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Foreign Bribery Enforcement: Credibility and Clarity Problems

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Abstract

The article provides an analysis of extraterritorial enforcement of transnational bribery from the perspective of credibility and clarity problems, answering the question when extraterritoriality contributes to the effectiveness of an international regulatory regime. The problem of extraterritoriality is increasingly significant under national policies. The significance of the issue is best illustrated by a number of highly profiled extraterritorial cases such as the one against the Federation of International Football Association (FIFA). The article opens new avenues in a longstanding debate concerning when extraterritorial application of national laws is an appropriate solution to global problems. The paper is a policy piece that will be of substantial utility to all scholars interested in the effectiveness of transnational regulation and interested in interdisciplinary legal research, but also to policy makers and practitioners.

Keywords

extraterritoriality, credibility and clarity, enforcement, international bribery, effectiveness, cooperation, coordination

1. Introduction: National Enforcement and Multinational Corporations

The rising economic and regulatory power of multinational corporations (MNCs) is one of the main features of globalization. These corporations influence political and economic processes, and contribute significantly to the creation, change, and enforcement of regulation (Danielsen, 2005). Although the MNCs might create jobs and wealth, or bring innovation, in their essence, they act in the private interest, towards maximizing their profits and corporate value. If effective governance structures are missing, global problems such as financial breakdowns, infringements of human rights, and corruption might occur

(Huwart and Verdier, 2013, Leisinger, 2009). That is why the governance of MNCs is the key issue for the society.

Despite the rising power of MNCs, government networks remain crucial in mitigating global problems (Andreas and Nadelmann, 2006, Slaughter, 2004). Most importantly, some of the major states have used extraterritorial regulation, meaning the broad application and enforcement of national laws to subjects acting beyond the borders of a given country. (Scott, 2014a, Zerk, 2010). While extraterritoriality makes it more effective to govern MNCs in areas such as climate change, corruption, or international cartels, literature indicates that extraterritorial enforcement might also serve national self-interests, thus destabilizing markets, principles of international order, or international relations between states (Schuman, 2011). Therefore, despite increasingly used, extraterritorial enforcement of national laws is controversial.

This contribution discusses extraterritoriality from the perspective of economic governance theories that explain how institutions and organizations should be structured in order to incentivize collective action. These theories hypothesize that if states act collectively, they will also be effective in tackling global problems (Marquette and Peiffer, 2015). The OECD international anti-bribery regime is an exemplary case to study extraterritorial enforcement of national laws because the OECD members such as the US have been increasingly using their anti-corruption laws extraterritoriality. A number of high profile enforcement actions such as *Alstom*, *Hewlett-Packard*, or *FIFA* indicate that extraterritoriality is not only a theoretical concept but also a matter of practice. The regime based on the OECD Anti-Bribery Convention was selected also because its implementation standard and the focus on the enforcement and detection mechanisms of the signatories make it the most advanced international convention that prohibits the supply side of bribery (Transparency International, 2013).¹

¹ Author's note: the Transparency International considers the OECD Convention as "widely regarded as the gold standard for treaty monitoring" TRANSPARENCY INTERNATIONAL 2013. *Exporting corruption [electronic resource: progress report 2013: assessing enforcement of the OECD convention on combating foreign bribery]*, Berlin, Transparency International.

The topic of this contribution is connected with the author's PhD project that focuses on the effectiveness of extraterritorial enforcement of the OECD-based anti-bribery laws. The article examines the state's enforcement of foreign bribery laws from a specific perspective - credibility and clarity problems accompanying the OECD enforcement regime. First, part of the contribution introduces the key scholarly work dealing with extraterritoriality. The second part focuses on the theories of collective action and the credibility and clarity problems. The article applies the theories to the specific case of the OECD anti-bribery regime and identifies the key limitations of the OECD framework. These limitations should be further researched and considered when assessing the effectiveness of international regimes and designing regulation.

