Each state party is to be reviewed by two other states parties.
- Each state party is to designate governmental experts who would actually conduct the reviews. (Disagreement arose over the definition of a “governmental expert.” Those opposed to the peer review concept generally stressed that these experts must be civil servants and that they reserve the right to refuse to accept anyone whom they regard as biased.)
- The review process consists, basically, of four stages: a self-assessment conducted by each state party on the basis of a checklist prepared by the Secretariat, discussions between the experts and the representatives of the authorities of the member state, preparation of a country report, and discussion at the implementation review group of consolidated thematic and regional reports.
- In responding to the self-assessment, each state party should seek to engage in wide consultations with relevant individuals and groups outside the public sector.
- The experts may also use information produced by other corresponding evaluation mechanisms.
- On-site visits may be arranged with the consent of the state party under review. However, the costs of these must come from voluntary funding, not the regular UN budget.
- In connection with on-site visits, the state party under review is encouraged to promote discussions with all relevant national stakeholders.
- On the basis of the evaluation, the experts prepare a country report and an executive summary. The report and its executive summary require the approval of the state party under review.
- The Secretariat prepares thematic and supplementary regional geographical reports for the implementation review group.
- These thematic and regional reports will serve as the basis for the analytical work of the Implementation Review Group. The executive summary of the country reports are submitted to the implementation review group for informational purposes only and not for discussion. (Those opposed to peer review did not want the implementation review group to be able to open discussion on implementation in a specific state party, where the authorities of that state party would be required to respond to questions.)
- The country reports themselves are confidential and thus, for example, are not submitted as such to the implementation review group. However, the states parties in question are encouraged to publish these



reports themselves. In addition, “States parties shall, upon request, endeavour to make country review reports accessible to any other State party. The requesting State party shall fully respect the confidentiality of such reports.”

The fact that the outcome is indeed a compromise is borne out by the interviews that we conducted with key negotiators for the purposes of this article. Negotiators on both sides appeared to believe that it was their side that won. For example, a negotiator for the controlled review side estimated that some 80 percent to 90 percent of what they proposed was approved “without significant change.” Negotiators for the open review side stressed that the Doha result clearly leaves the door open to a full peer review procedure (including, e.g., on-site visits, involvement of civil society, and publication of the reports) and that, once state parties have more experience with and confidence in the review mechanism, more and more elements of peer review will come into play.

### **How the Negotiations Worked**

The negotiations on the mechanism for the review of the implementation of UNCAC showed the difficulties that arise when one side stresses technical aspects while the other side stresses political aspects, and neither side is able to bridge this difference in approach. Peer review is gradually becoming an established and valued element of the review of implementation, but it does present risks of misuse. On the other hand, attempts to trim peer review of some of its essential elements (e.g., on-site visits, the involvement of civil society, and the publication of reports) may sap it of its vitality.

The negotiations also showed both the benefits and the drawbacks of negotiating as blocs. Having two clear blocs—the open review proponents and the controlled review proponents—helped to crystallize the issues on the table. At the same time, since both of the two sides transcended regional coalitions, the blocs helped to generate more global support. On the other hand, both sides appeared to suffer to some degree from a loss of credibility as a negotiating partner. The Group of 77 and China, as noted above, suffered from early defections and various developing countries became vocal supporters of open review. The European Union had a more organized structure for decisionmaking and negotiation; yet not only was it unable to maintain a coherent position that would retain other open review supporters, but at times different members of the European Union sent out mixed signals in the negotiations (e.g., on the issue of the need for on-site visits) that complicated the position of the lead negotiator.

According to one observer of the negotiations, at a certain stage a sense of inevitability evolved that the mechanism would be established.<sup>23</sup> It was primarily a question of where the compromises would be found. These



compromises could not be found until the two sides gradually realized the importance that each of the sides attached to its own proposals and redlines: on the one hand, the use of peer review, and on the other hand, the concepts of sovereignty, transparency, and nonpunitiveness.

The open review proponents had to convince the controlled review proponents that peer review was not intended to identify shortcomings as part of a political agenda or to make people look bad. Instead, the key element is ownership: the country under review should recognize that it has problems it needs to overcome and that there are politically acceptable ways to overcome them. The controlled review proponents had to convince the open review proponents that the concerns about political risks were valid ones and that these must be respected.

