

MOSCOW
2015
MARCH
26 - 27

REPORT

CONFERENCE

PUBLIC-PRIVATE PARTNERSHIP IN THE FIGHT AGAINST CORRUPTION

CONFERENCE ORGANIZERS:

CHAMBER OF COMMERCE AND
INDUSTRY OF THE RUSSIAN FEDERATION

UNITED NATIONS OFFICE
ON DRUGS AND CRIME

INTERNATIONAL
ANTI-CORRUPTION ACADEMY

The Conference on Public-Private Partnership in the Fight against Corruption took place in Moscow, the Russian Federation, from 26 to 27 March 2015. The conference was co-organized by the Chamber of Commerce and Industry of the Russian Federation (CCI), the United Nations Office on Drugs and Crime (UNODC), and the International Anti-Corruption Academy (IACA).¹ It was also supported by the Institute of Legislation and Comparative Law under the Government of the Russian Federation. The conference programme included a plenary session and two breakout sessions with 75 speakers from the aforementioned organizations and entities, as well as from Germany, Kazakhstan, Mexico, the Russian Federation, and the United Arab Emirates.

KEYNOTE ADDRESSES

MR. SERGEI N. KATYRIN

Mr. Sergei N. Katyrin, President of CCI, opened the Conference with a presentation on the role of chambers of commerce and industry in the partnership of state and business in anti corruption. Mr. Katyrin stressed the interest of the Russian CCI in anti-corruption efforts and underlined its international scope. He emphasized that the Anti-Corruption Strategy of the Russian Federation intends to minimize corruption risks in all areas of society. Russian anti corruption laws provide for government officials' filing of asset declarations, prohibitions on holding foreign accounts, limitations on inspections of businesses, anti-corruption expertise on draft laws, media efforts, and overall improvement of the business climate. As an active participant in these initiatives, CCI works with the Government on drafting legislation and protecting entrepreneurs, and cooperates with the Prosecutor General's Office and courts at federal and regional levels. Furthermore, Mr. Katyrin mentioned the development of 12 criteria of a corruption potential which will be used by consideration of bills and of acceptance of the Anti-Corruption charter of the Russian business² developed and signed in common by Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs, the All-Russian organization 'Business Russia', the All-Russian public organization of small and medium enterprises 'SUPPORT OF RUSSIA' for counteraction of corruption in the Russian private sector. As a result of these efforts, according to Mr. Katyrin, the level of corruption in the Russian Federation has been reduced. He also indicated that anti corruption is one of the main target areas for CCI, which views government procurement and construction as the most problematic areas, followed by government inspections of businesses. The CCI also has a strong focus on improving the business environment for small and medium-sized enterprises (SMEs).

MR. YURI V. FEDOTOV

Mr. Yuri V. Fedotov, Executive Director of UNODC and Under-Secretary General of the United Nations, emphasized in his address the impact of corruption on vulnerable, poor communities, business, growth, competition, and investor confidence, as well as the importance of consistent, comprehensive and cooperative responses to combat it. He referred to the United Nations Convention against Corruption (UNCAC) and its requirement for States parties to foster relationships with the private sector. The role of the private sector, Mr. Fedotov said, was highlighted in the first-ever resolution to focus on the private sector adopted by the fifth session of the Conference of the States Parties to UNCAC in Panama, in 2013, and includes raising awareness in the private sector of the need for anti-corruption ethics and compliance activities. Mr. Fedotov also stressed the need for the private sector to ensure that their employees, agents and business partners understand and comply with the law, and that there is prompt disclosure and cooperation with enforcement authorities when violations occur. Moreover, he emphasized the increasing trend to perceive anti-corruption measures as good for business, shareholders, and employees. He referred to UNODC's publications aimed at supporting governments and businesses in their anti-corruption efforts, including the Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances³ and A Resource Guide on State Measures for Strengthening Corporate Integrity.⁴ In closing, Mr. Fedotov invited the participants of the Conference to contribute to ongoing discussions on how companies can join forces with public institutions in countries where they do business, as well as with international and intergovernmental organizations, to „invest“ in building, strengthening and sustaining effective anti-corruption infrastructure. Public-private partnerships will be the main theme at the Conference of the States Parties to UNCAC in November 2015 in St. Petersburg, the Russian Federation.