2. Extraterritorial Enforcement and International Bribery

In recent years, extraterritoriality has been a topic that featured in discussions of scholars and practitioners, mainly in the US and the EU. The US enforcement authorities applied extraterritorially statutes in a number of legal fields such as environment, competition, financial crime, or financial services (Chander, 2013, Coffee, 2014, Jägers et al., 2014, Nash, 2010). For instance, in 2015 the US Environmental Protection Agency opened an investigation against Volkswagen AG, a German car manufacturer, because the company allegedly cheated emission tests of its cars. Consequently, many other jurisdictions and private subjects initiated legal proceedings against Volkswagen AG (Anderson, 2015). *Volkswagen* is one of many cases in which a US investigation of a firm organized under foreign laws initiated investigation in a number of other jurisdictions. When it comes to the EU, extraterritoriality was mainly used in the EU competition law (Geradin et al., 2011). In other legal fields, the EU extraterritoriality is not as expansive as the US (Mestral, 2014, Scott, 2014a, Scott, 2014b).

Defining extraterritoriality remains controversial both conceptually and from a normative point of view. Scott provides that the key feature of extraterritoriality in the US is "the application of a measure triggered by something other than a territorial connection with the regulating state" (Scott, 2014a 90). For

example, the US extends its jurisdiction by using conspiracy claims such as in *the Bonny Island - TSKJ* case in which Dutch (Snamprogetti) and Japanese (JPG and Marubeni) members of a joint venture were charged exclusively with conspiracy, and aiding and abetting the violations of the FCPA anti-bribery provisions by a US corporation (Halliburton) and a French issuer (Technip).² In the EU, "the application of a measure is triggered by a territorial connection but in applying the measure the regulator is required, as a matter of law, to take into account conduct or circumstances abroad" (Scott, 2014a 90). This work uses a broad working definition of extraterritoriality that cover both the US and the EU approaches, meaning an application and enforcement of national laws to subjects acting beyond the borders of a given country.

2.1. Extraterritoriality is Controversial

The appropriateness of extraterritoriality has been discussed from many different angles. While extraterritoriality makes it easier to prosecute MNCs for their transnational bribes, it could also cause many problems. Some scholars discuss whether using extraterritoriality to govern the activities of the MNCs in foreign countries is moral imperialism (Nichols, 2012, Salbu, 2002). The US extraterritorial enforcement in developing countries might be viewed as the imposition of the western legal and cultural standards in foreign markets. Instead, it is legitimate to ask whether and to what extent the authorities of developing countries and their citizens would be better off if they define themselves how the MNCs should be doing business in their markets, and sanction the MNCs if they do not comply with such a benchmark.

Moreover, extraterritorial application of foreign legislation is not merely the question of moral values but also has important political and economic consequences. Spalding, for instance, provides that overseas anti-bribery enforcement as the imposition of economic sanctions against emerging markets (Spalding, 2010). In addition, many other scholars discussed that the US overseas enforcement of the

² 17 January 2012. United States of America v. Marubeni Corporation, Cr. No. 12-cr-022 (Information). Department of Justice. STOLEN ASSET RECOVERY INITIATIVE 2013. Bonny Island Liquefied Natural Gas Bribe Scheme.

Foreign Corrupt Practices Act (FCPA)³ is too demanding both for businesses and for developing countries (Ashe, 2005, Cuervo-Cazurra, 2006, Dalton, 2006, Koehler, 2010, Westbrook, 2011). In effect, despite the fact that extraterritorial enforcement might limit some bribery, an empirical evidence shows that it negatively influence economic growth and the inflow of foreign direct investment in the developing countries (Cuervo-Cazurra, 2006).

Nevertheless, despite all the controversy, it is generally recognized that international bribery is undesirable, and long-lasting bribery-based relationships between MNCs and governments from developing countries cannot be eliminated merely by businesses or regulation limited by national borders (Spahn, 2009). However, extraterritorial enforcement cannot be fully effective if it does not support collective action of states against bribery (Marquette and Peiffer, 2015).

