

# The Progressing Proposal for An International Anti-Corruption Court



Mark L. Wolf, Richard Goldstone,  
and Robert I. Rotberg

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# I. Introduction

In 1945, U.S. Supreme Court Justice Robert H. Jackson gave a speech to the American Society of International Law (ASIL) that became a roadmap for the creation of the International Military Tribunal at Nuremberg. The tribunal, which fairly and effectively tried alleged Nazi war criminals, itself became the foundation for international courts to enforce international criminal law, ensuring that guilty individuals can be held accountable for their crimes. At the outset of his address, Justice Jackson said to the assembled international lawyers,

You are aware of the confusions, of the incompleteness, of the lack of ordinary sanctions, and of all that might be said in criticism of international law. Yet you are here . . . to reiterate your inveterate belief that international law . . . offers the only hopeful foundation for an organized community of nations.<sup>1</sup>

Justice Jackson was referring to the then-urgent need to prosecute perpetrators of war crimes and crimes against humanity. Today, his words are equally applicable to the urgent need to create an effective means to prosecute the perpetrators of grand corruption: that is, an International Anti-Corruption Court (IACC).

Grand corruption—the abuse of public office for private gain by a nation’s leaders (kleptocrats)—is a major barrier to meeting the United Nations (UN) Sustainable Development Goals, responding effectively to pandemics, fighting climate change, promoting democracy and human rights, establishing international peace and security, and securing a more just, rules-based global order.<sup>2</sup> Grand corruption does not endure due to a lack of anti-corruption laws. One hundred and eighty-one countries are party to the UN Convention against Corruption (UNCAC), which requires them to have laws criminalizing varying forms of corruption.<sup>3</sup> However, corrupt Heads of State and Government, and many other corrupt senior government officials, are able to commit their crimes with impunity in their own countries because they control the police, prosecutors, and courts.

At present, there is no international institution to hold kleptocrats accountable for their crimes of corruption when the countries they rule are unwilling or unable to do so. An IACC would, therefore, fill the crucial enforcement gap in the international framework for combatting grand corruption. It would constitute a fair and effective forum for the prosecution and punishment of kleptocrats and their collaborators; deter others tempted to emulate their example; and recover, repatriate, and repurpose ill-gotten gains for the victims of grand corruption.

# II. The Need for an International Anti-Corruption Court

## A. The Consequences of Grand Corruption

Grand corruption has a long and enduring history in many countries. It is not a victimless crime. Rather, it has devastating human consequences. In developing countries, over ten times more money is lost to illicit financial flows than is received in foreign aid.<sup>4</sup> In addition, as then-UN High Commissioner for Human Rights Navi Pillay explained, “Corruption kills. The money stolen through corruption every year is enough to feed the world’s hungry 80 times over. . . . Corruption denies them their right to food and, in some cases, their right to life.”<sup>5</sup>

The COVID-19 pandemic makes this even more clear. It has, predictably, proven to be a bonanza for kleptocrats because trillions of dollars have been disbursed without even the usual, frequently ineffective safeguards.<sup>6</sup> Among the many arrested or searched but not convicted in COVID-19-related corruption investigations are the former Bolivian health minister, the former president of Ecuador, and the prime minister of Bosnia’s Muslim-Croat Federation.<sup>7</sup>

Grand corruption also contributes to climate change and is a major impediment to ameliorating it. For example, kleptocrats profit greatly from the illicit forestry trade, which is estimated to be worth \$51–\$152 billion annually.<sup>8</sup> Unless something significant is done to deter grand corruption, a large percentage of the billions in aid intended to diminish climate change will be misappropriated by kleptocrats and their collaborators. The primary recipients of government climate-related development aid are countries that are perceived as among the most corrupt in the world, including Bangladesh, Uganda, Mexico, and Indonesia.<sup>9</sup> In addition, the risk of corruption will discourage private investment from being made in the countries that need it most. This will particularly injure the poor and powerless, who are disproportionately harmed by climate change and increasingly forced to migrate because of it.<sup>10</sup>

Moreover, the legions of refugees overwhelming countries in the Americas and Europe are fleeing failed states ruled by kleptocrats, including Syria, Venezuela, and South Sudan.<sup>11</sup> Any effort to alleviate the world’s refugee crises must, therefore, address a fundamental cause of forced migration: grand corruption.



