HOW TO MAKE INTERNATIONAL LAW MORE EFFECTIVE: THE EFFECTIVENESS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

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Abstract

This paper deals with how to make international law more *de facto* effective. There are countless conventions on topics such as human rights, environmental law, or, in our case, corruption prevention. The central thesis is that lawyers and policymakers can make existing treaties more effective using a multidisciplinary approach. It consists of the empirical studies of other science fields, including behavioural economics, sociology, and criminology. This approach is compatible with international law, specifically with the rules of interpretation laid out in the Vienna Convention on the Law of Treaties (hereinafter — VCLT), through an evolutionary interpretation. An effective anticorruption policy needs to be tailor-made for the specific country's condition. The assumption that a successful approach in one state in one specific situation will necessarily be successful in another is flawed. This paper presents different policy concepts to curb corruption: rational choice, self-concept maintenance, principal-agent theory, and collective action problem. The concepts are evaluated through the lens of empirical studies. To exemplify this approach an application of the criterion "culture" will be shown. G. Hofstede discovered in his research different cultural dimensions: power distance, individualism, masculinity, and uncertainty avoidance. Each dimension has a unique interaction with corruption. These interactions explain why the same approach does not yield the same result. For example, a state that has a very high-power distance would not benefit as strongly from a principal-agent theory approach. In high-power distance countries the average citizen has little to no influence on the state's politics. The accountability of principles, however, is one of the key elements of the principal-agent approach. On the contrary such an approach would certainly backfire. Giving principals more money and monitoring powers, as the approach suggests, would only consolidate existing structures. In a state with high accountability (low-power distance) this approach would strengthen the fight against corruption.

Keywords

multidisciplinary approach, evolutionary interpretation, effectiveness, VCLT, UNCAC, behavioural economics, sociology

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Introduction

One of the most critical aspects of international law (or law in general) is its effectiveness. What is the function of international law if it does not change the *de facto* behaviour?

For example, if the United Nations Convention against Corruption (hereinafter — UNCAC) is considered, there are 190 ratifications, but levels of corruption around the globe are still high. One of the newest indices (2022) shows that on a scale from 0 being extremely corrupt to 100 being exceptionally clean, 2/3 of the countries score below 50 with an average score of 43.[1] The reason why this is a catastrophic event is manifold.

Corruption reduces economic growth.[2] The World Bank estimates that the world loses 1 trillion US Dollars annually to corruption. The World Economic Forum even estimates a loss of 2.6 trillion US Dollars.[3] Moreover, corruption prevents foreign investments,[4] diminishes competition that could lead to

1 World Economics. Corruption Perceptions Index. URL: https://www.worldeconomics.com/Indicator-Data/Corruption/Corruption-Perceptions-Index.aspx (accessed: 27.07.2024).

2 Aidt T. S. *Corruption and Sustainable Development* / *International Handbook on the Economics of Corruption* / ed. by S. Rose-Ackerman, T. Soreide. Edward Elgar Publishing, 2011.

3 European Parliamentary Research Service. *The Cost of Non-Europe in the area of Organised Crime and Corruption*. Annex II-Corruption, 2016. URL: https://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU(2016)579319_EN.pdf (accessed: 17.07.2024).

4 Lambsdorff J. G. *How Corruption Affects Persistent Capital Flows* // Economics of Governance. 2003. Vol. 4. № 3. P. 229; Mohsin H., Zurawicki L. *Corruption and Foreign Direct Investment* // Journal of International Business Studies. 2002. Vol. 33. № 2. P. 291; Aizenman J., Spiegel M. *Institutional Efficiency, Monitoring Costs and the Investment Share of FDI* // Review of International Economics. 2006. Vol. 14. № 4. P. 683.

innovation,[5] and furthers the gap between the rich and the poor.[6] Confidence in the political and legal systems[7] diminished, for example, in Bulgaria,[8] China,[9] Egypt,[10] Kenya,[11] Peru,[12] Romania,[13] Russia,[14] and Venezuela.[15] Thus, it is not surprising that countries perceived as corrupt have a lot of violent conflicts.[16]

The World Bank[17] and the United Nations Development Program[18] stressed the importance of fighting corruption to mitigate poverty, provide education, and improve health care.

Bruno Simma states that

> Today, it can be delicate to point out that corruption may be the single most important obstacle to development; that there is a clear relationship between corruption and inequality in countries; and that corruption is both a driver and facilitator of illegal migration.[19]

This short overview alone poses crucial questions.

If the fight against corruption is essential, why does corruption prevail despite decades-long efforts to fight it?[20] Why did some states successfully achieve significantly lower levels of corruption than others,[21] and why do some countries with widespread corruption seem to have become even more corrupt along with the efforts to limit it?[22]

1. Hypothesis

The central idea of this paper is to use an interdisciplinary approach to international law. This paper uses Article 5 UNCAC as an example, as it is the fundamental article dealing with preventive measures and focuses on “effectiveness”.

Article 5 UNCAC states (emphasis added):

> 1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

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5 Reiter S., Steensma H. K. *Human Development and Foreign Direct Investment in Developing Countries: The Influence of FDI Policy and Corruption* // World Development. 2010. Vol. 38. № 12. P. 1678.

6 See Organization for Economic Growth and Development, Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development. OECD, 2015.

7 Richey S. *The Impact of Corruption on Social Trust* // American Politics Research. 2010. Vol. 38. № 4. P. 676.

8 Yotova D. *Bulgaria's Anti-corruption Protests Explained: and Why They Matter for the EU.* ECFR. 28 July 2020. URL: https://ecfr.eu/article/commentary_bulgarias_anti_corruption_protests_explained_and_why_they_matter/ (accessed: 3.08.2024).

9 Ka Sing C. *China’s War on Corruption Turns into High Wire Ac*t. Reuters. 18.01.2024. URL: https://www.reuters.com/breakingviews/chinas-war-corruption-turns-into-high-wire-act-2024-01-18/ (accessed: 23.07.2024).

10 Hassan M. *Corruption in Egypt — its Guards are its Thieves!* Middleeastmonitor. 31.01.2024. URL: https://www.middleeastmonitor.com/20240131-corruption-in-egypt-its-guards-are-its-thieves/ (accessed: 23.07.2024).

11 Odula T. *Kenyan Police Teargas Anti-corruption Protesters in Nairobi*. 21.08.2020. URL: https://www.washingtonpost.com/world/africa/kenyan-police-teargas-anti-corruption-protesters-in-nairobi/2020/08/21/bb4cd452-e3ab-11ea-82d8-5e55d47e90ca_story.html (accessed: 15.05.2024).

12 Lopez M. D. *Agents of Corruption: The Real Culprits of Peru’s Endless Graft*. 30.03.2023. URL: https://perureports.com/agents-of-corruption-the-real-culprits-of-perus-endless-graft/10077/ (accessed: 23.07.2024).

13 Rankin J. *"We Are Watching You": the 500-day Protest Against Corruption in Romania.* URL: https://www.theguardian.com/world/2019/jul/23/we-are-watching-you-protesters-corruption-romania-sibiu (accessed: 19.05.2024).

14 Holzer A. *Russia: Increased Corruption and Deterioration of Freedom. Is there Hope?* // Journal of Nonprofit Innovation. 2024. Vol. 4. № 1. P. 58.

15 Reuters. *New Round of Protests Shakes Venezuela as Public Services Fail.* 29.09.2020. URL: https://www.reuters.com/article/us-venezuela-protests-idUSKBN26K3A6/ (accessed: 19.05.2024).

16 Marquette H., Cooley L. *Corruption and Post-Conflict Reconstruction* // *Handbook of International Security and Development* / ed. by P. Jackson. Edward Elgar Publishing, 2015. P. 349.

17 *Brief: Combating Corruption.* World Bank, 2021. URL: https://www.worldbank.org/en/topic (accessed: 19.05.2024).

18 UNDP Global Anti-Corruption Initiative (GAIN) 2014-2017. United Nations Development Programme, 2014. URL: https://www.undp.org/sites/g/files/zskgke326/files/publications/globalanticorruption_final_web2.pdf (accessed: 28.03.2024).

19 Simma B. *Foreword: The United Nations Convention against Corruption: A Commentary* // *The United Nations Convention against Corruption: A commentary* / ed. by C. Rose, M. Kubiciel, O. Landwehr. Oxford commentaries on international law, 1st ed. Oxford University Press, 2019.

20 Persson A., Rothstein B., Teorell J. *Why Anticorruption Reforms Fail-Systemic Corruption as a Collective Action Problem* // Governance. 2013. Vol. 26. № 3. P. 449, 449.

21 Ibid. P. 450.

22 Lawson L. *The Politics of Anti-Corruption Reform in Africa* // The Journal of Modern African Studies. 2009. Vol. 47. № 1. P. 73.a.

> 2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

The word “effectiveness” allows policymakers to read the multidisciplinary into the existing treaty text. The goal is to uncover the fundamental assumptions or paradigms on which the drafters based their articles. To gain a more complete and more accurate picture of corruption, different studies should be conducted and then put into context to answer the question: Why do people behave corruptly? The suggested studies are behavioural economics, sociological, and criminology studies. The result is a practical, actionable approach applicable to specific countries' situations.

If the approach is fruitful, the application does not end with the fight against corruption. Instead, every field of law could optimise its strategies customised to the specific challenges. The focus on interdisciplinary studies is relevant for many other treaties that rely on “effectiveness”. There are numerous examples of treaties using “effectiveness” Article 7 (VII) (Nr. D) in the Paris Agreement, Art. 7(V)(f) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Article 5 (f)(i) of the Stockholm Convention on Persistent Organic Pollutants, Article 15(5)(a) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Article 5 of the United Nations Convention concerning the Protection of the World Cultural and Natural Heritage, Article 146 of the United Nations Convention on the Law of the Sea, Article 24(3) of the United Nations Convention on the Rights of the Child. Some of the world's most significant and most signed treaties have sections that specifically require “effectiveness”.