3. Collective Actions Problems

Collective action problem is a situation in which individual motivations and group motivations are in conflict and the achievement of individual motivations leads to inefficiencies for a group as a whole (Olson, 1965). In the context of international bribery, the problem is that even if international bribery is detrimental to economic growth or the rule of law, countries might refrain from mitigating it. Economists call this a prisoner's dilemma situation, meaning that countries act selfishly and do not cooperate, but international community and citizens would benefit if they would cooperate (Ferguson, 2013, North, 1990, Olson, 1965, Williamson, 1996). One explanation of the lack of effective cooperation between the states are credibility and clarity problems

3.1. Credibility and Clarity Problems

The existence of a formal anti-bribery alliance of states is a pre-condition of the states' collective action against transnational bribery. The central challenge for building such an alliance is the so-called credibility problem characterized by the possibility of free-riding. This means that some actors might

³ 1977. The Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, et seq. . United States.

refrain from contributing to a common good while enjoying the benefits provided by other actors. If states are not able to persuade each other that they keep their promises and refrain from free-riding, they have the credibility problem (Gibbons and Henderson, 2012). Therefore, the lack of trust and negative perceptions state authorities might have about future acts of each other prevent the creation of alliances, weaken cooperation inside the existing alliances or lead to their diminishment (Bachmann and Zaheer, 2006).

Moreover, once states establish an alliance, they usually have a number of administrative-managerial problems. However, even if the alliance generally knows what to do and is motivated to do it, clarity problems that cannot be recognize and solved by the alliance in advance will occur (Gibbons and Henderson, 2012). Hadfield and Weingast claim that an alliance that face such clarity problems might still be effective if it has a classification institution that would clarify the terms of the original promise. In other words, they should have a mechanism classifying behaviour as wrongful or not (Hadfield and Weingast, 2012); mainly in the areas that are not directly agreed upon but are necessary for the fulfilment of the original agreement. If the alliance does not have an institution administrating the clarity problems, the lack of knowledge will undermine the understanding of the original agreements of the alliance and consequently increase credibility problems.

One example how credibility and clarity problems might be overcome is the case of the car manufacturer Toyota that was famous for its effective production system. Despite the system was deeply studied and followed by others, not many firms copied Toyota's practices successfully. Bowen and Spear argue that these firms lacked the success mainly because they focused on tools and tactics rather than on operating principles (Spear and Bowen, 1999). The authors found that Toyota was at the time successful not merely because of the creation and the use of new tools but mainly because it makes:

[...] all its work a series of nested, ongoing experiments, be the work as routine as installing seats in cars or as complex, idiosyncratic, and large scale as designing and launching a new model or factory. We argued that Toyota's much-noted commitment to standardization is not for the purpose

of control or even for capturing a best practice, per se. Rather, standardization – or more precisely, the explicit specification of how work is going to be done *before it is performed* – is coupled with testing work *as it is being done*. The end result is that gaps between what is expected and what actually occurs become immediately evident. Not only are problems contained, prevented from propagating and compromising someone else's work, but the gaps between expectations and reality are investigated; a deeper understanding of the product, process, and people is gained; and that understanding is incorporated into a new specification, which becomes a temporary "best practice" until a new problem is discovered (Spear, 2004).

Similar problems face state alliances because they similarly as firms need classification institution in order to ensure more effective implementation and enforcement of agreed rules. Furthermore, the above mentioned example indicates how cooperation and coordination can be effectively established even if one cannot specify exactly what problems might arise and how to solve them. In the state context, the main role of the classification institution is to explain that it is primarily the state's responsibility, and collective interest, to improve the performance of the alliance by dealing with clarity problems. The question is whether and in which areas states can establish similar level of collective action as firms.