### **Conclusion**

Reflecting on the theoretical analyses that we discussed in the first part of this article, it is instructive to see what lessons can be learned from previous case studies and how propositions might be tested in the future. Statistical decision theory, which is found extensively in the literature, is not applicable to this case study because objective probabilities were not evident and there was no basis for objectivity. There were certain subjective probabilities; namely, coalitions of interests and a wish at times to shift the focus of the argument.

Turning to Odell's three propositions (see the section "Deadlocks"), this case study shows how integrative tactics aided an agreement, and especially the mediators (diplomats) were able to find an agreement by agreeing to a text by consensus, consulting more inclusively, and taking the argument above that of specialist and instrumental operations and focused solutions.

The compromises were not found as much by the technical experts who came from the capitals. The role of the technocrats was largely to indicate what options were to be found in the peer review model and to allay the concerns of those who were less familiar with the concept. The compromises were more often found by the Vienna-based diplomats through an intensive process of informal consultations during which the two sides came to better understand one another's positions. One observer noted that the bonding between the key negotiators also took place outside the meetings at occasions such as lunch, dinner, receptions, and smoking breaks. Moreover, because the negotiations lasted for several years, the diplomats came to have a real and detailed knowledge of the convention itself and of peer review.<sup>24</sup>

The main lesson of the UNCAC negotiations is perhaps best encapsulated by one participant: "You should not approach the negotiations from the point of view that I am right and you are wrong, that you should listen



to me because I know better. It is better to try to accommodate the different general concerns of the state parties. We are all equals and we all have an interest in the implementation of the Convention.”<sup>25</sup> 🌐

## Notes

Matti Joutsen is director of the European Institute for Crime Prevention and Control, which is affiliated with the United Nations. From 2000 to 2011, he was director of international affairs at the Ministry of Justice of Finland and, in that capacity, was the chief negotiator for Finland on the UN Convention Against Corruption and on the mechanism for the review of its implementation. He has written some 200 articles, studies, and papers on crime prevention, criminal justice, comparative criminal law, and international cooperation.

Adam Graycar is professor in the Research School of Social Sciences at the Australian National University. He has long experience with the UN Office of Drugs and Crime, dating back to 1994 when he was director of the Australian Institute of Criminology (AIC). He left the AIC to become head of the Cabinet Office, Government of South Australia. He is the author of over 200 scholarly works, including several articles on corruption, and is editor and coauthor of the *Handbook of Global Research and Practice in Corruption* (2011).

1. UN General Assembly, Res. 58/4 (31 October 2003). See [www.unodc.org/unodc/en/treaties/CAC/index.html](http://www.unodc.org/unodc/en/treaties/CAC/index.html).

2. Several international anticorruption conventions were negotiated and opened for signature during a burst of activity at the turn of the millennium: the 1996 Inter-American Convention Against Corruption of the Organization of American States; the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD); the 1998 Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union; the 1999 Criminal Law Convention on Corruption and the 1999 Civil Law Convention on Corruption of the Council of Europe; the 2001 Southern African Development Community Protocol Against Corruption; and the 2003 African Union Convention on Preventing and Combating Corruption.

3. UNCAC, art. 46(1).

4. One former head of state who has gained notoriety in this respect is Jean-Claude Duvalier, who is alleged to have extracted between \$300 million and \$800 million from Haiti, one of the poorest countries in the world. Other kleptocratic former heads of state operated in countries that were richer in natural resources and the sums were correspondingly larger. Sani Abacha is alleged to have extracted between \$2 billion and \$5 billion from Nigeria, Mobute Sese Seko about \$5 billion from Zaire, and Ferdinand Marcos between \$5 billion and \$10 billion from the Philippines. Former president Mohamed Suharto has the dubious distinction of being credited with the greatest criminal extraction: between \$15 billion and \$35 billion from Indonesia. See <http://iuhuru.com/2010/09/top-10-corrupt-world-leaders-history> (accessed 21 February 2012).

It should be noted that when kleptocrats extract resources on this scale, much of it does not leave the country but instead is used to maintain and strengthen the kleptocrat's power base; for example, by rewarding supporters and ensuring the allegiance of the military and security apparatus. Nonetheless, many kleptocrats have transferred money abroad as a hedge against a fall from power—as most



recently claimed in respect of Muammar Gaddafi and Hosni Mubarak, following their ouster from Libya and Egypt, respectively, as a result of the Arab Spring. See, for example, [www.africandictator.org/?p=1461](http://www.africandictator.org/?p=1461) (accessed 21 February 2012).