In addition, citizens' indignation at grand corruption has destabilized many countries and, as a result, created grave dangers for international peace and security. This is epitomized by Ukraine, where the flagrant corruption of President Victor Yanukovich was a major cause of the 2014 Maidan protests that drove him out of office and to Russia, the ensuing Russian invasion of Crimea, and its continuing dangerous aftermath.<sup>12</sup>

Grand corruption is also antithetical to democracy. Kleptocrats regularly repress independent journalists and civil society organizations with the potential to expose their criminal conduct.<sup>13</sup> The individuals, corporations, and criminal syndicates that bribe kleptocrats also illegally finance campaigns in elections that are neither free nor fair.

The Pandora Papers, published in 2021 by the International Consortium of Investigative Journalists (ICIJ), provide additional compelling evidence that corrupt leaders throughout the world, aided and abetted by domestic and international accomplices, are enriching themselves at the expense of the health and welfare of their often-desperate citizens and are secretly using the international banking system to move their substantial ill-gotten gains to foreign countries. The Pandora Papers investigation exposed the secret finances and lavish lifestyles of more than 330 politicians, including thirty-five current and former Heads of State.<sup>14</sup> The Pandora Papers follow the ICIJ's Panama and Paradise Papers, which provided similar evidence of grand corruption but resulted in the conviction of only one politician, the former prime minister of Pakistan.<sup>15</sup>

Because grand corruption pollutes the international financial system and has other severe international consequences, it is not just a domestic problem for individual countries to address alone. Rather, it is a global problem that requires a global solution.

## **B. Grand Corruption Does Not Exist Because of a Lack of Anti-Corruption Laws**

Almost all of the 181 states that are party to the UNCAC have enacted the required statutes criminalizing bribery, money laundering, and misappropriation of national resources.<sup>16</sup> The Vienna Convention on the Law of Treaties requires that each country make a good-faith effort to enforce those laws.<sup>17</sup>

However, some states that are party to the UNCAC are governed by kleptocrats who enjoy impunity in the countries they rule because they control the police, prosecutors, and courts, which are often also corrupt themselves. Those kleptocrats will not permit honest, effective investigation of themselves or their criminal collaborators. In other countries, leaders or other officials are willing to try to hold kleptocrats accountable but

do not have the capacity to conduct complex criminal investigations or try complex cases, particularly against wealthy, powerful people.

Statutes such as the U.S. Foreign Corrupt Practices Act (FCPA) and its forty-three counterparts enacted in countries that are party to the Organization for Economic Cooperation and Development (OECD) Convention against Bribery are inadequate to erode the impunity kleptocrats enjoy. Those statutes permit the prosecution of individuals and organizations that pay bribes but not of the public officials who demand or accept them. In addition, except in the United States and, recently, the United Kingdom, Switzerland, and Israel, those statutes are rarely, if ever, enforced.<sup>18</sup> A fundamental premise of criminal law is that the prospect of punishment will deter crime. Research has validated this premise, including with regard to violations of human rights.<sup>19</sup> The absence of risk of punishment, particularly imprisonment, contributes greatly to the pervasiveness and persistence of grand corruption.

# III. The International Anti-Corruption Court

Because grand corruption has international consequences and flourishes in many countries in meaningful measure due to the lack of enforcement of domestic criminal laws, the IACC is justified and necessary. Creation of the IACC was first proposed in 2014.<sup>20</sup> It has been, and remains, an evolving concept.<sup>21</sup> Some details concerning the IACC must be further developed. However, as Justice Jackson said in 1945,

It is important that we do not allow the assumptions that lie at the foundation of any worthwhile judiciary to become obscured in issues or pressures about details. These are not unimportant matters, but they are subsidiary to . . . the great principles on which an international tribunal must be based.<sup>22</sup>

The fundamental features of the IACC as currently conceived include the following.

## A. The Officials Subject to Prosecution in the IACC

The IACC would have the authority to prosecute Heads of State or Government, certain other high-level public officials (such as those appointed by a Head of State or Government), and anyone who knowingly and intentionally assists one or more of these individuals in the commission of a crime within the IACC's jurisdiction. Therefore, the IACC would, for example, have the authority to prosecute private parties who pay bribes or who assist in laundering the proceeds of crimes of corruption committed by public officials whom the court has the authority to prosecute.