How can states achieve more credibility and clarity by testing "work as it is being done" and integrating, with the help of the classification institution, their findings into explicit agreements about "how work is going to be done before it is performed"? Many issues such as international relations or considerations of public interest make operations of states and their alliances different from firms and their employees. Furthermore, these practices are conditioned by frequent interactions of individuals that clearly states cannot undertake in the same way as firms. Nevertheless, still many levels of states' interaction, including various governments' networks such as cross-border investigation teams, information sharing mechanisms fit the above mentioned example. Also in the context of the OECD international anti-bribery enforcement regime, state agencies including prosecutors, policy-makers, and legislators should take into account how important is to mitigate credibility and clarity problems, also

when adopting legislation. The following text analyses extraterritorial enforcement of OECD-based anti-bribery laws from the perspective of credibility and clarity problems.

3.2. Phase 1: Extraterritoriality and Initial Stage of Effective Regime

A number of scholars theorized that unilateral enforcement could, if used by a major economy, set an initial stage of an international regulatory standard (Coffee, 2014). In theory, large economies use enforcement leadership in order to ensure markets that are more efficient in the future. Consequently, large economies might relativize credibility problems if they are able to reach a large percentage of global trade. Small countries, on the other hand, generally do not dispose with high enforcement resources, and cannot impose so easily their jurisdiction over transnational activities of MNCs. Similar scenario was discussed at the time of the ratification of the OECD Anti-Bribery Convention (Windsor and Getz, 1999). In this context, we can hypothesize that even if most of countries do not spend enforcement resources and free-ride on the enforcement of large economies, the large economies enforcement relativizes credibility problems if it is able to cover many foreign corporations.

In practice, we see that the US enforce foreign bribery laws more often than any other country. The US robust enforcement is, however, relatively recent practice as the US has concluded most of big bribery cases only since 2007. While from 2002 to 2006 the DOJ and the SEC conducted in average three enforcement actions against corporations per year, it increased to average 14.25 enforcement actions from 2007 to 2014. The US authorities imposed in financial penalties, meaning fines, disgorgement, and pre-judgement interest, \$87 million in 2006, \$1.8 billion in 2010, and \$1.57 billion in 2014. In recent years the trend suggests that the US agencies focus on relatively small number of global bribery schemes that generate high value of penalties, in 2014 for instance: *Alstom* (\$772 million), *Alcoa* (384 million), *Avon* (\$135 million), or *Hewlett-Packard* (\$108 million) (Shearman & Sterling, 2015). Importantly, many of these companies are not organized under US laws. Figure 1 below demonstrates all anti-bribery

enforcement matters in which the US Department of Justice and the Securities and Exchange Commission imposed aggregate penalty at least \$30 mil.⁴

Figure 1:

Nationality of MNCs under US anti-bribery laws and penalties (2008-2015)			
France	Germany	Switzerland	United States
1. Alstom \$772mil (2014)	1. Siemens AG \$800mil (2008) 2. Daimler AG \$185mil (2010) 3. Magyar and Deutsche Telekom (Hungary/Germany) \$95mil (2011) 4. Bilfinger \$32mil (2013)	1. Weatherford \$252mil (2013) 2. Panalpina \$82mil (2010) 3. ABB Ltd \$58mil (2010)	1. KBR/Halliburton \$579mil (2009)
2. Total \$398mil (2013)			2. Alcoa \$384mil (2014)
3. Technip - \$338 mil (2010)			3. Avon \$135Mil (2014)
4. Alcatel-Lucent SA- \$137mil (2010)			4. HP \$108mil (2014)
Netherlands/UK/Italy/Japan			5. Johnson & Johnson \$70mil (2011)
1. BAE (UK) \$400 mil (2010)			6. Pfitzer Inc \$60mil (2012)
2. Snamprogetti/ENI (NL/Italy) \$365 mil (2010)			7. Bio-Rad \$55mil (2014)
			8. Archer Daniel

⁴ Author's note: this work goes in line with commonly accepted method used for calculating the FCPA statistics, the so-called "core" approach. Koehler notes that "The core approaches focuses on corporate conduct at issue regardless of whether the conduct at issue involves a DOJ or SEC enforcement action or both (as is frequently the case), regardless of whether the corporate enforcement action involves a parent company, a subsidiary or both (as is frequency the case), and regardless of whether the DOJ and/or SEC bring any related individual enforcement actions (as is occasionally the case)." KOEHLER, M. 2013. What is an FCPA enforcement action? : FCPA Professor.

