Chapter 3

Entry Sanctions as an Anti-corruption Policy

1 Introduction

The previous chapter has described how the US has used entry bans as a tool of anti-corruption enforcement and how this policy has been endorsed internationally. This chapter seeks to offer a holistic appraisal of the use of entry bans as an anti-corruption policy. It discusses what corruption is, how the line between corrupt and legitimate conduct is drawn in borderline scenarios, what is bad about corruption, and what the implications of grand corruption are. The chapter proceeds to examine existing international policies that address corruption, namely the criminalisation of foreign bribery and anti-money laundering laws. Turning then to anti-corruption entry sanctions, this chapter looks at why states counteract foreign corruption at all and what purposes denial of entry to persons suspected of corruption can have.

The analysis in this chapter is helpful for identifying the purpose(s) behind anti-corruption entry sanctions and establishing whether they amount to punitive and potentially criminal measures. If they do, then criminal procedural guarantees under international human rights law apply, including the presumption of innocence and the prohibition of retroactive punishment.

2 What Is Corruption?

2.1 Definitions

2.1.1 A Public Policy Perspective

Perhaps the best-known definition of corruption is that given by Transparency International, namely the abuse of entrusted power for private gain.\(^1\) This definition has been adopted by a number of international organisations and in scholarly works alike.\(^2\) To borrow Laura Underkuffler’s expression, this is a ‘shell definition’ of corruption – as opposed to a substantive definition – because it

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\(^2\) See, e.g., Chaikin and Sharman (see Chapter 1 note 22) 8; Claes Sandgren, ‘Combating Corruption: The Misunderstood Role of Law’ (2005) 39 International Law 717, 722. This definition is traced back to JJ Senturia’s *Encyclopaedia of Social Sciences*, Vol v (1931): Society for Advanced Legal Studies (see Chapter 1 note 24) ¶1.5.
does not specify what constitutes abuse of power.\(^3\) That differs across states and epochs, and the uncertainties are aggravated by political and moral overtones inherent to the concept.

The fight against corruption has a long history. As early as over two thousand years ago, Plato and Aristotle were concerned with designing a system of governance that would restrain the influence of the rulers’ selfish considerations on public affairs, and so exclude corruption of the elites.\(^4\) The history of representative government and democracy is a chronicle of constraints imposed on decision-makers, who are naturally predisposed to self-serving behaviour.\(^5\) It is, therefore, a story of fighting corruption in its broad sense, which reaches beyond the boundaries of criminal law.\(^6\) The Organisation of Economic Cooperation and Development (OECD) separates its definitions of corruption for policy and criminal law purposes, as conflating the two may lead to a conceptual confusion.\(^7\) The policy-oriented definition of corruption highlights the limitations of criminal law, which is helpless against corruption that is legally entrenched and institutionalised.\(^8\)

As for the criminal law dimension of corruption, governments have historically sought to address the instances of abuse of official power by their subjects, such as bribery.\(^9\) At the same time, the division between unlawful bribes and lawful gifts or other conferrals of benefit is culturally contingent. Much of what is corrupt in a modern representative democracy would not have been reprehensible, let alone punishable in rigidly monarchic or feudal societies of past. In essence, corruption is an antithesis to whatever is believed to be sound, non-corrupt governmental practices.\(^10\)

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3 Underkuffler (see Chapter 1 note 32) 8–20.
5 Barry Hindess, ‘Introduction: How should we think about corruption?’ in Barcham et al (note 4) 10; Teachout (see Chapter 1 note 32) 32–67.
8 See Daniel Kaufmann and Pedro Vicente, ‘Legal Corruption’ (2011) 23 Economics & Politics 195; Sandgren (note 2).
9 Noonan (see Chapter 1 note 32) xx. See also Timothy Martin, ‘The Development of International Bribery Law’ (2013) 14 Natural Resources & Environment 95, 95.
10 Mulgan (note 4) 28–34.