Heads of State or Government, and other officials within the jurisdiction of the court, would not have personal immunity (*ratione personae*) or functional immunity (*ratione materiae*) from prosecution in the IACC while in or after holding office. Personal immunity protects all acts of an individual while in office, and functional immunity provides protection to officials only for their official acts while they were in office.

By joining the IACC, a member state would agree that such immunities do not protect its present or former officials from prosecution in the IACC. Like treaties establishing the ICC and other international courts,<sup>23</sup> the treaty creating the IACC would provide that officials of third-party countries,

including present and former Heads of State or Government, would not have immunities in the IACC that usually protect them from prosecution in national courts other than their own. This would be consistent with authoritative statements of customary international law. In 2019, the ICC Appeals Chamber decided, in a situation referred to it by the UN Security Council involving President Omar al-Bashir of Sudan, which is not a member of the ICC, that principles of personal and functional immunity apply to “horizontal relationship between States,” but “no immunities under customary international law operate . . . to bar an international court in its exercise of its own jurisdiction.”<sup>24</sup> The ICC’s decision in *al-Bashir* followed a 2002 decision of the International Court of Justice (ICJ), in which it held that an “incumbent or former [Head of State or Government] or Foreign Minister may be subject to criminal proceedings before certain international courts, where they have jurisdiction.”<sup>25</sup>

## B. Crimes Subject to Prosecution in the IACC

The IACC would have the authority to enforce the laws required by the UNCAC, particularly those criminalizing bribery, embezzlement of public funds, misappropriation of public property, money laundering, and obstruction of justice.<sup>26</sup> This could be done by giving the IACC jurisdiction, with the consent of the state party concerned, to enforce existing domestic laws, a uniform version of them included in the treaty creating the court, or both.

In any event, the IACC would not require the creation of any new norms. Rather, it would provide a forum for the enforcement of existing obligations that are codified in the criminal laws of virtually every country but not enforced against kleptocrats and their collaborators in the countries that the kleptocrats rule.

## C. The Authority to Prosecute Nationals of Nonmember States

The IACC would have jurisdiction to prosecute nationals of member states and foreign nationals who commit all or elements of a crime within the jurisdiction of the IACC in the territory of a member state. Therefore, a kleptocrat who, for example, accepts a bribe in a state that is not a member of the IACC and uses the banking system of a member state to transfer or hide the proceeds of that crime in violation of the member state’s domestic laws could be prosecuted for money laundering in the IACC if the member state were unable or unwilling to prosecute.

This is important because kleptocrats routinely conspire with enablers to use international financial systems to launder the proceeds of their corrupt conduct and to relocate them as assets in attractive foreign destinations, while attempting to mask their beneficial ownership of those assets. For example, the leaders of Russia are widely suspected of such behavior. In 2016, the ICIJ's Panama Papers revealed that close associates of President Vladimir Putin moved \$2 billion (in individual transactions involving up to \$200 million) through international banks and companies created to mask their true beneficial owners.<sup>27</sup> Putin's friend since childhood, a cellist who had claimed he was not wealthy, was revealed to have almost £19 million in a Swiss bank, as well as investments in numerous Russian and off-shore entities, including a 3.9 percent share of a Russian bank with assets of almost \$11 billion.<sup>28</sup> In 2017, Russian Prime Minister Dimitri Medvedev was revealed to have accumulated more than \$1 billion worth of property, including land in Tuscany and two yachts.<sup>29</sup>

Similarly, after uprisings prompted in part by indignation at pervasive corruption, in January 2022 the family of Kazakhstan's former president, Nursultan Nazarbayev, was revealed to have bought many expensive properties in London while he was in office.<sup>30</sup> Those properties include one of Prince Andrew's homes, bought by Nazarbayev's son-in-law for £15 million.<sup>31</sup> As of 2020, the former president's daughter and grandson owned property in London worth at least £80 million.<sup>32</sup>

Crimes such as conspiracy and money laundering are continuing offenses, elements of which may be committed in part in several jurisdictions. If an official of a nonmember state or a coconspirator launders money in a member state, he or she would be subject to prosecution in that member state or, under the principle of complementarity, subject to prosecution in the IACC if the member state itself were unable or unwilling to prosecute.

