

# The Construction of International Anti-corruption in New Trend

## —A Perspective from International Organizational Law

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**Abstract:** Corruption always tends to be a serious problem for every state. With the rapid social, economic, and technological development, corruption is more likely to become globalized. This article focuses on the international anti-corruption organization through case study and literature research, aiming at providing suggestions in order to improve the effectiveness of anti-corruption actions across the world. Shortages are found both in the international anti-corruption agencies and their conventions with respect to the deficient enforcement power and low compulsory constraints. Favourable political will lack in ineffective agencies, which further negatively impact their funding, faculties, specialization, and independence. The conventions are limited due to the legal lag and their soft law nature. Further, two suggestions are proposed: cooperation of international organization and procedural justice in the conventions.

### 1. Introduction

In 2015, the illegal activities of former Malaysian Prime Minister, Najib Razak, and misconduct within his fund were revealed, including embezzlement, money laundering and abuse of power, etc. It is also known as the 1MDB (1Malaysia Development Berhad) scandal. This case is regarded as one of the most notorious scandals in the 21st century, not only for its huge impact on economic loss and politics, which directly led to the regime change but also for its transnational scale involving Switzerland, Singapore, the USA, and other countries.

In 2009, the 1Malaysia Development Berhad was established as a sovereign wealth fund in order to support and facilitate foreign investment on the surface [1]. However, the actual power was controlled by Najib Razak. In 2015, the opposition party condemned that approximately 700 million dollars were transferred to Najib Razak's private bank accounts through 1MDB, and the Wall Street Journal reported the same allegation. According to the subsequent investigation, more evidence on criminal mismanagement, bribery, misconduct, and other unlawful act referring to 1MDB and Razak was exposed. For instance, the film company owned by Razak's stepson transferred over 100 million dollars from 1MDB in order to produce a Hollywood movie, and Jho Low, one main conspirator of 1MDB corruption, spent over 8 million dollars, which came from 1MDB, in purchasing diamonds and jewelry. The evidence appears to be clear, and the scandal was known by everyone. However, in 2020, five years after the 1MDB corruption, the investigations in multiple jurisdictions is still ongoing, Razak still attempts to appeal, and Jho Low still keeps hidden overseas. There is still no conclusion for this case [1]. According to the review of the 1MDB corruption scandal, difficulties in tracking, arrest, the consensus in conviction, and other issues can be recognized in the contemporary transnational trend. This essay aims to indicate the existing problems within the transnational anti-corruption mechanism under the current international organizational law at first. After that, the causes will be discussed in the third part, and the fourth part will provide some further suggestions in order to improve the situation. Finally, the conclusion and limitations will follow.

## **2. The Existing Problems of International Anti-corruption Mechanism in a New Trend**

### **2.1 The international anti-corruption organizations' insufficient capability**

Greed and self-interest are rooted in human nature and the political system, and therefore, corruption can permanently exist in society, hardly been eliminated. However, it can be controlled through the law, anti-corruption mechanism, and moral education. That is, the independent, authoritative, and effective anti-corruption agencies tend to be essential in combat against corruptions. Up to 2012, the number of anti-corruption agencies has been increased to 120 worldwide, from the East to the West, from the developing countries to developed countries [2]. However, some drawbacks in those organizations also appeared.

The executive and enforcement power of traditional anti-corruption tends to be loose and lacking in a global scale, which also tends to be a problem in the new era. For instance, the 1MDB scandal has taken five years for detecting, accusing, and prosecuting and is still waiting for a result. Siemens company's billions of suspicious payments since 2001 and undetected transactions involved with bribery of contacts and policies were only revealed in 2006 [3]. On the one hand, in many nations, citizens have already regarded these behaviours as a normal method within business, political activities, and daily life, neglecting the effort of counter corruption organizations, etc. On the other hand, contemporary society simultaneously creates further novel challenges for counter-corruption strategies. With the increasing effectiveness and frequency of global communication, cyber corruption, bribery, and money laundering appear to be more difficult for tracing. Meanwhile, reaching a consensus among countries with a different law, social norms, and cultural acceptance towards corruption also tends to be an obstacle.

Quah, who compared four anti-corruption agencies in Singapore, Hong Kong, Thailand, and South Korea, indicated that many anti-corruption organizations appear to be ineffective and weak, referring to their inadequate political will and investigative power [4]. For instance, the anti-corruption agencies in South Korea, Korea Independent Commission Against Corruption (KICAC), lack the ability to conduct an independent investigation without the support of the Board of Audit and Inspection (BAI) and the Public Prosecutor's Office. Quah emphasized that it was a symbol of limited political will on anti-corruption, which further adversely affected the personnel and budgeted on anti-corruption agencies.[4] In other words, anti-corruption agencies were abused as methods for political interest rather than preventing, controlling, and attacking bribery. Other anti-corruption also reflected similar issues. Therefore, when it comes to international corruption, the organizations fail to actively provoke a consensus on political will, regulating areas, validity, and approval to some extent, which also hinder the construction of a transnational anti-corruption network.

