



**Conference of the States Parties
to the United Nations
Convention against Corruption**

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**Note verbale dated 14 December 2007 from the Permanent Mission
of the Netherlands to the United Nations (Vienna) addressed to the
United Nations Office on Drugs and Crime**

The Permanent Mission of the Kingdom of the Netherlands to the United Nations in Vienna presents its compliments to the United Nations Office on Drugs and Crime (UNODC) and has the honour to inform the latter that the attached note on the United Nations Convention against Corruption and technical assistance (see annex) has been considered and approved by the members of the Anti-Corruption Task Team of the Network on Governance of the Organization for Economic Cooperation and Development's Development Assistance Committee. The offer to present this note was welcomed by the Open-ended Intergovernmental Working Group on Technical Assistance (established by the Conference of the States Parties to the United Nations Convention against Corruption). The Permanent Mission of the Kingdom of the Netherlands to the United Nations (Vienna) hereby submits the note to UNODC, and through UNODC to the Conference, and sincerely requests that it be circulated as an official document of the Conference.



Annex to the note verbale dated 14 December 2007 from the Permanent Mission of the Netherlands to the United Nations (Vienna) addressed to the United Nations Office on Drugs and Crime

Note on the United Nations Convention against Corruption and technical assistance

The purpose of the present note is to clarify:

(a) The current consensus on the management and delivery of current forms of official development assistance provided by donors of the Organization for Economic Cooperation and Development (OECD);

(b) The relationship of development cooperation with regard to the implementation of the United Nations Convention against Corruption on the ground.

I. Background

During the meeting of the Open-ended Intergovernmental Working Group on Technical Assistance established by the Conference of the States Parties to the United Nations Convention against Corruption, held in Vienna on 1 and 2 October 2007, the Netherlands offered to submit a note to the Conference on the relationship between the Convention and development cooperation. That offer was welcomed by the Working Group.

In its statement, the Netherlands indicated that its delegation would prepare the note in close cooperation with the members of the Anti-Corruption Task Team of the Network on Governance of OECD's Development Assistance Committee (DAC).¹ The current note has therefore been considered and approved by both the Task Team and the Network.

¹ The Network on Governance is composed of members of OECD DAC, which include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, the Republic of Korea, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Commission of the European Communities. Observers include the United Nations Development Programme (UNDP), the World Bank and the International Monetary Fund (IMF). The Anti-Corruption Task Team of DAC's Network on Governance is composed of Australia, Austria, Belgium, Canada, Denmark, France, Germany, Japan, the Netherlands, Norway, the Republic of Korea, Sweden, Switzerland, the United Kingdom, the United States, the African Development Bank, the Asian Development Bank, the Commission of the European Communities, UNDP, UNODC, the World Bank and the United Nations Children's Fund (UNICEF).

II. The relevance of the United Nations Convention against Corruption for development cooperation

The Convention constitutes a unique international legal framework for anti-corruption policies. Its strength lies, inter alia, in its comprehensive nature, as it addresses both preventive and enforcement measures and it contains specific chapters on asset recovery and technical assistance.

From the very beginning, the Convention emphasized the strong link between its implementation and technical assistance. In particular, article 60, paragraph 2, of the Convention stipulates that:

“States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.”

Article 62 (paragraphs 1 to 3) of the Convention is also of relevance. That article states, inter alia, that “States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations ... (b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement the Convention successfully”.

At the same time, the Convention itself is of relevance for the implementation of the development strategies of donors, as has been outlined in the OECD DAC *Policy Paper and Principles on Anti-Corruption*,² as follows:

“The DAC should support UN-led efforts to promote the ratification of UNCAC by its member countries and encourage its members to combine and integrate their joint anti-corruption initiatives with other ongoing efforts to monitor and implement UNCAC on the ground. It emphasizes the interest to the donor community of proposals at the Conference of the States Parties in December 2006 for information-gathering with respect to compliance and related needs for technical assistance.”

The importance of the Convention for development cooperation is firstly that partner countries have ratified the Convention and that, therefore, its provisions provide a transparent and accepted framework for the development of anti-corruption policies. In this respect, it should be noted that the Convention covers all elements of a “whole-of-government” approach in this field, which is essential for effective anti-corruption efforts. Thus, the Convention facilitates policy dialogue and facilitates enhanced donor-partner coordination, as well as collaboration and information-sharing between States and non-State actors and South-South cooperation on governance and anti-corruption issues.

² Organization for Economic Cooperation and Development, *Policy Paper and Principles on Anti-Corruption: Setting an Agenda for Collective Action* (Paris, 2007), p. 33.

