

## 25 Combatting Corruption to Advance Good Governance

### Exploring Options for an International Anti-Corruption Court

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Corruption is deeply entangled in the roots of nearly every catastrophic global risk today and strangles many of the promising paths to mitigating those risks.

Various societies and legal systems define corruption differently. For example, lobbying that would be illegal in some countries is permissible in others, even if the public may look upon such activity with disgust and label it corruption in political discourse. However, there is broad consensus about some of the most egregious and clear-cut acts that constitute corruption. The UN Convention against Corruption requires its 190 parties to criminalise the bribery of public officials at national and intergovernmental levels, the embezzlement and misappropriation of public funds, money laundering, and obstruction of justice.

Loopholes remaining in some national legal codes regarding these crimes must be closed, but the problem will not be solved by legislation alone. Such cardinal acts of corruption continue to be perpetrated at a grand scale globally due to financial secrecy and a staggering gap in enforcement. In many countries, kleptocrats—rulers who use political power to loot state resources—can wield influence over the police, prosecutors and even the courts to establish impunity for grand corruption.

Unbridled grand corruption, the abuse of public power for private gain, affects different countries in different ways, but its proliferation is enabled by the same underlying transnational architecture. The international financial system has afforded kleptocrats and their co-conspirators—including their bankers, lawyers, accountants, real estate agents, and other financial service providers—opportunities to maximise schemes of grand theft. The transnational nature of kleptocracy also creates opportunities for governance innovations to counter the corruption risks inherent in the interdependence of modern economies. Kleptocrats prefer to hide, launder and use their ill-gotten gains in countries characterised by strong rule of law. They know that their time in office in their home countries may be limited due in large part to the corrosive effects of their own rapacity.

Elements within the ruling regime may overthrow their leaders in order to seize their turn to feed at the trough of corruption. This can happen dramatically in the form of a coup or in the opaque, internecine battles of power transitions. In other contexts, kleptocrats can face risks that their flagrant corruption can foment destabilising popular protest or even armed insurgency, requiring them to flee for their lives into exile. Where kleptocracy undergirds the most powerful authoritarians, kleptocrats who are confident in their control over tools of repression will very often feel uninhibited in the pursuit of self-aggrandisement as well. They may, of course, misread the supremacy of their rule, opening

the door to power struggles or the implosion of their governance structures. But the end result is the same: outflows of stolen assets into shadowy transnational money-laundering networks that secure wealth for the corrupt.

Refugee crises driven by devastating corruption in fragile and failed states in Africa, Central America, the Middle East, and elsewhere compound grand corruption's impact on international peace and security. The pervasive violence and lack of economic opportunity in such states, driving people to abandon their homes in utter desperation, cannot be effectively countered without dismantling and deterring kleptocracy.

War and other forms of violence may be the most visceral catastrophic risks that corruption fuels, but they are not the only ones. A recent study analysing data for 175 countries from 2012 to 2018 concluded that the cumulative effect of corruption on growth is that real per capita gross domestic product (GDP) decreased by around 17 per cent. 'The effect of corruption on economic growth is especially pronounced in autocracies and countries with low government effectiveness and rule of law' (Gründler and Potrafke 2019). Another recent study by the European Parliamentary Research Service estimates that the European Union could gain EUR58.5 billion in GDP per year if it improved the legislative framework on corruption and enhanced enforcement (Fernandes and Jančová 2023).

Corruption can exist at all levels, but the ballooning economic consequences of grand corruption is an increasing threat to developing countries and to the stability of the global economy, as an increasing number of countries default on substantial loans. The tightening of financial conditions in 2022 in response to rising inflation has precipitated a debt crisis in emerging market and developing economies, with more than 60 low-income countries now seen to have unsustainable debt profiles. This crisis is occurring at a time when more public resources are needed to address global challenges with local impacts, including climate change, food security and pandemics.

According to UN Secretary-General António Guterres in his 2021 report, 'Our Common Agenda', 'failure to deliver what people need most, including basic services, drives mistrust, regardless of how open institutions are to public participation'. 'Distrust is also fuelled by people's experiences of corruption, which has a disproportionate impact on women, exacerbates inequality and costs the world trillions of dollars annually', he wrote.

The work of Transparency International (TI; 2022a, 2022b, 2022c) and the publication since 1993 of its now well-known 'Corruption Perceptions Index' have played an important role in focusing public attention on corruption. TI has formulated anti-corruption initiatives in such areas as public procurement, conflict of interest and freedom of information laws, as well as the formation of an extended network of national chapters in more than a hundred countries.

While there is far more attention to the problem of corruption and less tolerance for it, TI's (2022a) 'Corruption Perception Index' for 2021 indicates that corruption levels have stagnated worldwide, adding, 'despite commitments on paper, 131 countries have made no significant progress against corruption over the last decade'. While 25 countries significantly improved their scores in that time, 23 countries significantly declined. Over the past decade, even the scores of high-performing countries like Australia, Canada and the United States have fallen, as they have also struggled with protecting the integrity of their public sectors.