This paper is meant as a starting point to show how to connect interdisciplinary insights with international law. Due to the limited pages, the general idea is presented with a few examples.

The state of research is in its infancy. A plethora of research describes corruption from an empirical point of view.[23] Researchers developed overarching theories on how to stop corruption.[24] However, combining these insights with the existing law is in its early days.[25] This article is one of the first attempts to combine an evolutionary approach with the effectiveness of the UNCAC.

2. The interdisciplinary approach and international law

This part describes the interdisciplinary approach, shows how the approach can be incorporated into international law using the Vienna Convention on the Law of Treaties (VCLT), and exemplifies this approach using Article 5 UNCAC.

Generally, when applying law, it is shown how the law can be understood or implemented. Scientists can understand law X in different ways, such as A, B, C, and D. Then, we argue for and against different ways, resulting in the solution. Provokingly stated, we use our biases and gut feelings to apply the law. However, instead of arguing for and against it, we use empirical studies from other sciences to verify whether the presented method would work in the given situation. For example, path A only works in small countries, and path C works exceptionally well in countries with a strong rule of law.

The relevant fields of study need to be devoted to the subject of the Convention. For the UNCAC, this paper will utilise behavioural economics, sociology, and criminology. Treaties regarding the climate, for example, would not utilise criminology but rather include studies from natural sciences.

The idea of behavioural economics builds on the rational choice theory[26] which postulates that individuals always act “rational” by conducting a cost-benefit analysis before deciding on any action.[27] The term “*homo economicus*” refers to the understanding that humans act in this perfect manner.[28] Similarly, the “rational economic approach” stipulates that the optimal way to reduce corruption is to break

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[23] For a comprehensive overview: Lambsdorff J. G. *The Institutional Economics of Corruption and Reform: Theory, Evidence, and Policy.* Cambridge University Press, 2007.

[24] Persson A., Rothstein B., Teorell J. *Op. cit*.; Rothstein B. *Controlling Corruption: The Social Contract Approach.* 1st. ed. Oxford University Press, 2021; *A Research Agenda for Studies of Corruption* / ed. by A. Mungiu-Pippidi, P. M. Heywood. Edward Elgar Publishing, 2020; Lambsdorff J. *Op. cit.*

[25] Aaken A., van. *Behavioral Approaches to International Corruption Fighting.* Verfassungsblog. URL: https://verfassungsblog.de/behavioral-approaches-to-international-corruption-fighting/ (accessed: 27.07.2024).

[26] *Ökonomische Methoden im Recht: Eine Einführung für Juristen* / ed. by E. V. Towfigh, N. Petersen. Mohr Lehrbuch, 2. überarbeitete und aktualisierte Auflage. Mohr Siebeck, 2017. S. 238; Brooks G. *Criminology of Corruption: Theoretical Approaches.* Palgrave Macmillan, UK, 2016. P. 18.

[27] Scott J. *Rational Choice Theory // Understanding Contemporary Society: Theories of the Present* / ed. by G. Browning, A. Halcli, F. Webster. SAGE Publication Ltd., 2000. P. 126.

[28] Sunstein C. R., Jolls C., Thaler R. H. *A Behavioral Approach to Law and Economics* // Stanford Law Review. 1998. Vol. 50. P. 1471, 1476.

incentives, increasing the possibility of getting caught.[29] According to this approach, individuals, organisations, and states act only out of self-interest.[30] Behavioural economics criticises the notion that humans act in *this* perfect manner.[31] The most prominent proponent of this theory is D. Kahneman, who was awarded the Nobel Memorial Prize in Economic Sciences for his work on behavioural economics.[32] In addition, C. Sunstein, C. Jolls, and R. Thaler simplified the idea of studying how "real people" and not hypothesised humans behave.[33] The central idea is that humans deviate from the optimal behaviour, but scientists can calculate this deviation,[34] or as D. Ariely phrased it, the deviation is "predictably irrational".[35] Understanding how humans behave is essential in guiding the behaviour in a less corrupt manner.

Sociology is more well-known than behavioural economics. Sociology is the systematic study of human societies.[36] It aims to describe and explain social phenomena as part of an integrated social structure.[37] Scientists can explore social phenomena on a large scale, such as entire cultures (macro), or they can explore small groups, like a small tribe in a small African town (micro).[38] The general idea is that no individual decides in a complete vacuum and that the given environment influences behaviour, for better or worse. Sociology is an essential building block of the proposed multidisciplinary approach. Through the lens of sociology or, more specifically, the lens of culture, the approach can be tailor-made to the specific country's situation. Therefore, this paper focuses on culture as one of the primary criteria for the approach.

Like sociology, criminology does not need an extensive introduction. Criminologists study behaviour that is sanctionable by criminal law.[39] They focus on measuring crime and preventing it.[40] Criminology is a multidisciplinary science that draws heavily on behavioural and social sciences such as sociology.[41]

3. Vienna Convention on the Law of Treaties and Article 5 UNCAC

Nonetheless, a general idea of how the interdisciplinary approach to international law should work is insufficient in and of itself to make it applicable. It is essential to verify whether the approach works within the framework of international law. Does international law, specifically Article 5 UNCAC, prescribe an interdisciplinary approach?

We need to interpret the wording carefully to gauge the meaning of conventions. No matter the motivation and idea underlying the interpretation, it must always adhere to the rules of interpretation.[42] Article 31 VCLT codifies the general rule of interpretation.[43] The interpretation task aims to give effect to the expressed intentions of the parties.[44] The ICJ establishes that the interpretation must be based "*above all upon the text of the treaty*", as this is the most adequate expression of the party's intent.[45] Article 31 VCLT focuses on the three main aspects of interpretation: wording, context, and object and purpose.[46] The interpreter must utilise these three pillars through the lens of good faith.[47] Article 31 VCLT

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29 Brooks G. *Op. cit*. P. 21.
30 Ibid.
31 Towfigh E. V., Petersen N. (eds) *Op. cit*. P. 238.
32 Kahneman D., Tversky A. *Prospect Theory: An Analysis of Decision under Risk* // Econometrica. 1979. Vol. 47. № 2. P. 263; Kahneman D., Slovic P., Tversky A. *Judgment Under Uncertainty: Heuristics and Biases.* Cambridge University Press, 2008.
33 Sunstein C. R., Jolls C., Thaler R. H. *Op. cit.* P. 1476.
34 Thaler R. H. *Quasi Rational Economics.* 1st paperback / ed. Russell Sage Foundation, 1994; Kahneman D., Slovic P., Tversky A. *Op. cit*.
35 Ariely D. *Predictably Irrational: The Hidden Forces that Shape Our Decisions.* (3rd. ed., rev. and expanded). Harper Collins Publishers, 2009.
36 Giddens A. *Sociology.* 5th. ed. (fully rev. and updated), reprint. Polity Press, 2008. P. 28.
37 Klamberg M. *Power and Law in International Society: International Relations as the Sociology of International Law.* Routledge, 2015. P. 57.
38 Kelle U. *Sociological Explanations Between Micro and Macro and Tech Integration of Qualitative and Quantitative Methods* // Historical Social Research. 2005. Vol. 30. № 1. P. 95.
39 Giddens A. *Op. cit.* P. 795; Sutherland E. H. *Principles of Criminology.* 11th. ed. General Hall, 1992. P. 1.
40 Ibid.
41 Barkan S. E. *Criminology: A Sociological Understanding.* 2nd ed. Prentice-Hall, 2001.
42 Venzke I. *How Interpretation Makes International Law: On Semantic Change and Normative Twists.* Oxford University Press, 2012. P. 47–50.
43 Dörr O., Schmalenbach K. *Vienna Convention on the Law of Treaties.* Springer, 2011. P. 522.
44 McNair L. *The Law of Treaties. Vol. 1.* Oxford University Press, 1986. P. 365; Dörr O., Schmalenbach K. *Op. cit.* P. 522.
45 International Court of Justice. *Territorial Dispute (Libya v Chad)* (1994). ICJ Report 6 para. 41; International Court of Justice. *Legality of the Use of Force (Serbia and Montenegro v Belgium)* (2004). ICJ Report 279 100.
46 Dörr O., Schmalenbach K. *Op. cit.* P. 523.
47 Ibid.

expresses through the singular word “rule” that all means of interpretation shall be applied simultaneously and form one rule of interpretation.[48] Though only one “*single combined operation*” exists, the operator must decide the importance of each means of interpretation on a case-by-case basis.[49] Extra-legal considerations, such as institutional or legal-political considerations, can influence the treaty interpretation.[50] Even though the interpretation is one combined step for readability, the following part describes the interpretation in three pillars: wording, context, and object and purpose.

3.1. Wording

The general rule of interpretation requires giving an ordinary meaning to the “*terms of the treaty”*, which refers to the written words and phrases used by the parties.[51]

Interpretation begins with linguistic and grammatical analysis of the treaty text, focusing on ordinary meanings. The way readers would regularly or customarily understand the term(s).[52] International judicial bodies use dictionaries to determine the meaning of terms used in treaties, focusing on informed understanding rather than layman's understanding to establish the treaty's context.[53] The ordinary meaning test considers two aspects: the temporal aspect, which involves static or dynamic interpretation of the treaty's ordinary meaning at the time of conclusion, and the language aspect, which requires consultation of each authentic treaty language for the term's ordinary meaning.[54]

Shifting the focus to Article 5 UNCAC, the relevant wording is “*effective”*. The Oxford Dictionary describes *effective* as “*producing the desired or intended result”*.[55] The wording is compatible with a multidisciplinary approach, assuming that the approach is indeed superior in combating corruption. If the interdisciplinary approach strengthens the fight against corruption, then the approach would be practical, thus within the meaning of the wording. However, the multidisciplinary approach is not the only way this could be interpreted. Other options could be effective, too. To be sure which interpretation is correct, we need to have recourse to the other means of interpretation, such as the context and the object and purpose.