MR. MARTIN KREUTNER

Mr. Martin Kreutner, Dean and Executive Secretary of IACA, described the organization's activities, particularly referring to examples of successful public-private partnerships in anti corruption efforts. An international organization and post-secondary institution, IACA provides education, training, and technical assistance in the field of anti-corruption. It brings together a constituency of 64 UN Member States and intergovernmental organizations (not including Signatories). As was emphasized at the 2013 G20 meeting in St. Petersburg, corruption is a major impediment to economic growth and sustainable development, including fair and equal competition, business, social and economic prosperity, as well as peace and security. Also, Mr. Kreutner highlighted education and training as essential tools in fighting against corruption. In this respect, IACA plays a major role, implementing the best knowledge and expertise from both the public and private sectors within its standardized and tailor-made trainings. These cover a range of topics centered on corruption and compliance, for example, the two-year Master programme in Anti-Corruption Studies (MACS), which includes seven modules on key aspects of anti-corruption. He also stressed the need for increased global commitment and cooperation, indicating that UNCAC has been a key mechanism in combatting corruption on a global level. In this context, IACA is set to provide support to the sixth session of the Conference of the States Parties to UNCAC in St. Petersburg. Furthermore, the introduction of anti-corruption initiatives in all spheres of society and more active involvement of the business sector are also needed to advance the anti-corruption movement. Mr. Kreutner congratulated the CCI on the success of its Anti-Corruption Charter of the Russian Business, which is a significant step forward and will serve as an example for others to follow.

PLENARY SESSION ON PUBLIC - PRIVATE PARTNERSHIP

Mr. Andrei A. Gladilin, Deputy Head of the Anti-Corruption Directorate of the Presidential Executive Office of the Russian Federation, delivered a welcome address on behalf of Mr. Sergei Ivanov, Chief of Staff of the Presidential Executive Office of the Russian Federation. He outlined the direction of the Russian Federation's anti-corruption policy and emphasized that anti corruption is one of the most important goals of the Russian Federation for 2015. The country has world-class anti-corruption legislation in place, which includes, inter alia, the requirement of compliance measures in the business sector. Mr. Gladilin outlined the Government's target areas in anti-corruption, such as procurement, and called on conference participants to expand good compliance practices from large corporations to other businesses and organizations.

Mr. Alexander E. Buksman, First Deputy Prosecutor General of the Russian Federation, discussed cooperation of the Prosecutor General's Office with civil society in the anti-corruption area. He reminded the participants that the Russian Federation ratified UNCAC over eight years ago, leading to significant changes in Russian legislation. The Prosecutor General's Office cooperates with the CCI and other business organizations, including a special group within the Office established for the protection of entrepreneurs. It also strives to keep the public informed about its anti-corruption activities through its support of education. The Office employs its expertise in drafting legislation, participates in public councils on anti-corruption in several regions of the country, and protects the rights of entrepreneurs, especially SMEs. Mr. Buksman noted that the protection of whistle-blowers and witnesses, as well as the extension of whistle-blower protection to legal entities are among the Russian Federation's priorities in legislative efforts.

Mr. Boris Y. Titov, Ombudsman for the Protection of Entrepreneurs under the President of the Russian Federation, spoke about the role of his office in improving the business climate and protecting entrepreneurs from corrupt practices. He shared the results of a recent study in which 56 per cent of respondents considered the Russian Federation to be a higher-risk location for doing business, and 70 per cent viewed law enforcement as ineffective. At the same time, 29 per cent of respondents stated that pressure to engage in corruption was increasing, while 26 per cent said that it was decreasing. Within the Russian Government, the tax authorities have made positive changes; however, criminal prosecutions of businesses remain the major problem. In 2014, the Ombudsman's office received 1,170 complaints on these grounds, although none of them were substantiated. Another target area for the Ombudsman's office is the control of business inspections. The Ombudsman also participates in the joint programme with the European Commission on best practices for entrepreneurs and lawyers. The main goals of the Ombudsman include the development of standardized anti-corruption practices, the protection of whistle-blowers, and legislative work, such as refining criminal laws on business. There are 1,050 municipal civic ombudsmen in the Russian Federation.