As the aforementioned demonstrates, corruption affects all countries. In the United States and other industrial countries, lobbying—to obtain special government dispensation in exchange for some favour—is a multi-billion-dollar industry. Critics contended

that a U.S. Supreme Court decision in 2010 (*Citizens United*) expanded, rather than curtailed, the influence of wealthy donors, corporations and special interest groups in U.S. elections.

‘Lobbying’, on balance, would be beneficial were it limited to enlightened public consultation on the merits of proposed legislation. However, lavish corporate cash spent to buy influence degrades the ability of the political system to address real problems and delays public-sector reforms and efforts, for instance, to mitigate the effects of climate change.

Corruption and bribery, whatever their form and however much the experts may wish to disguise them in the language of costs and benefits and economic choices, also have a moral dimension. Ultimately, they are a betrayal of trust. Ignoring this foundational principle comes at a considerable cost to society, undermining the effectiveness of measures taken to limit their corrosive effects. A plutocracy, a world in which wealth and money rule, is not a system likely to capture the popular imagination or enable citizens to thrive. Equally important, bribery and corruption are deeply at odds with the moral basis of most of the world’s great religions, which remain a compass point for much of the world’s population and often provide the value foundations of the modern state.

Even where windows of opportunity emerge to tackle grand corruption, entrenched kleptocratic forces inevitably fight back and often succeed at reasserting their advantage. The failure of reformist political leaders to fulfil their anti-corruption promises can reinforce public perceptions that there is impunity for grand corruption.

Sri Lanka’s recent experience is an example of how corruption can shatter the hopes of a nation brimming with possibilities for economic growth. Former President Gotabaya Rajapaksa was ousted in July 2022 from a country that had imploded economically. The Rajapaksa political dynasty, in power for decades, had long been accused of corruption and nepotism. Other states such as Brazil and South Africa, which once showed great promise, have similarly been hollowed out by corrupt leaders and their professional enablers. On African Union Anti-Corruption Day in July 2022, Nigeria’s President Muhammadu Buhari admitted that the fight against corruption had been difficult over his two terms as president. He said,

Truly, a lot more work on many fronts is required. For example, civil and public servants must be ethical and professional at all times. The private sector must contribute to curbing corruption. The international community needs to close safe havens. The judiciary requires more impetus. Perhaps, an International Anti-Corruption Criminal Court is needed.

Within President Buhari’s remarks is the shape of what is needed to address the persistent plague of corruption. Having the right laws on the books and well-intentioned political leaders who beat the odds to win elections with anti-corruption platforms are both essential but not enough to change the status quo. Governance innovations that enhance transparency and accountability are necessary at both the national and international levels. New multilateral institutions, such as the proposed International Anti-Corruption Court, can be developed to reinforce anti-corruption reforms at the national level when windows of opportunity emerge for meaningful change but where national capacity to act may be negligible. Seeing corrupt leaders held accountable for their corruption can build citizens’ trust in public institutions, helping to create a virtuous cycle of reform. National governments strengthened by the support of their citizens, based on improving anti-corruption

records, will be more predisposed to cooperating with multilateral institutions designed to assist them in the pursuit of justice. A coalition of states is needed to institutionalise the fight against corruption through a mosaic of interlocking governance innovations that leverage the transnational financial architecture to combat it rather than enable it.

### **Corruption, Bribery and Their Consequences**

Grand corruption, according to TI, is ‘the abuse of high-level power that benefits the few at the expense of the many’. Through such corruption, TI notes on the organisation’s website, ‘[V]ast amounts of public money are systematically siphoned off to the accounts of a few powerful individuals, at the expense of citizens who should actually benefit’. One estimate puts the amount diverted to corruption at 5 per cent of global GDP.

An important source of corruption stems from the distributional attributes of the state. The role of the state in the economy has greatly expanded over the past century, and this has led to a proliferation of benefits under state control. One paper showed that countries with a larger number of administrative tiers and public employees reported more bribery. More rent-seeking was likely as government structures became more complex (Fan, Lin and Treisman 2009).

A large state, however, need not be associated with higher levels of corruption. The Nordic countries, for example, have the highest levels of public spending but are also the least corrupt. In principle, however, the more interactions there are between officials and private citizens, the more opportunities there are for corruption, or ‘rent-seeking’, imposing heavy costs on society. Thus, bribes may be paid to public officials to obtain contracts for the sale of goods and services to the state, to gain preferential access to public enterprises that might be undergoing privatisation, to buy political influence and votes, to buy favourable court decisions, and to shape public policy. In some countries, these are disguised as campaign contributions and the like.