Again, the experience of the ICC is illustrative. The ICC authorized an investigation of possible war crimes committed by members of the U.S. military in Afghanistan, which is a member of the ICC, although the United States is not.<sup>33</sup> Similarly, the ICC is investigating possible crimes committed by individuals in the nonmember state of Myanmar, who coerced Rohingya people to flee to Bangladesh, which is a member state. The investigation was permitted because, as the ICC stated, "under customary international law, states are free to assert territorial criminal jurisdiction, even if part of the criminal conduct takes place outside of its territory, as long as there is a link with their territory."<sup>34</sup>

If even one element of an offense were committed by a kleptocrat in an IACC member state, the crime could be prosecuted there. If the state were willing but lacked the capacity to prosecute, or was for geopolitical or other

reasons unwilling to prosecute, the kleptocrat and his or her coconspirators could be prosecuted in the IACC.

#### D. Complementarity

The IACC would be a court of last resort. Operating on the principle of complementarity, it would investigate or prosecute only if a member state itself were unwilling or unable to prosecute.

Absent a referral from a member state, the IACC would decide whether to defer to the member state or exercise jurisdiction itself. In doing so, the IACC would be guided by principles in Article 17 of the Rome Statute that created the ICC and the substantial jurisprudence concerning complementarity developed, and continuing to develop, in the ICC. Like the ICC, the IACC would consider, for example, whether the member state is already investigating or prosecuting the matter; if so, whether those actions constitute a good-faith effort or a pretext to protect a possible criminal from being held accountable; and, in any event, whether the member state has the capacity to conduct the investigation or prosecution independently, impartially, and effectively.<sup>35</sup> In addition to the factors in Article 17 of the Rome Statute, in deciding whether a member state is unwilling or unable to carry out an investigation or prosecution, the IACC would also consider whether its national judiciary generally operates honestly rather than corruptly.

An IACC operating under the principle of complementarity would give many countries an incentive to improve their own capacity and efforts to prosecute corruption. Evidence indicates that both a former president of Colombia and the Revolutionary Armed Forces of Colombia factored the possibility of ICC prosecution into their negotiations to end a fifty-year civil war.<sup>36</sup> This evidently contributed to the ICC's decision to conclude a lengthy preliminary investigation of Colombia and to enter into a joint cooperation agreement in which Colombia pledged to continue relevant proceedings in good faith and the ICC pledged to support Colombia in doing so.<sup>37</sup> In reaching this agreement, the ICC and Colombia noted that the cooperative relationship they had developed during the ICC's preliminary investigation "strengthened the country's capacity to administer justice for the most serious crimes of concern to the international community as a whole, which constitutes a valuable experience that may be replicated in other situations around the world."<sup>38</sup>

The IACC will have similar potential to strengthen the domestic capacity of certain countries to investigate and try complex cases involving grand corruption. The IACC will employ investigators experienced in conducting complicated financial investigations; work with national and multinational

agencies that do so, such as the International Anti-Corruption Coordination Centre; and also work with sophisticated private investigators who are often employed by state agencies to trace looted assets.<sup>39</sup> In addition, the IACC will employ prosecutors with experience in trying complicated cases concerning financial crimes, and it will be comprised of judges with substantial experience in presiding in such cases. IACC investigators and prosecutors will work regularly with their national counterparts, and IACC judges will be available to advise domestic judges. In this way, the IACC will contribute to strengthening the capacity of many countries to prosecute major corruption cases, just as the International Commission against Impunity in Guatemala (CICIG) contributed to the successful prosecutions of a president and vice president of that country.<sup>40</sup>

## E. The IACC Will Be Important to the Victims of Grand Corruption

Kleptocrats rob the countries they rule of vast sums that are needed for the health and welfare of their citizens. Corruption is, therefore, a major obstacle to achieving the 2030 Sustainable Development Goals.<sup>41</sup>

The criminal prosecution of kleptocrats in the IACC could result in the recovery and return or repurposing of stolen assets. The sentence for the conviction of a kleptocrat in the IACC could include both a term of imprisonment and an order of restitution or disgorgement of illicit assets for the benefit of victims.<sup>42</sup>