Ms. Irina A. Yarovaya, Chair of the State Duma Committee on Security and Anti-Corruption, spoke on new legislative initiatives in the fight against corruption. The Russian Federation participates in all international anti-corruption instruments and has modern legislation in place to enable effective anti-corruption measures. This is reflective of good international practice, as well as realities particular to the Russian Federation. Most recently, the Russian Federation changed its procurement laws, simplified

accounting procedures, and reduced the number of inspections, all in the interest of improving the business environment. The Duma is currently working on drafting a law on unfair competition, increasing liability for embezzlement, and amending procurement laws to include information on subcontractors regardless of the amount of the contract.

Ms. Talia Y. Khabriyeva, Vice President of the Russian Academy of Science and Director of the Institute of Legislation and Comparative Law under the Government of the Russian Federation, suggested that in order to improve research in the area of anti-corruption it is necessary to overcome stereotypes, especially those of corruption being a public sector problem and of government having limited opportunities to interfere in business practices. Additionally, the Institute has proposed amendments to articles 19-28 of the Administrative Code, which aim to relieve legal entities of liability where the entity self-reports. However, this is problematic within the existing Russian legal framework and further research is required to understand how criminal liability of legal entities can be best incorporated into Russian law. Ms. Khabrieva also raised the issue of standards in anti-corruption measures, in particular, the challenges that are faced by small businesses in meeting compliance standards.

Mr. Alexander V. Zmeevsky, Special Representative of the President of the Russian Federation for International Cooperation in the Fight against Terrorism and Transnational Organized Crime, discussed issues pertaining to international cooperation in the fight against corruption. He emphasized that the UN should play a coordinating role under UNCAC, and that the Review Mechanism embodied in the Convention must be upheld.



In light of the upcoming sixth session of the Conference of the States Parties to UNCAC in St. Petersburg, the Russian Federation views transparency, education, the protection of businesses and consumers, and an increased role of the Anti-Corruption Charter of the Russian Business as its main goals in international anti corruption cooperation.

Mr. Alexander V. Fedorov, Deputy Chair of the Investigative Committee of the Russian Federation, also speaking in his capacity as a representative of the Russian Association of Lawyers, focused on the existing legal issues in anti-corruption, especially the criminal liability of legal entities for corruption offenses. Currently, foreign countries can impose criminal sanctions on Russian entities; yet, the Russian Federation does not possess the same right. Additionally, the country has ratified a number of international instruments providing for criminal liability of legal entities, which is one of the membership requirements of the Organisation for Economic Co-operation and Development (OECD). While Russian law does not provide for crimes by legal entities, in practice they do occur and are mentioned in articles 19 28 of the Administrative Code. Thus, if the administrative liability of legal entities already exists, the next step is to make appropriate changes in criminal law. Furthermore,

the European Court of Human Rights has concluded that the sanctions in the Russian Administrative Code in fact refer to a crime, and therefore investigation procedures with corresponding protection mechanisms are required.

Mr. Andrei E. Bugrov, Vice Chair of the Board of Directors and Deputy Director General of OAO Norilsky Nickel, talked about the importance of access to information, governmental transparency, fighting the demand-side of corruption, and the need for more active international cooperation in the area of government procurement, including within the G20.

Mr. Maxim A. Fateyev, President of the Chamber of Commerce and Industry of the Saratov Region, shared the experience of the CCI in anti-corruption efforts at the regional level. This includes the implementation of anti-corruption expertise in regional legislative drafts, cooperation with the regional Prosecutor General's Office, and providing legal advice to businesses.

At the end of the morning plenary session, a signing ceremony of the Anti-Corruption Charter of the Russian Business by representatives of several entities took place.

Ms. Elena O. Podolko, Deputy Head of the Department of Organizational and Analytical Support of the Anti-Corruption Department of the Administration of the President of the Russian Federation, stressed the Russian Government's political will to fight corruption. She mentioned achievements in this area, including an increase in governmental transparency, measures supporting SMEs, changes in procurement law, and education.

Mr. Dmitri V. Basnak, Director of the Department of Government Policy in State and Municipal Service and Anti-Corruption at the Ministry of Labor and Welfare of the Russian Federation, highlighted the success of the system of anti-corruption measures in the country. Control over the hiring of government employees and the termination of their contracts, education and training of anti-corruption personnel, drafting a law on whistleblower protection, and the collection of information on positive anti-corruption practices were highlighted as definitive steps forward.