3.2. Context

Treaty interpretation is not a purely grammatical exercise, as Article 31(1) VCLT requires interpreting terms “*in their context”*. Interpreters must consider the treaty as a whole and, beyond that, consider the systematic structure of the treaty as equally important as the ordinary linguistic meaning of words used.[56]

The treaty's context includes its title, preamble, annexes, protocols, and position within the ensemble. Interpreters can find interpretative value in the position of a word, phrase, paragraph, article, or article within the treaty's structure or scheme.[57]

The ICJ's *Oil Platforms* case highlighted the relevance of treaty titles in defining terms like *“commerce”* in bilateral agreements between Iran and the US.[58] The ICJ highlighted the significance of punctuation and syntax in the *Aegean Sea Continental Shelf* case, explicitly addressing the French phrase “*et, notamment”*.[59] In the *Land, Island, and Maritime Frontier Dispute (El Salvador v Honduras)*, the ICJ had to

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48 Waldock H. *Yearbook of the International Law Commission*. New York, 1966. P. 219.

49 Ibid.

50 Pauwelyn J., Elsig M. *The Politics of Treaty Interpretation* // *Interdisciplinary Perspectives on International Law and International Relations* / ed. by J. L. Dunoff, M. A. Pollack. Cambridge University Press, 2013. P. 445; Peat D. *Comparative Reasoning in International Courts and Tribunals.* Cambridge University Press, 2019. P. 18–21; Lippold M. *The Interrelationship of the Sources of Public International Law* // Beiträge zum ausländischen öffentlichen Recht und Völkerrecht. 2023. Volume 323. № 1. Nomos, 2023. S. 9.

51 Gardiner R. K. *Treaty Interpretation.* Oxford University Press, 2017. P. 164.

52 Ibid.

53 International Court of Justice. *Oil Platforms (Islamic Republic of Iran v. United States of America) Preliminary Objection, Judgment* (1996). I.C.J. Reports 1996. P. 803–845. European Court of Human Rights. *Case of Golder v. The United Kingdom* (1975). Application no. 4451/70 32; European Court of Human Rights. *Case of Luedicke, Belkacem and Koc v. Germany* (1978). Application no. 6210/73; 6877/75; 7132/75 40; World Trade Organization. *Canada-Measures Affecting the Export of civilian aircraft* (1999) WT/DS70/R 11.

54 Dörr O., Schmalenbach K. *Op. cit.* P. 543.

55 Oxford Dictionary. URL: https://www.oed.com/search/dictionary/?scope=Entries&q=effective (accessed: 27.07.2024).

56 International Court of Justice. *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* (1960). I.C.J. Reports 1960. P. 150–158.

57 Dörr O., Schmalenbach K. *Op. cit*. P. 543.

58 International Court of Justice. *Oil Platforms (Islamic Republic of Iran v. United States of America) Preliminary Objection, Judgment.* P. 47.

59 International Court of Justice. *Aegean Sea Continental Shelf Case (Greece v. Turkey)* (1978). I.C.J. Reports 1978. P. 3–53.

determine its authority to delimit disputed maritime boundaries. The Chamber held that the word "*determine*" should be read in its context, as the object of the verb "*determine*" is not the maritime spaces themselves but the legal situation of these spaces.[60]

The preamble to a treaty, typically a set of recitals, helps determine its object and purpose by stating its aims and objectives. It is often referenced in international jurisprudence to clarify specific provisions.[61] Comparing the term with a related treaty can aid contextual interpretation.[62]

The question is whether the context speaks in favour of the multidisciplinary approach or whether the context excludes this interpretation.

The preamble states, "*A comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively"*. This direct statement combining effectiveness with a multidisciplinary approach could be a robust contextual hint that the UNCAC requires a multidisciplinary approach. The preamble further states they want to "*foster a culture of rejection of corruption"*. The multidisciplinary approach (part IV,2, a, aa) heavily focuses on culture. The drafters understood that political or legal change does not occur in a vacuum but depends on the culture surrounding it. The drafters do not flat-out state that they want to utilise sociology, but that is the logical choice if they want to influence culture.

Article 5(1) UNCAC promotes the participation of society, which is accompanied by Article 13 (Participation of society). Similarly to the preamble, the drafters stress the importance of addressing the society to effectively fight corruption, thus hinting (again) at the relevance of sociology.

Article 5(4) UNCAC stresses that collaboration "*may include participation in international programs and projects aimed at the prevention of corruption"*. Here, the drafters did not refer to participation in other legal instruments or bi- or multilateral treaties but rather projects outside of the field of law, again accepting other fields as an essential cornerstone in preventing corruption. Article 6 (1)(b) UNCAC states that state parties shall prevent corruption by "*increasing and disseminating knowledge about the prevention of corruption"*. Article 6 is in Chapter II, Preventive Measures of the UNCAC, and directly states that the increase in knowledge of the phenomenon of corruption is essential for its prevention. The drafters did not state what specific fields of science shall illuminate corruption, but logically, these fields are outside the scope of the legal field itself. The context of Article 5(1) UNCAC does not stand in the way of the multidisciplinary approach. On the contrary, the overall picture does speak in favour of the approach.

As seen above, other related treaties may give further guidance for the correct interpretation. The preamble of the UNCAC names (with appreciation) other multilateral instruments to prevent and combat corruption. The Inter-American Convention against Corruption speaks in its Article III, Preventive Measures, of an oversight body (or bodies) that shall implement modern mechanisms for preventing corruption (Nr. 9) and stresses, similar to the UNCAC, the importance of encouraging civil society and nongovernmental organisations (Nr. 11).[63] The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions states in its preamble that they "*call for effective measures to deter, prevent… corruption*" and that they "*welcome other recent developments which further advance international understanding and cooperation… including actions of the United Nations… and the World Bank"*.[64] The Convention thus combines effective measures with further developments and understanding of corruption.

However, the most substantial support for the multidisciplinary approach is visible throughout the African Union Convention on Preventing and Combating Corruption. The preamble already states a "*need to address the root causes of corruption on the continent"*. The root causes of corruption are outside the law field. Thus, states can only address the causes through a multidisciplinary approach.

Article 2(4)(5) Objectives of the convention states that Parties want to "*promote socio-economic development by removing obstacles*" and that they want to "*establish the necessary conditions to foster transparency and accountability"*. Again, the drafters understand that states must remove those obstacles

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60 International Court of Justice. *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening).* P.373.

61 International Court of Justice. *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesial Malaysia)* (2002). I.C.J. Reports 2002. P. 625–651.

62 *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening).* P. 374; Dörr O., Schmalenbach K. *Op. cit.* P. 545.

63 Inter-American Convention Against Corruption (B-58). Article 3, 9, 11.

64 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Preamble).

before policies can take effect. Article 5(8) stresses the importance of "*promoting the education of populations to respect the public good… including school education programs and sensitization of the media, and the promotion of an enabling environment for the respect of ethics"*. Article 5(8) supports the multidisciplinary approach as it focuses on the criteria of education and ethics, which the approach considers. Further, Article 12 stresses the importance of the "*Civil Society at large"*. Lastly, Article 22 (Follow-up Mechanism) mentions a plethora of aspects that support the multidisciplinary approach. For example, Article 22(b) focuses on "*collect and document information on the nature and scope of corruption*" or in Article 22(d) "*advise governments on how to deal with the scourge of corruption-related offences in their domestic jurisdiction"*. The drafters stress the relevance of understanding corruption, which is at the heart of the multidisciplinary approach, and they show their understanding that different governments/cultures need different mechanisms.

Throughout the different related conventions, there are strong hints that states can achieve effectiveness only through a multidisciplinary approach, and more importantly, no convention stands in the approach's path.

The United Nations Office on Drugs and Crime (hereinafter — UNDOC) governs the UNCAC. The UN governs UNDOC itself; thus, development in the UN is relevant to the UNCAC. Considering the broader UN context, the United Nations shifted its approach to a multidisciplinary approach, precisely a behavioural approach, to conquer its challenges.[65] The UN Secretary-General Antonio Guterres describes behavioural science as a critical tool for the UN and the achievement of sustainable development goals.[66] The UN lays out its blueprint for a more sustainable future in its development goals.[67] In their development goal number 16, "Peace, Justice, and Strong Institutions", the UN lays out their plan to combat corruption. The UN follows the example of the World Bank, which already in 2015 published a lengthy report on using behavioural and sociological science to combat corruption.[68]

Considering the UNCAC itself, the related treaties, and the broader context of the UN, the context speaks in favour of the multidisciplinary approach. Thus, both the wording and the context demand a multidisciplinary approach. Nonetheless, the approach must still align with the object and purpose of the UNCAC.

