

## Article

# APUNCAC and the International Anti-Corruption Court (IACC)

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**Abstract:** The draft Anticorruption Protocol to the United Nations Convention against Corruption (APUNCAC) seeks to implement aggressive measures to fight corruption and impunity, including United Nations inspectors who would conduct independent investigations into allegations of corruption and hand cases to dedicated domestic anticorruption courts. APUNCAC is designed to be a free-standing proposal. However, it could be combined with Judge Mark Wolf's proposal for an International Anti-Corruption Court (IACC). An advantage of combining IACC + APUNCAC is that the combination defuses the key arguments against the IACC. This article reviews evidence suggesting that leaders of nations that currently experience endemic corruption might find it politically expedient to adopt the proposed reforms. The article discusses the advantages of combining IACC + APUNCAC. The combination would establish an independent corps of elite investigators, endow them with strong powers to conduct independent investigations, and enable them to refer cases to dedicated anticorruption courts staffed by judges vetted by the United Nations Commission on Crime Prevention and Criminal Justice. APUNCAC establishes mechanisms to ensure accountability of judges serving dedicated anticorruption courts. By addressing the key arguments against the IACC, the proposal to combine IACC + APUNCAC may enable broad public support in nations that would require public support in order to secure ratification.



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## 1. Introduction

The Anticorruption Protocol to the United Nations Convention against Corruption (APUNCAC) is a draft 200-page international convention developed by the author over the past decade (Yeh 2011a, 2011b, 2012a, 2012b, 2013, 2014a, 2014b, 2015, 2020a, 2020b, 2020c, forthcoming).<sup>1</sup> The objective is to fill gaps in the existing international legal framework that fights corruption. The existing framework does not establish an international corps of anticorruption inspectors that are independent of manipulation by domestic elites, does not establish a system of dedicated anticorruption courts, does not ensure the integrity of prosecutors and judges who serve those courts, and does not install an effective system to collect and centralize accurate beneficial owner information whenever funds are transmitted internationally or to known bank secrecy havens in amounts exceeding USD 3000.<sup>2</sup> APUNCAC contains provisions that would address each of these gaps. The rationale is that, in the absence of these provisions, domestic elites can manipulate domestic law enforcement, domestic legal systems, and the international financial system in a way

<sup>1</sup> APUNCAC. Accessed 25 November 2020. <http://tinyurl.com/y6bkpott>. APUNCAC was introduced via two articles published in 2011. See (Yeh 2011a). Corruption and the Rule of Law in Sub-Saharan Africa. *African Journal of Legal Studies* 4: 187–208, Yeh (2011b). Ending Corruption in Africa through United Nations Inspections. *International Affairs* 87: 629–50.

<sup>2</sup> Existing efforts focus on establishing registries to register beneficial ownership of companies, but this would not help investigators in cases where illicit flows are intermingled with legitimate funds. APUNCAC focuses, instead, on requirements that would force beneficial owners to reveal their identities with regard to international transfers to known bank secrecy havens, defined as jurisdictions on the U.S. State Department's list of jurisdictions "of primary concern." See Bureau for International Narcotics and Law Enforcement Bureau for International Narcotics and Law Enforcement Affairs (2017). *International Narcotics Control Strategy Report*. vol. 2. Washington, DC: United States Department of State. The rationale for this focus is that criminals use jurisdictions where regulation is lax to hide illicit funds.

that permits the continuation of rampant corruption. Details about how these provisions would be implemented and enforced, and reasons that potential States Parties might be expected to ratify APUNCAC and provide the necessary cooperation, have been addressed elsewhere (Yeh 2015, 2020a, 2020b, 2020c, forthcoming).

In brief, APUNCAC offers benefits, in the form of innovative provisions that would require beneficial owners to reveal their identities with regard to international transfers to bank secrecy havens. These provisions would strip away the anonymity that permits criminals, including terrorists, to escape with the proceeds of their crimes. These provisions would be attractive to the U.S., the UK, and OECD Member States because their efforts to fight terrorism have been stymied by the ability of terrorists to manipulate the international financial system, hide their funds, and continue to commit terrorist acts. Other states may wish to ratify APUNCAC in order to avoid being seen as pariah states that operate outside the rule of law, and to maintain international concessions regarding aid, trade, and debt relief.