Mr. Alexander T. Shamrin, First Deputy Rector of the Higher School of Economics, spoke about corruption risks in procurement under old and new laws. In this context, he discussed the

procurement law of 2014, which introduced multiple measures to prevent corruption and enhance transparency throughout the entire procurement cycle.

Ms. Olga V. Anchishkina, Leading Researcher of the Institute of Economics of the Russian Academy of Science, addressed the importance of shifting the anti-corruption strategy from eliminating corruption – an unattainable goal in any society – to the control of corruption and the management of corruption risks. With over 25 million procurement contracts in the Russian Federation every year, tracking all of them is a very difficult task. Ms. Anchishkina emphasized the need for developing good practices, particularly increased compliance, in order to reduce the levels of procurement corruption. According to her, the best anti-corruption measure is economic effectiveness and there is a need to create a positive set of legal and economic measures to increase it. She offered several specific recommendations; (1) working with the business sector on developing economic measures to increase effectiveness, (2) adopting best procurement practices, including controls, rather than placing such great emphasis on negative practices and criminal prosecutions, and (3) researching and developing a model of an ideal project owner in procurement.

PLENARY SESSION



Mr. Sergei A. Ulin, Chairman of the Russian-Israeli Business Council and Director General of CJSC Almazny Mir, considered the sale of Russian goods abroad and the attraction of foreign businesses to the Russian Federation as the primary goals for the Government. He stressed the role of business councils in helping to identify corruption problems in partner countries, in maintaining a dialogue within business circles of partner countries, and in learning from international practices, particularly those concerning SMEs. He underlined that corruption is viewed as a national security concern in Israel.

Mr. Oleg V. Savelenko, Director of the Department of the Legal Defense of Entrepreneurs of the National Chamber of Entrepreneurs of the Republic of Kazakhstan, described the activities of the Chamber, which received approximately five thousand complaints from entrepreneurs in 2014 relating to the protection of their rights.

Mr. Eric Mayer, an attorney-at-law partner at Pohlmann & Company in Germany, discussed the increasing convergence of anti-corruption legislation at the international level, such as the obligation to establish effective compliance management systems, which has become an almost universal basic standard. He continued by outlining ways in which public-private partnerships can be best applied to prevent corruption,

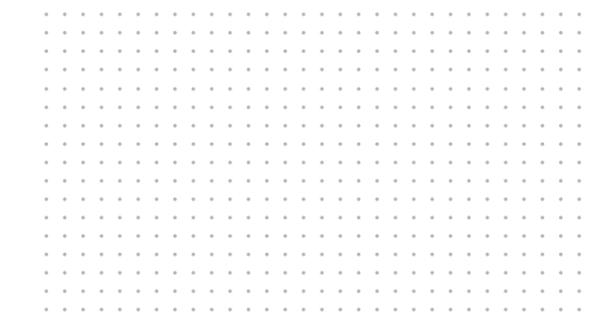
particularly through effective implementation and mutual support between the sectors. Finally, Mr. Mayer stressed the importance of “building networks against networks” in order to combat other forms of transnational organized crime in addition to corruption, particularly money-laundering and drug trafficking.

Ms. Yulia V. Zvorykina, Adviser to the Permanent Mission of the Russian Federation to the European Union, discussed corruption issues in the European Union. She later focused on what she called a uniquely Russian corrupt practice, namely bribery between government officials. The decline in state funding has intensified competition for handouts from the central government, leading to this phenomenon.

Ms. Alena V. Shnaidmuller, Vice President of the Chamber of Commerce and Industry of the Tyumen Region, described cooperation between agencies, such as the Chamber and the regional Prosecutor General’s Office, the police, the taxation office, and also touched upon the importance of SMEs and the Anti-Corruption Charter of the Russian Business.

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BREAK-OUT SESSIONS



BREAK-OUT SESSION I: ANTI-CORRUPTION IN PUBLIC PROCUREMENT

This first breakout session focused on the prevention of corruption in public procurement and was attended by representatives of state institutions and business. The moderator, **Mr. Gennady Degtev**, Head of the Moscow City Department on Competition Policy, emphasized the need for the exchange of positive practices amongst large, medium, and small businesses, in order to alleviate the serious consequences of corruption in procurement.