3.3. Object and purpose

Article 31 paragraph 1 VCLT introduces the teleological element into interpretation, promoting effectiveness by ensuring treaty terms advance its aims and avoid superfluous or diminishing practical effects.[69] Put otherwise, the goal is to establish the true intention of the parties. The intent of the parties links to the evolutionary interpretation.[70] It is not a separate method of interpretation but the genuine application of the standard methods of interpretation to distil the actual intent.[71] The principle of effectiveness is closely linked to evolutionary interpretation, as treaty interpretation heavily relies on the emphasis on effectiveness.[72] The principle of effectiveness and the evolutionary treaty interpretation are mutually dependent. As seen in the *Iron Rhine Tribunal*,[73] the effectiveness principle can lead to an evolutionary interpretation.[74] The phrase "*evolutionary interpretation*" refers to circumstances in which an international court or tribunal determines that a treaty provision is flexible and not set in stone, allowing for future advancements in international law. Put otherwise, this is an instance where the meaning of the

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65 United Nations. The Secretary-General's Guidance Note on Behavioural Science. URL:https://www.un.org/en/content/behaviouralscience/ (accessed: 27.07.2024).

66 Ibid.

67 United Nations. Take Action for the Sustainable Development Goals. URL: https://www.un.org/sustainabledevelopment/sustainable-development-goals/ (accessed: 3.08.2024).

68 *World Development Report 2015: Mind, Society, and Behavior*. World Bank, 2015.

69 *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization.* P. 160–161, 166.

70 Bjorge E. *The Evolutionary Interpretation of Treaties.* Oxford University Press, 2014.

71 Ibid.

72 International Court of Justice. *Fisheries Jurisdiction (Spain v. Canada)* (1998). ICJ Reports, 1998. P. 432–452; International Court of Justice. *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2012). ICJ Reports, 2012. P. 422–474.

73 *Award in the Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands* (2005). Volume XXVII. P. 35–125.

74 Bjorge E. *Op. cit.* P. 8.

treaty's terms upon their application, rather than the original meaning, is decisive.[75] Without the evolutionary interpretation, it is not easy to achieve an adequate interpretation.

The principle of effectiveness (sometimes referred to as *effet utile*) states, in essence, that any interpretation should produce intended results within the existing law.[76] The interpretation allowing a phrase or provision in a treaty to work should be understood, not the interpretation that would lessen its significance. The goal of the effectiveness principle is to interpret the states-parties' initial assent and agreement effectively rather than as fictitious or unreal.[77]

An evolutionary interpretation of the UNCAC is necessary as the drafters did not envision a multidisciplinary approach. The non-consideration is evident from the *travaux preparatoires*.[78] Multidisciplinary in this paper is the utilisation of different sciences, while multidisciplinary in the *travaux preparatoires* means that the field of law needs to address various (multiple) forms of corruption.[79] While there are substantial context clues regarding the interpretation, the original drafters did not intend to incorporate other disciplines, or at the very least, they did not think of doing so. Since the drafters did not explicitly demand a multidisciplinary approach in Article 5 UNCAC, an evolutionary interpretation is the only way to interpret it into the text.

The question remains whether international law allows for an evolutionary interpretation of international law, specifically the UNCAC. There are some obstacles that evolutionary interpretation needs to address. First is the potential problem of fragmentation of international law, second is whether all types of treaties should use an evolutionary interpretation, and third, what are the scope and limits of the approach.

3.3.1. Fragmentation

The first question in answering if an evolutionary interpretation leads to a potentially dangerous fragmentation of law is what fragmentation of international law is.

Fragmentation of international law refers to the growth of new subfields of international law, the rise of new actors like international organisations, NGOs, and multinational corporations, and the emergence of new types of international norms outside recognised sources, resulting in a fragmented state of the law. [80]

Fragmentation in international law results from the absence of a central world legislator, originating in domestic spheres where different government departments handle various issues, negotiating and applying different treaties. This fragmentation is a response to globalisation, with global problems such as climate change, migration, terrorism, and financial crises requiring more international and specialised regulation.[81]

The claim is that legal certainty is unclear when words have different meanings depending on the treaty.[82] Other scholars believe that the discourse on international law's fragmentation is invalid, as evidenced by the scarcity of conflicts, the parallelism and reconciliation of norms from different regimes, and the migration of norms between regimes.[83] The diversification of international legal regimes is a positive sign of law entrepreneurs' political will and the capacity of international law to tackle diverse global issues.[84] International law has evolved to address global societal complexity despite the potential

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75 International Court of Justice. *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)* (2009). I.C.J. Reports 2009. P. 213–263.

76 *Dispute between Argentina and Chile concerning the Beagle Channel* (1977). Volume XXI. P. 53–264, 231.

77 Orakhelashvili A. *The Interpretation of Acts and Rules in Public International Law.* Oxford University Press, 2008. P. 393.

78 United Nations Office on Drugs and Crime. *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention Against Corruption.* United Nations, 2010.

79 Ibid.

80 Peters A. *Fragmentation and Constitutionalization* // *The Oxford Handbook of the Theory of International Law* / ed. by A. Orford, F. Hoffmann. Oxford University Press, 2016. P. 1012.

81 Ibid. P. 1014.

82 Maxwell F. *Missed Communications and Miscommunications: International Courts, the Fragmentation of International Law and Judicial Dialogue* // Goettingen Journal of International Law. 2022. Vol. 12. № 1. P. 49, 51.

83 Lanovoy V., Izaguerri A. *The WTO's Influence on Other Dispute Settlement Mechanisms: A Lighthouse in the Storm of Fragmentation* // TRAD. 2013. Vol. 47. № 3. P. 481; Simma B. *Fragmentation in a Positive Light* // Michigan Journal of International Law. 2004. Vol. 25. № 4. P. 845; Koskenniemi M., Leino P. *Fragmentation of International Law? Postmodern Anxieties* // Leiden Journal of International Law. 2002. Vol. 15. № 3. P. 553.

84 Peters A. *Op. cit.* P. 1028.

exploitation by powerful states that can manage and negotiate multiple regimes.[85] Nonetheless, many justices have favourably presented the so-called fragmentation of the international judiciary.[86]

The continuing task for law applicants and observers will be to improve the institutions, processes, and guiding principles for integrating, harmonising, and coordinating diverse international regimes, given the likelihood that international law will continue to be differentiated.[87] The autonomation of the legal field leads to a growing intensity in confronting texts and procedures with social realities, facilitated by increasing differentiation, competition, and influence of dominated groups within the juridical field.[88] The fear of potential fragmentation does not prevent the multidisciplinary approach.

3.3.2. Classification of treaties

Regardless of whether fragmentation is good or bad, the question remains: Is the promotion of international law more effective with one set of interpretation tools (evolutionary/effective interpretation) or with specialised interpretation tools for special treaties?[89] Do different treaties demand different ways of interpretation? Could or should the UNCAC use the same interpretation rules as other treaties?

Some scholars argued that the evolutionary interpretation is unique to human rights treaties, as they focus more on object and purpose.[90] While it is true that human rights courts and tribunals regularly apply the evolutionary interpretation, it does not make them the only users. The reliance is not unique to human rights treaties, as the ICJ and the PCIJ use it throughout their jurisprudence.[91] It is a component of national and international court practice of several other aspects of international law and law in general, and it goes well beyond this particular setting.[92]

Another type of treaty that some claim requires special interpretive tools is constituent treaties. A constituent treaty creates and controls a non-state entity with an international legal personality.[93] The ICJ in the *Nuclear Weapons Advisory Opinion* affirmed that international organisations' instruments are multilateral treaties, subject to established rules of treaty interpretation.[94] D. Akande emphasised that the UN Charter is a living instrument using evolutionary interpretation, allowing the organisation to adapt to changing circumstances.[95] Akande[96] concludes that interpreting constitutional treaties differs from interpreting ordinary treaties by nature, basing his conclusions mostly on assessments of *Namibia*[97] and *Reparation for Injuries*.[98] High hurdles to treaty changes (Article 40 VCLT) make an evolutionary interpretation necessary to keep up with emerging difficulties and effectively execute the tasks allocated

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85 Ibid.

86 Higgins R. *A Babel of Judicial Voices? Ruminations from the Bench* // ICLQ. 2006. Vol. 55. № 4. P. 791.

87 Peters A. *Op. cit.* P. 1029.

88 Bourdieu P. *The Force of Law: Toward a Sociology of the Juridical Field* // The Hastings Law Journal. 1987. Vol. 38. P. 851–852.

89 McLachlan C. *The Evolution of Treaty Obligations in International Law* // *Treaties and Subsequent Practice* / ed. by. G. Nolte. Oxford University Press, 2013. P. 69.

90 Bernhardt R. *Evolutive Treaty Interpretation, Especially of the European Convention on Human Rights* // German Yearbook of International Law. 1999. Vol. 42. P. 11; Letsas G. *Strasbourg's Interpretive Ethic: Lessons for the International Lawyer* // European Journal of International Law. 2010. Vol. 21. № 3. P. 509; Weiler J. *The Interpretation of Treaties - A Re-examination Preface* // European Journal of International Law. 2010. Vol. 21. № 3. P. 507.

91 Bjorge E. *Op. cit*. P. 36; Permanent Court of International Justice. *Rights of Minorities in Upper Silesia (Minority Schools)* (1928) P.C.I.J. A. № 15–33; International Court of Justice. *Reservation to the Convention on Genocide* (1951) I.C.J. Reports, 1951. P. 15–23; International Court of Justice. *Ambatielos case (jurisdiction)* (1952). I.C.J. Reports, 1952. P. 28–45; *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization.* P. 170; International Court of Justice. *Case concerning United States Diplomatic and Consular Staff in Tehran* (1980). I.C.J. Reports 1980. P. 3; International Court of Justice. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Merits Judgment* (1986). I.C.J. Reports 1986. P. 14–273; International Court of Justice. *Oil Platforms (Islamic Republic of Iran v. United States of America) Preliminary Objection, Judgment.* P. 820; International Court of Justice. *LaGrand (Germany v. United States of America)* (2001). I.C.J. Reports, 2001. P. 466, 99–104; International Court of Justice. *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal).* P. 74, 86.