Such an assumption can also be illustrated by one assessment on the United Nations Convention Against Corruption (UNCAC), which claimed that effective cooperation and information sharing are lacking among international anti-corruption agencies. It also argued that some agencies encounter difficulties with special investigating or detecting methods due to their restricted resources and specialized knowledge [5].

### **2.2 The international anti-corruption convention's difficulty in adapting the new trend**

Some contents in the current international anti-corruption conventions tend to demonstrate the legal lag, and they hardly mention the strategies against corruption in contemporary society.

The UNCAC is the most representative and significant instructive document in the world, providing leading ideas and supporting the anti-corruption activities across the nations, including general provisions, preventive measures, criminalisation and law enforcement, and international cooperation [6]. It has been 17 years since UNCAC first published, and 15 years since it entered into force (United Nations Office on Drugs and Crime, 2020) [7].

According to the State of Implementation of the United Nations Office on Drugs and Crime, UNCAC still experiences some challenges from the basic issues and practical\_obstacles owing to the insufficient experience, resources, and training to complicated technical problems, such as

conviction, criminalization, and procedure [5]. Furthermore, the State of Implementation of the United Nations Office on Drugs and Crime especially stressed the problems that some terms tend to be inaccessible, incomplete, and lack coercive enforcement in reality. For instance, the boundary between being convicted as bribing public officers (or impeding justice) and being innocent is blurring; the actions of investigating, tracking, freezing, convicting, and witnesses protection are absent in cases of bribing public officers in foreign countries or international organizations; the current law and norms tend to be invalid in terms of money laundering and confirmation of liability. Moreover, the application of rules in the UNCAC appears to be limited, which means UNCAC can be hardly utilized as a straightforward automatic legal basis with respect to extradition. Additionally, countries are less likely to cooperate with others when resorting to the transfer of criminal proceedings [5].

Therefore, the existing conventions and terms on anti-corruption require some updates in order to fit in reality and contemporary society.

### **3. The Causes of Existing Problems of Current International Anti-corruption Mechanism**

#### **3.1 The low enforcement power of international anti-corruption organizations**

International corruption behaviours often tend to be complex, multidimensional, and sophisticated with respect to criminalization, jurisdictions, and cooperation among different countries, which require the coordination of international anti-corruption agencies. However, deficient independence, specialization, resources, and enforcement ability sometimes hinder the function of such organizations.

The standard of effective international anti-corruption agencies appears to be independent, specialization, and own adequate resource [8]. That is, the organizations should not be influenced by political intervention, concentrating on corruption activities and preparing enough for combating such particular crime, such as funding, power, and professional training for officers. First, an independent anti-corruption agency always accompanies with “genuine political will,” the autonomy on organizing and enforcing, and transparent supervision [8]. For instance, the anti-corruption agency in Thailand tends to be in a dilemma between the Cabinet and public officers and therefore is not able to punish the offenders of bribery [4]. Second, specialisation indicates special personnel with professional skills. For instance, KICAC not only lacks the independent investigating power due to political conflict, but also lacks the funding and training on staff for the same reason [4]. Such difficulty also corresponds to the third prerequisite of an anti-corruption organization: resource and power, which emphasizes financial support, experts, teamwork, and the ability of detection [8].

A large number of parties of the international anti-corruption agencies exhibit their own shortages on fighting corruption, and the international combat against corruption tends to be more difficult due to the inefficient enforcement and cooperation. For example, the Organization for Economic Co-operation and Development (OECD) is a forum for states to share, communicate and promote good policy, effective practice in order to solve challenges on social and economic problems across the world, including corruption [9]. The parties of OECD are the governments of over 30 democracies distributed across Europe, North America, and Oceania. This regional organization was constructed based on voluntary entry and quit. Therefore, the agency has no compulsory power to influence a country’s management and jurisdiction on international corruption, which may result in a loose regulation rather than strong enforcement on corruption. Moreover, questions on definition, legislation, and extradition are less likely to be consistent in many cases. The parties cannot provoke a strong subject initiative and enforcement power, which increases the problems of fighting against international corruption crime.

#### **3.2 The lack of compulsory constraint of international anti-corruption conventions**

The reasons for ineffective anti-corruption conventions and treaties can reflect in two aspects: the hysteresis nature of law and the absence of coercive power.

The law lag indicates a phenomenon that law and enforcement are more likely to be falling years behind other sectors in terms of adjusting, approving, and applying in order to serve justice [10]. As the principle of society and morality, law needs to be stable and conservative. Otherwise, people will find it difficult to obey, and law enforcement also cannot apply it smoothly. However, with the rapid development of technology, ideology, and social structure, the existing law cannot properly solve the constantly developing problems. The tedious and prudent procedures of legislation also aggravate the law lag. Such situations can be found in both domestic law, such as the constitution where the US Constitution only experienced 27 amendments (the amendments 1 to 10 were approved at the first time) during over 200 years [11], and international law, such as the UNCAC, which was published in 2003.