APUNCAC contains provisions that would permit UN anticorruption inspectors to pursue acts involving abuse of power and obstruction of justice. APUNCAC defines obstruction of justice, creates a procedure where a UN inspector may request an opinion from a domestic judge regarding an allegation involving obstruction of justice, and creates procedures that would ensure transparency regarding allegations involving abuse of power and obstruction of justice. APUNCAC establishes procedures to hand cases to dedicated domestic anticorruption courts.

APUNCAC includes provisions to ensure that the convention would be implemented as intended, States Parties would cooperate, and failure to cooperate would be censured by the United Nations, sanctioned through penalties imposed by the World Bank and IMF, and exposed through online publication of reports by Transparency International (Yeh 2015). A failure to cooperate would be investigated by UN inspectors as an obstruction of justice. APUNCAC establishes procedures to vet the selection of prosecutors and judges and mechanisms to ensure the accountability of judges serving dedicated anticorruption courts.

The creation of dedicated domestic anticorruption courts is different from Judge Mark Wolf's proposal to create a single International Anti-Corruption Court (IACC). However, both proposals are ambitious. Both seek to address the problem of corruption and impunity through the implementation of new courts. Both are based on the rationale that endemic corruption can only be addressed by establishing independent investigators, prosecutors, and courts. Both proposals raise thorny questions about why political leaders who themselves may be involved in corruption would ever support or sign the necessary agreements or legislation. Both proposals raise questions about how evidence would be collected, assembled, and presented to an anticorruption court. Both proposals raise questions about the incentives for potential States Parties to ratify the proposed conventions.

These questions demand attention. Momentum is building for action, but premature action regarding an immature or underdeveloped proposal could have unintended negative consequences. The result could be counterproductive.

The purpose of the current article is to address these questions. While APUNCAC is designed to be a free-standing proposal, it could be combined with Judge Wolf's proposal for an IACC. I address certain questions by proposing to combine the separate APUNCAC and IACC proposals into a single proposal. The IACC could serve as a supreme court for cases of grand corruption, modeled after the International Criminal Court. The APUNCAC courts could serve as first-level courts. UN inspectors would prepare cases for these courts. The current article explains the rationale for this proposal.

Section 2 describes Judge Wolf's proposal to establish an IACC and notes that momentum is building toward the establishment of an IACC. Section 3 describes three major criticisms of the IACC. Section 4 responds to those criticisms. Section 5 explains the rationale for combining IACC + APUNCAC. Section 6 concludes.

## 2. IACC

The idea for an International Anti-Corruption Court (IACC) was first put forward by Judge Mark L. Wolf at the 2012 St. Petersburg International Legal Forum and subsequently presented at the 2014 World Forum on Governance (Wolf 2014, p. 1). Wolf subsequently described his proposal in an article published in the journal *Daedalus*. Wolf justified the proposal by reiterating the need for a credible deterrent to actors who might otherwise choose to engage in acts of corruption:

It is a fundamental premise of criminal law that the prospect of punishment will deter crime. Research has validated this premise, including with regard to violations of human rights. The absence of risk of punishment, particularly imprisonment, contributes greatly to the pervasiveness and persistence of grand corruption. (Wolf 2018, p. 145)

Wolf argued that grand corruption and impunity flourish in nations where political leaders control prosecutors and judges, neutering deterrence:

Many countries do not hold corrupt leaders accountable because those very leaders control every element of the administration of justice. Kleptocrats enjoy impunity because they are able to prevent the honest, effective investigation and prosecution of their colleagues, their friends, their families, and themselves. (Wolf 2018, p. 147)

Wolf argued that the United States system of independent courts and prosecutors offers a promising model:

The United States provides a model for a new international approach to creating the crucial, credible threat that corrupt leaders will be punished for their crimes. Federal prosecutors are capable of trying complex cases successfully before impartial judges and juries. As a result, public officials convicted of corruption regularly receive serious sentences, which have the potential to deter others and to create a political climate in which candidates dedicated to governing honestly are elected. (Wolf 2018, p. 147)