92 Sicilianos L.-A. *Interpretation of the European Convention on Human Rights: Remarks on the Court's Approach*. 23.09.2020. P. 2.

93 Quayle P. *Treaties of a Particular Type: The ICJ's Interpretative Approach to the Constituent Instruments of International Organizations* // Leiden Journal of International Law. 2016. Vol. 29. № 3. P. 853, 854.

94 International Court of Justice. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (1996). I.C.J. Reports, 1996. P. 66; Quayle P. *Op. cit*.

95 Akande D. *International Organizations* // *International law* / ed. by M. D. Evans. 5th ed. Oxford University Press, 2018.

96 Ibid.

97 International Court of Justice. *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding security council resolution 276 (1970).* I.C.J. Reports, 1971. P. 16.

98 International Court of Justice. *Reparation for injuries suffered in the service of the United Nations* (1949). I.C.J. Reports, 149. P. 174–179.

to specific organs, as outlined in the UN Charter. The concept of effectiveness governs the interpretation of treaties that form international organisations to a significant extent.[99]

Comparing different types of treaties and analysing the actual interpretation practices shows that evolutionary interpretation is ubiquitous. The principles outlined in Articles 31–33 of the Vienna Convention and the traditional canons of construction naturally incorporate evolutionary interpretation. Evolutionary interpretation has been routinely used in international law in domains unrelated to human rights, even before establishing human rights organisations.[100] The interpretation of international rules should consider the broader normative environment.[101]

In any event, as P. Reuter argues,[102] distinguishing treaties based on their subject matter, in general, is challenging due to the heterogeneity of treaty content, as seen in the 1919 Versailles Treaty, which regulated various issues such as international organisations' charters and territorial status questions, as illustrated by numerous cases.[103] This understanding aligns nicely with the Vienna Convention's approach, which does not address this kind of differentiation in the principles of treaty interpretation.[104] As mentioned, the International Law Commission and VCLT saw treaty law as a single entity.[105] Neither fragmentation nor different types of treaties inhibit the evolutionary interpretation.

3.3.3. Scope and application

However, to interpret the UNCAC, knowing that one must apply an evolutionary interpretation is not sufficient. It is necessary to define the boundaries of the evolutionary approach to fulfil the VCLT's obligations.[106] Former president of the European Court of Human Rights (hereinafter — ECtHR, the Court) A.-L. Sicilianos set out three limitations to the evolutionary approach.[107] As seen above, the interpretation in international law does not distinguish between types of treaties; thus, the same criteria are helpful starting points. The first limitation is that the interpretation cannot be against the existing law (*contra legem*). Second, it must be consistent with the object and purpose of the treaty, and third, it must be based on “present-day” circumstances and not on a potential future.[108]

Contra legem

The interpretation can be *prater legem,* but it cannot be *contra legem*.[109] There are clear examples where the ECtHR reached the end of the evolutionary interpretation, as seen in *Johnston and Others v. Ireland*[110] or *Pretty v. the United Kingdom*.[111] In the *Johnston* case, the Court could not interpret the right to marry to include the right to divorce.[112] In the *Pretty* case, the Court stated that the right to life does not incorporate the right to die.[113]

In contrast, the ECtHR used an evolutionary interpretation in the case of *Magyar Helsinki v. Hungary*.[114] The question was whether the right to seek, impart, or receive information (Article 10 ECHR Freedom of expression) incorporates the right to seek information.[115] The “shall include” indicates that these are not the only rights. Thus, Article 10 includes the freedom to seek information.[116]

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99 Herdegen M. *Interpretation in International Law.* Max Planck Encyclopedias of International Law (MPIL). 2020. P. 41.
100 Bjorge E. *Op. cit.* P. 10; Sicilianos A.-L. *Op. cit.* P. 1.
101 Paulus A. L., Leiss J. R. *Constitutionalism and the Mechanics of Global Law Transfers* // Goettingen Journal of International Law. 2018. № 9. P. 65; Study Group of the International Law Commission. *Fragmentation of international law: Difficulties arising from the diversification and expansion of international law.* 18.07.2006. A/CN.4/L.702.
102 Reuter P., Haggenmacher P., Mico J. *Introduction to the Law of Treaties* (A Publication of the Graduate Institute of International Studies). Geneva : Routledge, 2011. P. 21.
103 Permanent Court of International Justice. *German Settlers in Poland* (1923). P.C.I.J. Series B. № 6. P. 19; *Rights of Minorities in Upper Silesia (Minority Schools).* P. 31.
104 Bjorge E. *Op. cit.* P. 34–35.
105 Crawford J. *Brownlie's Principles of Public International Law.* 8th ed. Oxford University Press, 2012. P. 370.
106 Sicilianos A.-L. *Op. cit*. P. 3.
107 Ibid.
108 Ibid.
109 Ibid.
110 European Court of Human Rights. *Case of Johnston and Others v. Ireland* [1986]. Application no. 9697/82.
111 European Court of Human Rights. *Case of Pretty v. United Kingdom* (2002). Application no. 2346/02. § 39.
112 Sicilianos A.-L. *Op. cit.* P. 3.
113 *Case of Pretty v. United Kingdom.* § 39.
114 European Court of Human Rights. *Case of Magyar Helsinki Bizottsag v. Hungary (GC)* (2016) Application no. 18030/11.
115 Sicilianos A.-L. *Op. cit.* P. 4.
116 Ibid.

Are there any rules that contradict or prohibit the multidisciplinary approach or not? Nothing in the 71 Articles of the UNCAC forbids an interdisciplinary approach that derives from an evolutionary interpretation.

Quite the opposite, UNCAC, in different parts, calls for a practical approach. For example, Article 1(a) UNCAC states (emphasis added): "*The purpose of this Convention are: To promote and strengthen measures to prevent and combat corruption more efficiently and effectively*". The drafters laid a strong focus on effectiveness. Article 5 UNCAC focuses on effectiveness ("*maintain effective, coordinated anti-corruption policies*" (Article 5(1)), "*promote effective practices*" (Article 5(2)), "*evaluate… measures… to determining their adequacy to prevent… corruption"* (Article 5(3)). Specifically, Article 5(3) indicates that the drafters understood that to keep up with the development of corruption, policies must be adaptable and professional to stand a chance in the fight against corruption. Article 5(3) fulfils even the rigorous understanding that a living instrument needs to have an inherent dynamic for change.[117] The drafters by no means intended to exclude such a possibility. The multidisciplinary approach is not *contra legem*.

Object and purpose

The second limit of evolutionary interpretation is its compatibility with the Convention's object and purpose, as emphasised in Article 31(1) VCLT, as ignoring this would betray the parties' intentions.[118]

In the *Magyar Helsinki Bizottsag* case,[119] the Court paid particular attention to the object and purpose of Article 10 and the object and purpose of the entire Convention.[120]

The Palena Tribunal highlighted that the parties' intentions may derive from sources other than the treaty language.[121] It is possible to derive this intent from preliminary papers or the Parties' subsequent actions.[122]

The criterion, "object and purpose", is the most crucial. The evolutionary interpretation and the multidisciplinary approach stand and fall with it. The object and purpose of the Convention can be seen in different parts throughout. The most prominent is Article 1(a) UNCAC, whose purpose is "*to promote and strengthen measures to prevent and combat corruption more efficiently and effectively*". The preamble states, "*The State Parties to this Convention… [are] convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively"*.[123] The text of the preamble is relevant for the interpretation according to 31(2) VCLT. To summarise, the object and purpose of the UNCAC is to fight corruption effectively.

The multidisciplinary approach breathes life into effectiveness by producing objective criteria for effectively targeting corruption in different circumstances. The multidisciplinary approach is in line with the object and purpose of the UNCAC and Article 5 UNCAC.

"Present-day"

The third and final boundary is that the interpretation must reflect the present day. This criterion is essential as it prevents excessive interpretation via evolutionary interpretation.[124] The ECtHR explicitly stated that the "living instrument" doctrine should adapt the Convention to the present-day conditions.[125] The Court typically requires a "European consensus" or significant trend in legislation or practice of contracting states towards the chosen interpretation, indicating common acceptance or regional custom at the time of judgement delivery. The aim is to accompany and channel change.[126] Put another way, even while the interpretation is "evolutionary", it must be grounded in the present. It would be dangerous to extrapolate future events outside the judiciary's purview.[127]

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117 Moeckli D., White N. D. *Treaties as "Living Instruments" / Conceptual and Contextual Perspectives on the Modern Law of Treaties //* ed. by M. Bowman, D. Kritsiotis. Cambridge University Press, 2018. P. 170.
118 Sicilianos A.-L. *Op. cit.* P. 4.
119 *Case of Magyar Helsinki Bizottsag v. Hungary (GC)* (n 121) § 155.
120 Sicilianos A.-L. *Op. cit.* P. 4–5.
121 *Argentine-Chile Frontier Case (Argentina, Chile)* (1966) (Ad hoc Arbitration).
122 Ibid. P. 89; Nolte G. *Introductory Report of the Study Group on Treaties over Time // Treaties and Subsequent Practice /* ed. by G. Nolte. Oxford University Press, 2013; Mortenson J. D. *The Travaux of Travaux : Is the Vienna Convention Hostile to Drafting History? //* American Journal of International Law. 2013. Vol. 107. № 4. P. 780.
123 United Nations Convention against Corruption 14 December 2005, UNCAC (United Nations) Preamble.
124 Sicilianos A.-L. *Op. cit.* P. 5.
125 European Court of Human Rights. *Case of Tyrer v. The United Kingdom* (1978). Application no. 5856/72.
126 European Court of Human Rights. *Case of X and Others v. Austria (GC)* (19 February 2013). Application no. 1910/07.
127 Sicilianos A.-L. *Op. cit.* P. 5.