3. SBM Offshore (NL) - coordinative enforcement by the US/Dutch authorities, sanction \$240mil imposed by the Dutch (2014) 4. JPG \$219 mil (2011) 5. Marubeni \$55mil (2012)		Midland Company \$54mil (2013)
16 matters against Non-US-based firms \$ 4428 million	8 matters against US-based firms 1445 million	\$

When studying the matters mentioned in Figure 1, my research identified three most important legal reasons why the US is able to cover so many foreign corporations:

- 1) **Territorial Nexus is Interpreted Broadly:** the US authorities interpret what constitutes a nexus with their territory broadly using links established by electronic communication and the US bank system as justification of their jurisdiction. For instance, in *Magyar Telekom*, the only concrete jurisdictional criterion was that electronic communications such as drafts of agreements with the foreign public officials, "were transmitted by Magyar Telekom employees and others through U.S. interstate commerce or stored on computer servers located in the United States."⁵ The employees were unaware that they are using servers located in the US.
- 2) **Conspiracy, aiding and abetting charges:** many foreign companies are reached by the use of conspiracy, and aiding and abetting charges. For instance, only one member of the TSKJ joint venture in the *Bonny Island* was a US based company but at the end, all non-US members of the joint venture and their foreign agent fell under US jurisdiction. For example, Marubeni, a foreign agent of the TSKJ, was charged despite the fact that it never acted while in the US.
- 3) **Liability for acts of others:** Once a given company is an issuer, the US authorities cover all subsidiaries controlled by the parent, practically treating them as a parent company. Together with

⁵ 29 December 2011. Securities and Exchange Commission v. Magyar Telekom, Plc, and Deutsche Telekom, AG, (complaint), No. 11-9646. Securities and Exchange Commission.

the use of conspiracy charges, this allows authorities to cover all elements of formal and informal corporate structures including foreign agents. In some cases, we see that the US authorities skip piercing of the corporate veil analysis such as in *Ralph Lauren*.⁶

From the perspective of the regime effectiveness, the US anti-bribery enforcement makes the credibility problem relatively less important because it may reach a wide spectrum of MNCs. This is also supported by academics that theorise that extraterritoriality might set an initial stage of an international regulatory standard. However, the question that follows is how extraterritoriality affects collective action once the initial stage of a regulatory standard is surpassed.

Slaughter and Zaring argued that if multiple authorities enforce a new standard, the existing regime could reach a new, and better, equilibrium only if states find political and legal instruments allowing them to cooperate and coordinate their actions, rather than use extraterritoriality as a foreign policy tool (Slaughter and Zaring, 1997). Similarly, the economic literature provides that “each country would benefit from cooperative multilateral actions taken by other countries, acting in their combined interests” (Falvey et al., 1999). In other words, market success depends on resolving coordination and enforcement problems that usually follow the initial stage of a new regulatory standard (Ferguson, 2013). At this place, we are getting to the clarity problems that are the key in reaching truly effective regimes.

3.3. Phase 2: Extraterritorial Enforcement and Clarity Problems

While national extraterritorial enforcement might relativize some credibility problems, it is not by itself the most effective way to regulate bribery. Firstly, such as enforcement is primarily based on the power of large economies. However, even large countries have jurisdictional and capacity limits. Thus, without the active participation of other countries, some markets might be under-regulated. Secondly, unilateral enforcement does not lead to the most effective use of enforcement resources. For example,

⁶ Press Release, *Ralph Lauren Corporation Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$882,000 Monetary Penalty*, U.S. DEP’T OF JUSTICE (Apr. 22, 2013), <http://www.justice.gov/opa/pr/2013/April/13-crm-456.html>; See also KOEHLER, M. 2014. A Foreign Corrupt Practices Act Narrative. *Michigan State International Law Review*, 22.

sharing of criminal evidence and other information, freezing stolen assets and recovering proceeds of crime cannot be done effectively without multidisciplinary cooperation. Thirdly, broad jurisdictional claims of leading economies may be seen as selective. It is noteworthy, as illustrate in Figure I above, that aggregate penalties imposed by US authorities to companies organized under non-US laws are approximately three times higher than penalties paid by companies organized under US laws. This fact has not only negative implication for the trust between states, but for the inefficient use of enforcement resources because of the potential enforcement overlap between various states. Therefore, despite the fact that unilateral enforcement might lead to an initial stage of an effective regime, it is not an optimal regulatory response to global problems such as international bribery.