Bribery everywhere is regarded as a perversion, requiring secrecy, deception, and the use of euphemisms, such as ‘gifts’ and ‘contributions’ when disclosed publicly. While it has been criminalised in virtually every country in the world, enforcement of the laws condemning it remains weak, in part because of the way that bribery interacts with power. Those who pay the most will be granted the exemption, shutting out the competitor and gaining the advantage.

### ***Sabotaging Public Finances***

Corruption undermines government revenue, limiting the government’s ability to invest in productivity-enhancing education, infrastructure and health. Where corruption is endemic, citizens often view paying taxes as a questionable business proposition, but when those who pay taxes are confident that they will see future improvements in a country’s infrastructure and human welfare, the system works reasonably well, and the budget becomes an important mechanism of distribution.

Corruption sabotages this implicit contract. Corrupt officials create an environment in which those who do pay taxes are either morally outraged at having to do so or feel justified in finding creative ways to avoid paying them. In some cases, lobbying and influence-peddling become attractive alternatives to paying taxes. Such practices are a natural response when government bureaucrats or legislators send a signal to the private sector that they are ‘for sale’.

Ultimately, corruption distorts public investment and boosts overall spending because public monies are diverted. The result is inflated government deficits, an accumulation of public debt, higher debt-service payments, and, inevitably, constraints on other more productive expenditures. By undermining the ability of the government to collect revenue, corruption not only increases government expenditures but also the effective tax burden and is highly damaging to public finances. When corruption depresses revenue, governments are often forced to increase tax rates and forego the benefits of programmes that cannot be financed from the budget.

Public finances are also sabotaged when there is corruption related to large capital projects and when governments undertake projects of greater complexity than warranted by a country's real needs. Additionally, spending is often cut elsewhere, often in socially vital areas, or in operations and maintenance. The developing world is littered with the skeletons of such 'white elephants' that represent a heavy burden on meagre budgets and that often have contributed to increasing the burden of debt.

A recent example is the malfunction of a thermal power plant in Bishkek, Kyrgyzstan, in 2018. While China offered low-interest loans for a \$386 million renovation of the ageing plant, they also insisted that the contract go to a Chinese company having little experience with such work. Despite its supposed modernisation, the plant broke down and left much of the town without heat or electricity in freezing temperatures. Subsequent research found little financial oversight of the project, resulting in accusations that it was substantially marred by inflated purchases, corruption and kickbacks.

### *Slowing Private-Sector Development*

Corruption undermines foreign direct investment since it is equivalent to an additional tax, thus providing incentives for investors to move to less corrupt countries. High levels of corruption impose financial burdens on businesses and undermine their international competitiveness. Unlike a tax, which is known and predictable and can be built into the cost structure of the enterprise in an orderly fashion, bribes are unpredictable and random and undermine cost control, profits and the efficiency of those who must pay them to stay in business.

While damaging the investment climate, corruption also discourages private-sector development and innovation, thus becoming a barrier to market entry. Budding entrepreneurs will be intimidated by bureaucratic obstacles, financial costs and the psychological burdens of starting business ventures on the wrong side of the law. Having to deal with corrupt officials to obtain permits and licences prompts entrepreneurs to either take their ideas elsewhere or withdraw from the market altogether. Corruption is particularly devastating for small- and medium-sized enterprises—often the engines of economic growth and job creation in the developing world—since they usually lack the clout of big companies that might protect them from requests for bribes.

Corruption also contributes to a misallocation of human resources. To sustain a system of corruption, officials and those who pay them must invest time and effort in the development of certain skills, nurture certain relationships and build up a range of supporting institutions and opaque systems, such as off-book transactions and secret bank accounts, 'assets' not easily transferable to the formal economy. By their very nature, they are intended to redistribute 'rents' or personal benefits and advantages, which do not create economic growth. The more corruption in a country, the more time must be spent complying with regulations, avoiding penalties and dealing with the bribery that underpins them.

### *Worsening Inequality*

Studies by the International Monetary Fund (IMF) show that corruption aggravates income inequality and distorts the tax system because the wealthy and powerful use their connections to ensure that the tax system works in their favour. Corruption is also often associated with the ‘use of wealth by the well-to-do to lobby governments for favourable policies that perpetuate inequality in asset ownership’ (Gupta, Davoodi and Alonso-Terme 2002). It also leads to inefficient targeting of social programmes, creating regressive benefits disproportionately allocated to those in the wealthier brackets, as when a wealthy doctor with three children gets triple the sum of a poor single mother with one child.

Energy subsidies are typically highly regressive, also leading to smuggling and other forms of crime. According to a 2015 IMF study, 61 per cent of the benefit of gasoline subsidies are allocated to the wealthiest top 20 per cent in the income distribution (Coady *et al.* 2015).

