

## Abstract of the Thesis

### ***“The Fight against International Corruption and Sustainable Development in the Energy Sector”***

The dissertation is aimed at investigating the so-called international public corruption, through the analysis of its impact on sustainable development. This crime, set forth in art. 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, concerns the conduct of a person who *“intentionally offers, promises or gives any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”*.

Such practice could occur in sectors characterized by a strong relevance of financial interests and by the interaction between public and private fields, namely the area of the public procurement and licenses.

It should be pointed out that the intensification of trade, the structural diversity among domestic legislations, along with the emergence of new economic and institutional actors led to the internationalization of the corruption that could be considered as a global issue.

This metamorphosis showed the inadequacy of domestic repressive systems, which are unable to fight the growing corruption; thus international community has promoted the adoption of new instruments and remedies aimed at reducing the phenomenon.

The first part of the research will focus on the international legal framework against corruption.

From a preliminary analysis it could be noted that the OECD Convention, a landmark for the entire area, covers on the active side of bribery conduct, omitting the passive bribery.

Accordingly there is a substantial asymmetry between the obligations imposed on the briber, subject to the rules of the implementation on the OECD Convention, and those imposed on the corrupted public official, whose work is not subject to such legislation.

In 1994 Working Group on Bribery (WGB) was created in order to control the implementation and enforcement of the OECD Convention. Meanwhile, on a European level, Council of Europe created the Group of States against Corruption (GRECO) with a similar task which consists of monitoring States' compliance with the organization's anticorruption standards.

It should be pointed out that along with hard law instruments there are some important soft law instruments, such as recommendations, drawn up by international organizations which are not subject to any deep control regarding their implementation. This leads to a vague and imprecise legal framework which emphasizes the urgency to create a uniform administrative system, where national and global law can contribute to define a composite regulation, in which the variety of norms can interact.

Accordingly the study of the international means will be so precious in order to evaluate and compare their level of effectiveness and incisiveness.

The leitmotiv that is going to guide this project focuses particularly on the negative consequences that the phenomenon of corruption provokes in the area of sustainable development.

Sustainable development is a multidimensional concept, since it consists of three dimensions - economic, social and environmental which are deeply interconnected.

The following spheres will be treated independently and separately.

Economic Sustainability is the most elusive component of the triple bottom line approach and it intends to promote the use of available resources in a way that is efficient and responsible and likely to provide long-term benefits.

It could not be ignored that corruption has a dramatic impact on this sphere, since it is likely to distort competition between companies and to restrict the development of the economy.

According to a World Bank estimate, in many areas of the world, companies bear a mark-up costs of approximately 10%, due to corruption and more than \$1 trillion dollars (US\$ 1,000 billion) is paid in bribes each year.

These data are consistent with a study conducted by Price Waterhouse Coopers which identifies the corrupt markets as a major obstacle to the economic recovery, after the recent global crisis. Therefore a macro-economic analysis will be conducted through indicators elaborated by Transparency International such as the Corruption Perception Index (CPI) and the Bribe Payers Index (BPI). Those indices will let to identify sensitive sectors which are potentially affected by corrupt acts and to assess the best practices for an incisive enforcement.

The economic sphere is deeply linked to social and environmental aspects, since it involves the full awareness of the impact of economic growth on society and on the environment.

The social element of the principle of sustainability can be identified by the ability to ensure the equitable distribution of human welfare conditions, namely security, health, education, democracy and justice;

while the environmental component is closely linked to the protection of ecosystems and the maintenance of natural resources.

Accordingly the achievement of sustainability is inconsistent not only with the economic decline but also with the violation of the dignity and human freedom and with the deterioration of the heritage and natural wealth.

The connection between corruption and the environment has emerged for the first time in the report of the 2001 Environmental sustainability, developed by the World Economic

Forum, and recently in the 2030 Agenda for Sustainable Development published by the United Nations in September 2015. In particular the campaign promoted by the United Nations have increased the awareness that the fight against corruption can boost sustainable development.

Moving from the regulatory framework, the research will focus, therefore, on the most significant manifestations of corruptive acts, which could produce devastating effects in ecosystem sphere, and which are mainly due to the conduct of multinational corporations merely driven by profit maximization.

The main aim of this project consists in giving an overall framework of international public corruption, seen in all its facets and implications.

The analysis will highlight the current relations between the crime and the three dimensions of sustainable development that, albeit interconnected, will be the subject of separate analysis, conducted through aggregate indicators (such as CPI, BIB), developed by the international community and used in combination with each others.

An important part of the research will also focus on the study of the reports published by the monitoring bodies, including the WGB and the GRECO. From these data it will be possible to obtain reliable

information about the current state of implementation of anticorruption legislation on an international level and to conduct a comparative analysis.

A preliminary research shows a conventional framework which, although rich and articulated, is characterized by different methodological approaches that do not seem to be fully integrated.

With regard to domestic law, a comparative study will be conducted on: The Foreign Corrupt Practices Act; The Bribery Act of 2010 and the Civil Service Management Code of 2004 adopted by the United Kingdom; the Italian law no. 231/2001. The study will also take into consideration the European Directives on public contracts that are sensitive to social issues and environmental protection.

In order to provide an overall view relevant case law will be analyzed along with the practices of multinational corporations and their *modus operandi*, thanks to valuable data provided by the NGOs.

Finally it is important to point out that the study of the fight against corruption, that should be analyzed from different perspectives, shows the particular interdisciplinary character of the present research. In fact, it involves international law, criminal law, environmental law, economic studies, the protection of fundamental rights, as well as the regulation of the so called global administrative law.

Accordingly each branch will be essential for the full comprehension of this phenomenon and for the identification of its particular elements.

The project will try to provide concrete answers about the actual possibility of combining the international transactions of corporations and industries with the fight against corruption, according to a sustainable development perspective.