

Preface

The practice of offering negotiated settlements to corporate offenders facing corruption allegations poses a range of questions that are difficult to answer, and those questions triggered our academic interest and curiosity almost a decade ago. A conference on what international actors can do in anti-corruption reform, organized in 2011 by Susan Rose-Ackerman and Paul Carrington at the Rockefeller Foundation Bellagio Center in Bellagio, Italy, addressed the need for better policy solutions and established a good basis for our cooperation.¹ At that time, Tina Søreide was starting her postdoc in law with studies of corporate criminal liability. Abiola Makinwa initiated a European Union-financed comparative research project on negotiated settlements in eight European countries, a project in which Tina took part as rapporteur for the case of Norway.² Although that project gave us new insight into settlement practices, it also intensified our interest in the many unresolved questions.

With a view to gathering more information, the Anti-Corruption Committee of the International Bar Association (IBA), then led by Pascale Dubois and Bruno Cova, gave us the opportunity in 2016 to establish a subcommittee on settlements.³ With Abiola as chair of the subcommittee and Tina as vice chair, we organized a global IBA survey. Rapporteurs in 66 countries provided detailed reports on settlement-related rules and practices, including on how these might diverge. The IBA yearly conferences on corruption, held at the Organisation for Economic Co-operation and Development (OECD) headquarters in Paris, were instrumental in securing support for the survey and provided a forum for debate around the practices observed.

Meanwhile, we also realized that the normative evaluative framework for governments' use of settlements was vague, and commenced this book project. There was – and still is – a need to mobilize academics for reflection

¹ Rose-Ackerman, Susan. International actors and the promises and pitfalls of anti-corruption reform. *UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW*. 34, 447. (2012).

² Makinwa, Abiola (ed.). *NEGOTIATED SETTLEMENTS FOR CORRUPTION OFFENCES: A EUROPEAN PERSPECTIVE*. Eleven International Publishing, 2015.

³ The subcommittee is now chaired by Peter Solmssen: https://www.ibanet.org/LPD/Criminal_Law_Section/AntiCorruption_Committee/Non-Trial-Resolutions-of-Bribery-Cases.aspx.

and discussion about the regulation and enforcement of corporate settlements. This volume is the result of an inspiring and productive process in this regard.

During the same period, Tina participated in the OECD Secretary-General's High Level Advisory Group on Anti-Corruption and Integrity (HLAG), which started soon after the G20 commissioned a study of the consequences of corruption⁴ and agreed on seven principles describing the harms associated with the problem.⁵ The HLAG prepared a report on how the OECD could use its position to strengthen existing initiatives against corruption and develop new ones. One of the recommendations of the report, Recommendation 6, suggested that the OECD "create and publish model guidelines for criminal and civil settlements and voluntary disclosure consistent with the requirement for effective, proportionate and dissuasive sanctions under the OECD Anti-Bribery Convention."⁶ Tina and another HLAG member, Peter Solmssen, an experienced business lawyer known for his role in settling bribery cases for Siemens, brought this particular recommendation forward. The OECD agreed to develop guidelines, and Tina and Peter became the nucleus of a highly experienced and diverse group of experts known as the Recommendation 6 Network, which included Abiola and several contributors to this volume.⁷ The network developed a set of principles for more legitimate use of settlements, which was submitted as a proposal to the OECD Working Group on Bribery in International Business Transactions (WGB) in March 2019.⁸ At the same time, the OECD WGB conducted a survey of the use of settlements in bribery cases among member countries, leading to new information of high relevance to chapters in this volume.⁹

Our deepest gratitude goes to the scholars who have contributed chapters to this volume and without whom there would be no book. We also want

⁴ OECD. CONSEQUENCES OF CORRUPTION AT THE SECTOR LEVEL AND IMPLICATIONS FOR ECONOMIC GROWTH AND DEVELOPMENT. 2015.

⁵ The G20 High Level Principles on Corruption and Growth.

⁶ High-Level Advisory Group, Report to the OECD Secretary-General on Combating Corruption and Fostering Integrity, OECD Paris, 2017: <https://www.oecd.org/corruption/oecd-hlag-anti-corruption-and-integrity.htm>.

⁷ An important event in this respect was the November 9, 2017 conference at New York University, "No Turning Back: 40 Years of the FCPA and 20 Years of the OECD Anti-Bribery Convention": <https://www.oecd.org/corruption/40-20-anniversary-conference-2017.htm>.

⁸ The Recommendation 6 Network of Experts: International Guidelines for Non-Trial Resolutions in Foreign Bribery Cases: <https://www.nhh.no/en/research-centres/corporate-compliance-and-enforcement/guidelines-for-non-trial-resolutions/>.

⁹ OECD. RESOLVING FOREIGN BRIBERY CASES WITH NON-TRIAL RESOLUTIONS: SETTLEMENTS AND NON-TRIAL AGREEMENTS BY PARTIES TO THE ANTI-BRIBERY CONVENTION. 2019.

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¹⁰ Conference program at the PCCE website: <https://www.law.nyu.edu/centers/corporatecompliance/events/academic-conference-april-2019>.