Where corruption is rife, politicians will want to remain in office as long as possible, not to serve the public good but to avoid yielding to others the pecuniary benefits of high office. Hence, the prevalence of ‘presidents for life’ in many countries, or efforts by autocrats to amend the constitution to ensure longer stays in power, fearful of losing the impunity of their office. New autocratic leaders who come to power, whether through elections, coups or even planned transitions, will often use anti-corruption laws to consolidate power by selectively using them against opponents or potential opponents within the political elite. Such anti-corruption cases are easy to substantiate in kleptocracies, and they have the added benefit of helping convince restive publics that new leadership may actually clean up government corruption. Unfortunately, such anti-corruption campaigns are frequently false dawns. Losing power presents a high risk to former leaders that they will be held accountable for their rapacious corruption, regardless of the regime type that follows their rule. And, when long stays in office are no longer an option, a new government will want to steal as much as possible quickly, given the short window of opportunity.

Significant inequity is associated with Western governments which criminalise bribery at home but look the other way when bribery involves foreign officials in less developed countries—the sad legacy by which governments in developed countries justify bribery abroad by seeing it as part of the ‘cultural landscape’ of the developing world and a cost of doing business in alien (and presumably more corrupt) settings.

### *Weakening Government*

Corruption is a betrayal of trust and diminishes the legitimacy of the state and the moral stature of the bureaucracy in the eyes of the population. While efforts are made to shroud corrupt transactions in secrecy, the details often leak out and tarnish the reputation of the government, damaging the government’s credibility and limiting its ability to become a constructive agent of change in other areas of policy. Corrupt governments have great difficulty being credible enforcers of contracts and protectors of property rights.

There is no limit to the extent to which corruption, once unleashed and beyond control of the authorities, can undermine the stability of the state and organised society. Tax inspectors will extort businesses; the police will kidnap innocents and demand ransom; the prime minister will demand payoffs to make himself available for meetings; aid money will disappear into the private offshore bank accounts of senior officials; the head of state will demand that taxes be credited to his personal account. Investment ceases, and capital

flight leads to disinvestment. The five most corrupt countries in TI's (2022a) Corruption Perceptions Index 2022 include Yemen, Venezuela, South Sudan, Syria, and Somalia. It is hard to see how such countries can recover from their myriad crises without dramatic reductions in corruption levels.

When corruption becomes enmeshed in domestic politics, separate centres of power emerge to rival the power of the state. At that point, the chances that the government will want, or even be able, to do anything to control corruption may disappear, and the state may mutate into a kleptocracy. Corrupt, failed or failing states become a security threat for the whole international community 'because they are incubators of terrorism, the narcotics trade, money laundering, human trafficking, and other global crime—raising issues far beyond corruption itself' (Heineman and Heimann 2006).

### **Combatting Corruption**

Fortunately, international public awareness of corruption has been rising, especially since the 1990s. This development has been due, in part, to media exposure of the many scandals involving political figures engaged in various forms of bribery or corruption. In recent years, there have been a series of investigations into major leaks of financial documents, beginning with the 2016 Panama Papers led by the International Consortium of Investigative Journalists (ICIJ), that have lifted the lid on the grand scale of transnational corruption facilitated by complex networks of bankers, lawyers, accountants, real estate agents and other financial service providers.

Greater transparency has, however, produced some change. In India, Malaysia and Pakistan, for example, prime ministers were defeated largely because they were dogged by corruption charges. In South Korea, two presidents were jailed following disclosures of bribery. In Italy, magistrates sent several dozen members of the political class to jail and exposed a vast corruption network that had linked political parties and the business community for decades. Investigations led by the U.S. Department of Justice into alleged bribery of former presidents and other government officials by Brazilian construction giant Odebrecht to win contracts produced upheaval across the political spectrum in Latin America. The outcomes have varied greatly. In some Latin American countries, former presidents and ministers have gone to jail. In others, such as Mexico and Venezuela, investigations have progressed little or not at all. In most places, revelations of grand corruption brought to light by investigative journalists or law enforcement have led to heavily politicised debates about the veracity of corruption allegations.

More recently, some 70 members of the mafia group 'Ndrangheta were convicted by Italian courts. Several former heads of state in Central America were indicted and await extradition to the United States on drug trafficking charges. Africa has seen less progress, but corruption has become undoubtedly harder to hide, owing partly to new communication technologies that allow for more openness and transparency.

Citizens can now scrutinise government activities and debate the merits of public policies. Press freedoms and higher levels of literacy ensure access to the performance of politicians and the content of their policies, thus shaping the context for reforms in important ways. An active civil society that encourages participation in civic organisations also supports strategies aimed at reducing corruption.

The internet has proven effective in reducing corruption (Andersen *et al.* 2011), and its potential can be better understood when applied to tax collection, public procurement and other forms of interactions between citizens and the public sector. For example,

Chile's e-government reforms have been recognised as pioneering efforts in the use of technologies which enhance transparency and efficiency in government. The country has introduced online platforms to facilitate government interactions with citizens and businesses and has created one of the world's most transparent public procurement systems. Chile Compra, launched in 2003, is an Internet-based public system for purchasing and hiring that has earned a worldwide reputation for excellence, transparency and efficiency.

