

International Strategies against Corruption: Public-Private Partnership and Criminal Policy.

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Emerging Control and Sanctioning Against Corruption

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1.- Control and sanctioning.-

- Rather unusual subject matter for ICC.
- ICC, as the world business organization, has the objective to “make the rules that govern the conduct of business across borders”.
- Controlling the implementation of such rules and sanctioning their breach is not considered as being within ICC’s ambit.

2.- ICC's Anti-corruption Role (I).

- Pioneering work: the 1977 ICC *Rules of Conduct to Combat Extortion and Bribery*.
- Susequent editions: 1996, 1999, 2005 en 2011.
- Compliance Handbook issued first in 1999, then in 2003 and 2008.
- The forthcoming fourth edition is going to be an *Ethics and Compliance Training Handbook*, written by compliance practitioners for present (future or potential) compliance practitioners.

3.- ICC's Anti-corruption Role (II).

- RESIST (with UN Global Compact, PACI-WEF and TI): 22 scenario's to resist extortion/solicitation.
- Guidelines on sensitive subject matters:
 - On Whistleblowing,
 - On Agents, Intermediaries and Other Third Parties, and
 - On Gifts and Hospitality (still a draft).
- The ICC Anti-corruption Clause (2012):
 - A clause for all enterprises,
 - A balanced clause, based on both the need to apply a civil sanction but also on sanctity of contracts,
 - I will come back to the Clause.

4.- No Reporting Commitment.-

- ICC and in particular the ICC Commission on Corporate Responsibility and Anti-corruption are not based on a membership concept. The members of the Commission are designated by ICC National Committees.
- While ICC welcomes receiving feedback from enterprises and National Committees on the implementation of the *Rules on Combating Corruption*, it does not require them to report on implementation of the Rules.
- UN Global Compact and PACI-WEF do.

5.- Lessons from the past (I).-

- In 1977 ICC issued the first *Rules of Conduct to Combat Extortion and Bribery* and established an Expert Panel as monitoring body for these Rules.
- The Panel was planned to “consider in appropriate circumstances alleged infringements [extortion or bribery by competitors] of the Rules of Conduct”.
- In fact, the objective of sanctioning infringements was never met and the Panel had to be suppressed.
- “The companies would resist submitting individual cases to what appeared to be a quasi-judicial body, constituted within an international business organization”.

6.- Lessons from the past (II).-

- In an effort to name and shame extortionists, ICC imagined to organize within ICC's specialized division, Commercial Crime Services (CCS) in London, a registration/compilation of extortion/solicitation attempts.
- Such initiative, which had to be legally and administratively strongly established, required a small financial support from participants.
- The concept was never totally endorsed by the business community and after a while was abandoned.

7.- The ICC Anti-corruption Clause.-

- ICC Mexico National Committee voiced the idea of a standard Anti-corruption Clause.
- In 2012 we succeeded, after long and hard work and many consultation rounds, to establish such Clause, which was adopted on by the ICC Executive Committee on September 27, 2012.
- Roll out on October 10, 2012 in Paris in the presence of the B20 and G20 delegations.

8.- A Strong Contractual Sanction.-

- Striking to see how strong the conventions are, how national laws are gradually improved and how leading companies are strengthening their prevention policies.
- There is, however, still a compliance deficit.
- The ICC Anti-corruption Clause is for companies to include in their agreements, whereby they undertake to comply with the ICC Rules on Combating Corruption or commit to put in place and maintain an anti-corruption compliance programme.
- ICC insists on robust corporate compliance supported by equally robust “**contractual compliance**”.

9.- How does it work (option 1 and 2)?

- Undertaking **not to bribe** directly or indirectly before or during contract.
- If a party brings evidence that the other party has been engaging in **material** or **several repeated breaches**, it notifies the latter and requires to take **remedial action** and to inform it.
- If no remedial action, or if remedial action not possible, possible defence by proving **adequate preventive measures**.
- If no remedial action or defence not effectively invoked, the first party may, at its discretion, either **suspend** the contract or **terminate** it.

10.- How does it work (option 3)?

- Parties to put into place a **compliance programme**.
- Parties to implement programme and **inform** other party about implementation through statements by a **qualified corporate representative**.
- If a party brings evidence that statement contains **material deficiencies**, undermining program's efficiency, the first party may notify, require **remedial action** and ask to be informed about such action.
- If no remedial action or if remedial action not possible, the first party may, at its discretion, **suspend** or **terminate** the contract.