The capacity of the IACC to recover the proceeds of grand corruption would be magnified if the court were empowered to decide civil cases brought by private whistleblowers.<sup>43</sup> The U.S. False Claims Act (FCA) authorizes and incentivizes such suits. Under the FCA, civil actions can be initiated by private citizens, who sue on behalf of the United States those who have allegedly defrauded the U.S. government, including in cases involving the alleged collusion of public officials who have been bribed. If the Department of Justice takes over the case, the private citizen who initiated it is entitled to a substantial payment from any settlement or judgment. If the Department of Justice does not take over the case and the suit is settled or won, the private citizen receives at least 25 percent of the amount recovered for the government. FCA cases have resulted in the recovery of billions of dollars in the United States, including \$3 billion in 2019 alone.<sup>44</sup> Comparable cases in the IACC could do the same for many countries. In any event, with or without a counterpart of the FCA, the IACC would provide a vital forum for using the evidence developed by courageous whistleblowers in countries with law enforcement agencies and judiciaries that are dominated by kleptocrats and are often corrupt themselves.

Perhaps the greatest value that the IACC would provide to victims of grand corruption would be creating the credible threat that kleptocrats will be prosecuted and punished, thus deterring them from committing crimes that are difficult to address and redress after they occur. Evidence indicates that prosecutions of human rights abuses in the ICC, as well as in domestic courts, are deterring violations of human rights.<sup>45</sup> ICC investigations have, for example, catalyzed reforms in the Democratic Republic of the Congo, Sudan, Guinea, Georgia, and Colombia.<sup>46</sup> This has prompted some scholars to conclude that “ICC investigations, indictments and convictions or those triggered by complementarity are likely to encourage actual or potential perpetrators to reassess the risks of punishment—*relative to the status quo*, which is often impunity—and to moderate their behavior.”<sup>47</sup>

The deterrent effect of an International Anti-Corruption Court on grand corruption should be even greater than the ICC’s impact on violations of human rights. War crimes and related human rights abuses typically occur during armed conflict, when perpetrators may view the ends as justifying the means. In contrast, grand corruption involves discretionary crimes of calculation. When there is no risk of sanction because the official controls all power to prosecute and punish, there is nothing to inhibit an avaricious leader from enriching himself corruptly. However, when the credible threat of extraterritorial prosecution and imprisonment is established, the calculation—and the conduct—should change.<sup>48</sup>

The deterrent effect of the threat of prosecution is illustrated by experience in Angola. In 2016, then-President José Eduardo dos Santos, who held office for thirty-eight years until 2017, made his daughter Isabel the head of the national oil company and the wealthiest woman in Africa.<sup>49</sup> While dos Santos was president, Angola had the highest percentage of children of any country who did not live to the age of five.<sup>50</sup> Despite Angola’s vast national resources and the wealth they generated, more than half of the country’s population had no access to healthcare.<sup>51</sup> One of President dos Santos’s last acts before leaving office was to give immunity from prosecution to his family and himself, providing additional evidence that kleptocrats fear being prosecuted and punished and therefore are capable of being deterred.<sup>52</sup>

If the threat of prosecution in the IACC does not deter a kleptocrat, successful prosecution there would likely result in a sentence of imprisonment and probably, therefore, the official’s removal from office. This would provide the best antidote to grand corruption: the opportunity for the democratic process to replace kleptocrats with leaders dedicated to serving their citizens rather than enriching themselves.



## F. Common Questions Concerning the IACC

Some argue that the IACC would be a violation of national sovereignty.<sup>53</sup> However, any country that joins the court will be deciding to share some of its authority to prosecute kleptocrats, in certain circumstances, in order to give integrity to the domestic laws it enacted as party to the UNCAC.

Others suggest that, if an international forum for prosecuting grand corruption is desirable, perhaps it should be the ICC rather than the IACC.<sup>54</sup> However, the Rome Statute that created the ICC and established its jurisdiction cannot be properly interpreted as providing the authority to prosecute grand corruption.<sup>55</sup> An amendment to the Rome Statute would require a vote of two-thirds of the Assembly of States Parties and would not come into effect until one year after seven-eighths of the states parties ratified the change.<sup>56</sup> Some of the ICC's 123 member states are ruled by kleptocrats who would oppose such an amendment.<sup>57</sup> Expanding the jurisdiction of the ICC to include grand corruption is, therefore, unlikely to be politically feasible.