As described above, a classifying institution is crucial for cooperation and coordination. In the case of the OECD anti-bribery framework, the OECD Working Group can be considered as an administrator of the OECD Convention. It uses various soft instruments such as self-assessments, peer reviews, and the publication of reports with recommendations. The OECD Working Group is, thus, a classifying institution of the OECD anti-bribery regime. However, it lacks the authority to decide a case if states are in a dispute, or to impose sanctions in case of non-compliance.

Despite the OECD has a mechanism dealing with clarity problems, the main responsibility is at the side of the OECD Convention signatories. Their main task is clear, i.e. make it a crime to bribe foreign public officials in international business transactions (Article 1 of the OECD Convention). However, as legal cultures of the signatories differ, the Convention "seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party's legal system." (paragraph 2 of the Official Commentaries to the OECD Convention). Thus, similarly as in the Toyota example above, states should expect clarity problems in the areas that are not or cannot be directly agreed upon but are necessary for the fulfilment of the original agreement. The signatories should, similarly as the employees of Toyota, be "active problem solvers" in determining what is functionally equivalent because the OECD monitoring

mechanisms cannot classify vague rules or enforcement behaviour that is not observable. I would like to refer to the two most important clarity issues that I discuss in my PhD project.

1) Substantive Law Fragmentation and Types of Foreign Bribery Schemes

There is usually not a single briber and a single bribery act. Depending on a strategy of the given enforcer, foreign bribery enforcement actions may present these acts in several different ways. Firstly, the *Siemens* matter is an example of an endemic bribery that is not confined to one bribery payment, but it includes an array of different transactions scattered throughout the world. What can be seen is that it covers a set of thousands of individual bribes conducted by Siemens' agents, subsidiaries and other persons acting on its behalf. Secondly, the *Bonny Island* matter included a much smaller number of projects but a number of large corporations bribed. Therefore, while *Bonny Island* is relatively homogenous scheme, *Siemens* covered a much broader range of activities. Moreover, there is a number of matters such as *FIFA* where bribe-givers and bribe-takers are two constituent elements of a foreign bribery scheme.⁷ Despite the fact that the latter cannot in principle be charged with a foreign bribery offense, the enforcement authorities can sometimes extend their jurisdiction and capture them as well. For instance, we can see that organization such as FIFA can be infiltrated by a mafia-like organization that corrupts the entire process. All members of such an organization may be captured under special laws such as the Racketeer Influenced and Corrupt Organization Act (RICO).⁸ It is true that *FIFA* is not in essence a FCPA case, but in fact, the activities of marketing organizations vis a vis quasi-public associations represent one way foreign bribery enforcement may be constructed and enforced.

Furthermore, this is not only that national enforcement authorities have discretion to decide how the case will be constructed vis a vis its facts, but also what substantive laws shall be applied to such a construction. Importantly, one set of facts can lead to the application of various substantive laws factually capturing foreign bribes such as accountancy, internal controls, foreign bribery, export laws, domestic

⁷ DEPARTMENT OF JUSTICE 27 May 2015. Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption

⁸ Section 901(a) of the Organized Crime Control Act of 1970, Public Law No. 91-452, 18 U.S.C. §§ 1961 - 1968.

bribery laws, anti-trust regulation etc. Despite the fact that the application of, for instance, accountancy laws instead of foreign bribery laws may lead to similarly severe penalties, thus might be considered functionally equivalent, the substantive concurrence have serious impact on many related procedural and substantive questions such as jurisdiction, coordination and cooperation.