The soft law and hard law are two contrasting definitions in law with respect to obligation, precision, and delegation [12]. The hard law tends to have a strong legal obligation, precisely divides the legal and the forbidden, and approves a third party for judgment like a court [12]. However, a soft law's obligation appears to be weak or not exist, with blurring and abstract boundaries of deviance, and its interpretation and enforcement are inside the members [12]. Both the worldwide anti-corruption conventions, such as UNCAC, and the regional conventions, such as The European Council Criminal Law Convention on Corruption, are less likely to own the coercive enforcement power due to their soft law property. That is, unlike the domestic anti-corruption laws, which have the backup and assistance from national violent apparatus national administrated department dealing with violent issues including police, court, and prison, the international conventions on anti-corruption does not have a national or institutional coercive power to supervise and regulate the enforcement. It all depends on the voluntariness of parties. Additionally, the meaning of corruption varies in different countries, and therefore, there are no specific permissions and forbiddances for this term in many conventions, including the UNCAC [13]. Moreover, the political will tends to be more complex in an international context. The members are more likely to weigh the advances and costs on economic effect, international relations, and reputation when considering an anti-corruption action.

#### **4. The Improving Suggestions on International Anti-corruption Mechanism in the New Trend**

##### **4.1 Promote the cooperation among international organizations**

The failure and ineffectiveness of many international anti-corruption cases are mainly due to invalid cooperation among countries. For instance, the extradition of suspects, the consensus on punishment, and different levels of political will directly influence the organizations' independence, specialization, and resources. Therefore, provoking advanced cooperation tends to be necessary, including the cooperation between the international anti-corruption agencies and regional anti-corruption agencies and the assistance from high-executive agencies to low-executive agencies.

On the one hand, the parties, cases, and regulating scope of regional organizations, such as OECD, Council of Europe's Group of States against Corruption (GRECO), are mostly contained in Europe and the western country. With the cooperation of UN and other regional anti-corruption agencies, they are able to trace and solve transnational corruption cases with a larger range. Moreover, with the cooperation of those regional agencies, UN tends to have a more specific and focusing view on each area in the global: Europe, Asia Pacific, etc.

On the other hand, the agencies with high enforcement power can also help the low-executive agencies to benefit the anti-corruption. For instance, the Independent Commission Against Corruption (ICAC) in Hong Kong tends to be one of the most effective anti-corruption agencies in Asia for its favourable policy contexts, abundant funding, and well-trained personnel, while some other agencies in Asia, such as the KICAC in Korea and the National Counter Corruption Commission (NCCC) in Thailand are often stuck in the trouble of the lack of both political will and resource [4]. Therefore, with the assistance of Hong Kong's ICAC, such as regular meetings, personnel exchange, and signing cooperation agreements, these successful experiences can be transferred, and further changes can be provoked.

## 4.2 Improve the executive procedure of international anti-corruption legal norms

Procedural justice is a term in law that indicates “someone perceives people in authority to apply processes or make decisions about them in a fair and just way”[14]. That is, every step of the judicial process needs to be fair and transparent. In the case of international anti-corruption, organizations can successfully achieve their goal, combat corruption and realize justice through managing and standardizing their procedures in the conventions.

There are two situations where the procedures are not complied with. First, the conventions state the regulation and procedure. However, the parties tend not to obey it during the practice. In this case, the organizations should appeal to members to strictly comply with the procedural standard while operating. Additionally, punishments can be applied when necessary, such as weakening specific members’ power and status. Secondly, procedural terms are not mentioned in the conventions. In this case, organizations should add related norms and regulations in the treaties and conventions, including clarifying the subject, time limit, and specific procedure of certain actions.

## 5. Conclusion

This article emphasizes the international anti-corruption in the new trend, indicating contemporary deficiencies, analyzing the reasons behind the ineffective organizations and conventions, and suggesting future directions for improvement. The fail, unsolved and long-lasting corruption cases across the world still keep at a high rate in the 21st century, such as the scandal of 1MDB and Siemens. Furthermore, many agencies tend to be ineffective, and some anti-corruption conventions cannot fit in the current society: the KICAC in Korea tends to be abused and become a political method; conventions of UNCAC formulated decades ago, even the later evaluations of it are not up to date.

The reason behind the ineffective agencies is the low enforcement force with the lack of political will and insufficient independence, specialization, and resource, on the one hand. Additionally, an international organization can sometimes encounter difficulties in establishing a consensus. On the other hand, the reason for ineffective conventions is the lack of compulsory constraint. Most conventions are soft law without the protection and execution of court, police, and prison. Furthermore, the legal lag also limits the validity of international anti-corruption conventions.

Two suggestions are provided in order to improve the international anti-corruption mechanism in terms of the organization and conventions. On the one hand, the cooperation among international and regional cooperation should be promoted, and the high-executive agencies should be encouraged to assist the agencies that have low enforcement power. On the other hand, regulation on the process should be applied in the international anti-corruption conventions in order to realize procedural justice.

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