Moreover, in view of the global demands on the ICC's limited resources, including grand corruption in its mandate would, as a practical matter, prove to be inadequate. Required to prioritize potential cases, prosecutors would inevitably feel compelled to focus on genocide, war crimes, and crimes against humanity rather than on grand corruption, despite its serious consequences.

The ICC cost about U.S.\$168 million in 2021.<sup>58</sup> Some argue, therefore, that creating the IACC would be too expensive.<sup>59</sup> However, the IACC would be organized to be less costly and more efficient than the ICC. Its jurisdiction would be more limited, and its procedures less complex and protracted. The IACC would not, for example, require pretrial chambers.<sup>60</sup> The number of judges on active and remunerated service could be made contingent on the caseload of the court.<sup>61</sup> In addition, the IACC could use courthouses around the world to conduct trials as close as possible to the victims of grand corruption and, in the process, reduce the cost of the facilities the IACC would require.

In any event, corruption is estimated to cost trillions of dollars annually, and grand corruption contributes greatly to that cost.<sup>62</sup> The IACC would deter and reduce grand corruption, saving some countries enormous sums of money. In addition, a conviction in the IACC could result not only in a prison sentence but in an order of restitution to the victimized country. Fines imposed by the IACC might be used to defray, and possibly cover, the costs of its operation. Therefore, the IACC would be cost-effective.

Questions have also been raised concerning whether the IACC could obtain the evidence necessary to prosecute kleptocrats successfully because

much of that evidence will often be in the country that they rule.<sup>63</sup> This may be a challenging task but frequently not an insurmountable one. In recent years, enhanced international efforts have been undertaken to trace the flow of illicit funds. The International Anti-Corruption Coordination Centre was created in 2016 to facilitate and coordinate investigations of corruption, including crimes involving bribery of public officials, embezzlement, and money laundering.<sup>64</sup> It is staffed by expert law enforcement agents from the United Kingdom, the United States, Canada, Singapore, New Zealand, and Australia. Switzerland and Germany participated in establishing the Centre and remain involved. In 2020, the Centre authorized smaller countries to become associate members. Interpol also works closely with the Centre.<sup>65</sup> In addition, often with the urging of the International Monetary Fund, among others, looted institutions, such as the national banks of Mozambique and Ukraine, engage sophisticated private investigators who may successfully trace the flow of illicit assets. However, the countries that have been robbed frequently lack the capacity to use the evidence resulting from these investigations.

Members of the ICIJ and other courageous investigative journalists and whistleblowers have discovered substantial evidence of grand corruption, but it is rarely, if ever, used in national courts in countries ruled by kleptocrats. Similarly, prosecutions pursuant to the FCPA and its counterparts often generate evidence, including from witnesses who are willing to testify that foreign officials have received bribes, but that evidence is frequently not used to prosecute those officials. Again, Russia is illustrative.

In 2008 and 2010, respectively, the multinational corporations Siemens AG and Daimler AG admitted, in prosecutions in New York for violating the FCPA, to paying millions of dollars in bribes to Russian officials, as well as to officials in many other countries. . . . In their plea bargains, Siemens and Daimler each agreed to cooperate in the prosecution of the Russian officials they had bribed. The evidence, including names of twelve officials bribed by Siemens, was turned over to the Russian government. Then-President Medvedev promised to pursue the cases, yet no Russian official has ever been prosecuted for taking a bribe from Siemens or Daimler.<sup>66</sup>

Such evidence would be put to good use in the IACC.

Finally, some have argued that the IACC will not be effective because kleptocrats will not permit their countries to join a court that might prosecute them. However, kleptocrats regularly launder the proceeds of their criminal activity through major financial centers, invest them in foreign countries, and conspire with enablers in foreign countries to do both. The

IACC would have jurisdiction over crimes committed by nationals of an IACC member state and crimes committed by nonnationals in the territory of an IACC member state. Countries that are home to international financial centers polluted by the proceeds of corruption, as well as countries that are popular destinations for laundered money, are promising candidates to join the IACC. If, for geopolitical or other reasons, an IACC member state were unwilling or unable to prosecute a kleptocrat who has engaged in money laundering or another crime involving corruption in its jurisdiction, the kleptocrat would be subject to prosecution in the IACC. Accordingly, the IACC could be created and be effective if established with far less than universal participation if it includes a diverse group of representative states, as well as some financial centers and attractive destinations for the laundered proceeds of grand corruption.

