Reforming the International Law on Corporate Settlements in Foreign Bribery Cases

Response to ASIL, World Bank, and OECD CFP on Supranational Responses to Corruption

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Settlements between companies and governments are a controversial, though common, outcome of foreign bribery cases. The negotiation of corporate responsibility seems antithetical to norms of equality, impartiality, and publicity in criminal justice, as well as the practical goals of enhanced deterrence. Yet, settlements promise regulators the rapid resolution of complex cases by incentivizing corporate defendants to self-report wrongdoing, cooperate in investigations, and undertake compliance reforms and other remedial measures. In turn, settlements offer corporations a faster and potentially more private exit from allegations of bribery in their international operations and value chains.

Through a content analysis of key UN and OECD instruments and treaty body reports, we have previously found a dearth of express rules on settlements in international law but a qualified implicit endorsement of domestic settlement laws and practices.[1] We welcomed this approach for providing some regulatory limit to deal-making, but also diagnosed an irony: international organizations call for transparent, effective, and predictable domestic settlement rules, but fail to clearly articulate their own settlement standards.

In light of recent efforts to revisit international standards on financial crime, this paper critically analyzes the prospects of reform to the regulations around corporate settlements in foreign bribery cases. What are the options for legal change, especially within the OECD Working Group on Bribery, which is the principal *de facto* cite for international standard-settling at present? What would an OECD recommendation on corporate settlements need to do to improve on the status quo of international regulation through country monitoring? Are there other legal spaces or initiatives that could drive reform within particular states or other international organizations?

Drawing on the empirical and normative literature on corporate settlements and our own involvement in the international law reform process, the paper probes the extent to which enforcement by non-trial resolution is, in fact, consistent with the principles behind the OECD Convention. Diagnosing fundamental problems with the cross-national regulation of national foreign bribery laws, which are often broad and vague,[2] it reviews strategies for the control of non-trial resolutions across the signatories to the Convention.

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[1] Ivory, Radha and Tina Søreide. 'The International Endorsement of Corporate Settlements in Foreign Bribery Cases.' *International & Comparative Law Quarterly,* 69 (4) 2020: 945-978.

[2] Moene, Kalle and Tina Søreide. 'Criminal Liability for Corporate Bribery. Variations across Countries.' Essay prepared for the conference in honor of Susan Rose-Ackerman, Yale University, August 2021 (SSRN working paper by May 2021).