The last criterion, “present day”, is the most difficult to fulfil. Lawmakers have not applied a similar widespread approach. However, the reason behind the hesitancy is the infancy of this train of thought.

While not fully developed, the approach is on the rise. More and more UN agencies are investigating the use of behavioural science, as parts of the multidisciplinary approach would suggest. Thus far, they have employed several methodologies and behavioural science in several areas of concentration, encompassing the Sustainable Development Goals.[128] The UN uses behavioural science for internal bureaucratic and administrative procedures. The thematic areas of gender, education, health, avoiding crime and violence, labour, and the environment have seen the most extensive and advanced uses of behavioural science, with various UN entities conducting pilot projects or randomised control trials.[129]

To summarise, the multidisciplinary approach has not yet been used extensively concerning the field of corruption, but the approach has permeated other UN agencies and various fields of international law. The multidisciplinary approach is modern, but not so modern that it is irreconcilable with the criterion of “present day”.

4. Example of the UNCAC

We now know that we must interpret Article 5 UNCAC in an evolutionary manner to incorporate the multidisciplinary approach. The following section shows an example how the approach would work in practice. This part shows a selection of different Options that “effective” can be understood in the context of Article 5 UNCAC and shows how those Options interact with the empirical studies.

4.1. Options

4.1.1. Option 1: rational choice/simple model of rational crime

Option 1 is called rational choice, specifically, a simple model of rational crime (SMORC). This Option became known through the work of Nobel-prize winner G. S. Becker.[130] The general idea is that dishonesty and, thus, corruption consist of three essential elements that influence behaviour.

The first element is the potential gain from the crime.[131] The second relevant criterion is the probability of getting caught,[132] and the third is the expected severity of punishment. The dishonest person undertakes a cost-benefit analysis. If the reward outweighs the probability of severe punishment, the person will commit the dishonest act.[133] This understanding leads to the intuitive approach to focus on reducing the amount of money (or other things) gained in the corrupt process and investing in actions that strengthen the possibility of being caught.[134] So, for example, one way to achieve higher apprehension and conviction rates is by spending more money on police officers, court personnel, or other specialised tools.[135] Those specialised tools include, among other things, fingerprinting,[136] wiretapping,[137] computer control,[138] monitoring in general,[139] accounting and auditing standards,[140] and monitoring bank accounts and transactions.[141] Another essential aspect of this approach would be to invest in transparency. Transparency can take the form of the publication of relevant laws and regulations.[142]

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128 The UN Innovation Network (UNIN). United Nations Behavioural Science Report, 2021. P. 5.
129 Ibid.
130 Becker G. S. *Crime and Punishment: An Economic Approach* / *The Economic Dimensions of Crime* // ed. by N. G. Fielding, A. Clarke, R. Witt. Palgrave Macmillan UK, 2000.
131 Becker G. S. *Crime and Punishment: An Economic Approach* // Journal of Political Economy. 1968. Vol. 76. № 2. P. 169, 173.
132 Ibid. P. 184.
133 Hechter M. *The Attainment of Solidarity in Intentional Communities* // Rationality and Society. 1990. Vol. 2. № 2. P. 142.
134 Becker G. S. *Op. cit*.
135 Ibid. P. 174.
136 Ibid.
137 Ibid.
138 Ibid.
139 United Nations Office on Drugs and Crime. *Technical Guide to the United Nations Convention Against Corruption*. New York, 2009. P. 56. URL: https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf (accessed: 17.07.2024).
140 Ibid.
141 Ibid.
142 Ibid. P. 30.

4.1.2. Option 2: behavioural economics “self-concept maintenance”

People act dishonestly intentionally and deliberately by balancing the predicted external rewards and costs of the dishonest conduct, just like in the traditional economic model (also known as *homo economicus*) (Option 1).[143]

Option 2 stipulates that another crucial psychological perspective is internal rewards.[144] People internalise the values and norms of their society, which serve as an internal benchmark against which they compare their behaviour.[145] People struggle to balance gaining from cheating and maintaining a positive self-concept as honest.[146] The point of departure for this Option is that people derive financial benefits from dishonesty while maintaining their positive self-concept.[147] People find a balance between honesty and dishonesty by defining them for themselves, regardless of whether their definition matches the objective definition.[148] People can categorise their actions into more compatible terms and find rationalisations for their actions, allowing them to cheat without negatively updating their self-concept.[149] This understanding of corruption opens the door for policies to influence the maintenance of the positive self-concept.[150] For example, reminding people about their moral standards[151] or giving them less opportunity to justify their behaviour (categorisation malleability[152]) morally could reduce corruption. As categorisation malleability increases, the magnitude of dishonesty a person can commit increases without affecting their self-concept.[153] One example could be that stealing a 10-cent pen from a friend is more accessible to justify than stealing 10 cents from his wallet.[154] However, there is a limit to stretching the truth. After a certain threshold, the conceptualisation loses its effect.[155]

4.1.3. Option 3: principal-agent theory

Another famous theoretical approach to corruption is the principal-agent theory.[156] This approach stipulates that we have “principals” who are assumed to embody public interest and “agents” who prefer acting corruptly.[157] For example, in cases of bureaucratic corruption, the state officials are the “principals”, and the bureaucracy is the “agents”.[158] The corruption problem arises when the "principal" and the "agent" have diverging interests, and the agent pursues his interest.[159] Corruption becomes possible when there is an information asymmetry between “principals” and “agents”.[160] Policymakers must design policies to lower the number of transactions the “agent” can undertake, the value of the potential bribe, the possibility of being detected, and the potential punishment.[161] Adding a supervisor/auditor to the principal-agent

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143 Becker G. S. *Op. cit*.

144 Mazar N., Amir O., Ariely D. *The Dishonesty of Honest People: A Theory of Self-Concept Maintenance* // Journal of Marketing Research. 2008. Vol. 45. № 6. P. 633.

145 Campbell E. Q. *The Internalization of Moral Norms* // Sociometry. 1964. Vol. 27. № 4. P. 391; Henrich J., Boyd R., Bowles S. et al. *In Search of Homo Economicus: Behavioral Experiments in 15 Small-Scale Societies* // American Economic Review. 2001. Vol. 91. № 2. P. 73.

146 Aronson E. *The Theory of Cognitive Dissonance: A Current Perspective* // Advances in Experimental Social Psychology. 1969. Vol. 4. P. 1; Harris S., Mussen P., Rutherford E. *Some Cognitive, Behavioral and Personality Correlates of Maturity of Moral Judgment* // The Journal of Genetic Psychology. 1976. Vol. 128. P. 123.

147 Mazar N., Amir O., Ariely D. *Op.cit.* P. 632.

148 Ibid.

149 Gur R. C., Sackeim H. A. *Self-Deception: A Concept in Search of a Phenomenon* // Journal of Personality and Social Psychology. 1979. Vol. 37. № 2. P. 147.

150 Mazar N., Amir O., Ariely D. *Op. cit.* P. 632.

151 Ibid. P. 635.

152 To allow people to reinterpret their behaviour in a self-serving manner.

153 Cunha M. P. E., Cabral-Cardoso C. *Shades of Gray: A Liminal Interpretation of Organizational Legality-Illegality* // International Public Management Journal. 2006. Vol. 9. № 3. P. 209; Schweitzer M. E., Hsee C. K. *Stretching the Truth: Elastic Justification and Motivated Communication of Uncertain Information* // Journal of Risk and Uncertainty. 2002. Vol. 25. № 2. P. 185.

154 Mazar N., Amir O., Ariely D. *Op. cit*. P. 634.

155 Ibid. P. 634–635.

156 Brooks G. *Op. cit.* P. 24; Gemperle S., Panov S. *How to Research Anti-Corruption* // *How to Research Corruption? Conference Proceedings: Interdisciplinary Corruption Research Forum* / ed. by A. K. Schwickerath, A. Varraich, L.-L. Smith. SSOAR, 2016. P. 60; Rose-Ackerman S. *Corruption: A study in political economy.* Academic Press, 1978.

157 Persson A., Rothstein B., Teorell J. *Op. cit.* P. 452.

158 Rijckeghem C., van, Weder B. *Bureaucratic Corruption and the Rate of Temptation: Do Wages in the Civil Service Affect Corruption, and by How Much?* // Journal of Development Economics. 2001. Vol. 65. № 2. P. 307.

159 Ross S. A. *The Economic Theory of Agency: The Principal's Problem* // The American Economic Review. 1973. Vol. 63. № 2. P. 134; Harris M., Raviv A. *Optimal Incentive Contracts with Imperfect Information* // Journal of Economic Theory. 1979. Vol. 20. № 2. P. 231; Lambsdorff J. *The Institutional Economics of Corruption and Reform.* P. 58; Aidt T. A. *Economic Analysis of Corruption: A Survey* // The Economic Journal. 2003. Vol. 113. № 491. P. 632.