Secondly, implementation of the Convention requires that partners develop or strengthen in-country capacity to enforce the Convention, which leads them to identify their needs for technical assistance and thus creates its own demand for cooperation with donors. Donors can support partner countries to strengthen their national capacities, while facilitating the exchange of experiences related to implementation of the Convention. Thirdly, the Convention provides the basis for strengthened cooperation on supply-side issues, such as bribery of foreign public officials and asset recovery. The role of donors and their responsibilities in these areas has been widely recognized, for example concerning promotion of and compliance with **internal** integrity codes and anti-corruption measures.³

III. Practical forms of cooperation

Whereas there is no doubt about the significance of the Convention for development relations, misunderstandings do arise when it comes to the definition of technical assistance.

It should first be noted that the Convention refers to technical assistance in a broad sense of the term: it does not only refer to making available specialized expertise, but, as mentioned in article 60, relates to all material and financial assistance provided to countries in order to implement the Convention. Technical assistance, as used in the Convention, can therefore include many types of activity that also constitute official development assistance.

Aid is provided in different forms.⁴ In the context of supporting the implementation of the Convention, it is mainly aimed at developing capacity to address corruption in partner countries. There are no agreed definitions of aid modalities, but the ones listed below provide broad categories generally agreed by donors.

- *General budget support.* Donors provide support to the national budget or to a part of the budget (for example in the case of sectoral budget support), having discussed the underlying national development strategies with recipient countries, often through a poverty reduction strategy paper or similar national plan. This support is not linked to specific projects and includes a lump-sum transfer of foreign exchange.
- *Programme-based approaches.*⁵ Donors provide coordinated support for a locally owned programme of development, such as a national development

³ This was also extensively discussed during a conference organized by OECD, the World Bank and Belgium on “Improving Governance and Fighting Corruption: New Frontiers in Public-Private Partnerships”, in Brussels on 14 and 15 March 2007.

⁴ See the Organization for Economic Cooperation and Development Development Assistance Committee glossary at http://www.oecd.org/glossary/0,3414,en_2649_33721_1965693_1_1_1_1,00.html#1965422.

⁵ Programme-based approaches are defined in the Paris Declaration on Aid Effectiveness of 2005 (see footnote 8 below) based on a definition from *Harmonising Donor Practices for Effective Aid Delivery, Volume 2: Budget Support, Sector-wide Approaches and Capacity Development in Public Financial Management* (Organization for Economic Cooperation and Development, Paris, 2005), Box 3.1.

strategy, a sector programme, a thematic programme or a programme of a specific organization.⁶

- *Sector programme aid*. Contributions to carry out wide-ranging development plans in a defined sector such as agriculture, education, transportation, etc. Assistance is made available “in cash” or “in kind”, with or without restriction on the specific use of the funds, but on the condition that the recipient executes a development plan in favour of the sector concerned.⁷
- *Project support*. Funds provided to implement a specific and predefined set of development activities over a specified period of time. In line with the provisions of the Paris Declaration on Aid Effectiveness: Ownership, Harmonization, Alignment, Results and Mutual Accountability,⁸ project support can be delivered in the form of integrated support to partner institutions. In other cases, project aid uses parallel systems with donors taking the lead in design and appraisal, deciding on the inputs to be provided and using their own disbursement and accounting procedures.
- *Technical cooperation* (or technical assistance).⁹ This is an integral part of almost all general budget support, sector programme aid and project support. The OECD DAC defines it as the provision of know-how in the form of personnel, training, research and associated costs. Used without qualification, the term technical cooperation (sometimes referred to as technical assistance) is a generic term covering contributions to development primarily through the medium of education and training. Technical cooperation can cover civil society as well as government institutions.

At the country level, local consultative arrangements are in place so that donors and Governments can agree on the modalities of support in order to avoid the fragmentation of aid. Similarly, partner countries and donors need to look into the available and most suitable choices of aid instruments, based on specific country context and on needs identified by partners themselves (see CAC/COSP/2008/5, para. 21). In 2005, a significant milestone was reached on how aid should be coordinated and managed when more than 100 countries signed up to the Paris Declaration on Aid Effectiveness,⁸ about half of which were developing countries. The basic principles outlined in the Declaration are alignment (donors ought to base their support on partner countries’ national development strategies, institutions and procedures), harmonization (donors ought to coordinate their support), ownership (assistance should support and respond to partners’ efforts to diagnose their own needs) and mutual donor-partner accountability.

⁶ Programme-based approaches share the following features: (a) leadership by the host country or organization; (b) a single comprehensive programme and budget framework; (c) a formalized process for donor coordination and harmonization of donor procedures for reporting, budgeting, financial management and procurement; and (d) efforts to increase the use of local systems for programme design and implementation, financial management, monitoring and evaluation.