Every two years, the United Nations produces an e-government survey ranking countries according to their progress on digital government. Over the past 15 years, many countries have enabled individuals and businesses to comply with their tax obligations using online platforms, reducing the need for interactions with tax officials and opportunities for bribery in the filing of tax returns.

### *Reducing Red Tape*

World Bank data has long shown a strong correlation between the incidence of corruption and bureaucratic red tape. Hence, the critical necessity of eliminating as many needless regulations as possible while safeguarding the state's essential regulatory functions. Many regulations on the books of many countries that require citizens to acquire a plethora of certificates and licences for routine interactions with the state are a legacy of the past and no longer relevant to present-day needs and have metamorphosed into potential sources of economic rents and lured officials into corruption and illegality.

The most competitive economies are those that have managed to lighten the regulatory burden and enhanced efficiency, so essential for international competition. According to the World Bank's (2020) 'Doing Business' report, it takes only one day and one procedure to establish a small business in New Zealand at minimal cost. Not surprisingly, New Zealand has enviably low levels of corruption, as per the latest report by TI. There will always be scope for a minimum set of rules, consumer protection, management of the environment, and requirements related to banking, but these can be designed in a way that does not hamper entrepreneurship or create opportunities for bribery.

### *Better Targeting of Subsidies*

Subsidies can also enable governments to distort incentives and create opportunities for corruption. Governments may want to support certain vulnerable groups through well-targeted income support. In practice, however, they provide much of their subsidy support without regard to recipients' income levels.

Consider energy subsidies. According to IMF (2022) data,

[F]ossil fuel subsidies were \$5.9 trillion or 6.8 per cent of GDP in 2020 and are expected to increase to 7.4 per cent of GDP in 2025 as the share of fuel consumption in emerging markets—where price gaps are generally larger—continues to climb.

These subsidies

have sizeable fiscal costs (leading to higher taxes/borrowing or lower spending), promote inefficient allocation of resources (hindering growth), encourage pollution (contributing to climate change and premature death from local air pollution), and are not well targeted at the poor (mostly benefiting higher income households).

Artificially low prices created by subsidies can put the government at the centre of corruption-generating schemes. For example, when Russia transitioned to a market economy in the 1990s, there were large discrepancies between domestic and international prices of oil and other commodities. By buying off corrupt officials to acquire export licences, a whole new class of wealthy oligarchs was created. Governments may also hesitate to eliminate subsidies because of potentially violent protests by a public accustomed to low prices. Hence, subsidies can become entrenched and diminish the government's ability to spend in more productive areas.

### *Improving Budgeting*

Governments collect taxes, tap capital markets to raise money, receive foreign aid, and develop mechanisms to allocate these resources to satisfy multiple needs. Some do this in ways that are relatively transparent to ensure that resources will be used in the public interest. New Zealand, a pioneer in this area, approved its Fiscal Responsibility Act in 1994 to provide a detailed legal framework for transparent management of public resources.

The IMF has identified good practices that have proved to be effective in promoting better management of public funds. Some relate to mechanisms used by governments every year to approve the budget. There is broad consensus that the draft budget should provide detailed explanations of fiscal targets and priorities, free and open legislative debate and authorisation, the transparent execution of the budget, and public disclosure of performance and audits. There is also agreement that the use of extra-budgetary funds should be strictly limited and that the budget should capture all sources of revenue and all items of expenditure. As part of the requirements to accede to the European Union, countries in Central and Eastern Europe are good examples of reforms implemented to improve the transparency of budget procedures.

Taxes and tax collection should be based on established laws and provisions, not left to the discretion of the tax authorities. The tax codes of many countries clearly lay out taxpayers' rights and obligations, regulate the imposition of penalties to ensure that they are not used by unscrupulous politicians against political opponents, and establish independent review agencies with the authority to investigate government operations. Following New Zealand's lead, other countries have established clear lines of responsibility among different levels of government, reduced the possibility for discretion, and lessened uncertainty.

How governments manage the budget affects the incidence of corruption because it represents the single largest pocket of resources in a country's economy, sometimes equivalent to almost half of GDP. The more open and transparent the process, the less opportunity for malfeasance and abuse.

Improving processes and mechanisms for preparing and executing the budget may well be among the most fruitful areas in which multilateral organisations can assist in the fight against corruption. Given their reluctance to wade into 'political' waters, there is no need to frame such reforms as reducing corruption. It is enough to focus on the benefits of transparent budget processes, including gains in efficiency, better resource allocation and improved economic growth.

