

Globalised Business and Anti-Corruption Legal Strategies: Challenges for Private International Law in Promoting Public Policy (summary)

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A paradigm shift will be required if private international law is to contribute to the global public policy challenges that have recently attracted attention, such as the SDGs and 'Business and Human Rights'. This is because public policy is typically a matter of public law, which is also related to traditional jurisprudence's adherence to the perception that it is realised through state power. The assumption is that public policy is defined for each nation-state, and the way in which it is promoted is based on administrative and criminal law, because it has been thought to be realised through the command and control of state power. It is inconceivable that a state would apply foreign public law to promote its own public policy, which means that public law cannot even be the subject of a choice of governing law.

Therefore, as a premise for positioning this paper as a study related to private international law, we would like to extend this traditional area of private international law studies. In other words, private international law is redefined as a legal field that covers a wide range of devices and measures to realise a certain degree of coordination and cooperation between countries, while maintaining the legal systems of each country with their own autonomy. To that extent, the expression 'private international law studies' is no longer appropriate and should perhaps be renamed conflicts law studies. With such a redefinition, it attempts to bring global public policy issues within its field of study.

As an example of successful global public policy promotion, I deal with the emergence of a legal framework for the prevention of bribery to foreign public officials. This has been achieved not through the establishment of supranational enforcement agencies under public international law, nor through the strict unification of law, but through the international sharing of global public policy issues and the cooperation at the practical level of the lawyers responsible for their enforcement.

Being based on criminal sanctions is the most important feature of this approach. First, the imposition of strict criminal penalties sends a strong message of deterrence. Its effectiveness requires a strong enforcement mechanism, which is provided by the close cooper-

ation of enforcement authorities in other relevant countries in the investigation and enforcement of cases of massive corruption often lead by prosecutors of the US Department of Justice. This approach allows for the smooth penetration of anti-corruption legal practices into the respective countries.

Private international law studies (conflicts law studies) urgently needs to address this issue. This is because it is precisely the issue at the heart of devising ways and means of achieving a certain degree of coordination and cooperation between countries, while maintaining the autonomy of their respective legal systems. Neither public international law nor criminal law, which are adjacent fields, have discussed this issue. Moreover, it is an extremely interdisciplinary field that requires an accurate understanding of compliance, legal professional development and the criminal justice system. Therefore, the new era of conflicts law studies will require a substantial exchange of information with experts in a variety of related fields. In this respect, our traditional private international law has little experience, making it an extremely difficult challenge to transform it into a discipline geared towards the realisation of international public policy. To turn a blind eye to this challenge, however, would be to turn our backs on the demands of the times. (Conclusion.)