2) Procedural Fragmentation

Furthermore, the functional equivalence allows the enforcement agencies to use multiple types of proceedings. Criminal, administrative or civil proceedings include a number of decisions and legally relevant facts, some of them developed only in practice. For instance, national enforcement authorities negotiate agreements with defendants, aiming to speed up the procedure. The defendant might provide evidence about its corrupt activities in exchange for non-prosecution or deferred prosecution, and lower penalties. These practices are formally part of the particular legal proceeding but they are not final judgements where we could identify all relevant acts. As the result we see, for example, in Siemens, Bonny Island, or Petrobras matters that a number of countries un-coordinately overlap in their enforcement efforts. This might lead to a wasted enforcement resources and prevents the OECD members from efficiently cooperating, coordinating their actions, and use their full potential to hold MNCs accountable for transnational bribery.

4. Conclusion

Regimes based on a decentralized national enforcement might be effective in tackling global problems if states act collectively. The effectiveness of regimes depends on how they are able to deal with credibility and clarity problems. From this perspective, the article analysed the regime based on the OECD Anti-Bribery Convention. Regarding the credibility problems, we see that the US frequently enforce their anti-bribery laws extraterritorially. In theory, extraterritorial enforcement is rather self-interested practice than a multilateral and collaborative response to global economic challenges. On the one hand, extraterritoriality allows large economies to prosecute MNCs all around the world and offsets the lack of regulatory response in jurisdictions that are not able or willing to prosecute the bribery. On the

other hand, provided a number of jurisdictional overlaps, differences in legal, cultural, and economic aspects of various countries, it is unclear when exactly large economies should or should not enforce their laws extraterritorially.

The credibility and clarity problems are partially mitigated by the OECD Convention and its review mechanisms. However, because of various clarity problems related to, for instance, general difficulty to govern MNCs, differences between states in terms of their substantive and procedural laws, or economic differences between states, extraterritorial enforcement of foreign bribery laws can achieve only limited results when it comes collective action. There is a space for the improvement in the harmonisation of certain legislative issues such as substantive laws capturing foreign bribes, mutual legal assistance, or more transparent use of settlement mechanisms. Furthermore, states should more actively support informal experience-sharing between prosecutors and police agencies.

Nevertheless, it must be noted that extraterritorial regimes are built mainly for large economies that can afford engaging in large enforcement actions. As such an enforcement must to a great extent reflect their national enforcement policies, not every enforcement is necessarily beneficial for collective action as states may be strategic in targeting certain corporations or if there is an over-enforcement. Not every state can be expected, because of its jurisdictional reach and revenues gathered by sanctions, to be active in the same way. Most importantly, smaller states should be incentivized to assist more actively bigger economies by providing more evidence and other assistance, and allow enforcement leaders such as the US to lower their enforcement costs by punishing the bribery schemes in their complexity. Smaller economies should be then recognized for their assistance, that should be in its core evaluated as active enforcement, and gain some control over the leader's enforcement, either through factual or, later, legal means. The question for the OECD is to continuously define and re-define what the signatories are reasonably expected to do when it comes to the enforcement results.

In all, credibility and clarity barriers will always accompany extraterritorial regimes. It does not mean that the OECD anti-bribery regime is wrong or defective. Rather, it points towards natural

limitations of state enforcement and the ability of states to act collectively. The OECD regulatory framework is an important instrument in the fight against transnational corruption and bribery. The question for further research is to consider whether we can integrate foreign bribery enforcement under the broader scope of financial crime regulation. If, the above-mentioned credibility and clarity would be too much of a barrier to cooperation and coordination, the enforcement would stay highly political. Most probably, possible future enforcement from other leading economies may only further increase coordination problems. If that is the case, we should think about how political and "exemplary" extraterritorial enforcement may coexist with alternative anti-corruption regulatory mechanisms such as private self-regulation or multi-stakeholder initiatives that may bring more credibility, clarity and trust than national states.

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