## IV. The Campaign to Create the IACC

Until recently, the most frequent criticism of the IACC has been that, no matter how compelling the concept, it is an ideal that is impossible to achieve.<sup>67</sup> However, the rapidly growing support for the IACC is refuting, and muting, this contention.

The crucial necessity of countering corrupt, autocratic leaders has become widely recognized. In June 2021, the G7 Ministers released a statement asserting that “corruption is a pressing global challenge” and vowed to address it.<sup>68</sup> That same month, President Joe Biden declared doing so to be a core U.S. national security priority.<sup>69</sup> He then convened a December 2021 Summit for Democracy with combatting corruption as one of its three themes.<sup>70</sup> In addition, previously powerful leaders have been swept out of office in elections in many countries, including Slovakia, Malaysia, Moldova, and Zambia, because combatting corruption is a high priority for their people.<sup>71</sup>

These factors are contributing to the accelerating progress of the proposal to create the IACC. In June 2021, Integrity Initiatives International, the catalyst for the creation of the IACC, released a declaration calling for the creation of the IACC signed by more than 125 world leaders, including six former Heads of State and two Nobel laureates, from forty countries representing six continents.<sup>72</sup> The declaration has since been signed by more than 260 individuals from more than seventy-five countries, including forty-three former Heads of State or Government and thirty-two Nobel laureates.

In 2016, President Juan Manuel Santos, a Nobel laureate, made Colombia the first country to endorse the IACC. His successor reaffirmed and continued this commitment.<sup>73</sup>

In September 2021, the federal elections platforms of both the Canadian Liberal and Conservative parties called for establishing the IACC.<sup>74</sup> Following the formation of the new Canadian government, in December 2021 its foreign minister was instructed to “[w]ork with international partners to help establish an International Anti-Corruption Court, to prevent corrupt officials and authoritarian governments from impeding development that should benefit their citizens.”<sup>75</sup>

In March 2022, the Dutch foreign minister made creating a coalition of countries to establish the IACC an element of the foreign policy of the

Netherlands.<sup>76</sup> The Dutch have since begun recruiting other countries to join them in establishing the IACC. For example, at a recent meeting of European Union foreign ministers, the Dutch foreign minister said, “corruption among public officials isn’t just a financial problem; it also undermines democracy and the rule of law in a country and exacerbates inequality among its people. . . . By establishing an [IACC] the Netherlands aims to strengthen the international legal order.”<sup>77</sup>

Canada, the Netherlands, and Ecuador are now collaborating to convene, in 2022, two conferences of high-level officials from a diverse group of countries to discuss gaps in the international framework for combatting corruption; possible means to address these gaps, particularly including the IACC; and a political strategy for, among other things, making the IACC a reality. This core group will likely soon be expanded to include additional countries in Asia, Africa, Latin America, the Balkans, the Baltics, Eastern Europe, and Western Europe. The prospects for advancing the creation of the IACC are promising in all of these areas.

In addition, the IACC is supported by many nongovernmental organizations (NGOs) throughout the world. Significantly, young people courageously confronting kleptocrats in many countries—including Venezuela, Zambia, Lebanon, Malta, and Russia—are ardent advocates for the IACC.

Persuading the United Nations to take a leading role in creating the IACC may be difficult, because its policy and practice of operating by consensus means that countries ruled by kleptocrats, including some countries on the Security Council, in effect have veto power. However, precedent demonstrates that the IACC can be established by treaty independently of the United Nations if necessary.

For example, in 1992 the International Campaign to Ban Landmines (ICBL) was launched by six NGOs, led by Jody Williams. The then-foreign minister of Canada, Lloyd Axworthy, convened a conference and partnered with Norway, Austria, South Africa, and other countries to advance the campaign. By 1997, a treaty had been signed by 122 nations, becoming binding law with unprecedented speed.<sup>78</sup> Williams, who received the Nobel Peace Prize for her leadership of the ICBL, and Axworthy are now working to help create the IACC.<sup>79</sup>

As Williams explains, “It is possible to work outside of traditional diplomatic forums, practices, and methods and still achieve success multilaterally.”<sup>80</sup> Williams’s view has been validated by the International Campaign to Abolish Nuclear Weapons (ICAN).