### *Implementing International Conventions*

Because corruption increasingly has cross-border effects, the international legal framework for corruption control is key. This framework has improved substantially over the past decade. Besides the Anti-Bribery Convention of the Organisation for Economic

Co-operation and Development (OECD), which went into effect in 1999, the Organisation works with six regional anti-corruption programmes that cover, among others, Africa, Europe and the Americas. In addition, the United Nations Convention against Corruption (UNCAC) entered into force in December 2005 and had been ratified by 189 parties by the end of 2021.

The UNCAC is a very promising instrument because, unlike the OECD convention, it creates a global legal framework involving both developed and developing nations. It also covers a broader range of subjects, such as domestic and foreign corruption, extortion, preventive measures, anti-money-laundering provisions, conflict-of-interest laws, and the means to recover illicit funds deposited by corrupt officials in offshore banks.

Because the United Nations has no enforcement powers, the effectiveness of UNCAC depends on the establishment of adequate monitoring mechanisms to assess government compliance. The United Nations Development Programme, the World Bank, and other international organisations could help by providing technical assistance to countries willing to develop their capacity to comply with the convention's provisions. Even so, the ambitious scope and country coverage of UNCAC suggest that it could take some time before its benefits are fully realised.

In the meantime, Heineman and Heimann (2006) argue that a more workable approach in the fight against corruption may be more robust implementation of the anti-corruption laws in the 40 states that have signed the OECD's Anti-Bribery Convention.

This approach would require governments to be more proactive in cracking down on OECD companies which, contrary to the convention's provisions, continue to bribe foreign officials. This is a serious problem, as well-publicised cases against Siemens and Daimler make clear. More recently, there have been fines against international banks for various forms of market manipulation (e.g., LIBOR setting). Governments have sometimes been tempted to shield companies from the need to comply with anti-corruption laws, a misguided attempt to avoid undermining the companies' competitive position in other countries.

To add credibility to their announced commitment to the goals of the convention, governments also need to develop an effective mechanism to investigate and prosecute cases of corruption. But the responsibility for corruption control does not rest with governments alone. As originators of bribery and frequent victims of extortion, businesses, particularly multinational corporations, also have a key part to play.

In past decades, multinational corporations frequently engaged in bribery, and some, particularly in the extractive industries, continue to do so in countries where it is difficult to gain access without engaging in bribery. However, given what we now know about the damage caused by corruption worldwide, no self-respecting multinational corporation with credible long-term strategies for growth and brand development will want to be associated with bribery and other forms of malfeasance. The potential for damaging revelations and multimillion-dollar fines suggests that bribery is not only not cost-effective, but a completely senseless business strategy. Reputational and financial damage should incentivise an overall trend towards more honest business, but only if journalists and activists continue to uncover wrongdoing and courts continue to hold companies and their co-conspirators accountable.

### **The Need for a Global Response**

At the international level, there are increasing efforts to build coalitions to combat corruption. For example, the Financial Action Task Force has brought together nearly 40 member countries to work on combatting terrorist financing, money laundering and

financing of weapons of mass destruction. Among other goals, it sets global standards and publishes best practice and guidance to stop illicit finance.

There are also different models and legal instruments being used in some countries that may lend themselves to being strengthened and scaled up to target corruption, and especially grand corruption, in a more comprehensive way globally. In the United States and Canada, for example, beneficial ownership registries are in the process of being created so that companies are required to reveal their true owners. The 2021 Corporate Transparency Act that requires the U.S. government to establish such a registry was an important achievement after a decade of civil society campaigning. However, the law mandates a registry that is accessible only to U.S. law enforcement. Such registries should be publicly accessible, like that of the United Kingdom, so that citizens, civil society organisations and investigative journalists can also use them to uncover corrupt schemes.

As one recent example, Chatham House, a policy institute based in London, released a report (Heathershaw *et al.* 2021) on properties that post-Soviet elites were buying in the United Kingdom, presumably with illicit funds stolen from public coffers. The family of Kazakhstan's former president, Nursultan Nazarbayev, bought 34 properties in the United Kingdom alone at a cost of £530 million. Secret offshore ownership of property, where beneficial ownership is hidden, is a growing problem globally, although it is receiving more citizen and media attention. Making this information public also makes a big difference.

There remains far more work to be done to expand open-access information, and progress cannot be taken for granted. The Court of Justice of the European Union issued a troubling ruling in November 2022 that invalidated a key provision of the 5th European Union Anti-Money-Laundering Directive, which required public access to information on the real owners of companies. The ruling says that law enforcement, journalists and civil society organisations must continue to have access to European Union states' beneficial ownership registries. Implementing new procedures for journalists and civil society to gain access will take time, and it is possible that non-European stakeholders will have difficulty gaining access at all. Publicly accessible beneficial ownership registries and other transparency measures are essential to provide accountability mechanisms, such as the newly proposed International Anti-Corruption Court, with high-quality evidence that can be used to build successful prosecutions.

