The International Law-Making Process: An Innovative UK Practice and Its Use in Transposing International Norms into Domestic Law

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History
When parties to an international convention undertake to make certain types of behaviour a criminal offence within their own countries, this will, almost irrespective of constitutional variations, require to be implemented by national legislation. Such is the case with Article 1 of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “OECD Convention”). Parties are required to “take such measures as may be necessary to establish that it is a criminal offence (...) for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official (...) in order to obtain or retain business or other improper advantage in the conduct of international business”.

The article goes on to provide an autonomous definition of what, for the purposes of the Convention, constitutes a “foreign public official”, though there is no express obligation to adopt the definition as such.

The parties to the OECD Convention, including member states of the OECD as well as other signatories, undertake to submit to a process of monitoring, in the form of peer review of their compliance. Peer review mechanisms, to date used mostly in the consensus-based OECD context, can provide a valuable tool for encouraging and assisting in the implementation of international obligations in national law. In the case of the OECD Convention, this review comprises two phases: in the first, each country’s implementing legislation is examined to ensure that its criminal provisions fulfil the specific requirements as to the elements of the offence; the second phase examines the implementation in practice of the legislation.

When the United Kingdom underwent Phase 1 of the monitoring process, the OECD Working Group on Bribery noted certain deficiencies in the state of the UK law as it then existed, and recommended reforms. After the enactment of the Anti-Terrorism, Crime and Security Act 2001, Part 12 of which dealt specifically with foreign bribery, a further “Phase 1 bis” review was conducted. This second review found that, when taken together, the UK bribery laws now in force covered the required elements of the offence. However, the Working Group was still concerned about the fragmented and inconsistent nature of the UK law. It is, still, a less than coherent mix of common law and statutes, some of them antiquated, which are too confusing to lend themselves to easy enforcement. The UK Law
Commission had already recommended in its 1998 report on the state of general corruption law that it should be comprehensively reformed, and the Working Group endorsed this view.

On 23 March 2003, the UK government published its new draft Corruption Bill. A single, all-encompassing, statute was proposed, prepared by Parliamentary counsel and based on an earlier Law Commission draft, with the objective of rationalising the laws on corruption in general, as well as ensuring full conformity with the requirements of the OECD Convention.

The process of pre-legislative scrutiny

The Corruption Bill was subjected to an innovative and far-reaching process of pre-legislative scrutiny by Parliamentary committee. The day after the Bill was published, a Joint Committee was appointed, consisting of fourteen members drawn in equal numbers from the House of Commons and the House of Lords. Many of its members were lawyers, and all the major political parties were represented. Lord Slynn of Hadley, a former Law Lord and an eminent international lawyer, was elected chairman. The Committee’s remit was to examine the draft Bill and to report to both Houses no later than four months after its presentation. The Committee was given the power to “require the submission of written evidence and documents, to examine witnesses, (...) to appoint specialist advisers, and to make Reports to the two Houses.”

The Joint Committee delivered a 56-page report which was published on 31 July 2003.1 The report was the product of a structured and intensive process, during which the Committee held eighteen meetings. The Committee appointed an academic expert as specialist adviser, and set out six major areas in which it wished to take evidence, one of which was whether the proposals were compatible with international obligations, and how they compared with equivalent law in other countries. It accepted some thirty items of written evidence and held eight sessions during which oral evidence was heard from a broad range of interested parties. These included the heads of the major criminal law enforcement agencies (the Director of Public Prosecutions and the Director of the Serious Fraud Office), the Attorney General, representatives of the Home Office under whose auspices the Bill had been drafted, including the Minister responsible, representatives of major industry, a professor of comparative criminal law, and also representatives of Trans-

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