ICAN was formed in Australia in 2007 to work for the adoption of a convention to eliminate nuclear weapons after decades of unsuccessful efforts to regulate them. Emulating the ICBL, ICAN

involved 468 organizations in 101 countries, led by a few medium-sized nations, including Austria and Canada. In 2017, a Treaty on the Prohibition of Nuclear Weapons was adopted at the United Nations by a vote of 122 to 1. While the treaty is not supported by any of the states that now have nuclear weapons, it reflects a significant evolution of international norms and is a meaningful milestone. Although viewed by many in 2007 as a quixotic quest, ICAN was awarded the Nobel Peace Prize in 2017.<sup>81</sup>

The developing campaign for the IACC has adopted a similar model. The international coordinating committee for the campaign, which was formed in 2021, is building a global coalition of civil society organizations to advocate for the IACC. In addition, it is working with countries, including the Netherlands and Canada, to initiate a diplomatic process to establish the court by treaty. There is, therefore, now an opportunity for civil society and national governments to work together to establish the IACC, which is urgently needed to fill a crucial gap in the international framework for combatting grand corruption and diminishing its devastating consequences.

# V. Conclusion

Following the recent Russian invasion of Ukraine, former UK Prime Minister Gordon Brown rightly wrote,

Every day Putin continues to hold power, the case for an International Anti-Corruption Court grows as a forum of last resort, a court of final appeal to intervene where domestic law has not or cannot act against misappropriation of a country's wealth, and to punish, deter and diminish corruption whenever a nation fails to enforce their own criminal laws against corrupt leaders.<sup>82</sup>

Important work remains. Efforts to refine the concept of the IACC continue, and further details concerning its structure and operations are still being developed. The May 2022 meeting at the American Academy of Arts and Sciences, for which this paper was prepared, made a significant contribution to advancing that work. Many participants in that meeting<sup>83</sup> have joined the growing number of world leaders, NGOs, countries, and courageous young people energetically working to make the IACC a reality.

This will continue to be a challenging task. However, at least equally formidable challenges were met in establishing the Nuremberg Tribunal, the ICC, and other international courts. To echo the words of Justice Jackson, "we now have [another] opportunity, not likely to soon recur, to bring international law out of the closet."<sup>84</sup> Once again, "The trouble [may be] that the advocates of international law have too little of what [U.S. Supreme Court Justice Oliver Wendell] Holmes called 'fire in the belly,' while the extreme nationalists [particularly including autocratic kleptocrats] have . . . too little else."<sup>85</sup> We hope and trust that the meeting at the Academy will become a milestone in proving that this is not true.

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# About the Authors

**Judge Mark L. Wolf** is a Senior United States District Judge in the District of Massachusetts. He is also the Chair of Integrity Initiatives International. In 2014, the Brookings Institution and *The Washington Post* published his articles advocating the creation of an International Anti-Corruption Court. In 2016, Judge Wolf and colleagues founded Integrity Initiatives International, the mission of which is to strengthen the enforcement of criminal laws against corrupt national leaders. In 2018, he published an essay “The World Needs an International Anti-Corruption Court” in a *Dædalus* issue on “Anticorruption: How to Beat Back Political & Corporate Graft.”

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## INTEGRITY INITIATIVES INTERNATIONAL

Integrity Initiatives International (III) is a nongovernmental organization, founded in 2016, that works to strengthen the enforcement of criminal laws to punish and deter leaders who are corrupt and regularly violate human rights. III's principal activity in pursuit of its mission is the creation of an International Anti-Corruption Court that will hold corrupt national leaders and their co-conspirators accountable when national governments are unwilling or unable to do so. In addition, III supports national measures, such as the special anti-corruption court in Ukraine, has forged a network of young people dedicated to combatting corruption in their own countries and around the world, and fosters collaboration between human rights and anti-corruption organizations.

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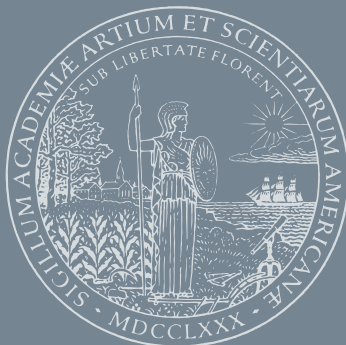
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