The United States has increasingly been involved in levying financial sanctions on corrupt actors, especially over the past two decades. While some, including European allies, have criticised the U.S. approach as being unilateral and heavy-handed, U.S. enforcement has helped to establish better compliance controls across the international banking sector and brought more attention to the laundering of illicit funds. The U.S. Global Magnitsky Act allows the United States to sanction foreign officials for grand corruption and human rights abuses. Other countries, along with the European Union, have passed similar laws that can only be used to designate human rights abusers. As unilateral administrative branch tools, sanctions in general are applied unevenly across cases, based on the particular foreign policy objectives of different states. As punitive measures against individuals, Magnitsky sanctions may constitute a form of ad hoc accountability, but it is unclear whether they produce deterrence to the extent that the consistent application of criminal law can.

Ensuring that those engaged in corruption and extensive looting of public resources are prosecuted is also fundamental to demonstrating to beleaguered societies that accountability rather than impunity is possible. National institutions such as the High

Anti-Corruption Court in Ukraine and the now-defunct hybrid national-international Commission Against Impunity in Guatemala can prove effective. However, in each case, kleptocrats can influence or abolish such institutions when they gain power.

Regardless of some working models and systems, there has been limited success in checking the growth of multiple forms of corruption across the planet, affecting both developed and developing countries alike. As such, the establishment of an International Anti-Corruption Court has been proposed. Such a court would be immune from the domestic manipulations of kleptocrats and, therefore, would complement the existing global legal architecture for combatting anti-corruption.

### **The Rationale for an International Anti-Corruption Court**

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 International Anti-Corruption Court (IACC) would fill the crucial enforcement gap in the international framework for combatting grand corruption, wrote Mark Wolf, Richard Goldstone and Robert Rotberg in a 2022 paper on the proposal for an IACC. Today, note the authors, some states 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’. As such, they are unlikely to allow honest investigations. A kleptocrat prosecuted by an IACC could lead to that individual’s imprisonment or removal from office and ‘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’, they wrote. An IACC, they added, ‘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’.

There would be no reason for an IACC to be involved when member states have the ability and resources to prosecute those engaged in grand corruption. Rather, the rationale behind such a court would be to fill in existing gaps, to enforce laws required under the United Nations Convention against Corruption—which nearly all countries have signed—and, overall, to punish and deter kleptocrats and their co-conspirators, often referred to as professional enablers, who help them launder vast quantities of stolen assets.

It is critical that the IACC learn lessons from the experiences of existing international courts and tribunals. Convincing states, which are inherently prone to maximising their sovereignty, to establish international and hybrid justice institutions has relied on the fundamental legal principle of complementarity that ensures they are mechanisms of last resort. Complementarity can incentivise the development of national institutions. An IACC can be designed to actively go further by empowering national institutions. Its expert investigators and prosecutors would serve as resources for their national counterparts working to develop cases. Independent anti-corruption commissions, special prosecutors’ offices, and specialised national courts exist in many countries but often face barriers preventing them from going after the proverbial big fish. They can also submit successful mutual legal assistance requests for evidence from other states. As grand corruption often involves transnational money-laundering networks, evidence located in other states must be obtained to indict corrupt actors, and an IACC could help facilitate more successful mutual legal assistance requests. Where possible, cases built through cooperation between national authorities and an IACC should be adjudicated in national

courts. By working with national anti-corruption institutions in the investigatory phase, an IACC would be well placed to bring cases to its trial chambers in instances where it is not possible for national authorities to take action. Not all cases that fall within an IACC's purview will present opportunities to do so, but where it can, an IACC will act in the first instance as an institution that empowers its national counterparts.

Moreover, the IACC would have the capacity to recover, and then repatriate or repurpose, stolen assets for the benefit of the victims. Asset recovery and return are fraught aspects of anti-corruption practice which require significant improvement. Policymakers, particularly in the United States, have been calling for some of the illicit fortunes and frozen assets of Russian oligarchs to go towards the rebuilding of Ukraine following Russia's illegal invasion in February 2022. Besides the infrastructure extensively damaged by Russia's aggression, compensation should also be given to the close to 1 million refugees whose lives have been upended by the war and who are innocent bystanders in an unprovoked conflict.

While many proposals have been put forward to make more of Russia's assets available to Ukraine, legal questions have been raised about the precedents that would potentially be set, such as the taking of private property for public use, among others. The United States, for example, has strong legal protections to protect foreign assets, and reversing that posture would have significant repercussions on domestic and international law. As these questions are debated, they could inform how assets may, or may not, be distributed by a future IACC. Furthermore, sanctions laws that enable authorities to seize and repurpose stolen assets are inherently political responses to the problem of grand corruption. As a rule of law response to the problem, working towards the creation of an IACC is an opportunity to design a means to impartially adjudicate the recovery and return of illicit assets.