160 Persson A., Rothstein B., Teorell J. *Op. cit.* P. 452.

161 Ibid. P. 453; Marquette H., Pfeiffer C. *Corruption and Collective Action* // Governance. 2015. Vol. 31. № 3. P. 2.

paradigm shall mitigate the informal asymmetries the principal encounters.[162] However, if a supervisor colludes with her, the agent may be coerced into fabricating her reports. For a bribe, she may overlook the agent's disobedience.[163]

The recommendations for action under this approach would be:

> Deregulation, meritocratic recruitment, reducing monopoly by promoting political and economic competition, increasing accountability by supporting democratisation and bureaucratisation (for administrative accountability), improving salaries of public officials, thereby increasing the opportunity cost of corruption if detected, improving the rule of law so that corrupt bureaucrats and politicians can be prosecuted and punished and encouraging greater transparency of government decision-making through deepening decentralisation, increased public oversight through parliament an independent media, creation and encouragement of civil society watchdogs.[164]

4.1.4. Option 4: collective action problem

A collective action problem is a situation where a group fails to work toward producing a public good or a “common pool resource”.[165] This approach underlines the relevance of how individuals act according to group dynamics, most notably the expectation of how others act.[166]

E. Ostrom illustrates this with the example of fishers.[167] Many fishermen cast their nets in the same lake. Each one has the incentive to fish quickly and as much as possible. As H. Gordon stated years before, “*The fish in the [lake] are valueless to the fisherman because there is no assurance that they will be there for him tomorrow if they are left behind today*.”[168] In the long term, this leads to overfishing, resulting in natural resource exhaustion. This problem is called the “tragedy of the commons”.[169] In this scenario, the first one to not overfish or act “honestly” has a competitive disadvantage.[170] The fishermen or our corrupt actors are not oblivious to the danger of their actions or the potential benefit they would generate by changing their behaviour.[171] The problem is that they cannot credibly rely on the other actors.[172] The crucial criterion for changing behaviour under this approach is “changing the expected behaviour of the other actors”.[173] This problem consists of three sub-problems E. Ostrom refers to as the *behavioural theory of rational action*:[174] 1) the problem of supply, 2) the problem of making credible commitments, and 3) the problem of mutual monitoring.[175]

How does this approach connect to corruption? Corruption similarly supposes that individuals put themselves ahead of a common goal. In that case, corruption is the “manifestation of free riding itself”.[176] Another point of comparison with a shared pool resource is that corruption destabilises a state's ability to provide public goods and services efficiently.[177] A long list explains variables in collective action — based

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162 Khalil F., Lawarree J. *Collusive Auditors* // American Economic Review. 1995. Vol. 85. № 2. P. 442.
163 Ibid.
164 Ivanov K. I. *The Limits of a Global Campaign against Corruption* // *Corruption and Development: The Anti-Corruption Campaigns* / ed. by S. Bracking. Palgrave Macmillan, 2007.
165 Olson M. *The Logic of Collective Action: Public Goods and the Theory of Groups.* Harvard University Press, 1971.
166 Marquette H., Pfeiffer C. *Op. cit*.; Seabright P. *Managing Local Commons: Theoretical Issues in Incentive Design* // Journal of Economic Perspectives. 1993. Vol. 7. № 4. P. 113; Ostrom E. *Governing the Commons: The Evolution of Institutions for Collective Action.* Cambridge University Press, 1990; Elster J. *Rationality, Morality, and Collective Action* // Ethics. 1985. Vol. 96. № 1. P. 136.
167 Ostrom E. *Governing the Commons...*
168 Gordon H. S. *The Economic Theory of a Common-Property Resource: The Fishery* // The Journal of Political Economy. 1954. Vol. 62. № 2. P. 124.
169 Rothstein B. *Controlling Corruption…* P. 72.
170 Rothstein B. *Social Traps and the Problem of Trust.* Cambridge University Press, 2005.
171 Persson A., Rothstein B., Teorell J. *Op. cit.* P. 457.
172 Ibid.
173 *Toward a Political Economy of Development: A Rational Choice Perspective* / ed. by R. H. Bates. University. of California Press, 1988.
174 Ostrom E. *A Behavioral Approach to the Rational Choice Theory of Collective Action Presidential Address, American Political Science Association* // The American Political Science Review. 1998. Vol. 92. № 1. P. 1.
175 Ostrom E. *Governing the Commons…* P. 37.
176 Marquette H., Pfeiffer C. *Op. cit.* P. 3.
177 Ibid. P. 4.

on them E. Ostrom[178] H. Marquette, and C. Pfeiffer distilled a smaller list with criteria regarding corruption.[179]

This list includes eleven factors:

– group size;[180]
– group heterogeneity;[181]
– face-to-face communication;[182]
– repeated interaction;[183]
– trust/good reputations;[184]
– group interdependence;[185]
– voluntary group membership;[186]
– heuristic/norms;[187]
– monitoring/transparency (contributions & collective good);[188]
– long time horizons;[189] and
– salience of collective good.[190]

4.2. Empirical studies

This section exemplifies how studies can predict the effectiveness of the different Options. Here is only a tiny overview of one criterion: culture.[191]

One approach that works in a country/situation could be fatal if applied to a different one. For example, Hong Kong[192] and Singapore[193] successfully applied similar measures (establishing effective anti-corruption agencies) to fight corruption sustainably.[194] Since then, Singapore has been the 5th cleanest while Hong Kong is the 12th cleanest country in the world. However, countries like Uganda and Tanzania could not achieve similar effects with the same measure.[195] The effectiveness of an approach thus heavily relies on the context.[196]

Culture is the central aspect investigated to establish the proper context. There are various and vastly different cultures worldwide. If minds are not receptive, even powerful foreign states cannot convert entire populations from their deeply held values.[197]

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178 Poteete A. R., Janssen M. A., Ostrom E. *Working Together: Collective Action, the Commons, and Multiple Methods in Practice.* Princeton University Press, 2010.

179 Marquette H., Pfeiffer C. *Op. cit.* P. 5.

180 Ostrom E., Walker J. R., Gardner R. *Covenants With and Without a Sword: Self-Governance Is Possible* // American Political Science Review. 1992. Vol. 86. № 2. P. 404; Olson M. *Op. cit*.

181 Banerjee A., Iyer L., Somanthan R. *History, Social Divisions, and Public Goods in Rural India* // Journal of the European Economic Association. 2005. Vol. 3. № 2/3. P. 639; Kanbur R. *Heterogeneity, Distribution, and Cooperation in Common Property Resource Management*. Background Paper for the 1992 World Development Report; Olson M. *Op. cit*.; Hardin R. *Collective Action.* Taylor and Francis, 1982.

182 Ostrom E., Gardner R., Walker J. R. *Rules, Games, and Common-Pool Resources.* University of Michigan Press, 1994; Kerr N. L., Kaufman-Gilliland C. M. *Communication, Commitment, and Cooperation in Social Dilemma* // Journal of Personality and Social Psychology. 1994. Vol. 66. № 3. P. 513.

183 Ostrom E. *Collective Action and the Evolution of Social Norms* // Journal of Economic Perspectives. 2000. Vol. 14. № 3. P. 137; Schlager E. *Policy Making and Collective Action: Defining Coalitions within the Advocacy Coalition Framework* // Policy Sciences. 1995. Vol. 28. № 3. P. 243.

184 Seabright P. *Op. cit*.; Elster J. *Op. cit*.; Ostrom E. *Governing the Commons...*

185 Hardin R., Karen C. S. *Norms of Cooperativeness and Networks of Trust* // *Social norms* / ed. by M. Hechter, K.-D. Opp. Russell Sage Foundation, 2005.

186 Hauk E., Nagel R. *Choice of Partners in Multiple Two-Person Prisoner's Dilemma Games: An Experimental Study* // The Journal of Conflict Resolution. 2001. Vol. 45. № 6. P. 770.

187 Crawford S., Ostrom E. *A Grammar of Institutions* // *Understanding Institutional Diversity* / ed. by E. Ostrom. Princeton University Press, 2005.

188 Ostrom E. *Governing the Commons…*

189 Bendor J., Mookherjee D. *Institutional Structure and the Logic of Ongoing Collective Action* // American Political Science Review. 1987. Vol. 81. № 1. P. 129.

190 Agrawal A. *Common Resources and Institutional Sustainability* // *The Drama of the Commons* / ed. by E. Ostrom et al. National Academy Press, 2002.

191 Other areas could be: Governments & Institutions, corruption networks, religion, freedom (of press, judiciary, electoral process), punishments & incentives (including studies to monitoring, whistleblowing, auditing and asymmetric penalties).

192 Root H. L. *Small Countries, Big Lessons: Governance and the Rise of East Asia.* Oxford University Press, 1996. P. 52; Tanzi V. *Corruption Around the World: Causes, Consequences, Scope, and Cures*. International Monetary Fund Working Paper, 1998.

193 Root H. L. *Op. cit*. P. 42; Tanzi V. *Corruption Around the World…*

194 Persson A., Rothstein B., Teorell J. *Op. cit.* P. 465–466.

195 Yeh S. S. *Ending corruption in Africa through United Nations inspections* // International Affairs. P. 629, 632.

196 Marquette H., Pfeiffer C. *Op. cit.* P. 11.

197 Hofstede G., Hofstede G. J., Minkov M. *Cultures and Organizations: Software of the Mind: Intercultural Cooperation and its Importance for Survival.* McGraw-Hill, 2010. P. 126–127.

To compare cultures, G. Hofstede developed five criteria to differentiate world cultures.[198] In the beginning, Hofstede studied survey data about the societal values of people in more than fifty countries worldwide.[199] He studied questionnaires of employees of the extensive international cooperation IBM (International Business Machines). Statistical analysis showed that the values from one country to another almost matched perfectly, except for the nationality. They showed that these questionnaires are an excellent tool for distinguishing national values.[200] These different “dimensions of culture” matched other studies exceptionally closely.[201] Scientists replicated the IBM questionnaire at least six times and reached almost identical results.[202] Different “dimensions of culture” matched other studies exceptionally closely.[203]

Additionally, the World Values Survey collects questionnaires from more than a hundred countries worldwide in ten-year intervals, and the surveys correlate with the original IBM study.[204] *Culture's Consequences* by G. Hofstede is one of the most cited books in sociology.[205]

The resulting criteria are the following: power distance, uncertainty avoidance, masculinity, individualism, and long-term orientation. This article focuses on power distance, and individualism/collectivism.