5. For an overview of methods of evaluating the implementation of international treaties and on the expansion of the use of peer review, see in particular Merja Norros, *Judicial Cooperation in Civil Matters with Russia and Methods of Evaluation* (Helsinki: Kikimora Publications, 2010).

6. Regarding the implementation of the Council of Europe's Criminal Law and Civil Law Convention on Corruption, see [www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp). Regarding the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, see [www.oecd.org/document/20/0,3343,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html).

7. The article is based on our extensive experiences with the United Nations crime prevention and criminal justice programme in general and with the negotiations on the UNCAC review mechanism in particular. In the preparation of this article, the first author conducted interviews with a number of key negotiators. In addition, the first author was privileged to be able to participate in the core negotiations, up to and including those held in the small room in Doha, mentioned at the beginning of the section entitled "Compromise at the Third Session of the Conference of States Parties."

8. J. S. Odell, "Breaking Deadlocks in International Institutional Negotiations: The WTO, Seattle, and Doha," *International Studies Quarterly* 53 (2009): 273–299, see especially 274.

9. See, for example, R. P. Barston, "International Negotiation: The Development of Central Concepts," *European Journal of Political Research* 11 (1983): 129–138; V. A. Kremeniuk, *International Negotiation: Analysis, Approaches, Issues* (New York: Jossey-Bass, 2002); J. K. Sebenius, "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities," *International Organization* 46 (1992): 323–365; J. K. Sebenius, "Caveats for Cross-Border Negotiators," *Negotiation Journal* 18 (2002): 121–133; J. K. Sebenius, "Negotiation Analysis: From Games to Inferences to Decisions to Deals," *Negotiation Journal* 25 (2009): 449–465.

10. Odell, "Breaking Deadlocks," p. 274.

11. Sebenius, "Negotiation Analysis," p. 456.

12. Odell, "Breaking Deadlocks."

13. Odell affirms that case studies are of fundamental importance, but he goes on to stress that we cannot ever be certain that any case studies are necessarily typical of situations that are being negotiated or that any pair of case studies can establish causality or eliminate alternative explanations. Odell, "Breaking Deadlocks," p. 295.

14. Odell, "Breaking Deadlocks," p. 295.

15. CAC/COSP/2008/10, [www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html](http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html).

16. See, for example, CAC/COSP/2008/15, par. 28, [www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html](http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html).

17. The Group of 77 and China is a coalition of developing countries that promotes the interests of its members at the United Nations. Nonetheless, it should be emphasized that the negotiations on the review mechanism dealt with in this article should not be seen as a North-South debate between the industrialized countries and the developing countries. The borderlines were more fluid and the national positions often more nuanced.

18. CAC/COSP/2008/15, par. 29, [www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html](http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html).



19. *Ibid.*

20. The states parties that submitted written proposals were Austria, Chile, China, Ecuador, El Salvador, Finland, France, Hungary, Indonesia, Jordan, Kuwait, Latvia, Mali, Mauritius, Morocco, Nigeria, Norway, Panama, Peru, Slovakia, South Africa, the United Kingdom, the United States, and Uruguay. The signatories that submitted written comments were Brunei Darussalam, Germany, Iran, Japan, Switzerland, Thailand, and Tunisia. These are available at [www.unodc.org/unodc/en/treaties/CAC/working-group1-meeting2.html](http://www.unodc.org/unodc/en/treaties/CAC/working-group1-meeting2.html).

21. CAC/COSP/WG.1/2008/CRP.2, [www.unodc.org/unodc/en/treaties/CAC/working-group1-meeting2.html](http://www.unodc.org/unodc/en/treaties/CAC/working-group1-meeting2.html).

22. See [www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html](http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html).

23. Confidential interviews conducted by Matti Joutsen.

24. One coincidental feature of both our case study and Odell's is that, after failure in multilateral meetings in various cities, agreement was finally reached at Doha. Odell, "Breaking Deadlocks." Could it be that, when faced with difficult negotiations, organizers might consider scheduling meetings in Doha?

25. Confidential interviews conducted by Matti Joutsen.