⁷ Organization for Economic Cooperation and Development, Working Party on Statistics, “Guidance Paper for Reporting on the Sector Programme flag in the CRS” (DCD/DAC/STAT(2006)23).

⁸ Adopted at the High-level Forum on Joint Progress Toward Enhanced Aid Effectiveness, Paris, 28 February to 2 March 2005, available from <http://www.oecd.org/dataoecd/11/41/34428351.pdf>.

⁹ Organization for Economic Cooperation and Development, “DAC Statistical Reporting Directives” (DCD/DAC(2007)34).

Discussions in the context of the Conference seem to assume that “technical assistance”, by definition, takes the form of project support, be it by providing the right technical expertise or by providing grants to support agencies and institutions in recipient countries. Discussions in the Working Group on Technical Assistance, in particular, seemed to suggest that through the self-assessment checklist¹⁰ countries can make it known in which areas they need technical expertise, upon which donors are asked to see how they can meet those needs. However, as outlined above, technical assistance, in this narrow sense, is just one instrument that can be deployed for promoting capacity development in the governance area and for supporting the implementation of the Convention.

To be consistent with the spirit of the Paris Declaration on Aid Effectiveness and the DAC “Principles for donor action in anti-corruption”,¹¹ as well as the Convention itself, action on corruption needs to be centred on more comprehensive initiatives at the country level. This calls for an approach that views corruption in the context of the wider political economy of public sector governance in each country. This view is entirely in line with the holistic approach taken by the Convention itself, which emphasizes a wide range of policies and actions that reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability (chap. II, art. 5). While in the short term, ad hoc and piecemeal measures may bring about some results and “quick wins”, their long-term impact is greatly enhanced if they constitute part of a holistic approach.

One possibility would be the incorporation of countries’ national anti-corruption plans into their poverty strategy reduction papers, which are often based on governance assessments conducted by partners themselves. In addition, the identification of needs related to implementation of the Convention should become integral to donors’ and joint development partners’ governance assessments, which often determine, in alignment with the recipient’s national development plan, where anti-corruption assistance should be allocated.

IV. Assessing needs beyond checklists: dialogue with donors and partners and relying on governance assessments

The replies to the checklist on the Convention are valuable, also from a donor’s perspective. In addition, considerable value would be added if countries requesting technical assistance could indicate the type and level of support they are currently receiving. This would enable a more rational allocation of new resources, avoiding underfunding activities and avoiding duplication. UNODC could share the Convention checklist responses with existing donor coordination groups in the field,

¹⁰ In its resolution 1/2, entitled “Information-gathering mechanism on the implementation of the United Nations Convention against Corruption”, the Conference of the States Parties decided that a self-assessment checklist should be used as a tool to facilitate the provision of information on implementation of the Convention prior to the second session of the Conference, and urged States parties and invited signatories to complete and return the checklist to UNODC (United Nations document, CAC/COSP/2006/12, chap. I).

¹¹ Organization for Economic Cooperation and Development, “Principles for donor action in anti-corruption” (DCD/DAC(2006)40/REV1).

with a view to identifying existing donor activities that already address some of those needs.

During the meeting of the Working Group on Technical Assistance, some delegations were of the opinion that the replies to the checklist would be a sufficient basis for outlining priorities for the performance of its mandated functions and the related support it will receive from UNODC. However, donors are likely to seek to relate the impact of a UNODC programme for technical assistance to the situation on the ground in their programme countries: in certain areas where UNODC's expertise is key, such as in the fields of legislative assistance, asset recovery and international cooperation, including mutual legal assistance, there seems to be more basis for programme development, while other areas may be covered by the work of a multitude of bilateral and multilateral donors.

In most cases, existing donor coordination groups (many of which include partner country counterparts) and the development of joint assistance strategies provide the basis for enhanced harmonization, sharing of information and a more effective division of labour among donors at the country level. These coordination groups can provide an excellent basis for discussing the needs for assistance in implementing the Convention and to deepen already existing donor efforts to bring the guiding principles set out in the Convention into the mainstream in their respective programmes and policies. In parallel, existing donor- and partner-led governance and anti-corruption assessments can be tailored to provide indications of needs, entry points and levers for change with regard to implementation of the Convention.

It seems therefore recommendable for UNODC to prepare itself to liaise and communicate more systematically with donors who are discussing anti-corruption activities with partner countries on the ground and to participate, as relevant and when possible, in field-based donor coordination group meetings. This will facilitate integration of UNODC's technical assistance activities and its expertise with regard to the implementation of the Convention into broader assistance efforts.