Another moderator, **Ms. Elisabeth Täubl**, Deputy Chief of Staff and Policy Advisor of IACA, presented information on IACA's programmes, in particular a training on anti-corruption in public procurement. This one-month training, developed in cooperation with UNODC, aims to reduce corruption in public procurement by training professionals from around the world in sound anti-corruption strategies.

The key international speaker for this session, **Mr. Max Kaiser Aranda**, from the legal advisory organization in Mexico, Cancino Ayuso Abogados (CAYAD), delivered a presentation on effective transparency and control in public procurement. He discussed the key risks of corruption that exist at various points within the procurement cycle, including the pre-tender, tender, and post-tender stages. He gave recommendations for enhancing transparency and public access at each of these stages.

During the discussion, other participants emphasized the importance of transparency and efficient legal frameworks as the key prerequisites for preventing and combatting corruption in public procurement in the Russian Federation, particularly for

small and medium businesses. Some speakers mentioned the significance of engaging independent external experts in order to accurately determine the risks of corruption. Experience has indicated that the most transparent type of public procurement is electronic procurement, which ensures access to information and enables the process to be tracked. Additionally, it was pointed out that the rules need to be made clearer in order to be applied without discrimination. Several speakers agreed that there is currently no functional, unified anti-corruption strategy that sufficiently takes into account the unique dimensions and circumstances of the respective country. The level of corruption in the sphere of public procurement is high, which is also a relevant problem in relation to the monopolization of natural resources, where there is a significant risk of protectionism.

BREAK-OUT SESSION II: BALANCING SANCTIONS AND INCENTIVES FOR ENCOURAGING PRIVATE SECTOR INTEGRITY

The second break-out session focused on possible sanctions and incentives that may be used by States to encourage private sector integrity. During this session, the moderator, **Mr. Anatoly Vyborny**, State Duma Deputy and Chairman of the CCI of Russia Committee on Business Security, highlighted the importance of increasing anti-corruption incentives and the necessity of implementing compliance procedures in the Russian small-business sector.

Another moderator, **Ms. Candice Welsch**, Chief of the Implementation Support Section in the Corruption and Economic Crime Branch of UNODC, discussed corporate anti-corruption programmes as the primary tool for encouraging and strengthening integrity in the private sector. She outlined the UNCAC requirements for business sanctions and emphasized that the details should be left to States parties. These typically include monetary fines, incarceration, confiscation of illegal assets, contract remedies, debarment, denial of benefits, liability for damages, and reputational harm. Ms. Welsch underlined that sanctions are most effective when combined with incentives that reward a company for good practice. In this context, she discussed penalty mitigation, including defence against liability, procurement preference, access to benefits, and reputational incentives.

The key international speaker, **Mr. Arjun Ahluwalia**, from Argentum Advisors in the United Arab Emirates, concentrated on corruption in the private sector. He talked about the need to define and understand private sector corruption, as well as the environment that facilitates it. He noted a disconnection between the public and private sectors in this regard. He also emphasized that the private sector is a very amorphous concept, and therefore the "one size fits all" approach would not help to eliminate corruption in this area.

Other speakers throughout the discussion stressed the importance of treating corruption as a threat to the Russian

Federation's national security, and as such, recommended that a national compliance system be established and compliance programmes also be incorporated into companies' security measures. Compliance was also discussed in relation to SMEs in BRICS countries, where the concept of compliance is relatively new. A solution offered for this issue was to make compliance programmes mandatory for all companies participating in government procurement, and to update laws to provide for reduced liability in cases of adequate compliance. Further suggestions were made for the establishment of criminal liability of legal entities in order to prevent corruption within companies, the introduction of a law on lobbying, and the expansion of the reach of Russian anti-corruption laws beyond its borders.

CLOSING REMARKS

In the closing session, it was underlined that anti-corruption activities should be based on systematic and comprehensive studies of all the causes of corruption's occurrence and manifestation in both public and private sectors. The mission is to deploy best anti-corruption public-private partnership practices. The importance of the legal impact on both private individuals and legal entities with regard to illicit enrichment cases was emphasized.

ENDNOTES

¹ CCI was the host of this conference. While UNODC provided for the translation of two relevant private sector publications into Russian and interpretation during the event, IACA facilitated the participation of international speakers and prepared the present report.

² <http://www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1387976e.pdf>.

³ http://www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf.

⁴ http://www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf.

⁵ Lower House of the Parliament of the Russian Federation.

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