Some have suggested that the International Criminal Court (ICC), in existence since 2002 and supported by 123 member states, should prosecute grand corruption. However, the ICC has a mandate to focus on war crimes, genocide and crimes against humanity. It does not have the authority, nor the specialised expertise, to prosecute grand corruption. Amending the ICC's Rome Statute to include grand corruption would require ratification from seven-eighths of its member states and would be less politically feasible than for a group of like-minded states to create a new IACC. In any event, even if grand corruption were added to the ICC's jurisdiction, its prosecutor would be hard-pressed to prioritise such crimes over the crimes already within the court's jurisdiction. An IACC, in contrast to the ICC, would have a more limited focus and jurisdiction.

An IACC would be able to prosecute nationals of member states or foreign nationals who commit part of a crime in the territory of a member state. Prosecuting individuals from non-member states would be more difficult but not impossible. If a kleptocrat used the banking system in a member state, he or she could be prosecuted for money laundering (Wolf, Goldstone and Rotberg 2022).

Recognising the global challenge of addressing corruption, a declaration in support of creating an IACC has been signed by more than 300 thought leaders from over 80 countries, including by more than 45 former presidents and prime ministers and over 30 Nobel laureates. The governments of Canada and the Netherlands have included in their official foreign policies the express goal of working with international partners to establish the court. Early in the process of interstate discussions of the concept, Ecuador, Nigeria and Moldova stated their express commitment to work towards establishing the IACC in November 2022, January 2023 and March 2023, respectively. The first country

to endorse the IACC concept was Colombia in 2016 and the president of Timor-Leste has signed the declaration calling for the court.

In describing the rationale for such a court at the World Justice Forum in June 2022, Dutch Foreign Minister Wopke Hoekstra acknowledged that grand corruption often goes unpunished and, therefore, the international community needed to ‘step in with a complementary court that can take over grand corruption cases when states are simply unable or unwilling to do so’. As a court of last resort, the IACC ‘would fill an accountability gap, strengthen international justice, and show victims of corruption that the international community finally takes these cases seriously’, he said. Doing this at an international level is crucial, he added, given the international dimensions of the problem.

Governments run by kleptocrats will inevitably label an IACC as a political, neo-imperialist project. Looking past such bad faith criticisms, a cross-regional group of diverse countries committed to the rule of law can come together to create an impartial IACC. The court can be effective with a relatively small number of founding member states as long as those states include several of the world’s major financial centres polluted by money-laundering networks, with additional countries joining gradually. To accelerate this process, it will be important to obtain vital support from civil society organisations across the world. Many have already joined this initiative. Together, they can strive to create an institution that is fair and effective at changing the global incentive structures that currently make grand corruption far too easy for kleptocrats and their collaborators.

## **Conclusion**

Recognition of the risks posed by grand corruption is growing among policymakers. But responses to the problem still lack the requisite urgency. Mitigating the risks posed by war, pandemics, economic crises and climate change requires a global response to grand corruption. The anti-corruption puzzle includes a range of innovations at all levels of governance in both developed and developing countries. Transparency must be enhanced through the proliferation of publicly accessible beneficial ownership registries, open procurement processes and more. Journalists, civil society organisations and citizen investigators who make use of transparency tools to uncover grand corruption must be afforded protection. Existing international commitments must be implemented. National anti-corruption institutions, including specialised anti-corruption courts, must be created and strengthened. An IACC is needed to work in tandem with national counterparts to provide an institution of last resort, ensuring that accountability can reach into states that are captured by kleptocrats.

The path forward demands a coalition of concerned states to work closely with civil society to pursue what must be an ambitious global anti-corruption agenda. A number of states have shown an interest in giving anti-corruption more attention, and some, such as Canada and the Netherlands, have begun exploring how to bring these states together in an organised fashion. To be effective, a coalition of states must move beyond the rhetorical refrains that have become commonplace at various international summits and engage in concerted action that deepens the cooperation and coordination that can put lofty commitments into actual practice.

A coalition focused on institutionalising the fight against corruption should work energetically to take the necessary steps to create an IACC. Possibilities include new multilateral institutions, such as a rapid response force of international prosecutors that can be deployed to work with national authorities to capitalise on windows of opportunity

for change; a stable of judges expert in transnational financial crime that can advise or even be seconded to sit alongside their national counterparts; an office to facilitate mutual legal assistance requests; a programme to provide whistleblowers advice and protection; and other ideas that would address parts of the existing gaps in the international framework for fighting corruption. Such ideas should be carefully considered and designed in ways that avoid duplication and provide for efficient collaboration between national and international anti-corruption institutions, including a future IACC. Only a vast, interlocking tapestry of anti-corruption institutions will lead to substantial progress and provide the international community with greater capacity and the opportunities to tackle other pressing global challenges.

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