4.2.1. Power distance

Power distance refers to the belief and acceptance among less powerful members of a country's institutions and organisations of how they can affect power.[206] In a community, power distance refers to the degree to which members accept that some people hold more power than others.[207] The less powerful members define the power distance, while the influential members typically define the power distribution with their behaviour.[208] The power distance index (hereinafter — PDI) ranks countries from 1 to 100, with a low number indicating a small power distance and a high number indicating a considerable power distance.[209] Significant power distance correlates strongly with corruption.[210]

4.2.2. Individualism/collectivism

One main difference between cultures is the individual's role versus the group's role in human societies. Most people live in societies where group interests prevail over individual interests, leading to a fundamental difference in human societies.[211] These societies are collectivist, referring to the power of the group rather than the state's influence on individuals. The term may have political connotations but does not refer to the state's power over individuals.[212] The IBM database uses a process to calculate individualism index values (IDV), ranging from 0 for collectivist countries to 100 for individualist ones. Approximation formulas are used for follow-up studies, allowing for direct calculation of individualism index values.[213] The relationship between national wealth and individualism in culture is strong.[214]

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198 Ibid.
199 Ibid. P. 30.
200 Ibid.
201 Inkeles A., Levinson D. J. *The Personal System and the Sociocultural System in Large-Scale Organizations* // Sociometry. 1963. Vol. 26. № 2. P. 217.
202 Hoppe M. H. *A Comparative Study of Country Elites: International Differences in Work-Related Values and Learning and Their Implications for Management Training and Development.* U.M.I., 1990; Shane S., MacMillan I., Venkataraman S. *Cultural Differences in Innovation Championing Strategies* // Journal of Management. 1995. Vol. 21. № 5. P. 931; Helmreich R. L. Merritt A. C. *Culture at Work in Aviation and Medicine: National, Organizational, and Professional Influences.* Routledge, 2016; Mooij M. K., de. *Consumer Behavior and Culture: Consequences for Global Marketing and Advertising.* SAGE Publishing, 2011; Mouritzen P. E. *Leadership at the Apex: Politicians and Administrators in Western Local Governments.* University of Pittsburgh Press, 2002; Nimwegen T., van. *Global Banking, Global Values: The In-House Reception of the Corporate Values of ABN AMRO.* Eburon, 2002.
203 Inkeles A., Levinson D. J. *Op. cit*.
204 Hofstede G., Hofstede G. J., Minkov M. *Op. cit.* P. 44.
205 Other scientists cited the book (according to Google) 64192 times as of May 2024.
206 Hofstede G., Hofstede G. J., Minkov M. *Op. cit*. P. 61.
207 Ibid.
208 Ibid. P. 61.
209 Ibid. P. 56.
210 Getz K. A., Volkema R. J. *Culture, Perceived Corruption, and Economics* // Business & Society. 2001. Vol. 40. № 1. P. 7.
211 Hofstede G., Hofstede G. J., Minkov M. Op. cit. P. 90.
212 Ibid. P. 90–91.
213 Ibid. P. 94.
214 Ibid.

A quote that symbolises the different attitudes of collectivist countries and individualist countries towards corruption is: "*A [individualist] will say of [collectivists]: 'They cannot be trusted because they will always help their friends.' Collectivists will say of individualists: 'You cannot trust them; they would not even help a friend*'."[215]

Collectivist officials are likelier to hand out favours when dealing with acquaintances, friends, and relatives and are less likely to report corrupt activity.[216] The emphasis is on maintaining relationships, which supports nepotism and favouritism.[217] Not handing out favours might even be considered a *faux pas*.[218] Another factor in corruption is the practice of gift-giving in collectivist cultures, as boundaries between gift-giving and corruption are blurred.[219]

Power distance and individualism are negatively correlated. Countries with a considerable power distance are more likely to be collectivist; consequently, a small power distance indicates more individualist countries.[220] A cross-country analysis of 99 countries shows a robust relationship between individualist countries and lower levels of corruption, even when checking for a rich set of control variables (especially national wealth).[221]

4.2.3. Application to the Options

We apply those criteria to our established Options for the grand finale. The principal-agent theory works best in countries with indeed principled agents. Principal agents are interested in reducing corruption. In countries with a considerable power distance, principal agents have more freedom to abuse their power, as the "normal" person has less influence than in cultures with a low PDI, and the "normal" people accept potentially corrupt behaviour.

The principal-agent theory proposes improving public oversight, improving officials' salaries, or supporting public watchdogs. In systemically corrupt countries, the person who spends most of the money to acquire a specific position is most likely to abuse it.[222] These proposals would thus backfire in a high PDI country. The society is not capable of holding the principals accountable. Giving principals more money and tools to monitor gives an already powerful entity even more unchecked power.

However, civil society can hold agents more accountable in countries with low PDI. Improving monitoring, reporting on corruption, and supporting watchdog groups would effectively deter corruption. The suggestion would be to utilise the principal-agent theory only in countries with a relatively low PDI. A collective action problem approach would probably be fruitful in collectivist countries.

The Option builds significantly on group dynamics, interdependence, trust/good reputations, face-to-face communication, and group heterogeneity. Under the conditions that most relevant people are part of a group with strong ties to one another, such as family or tribal/clan structures, the approach can overcome the tragedy of the commons.

On the other hand, a country with a significant IDV would likely not have the same success. In individualist countries, group members can easily switch groups, and close ties primarily only exist towards their own (core) family. Organising many different individuals would be significantly more challenging compared to fixed groups.

The strength of the multidisciplinary approach lies in its adaptability to different circumstances. Generally speaking, the more scientists utilise studies, the more tailored an approach can be to a country's situation. Here is already an example of two criteria.

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215 Trompenaars F., Hampden-Turner C. *Riding the Waves of Culture: Understanding Cultural Diversity in Business.* Brealey, 2011. P. 31–32.

216 Jha C., Panda B. *Individualism and Corruption: A Cross-Country Analysis* // Journal of Applied Economics and Policy. 2017. Vol. 36. № 1. P. 60, 62.

217 Ibid.

218 Tanzi V. *Corruption, Governmental Activities, and Markets.* IMF Working Papers Working Paper № 94/99. International Monetary Fund, 1994.

219 Zheng X., El Ghoul S., Guedhami O., Kwok C. C. Y. *Collectivism and Corruption in Bank Lending* // Journal of International Business Studies. 2013. Vol. 44. P. 363.

220 Hofstede G., Hofstede G. J., Minkov M. *Op. cit.* P. 102–103.

221 Jha C., Panda B. *Op. cit.* P. 60.

222 Persson A., Rothstein B., Teorell J. *Op. cit*.

Conclusion

In conclusion, despite all the good that international law does, we can do more to improve *de facto* compliance with treaties. A multidisciplinary approach enhances compliance with (international) law. We must utilise empirical studies from other sciences, such as behavioural economics or sociology. This multidisciplinary approach targets the specific state's conditions when focusing on cultural dimensions. This approach is compatible with the rules of interpretation set out in the VCLT, specifically with an evolutionary interpretation. The general approach exemplified here can enhance other fields of law as well. In the future, policymakers shall rely more and more on empirical evidence when drafting conventions to enhance overall compliance.

КАК СДЕЛАТЬ МЕЖДУНАРОДНОЕ ПРАВО БОЛЕЕ ЭФФЕКТИВНЫМ: ЭФФЕКТИВНОСТЬ КОНВЕНЦИИ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПРОТИВ КОРРУПЦИИ

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Аннотация

В статье рассматривается вопрос о том, как сделать международное право более эффективным де-факто. Существует бесчисленное множество конвенций, посвященных защите прав человека, охране окружающей среды или, как в нашем случае, предотвращению коррупции. Главный тезис заключается в том, что юристы и политики могут сделать существующие договоры более эффективными, используя междисциплинарный подход. Он состоит в применении результатов эмпирических исследований других научных областей, включая поведенческую экономику, социологию и криминологию. Этот подход совместим с международным правом, в частности с правилами толкования, изложенными в Венской конвенции о праве международных договоров (далее — ВКПМД), посредством эволюционного толкования. Эффективная антикоррупционная политика должна быть адаптирована к условиям конкретного государства. Если один подход сработал в определенном государстве в конкретной ситуации, это не значит, что эта политика будет иметь такие же результаты везде. В данной статье представлены различные концепции политики по борьбе с коррупцией: рациональный выбор, поддержание я-концепции, теория принципала-агента и проблема коллективных действий. Эти концепции оцениваются через призму эмпирических исследований. Для иллюстрации этого подхода показано применение критерия «культура». В своих исследованиях Г. Хофстеде обнаружил различные культурные измерения: дистанция власти, индивидуализм, маскулинность и избегание неопределенности. Каждое измерение имеет уникальное взаимодействие с коррупцией. Эти взаимодействия объясняют, почему один и тот же подход не дает одинаковых результатов. Например, в государстве с очень высоким индексом дистанции власти подход, основанный на теории принципала-агента, будет не столь эффективен. В странах с высоким индексом дистанции власти средний гражданин практически не влияет на политику государства. Однако подотчетность принципов является одним из ключевых элементов подхода принципал-агент. Напротив, такой подход может привести к обратному результату. Если дать принципалам больше денег и полномочий по контролю, как предполагает подход, это только укрепит существующие структуры. В государстве с высокой степенью подотчетности (низкий индекс дистанции власти) такой подход усилил бы борьбу с коррупцией.

Ключевые слова

междисциплинарный подход, эволюционное толкование, эффективность, ВКПМД, UNCAC, поведенческая экономика, социология

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