Wolf concluded:

[A]n IACC is needed for the extraterritorial prosecution and punishment of corrupt leaders of countries that are unwilling or unable to enforce their own laws against powerful offenders. The international consequences of grand corruption justify the creation of an IACC, separate from but similar to the International Criminal Court (ICC). (Wolf 2018, pp. 145–46)

[T]he fact that grand corruption continues to flourish demonstrates that the current means alone are inadequate and something new is needed. (Wolf 2018, p. 148)

Wolf offered preliminary ideas about how the IACC would work:

[T]he IACC should employ elite prosecutors from around the world with the experience and expertise necessary to develop and present complex cases effectively. In addition, the Court should be led by able and impartial international judges. Importantly, like the ICC, the IACC should operate on the principle of complementarity. National courts would have primary jurisdiction over crimes by corrupt leaders in their countries. The IACC could only exercise jurisdiction if a nation proved unwilling or unable to make good-faith efforts to investigate, prosecute, and punish its leaders and their accomplices for corruption. The IACC would therefore be a court of last resort, to be relied upon only in cases in which national enforcement of existing domestic criminal laws against a country's leaders is not possible. (Wolf 2018, pp. 149–50)

Wolf's proposed IACC has gained international support. In November 2018, the United Nations adopted a resolution calling for the convening of a Special Session of the

General Assembly “on challenges and measures to prevent and combat corruption and strengthen international cooperation”. As noted by Integrity Initiatives International:

In January 2019, Colombia became the first country to call on the United Nations specifically to create the IACC and make it a key focus of the 2021 Special Session. In May 2019, Peru joined Colombia in backing the IACC, as President of Colombia Iván Duque Márquez and President of Peru Martín Vizcarra signed a Joint Presidential Declaration calling for further study and action to establish an IACC. On June 12, 2019, Colombian Foreign Minister Carlos Holmes Trujillo delivered opening remarks, including a call for support of the IACC, to the United Nations Office on Drugs and Crime Expert Group Meeting in Oslo, Norway. As a result, recommendation 46 of the Expert Group meeting calls for further study of the IACC. In December 2019, III participated in the Conference of States Parties to the United Nations Convention against Corruption in Abu Dhabi, United Arab Emirates by advocating for the inclusion of the IACC on the agenda for the 2021 Special Session of the United Nations. Most recently, Congresswoman Jackie Speier (D-California) and Congressman James McGovern (D-Massachusetts) introduced a House Resolution calling on the Congress of the United States to support efforts to establish an IACC. ([Integrity Initiatives International 2020](#))

It is expected that a resolution will be introduced regarding the IACC at the Special Session of the United Nations General Assembly to be held 26–28 April, 2021 at United Nations Headquarters in New York.

### 3. Criticism

While momentum is building in support of the IACC, Harvard law professors Matthew Stephenson and Alex Whiting have questioned the viability of the IACC through articles published as blog posts ([Stephenson 2016](#); [Whiting 2018](#)).

#### 3.1. Criticism 1

Stephenson wrote:

[A]n IACC would require that sovereign states consent to giving an international court the authority to determine whether each state’s legal system is adequate to hold accountable senior leaders who engage in acts of grand corruption, and if the international court decides that it isn’t, that court would be empowered to arrest, try, convict, and imprison the state’s leaders. There’s essentially zero chance that states ruled by corrupt elites—or, for that matter, states sensitive to sovereignty concerns—will ever sign onto this. And without that consent, the whole proposal is stillborn. The IACC is thus an example of what my colleague Adrian Vermeule would call a “self-defeating proposal”, in which the diagnosis of the problem to be solved (here, the unwillingness of political leaders to surrender their impunity), if accurate, means the proposed solution (here, asking them to consent to a surrender of their impunity) cannot possibly work. ([Stephenson 2016](#))

Stephenson argues that political leaders in states characterized by high-level corruption cannot be induced to sign agreements permitting an international anticorruption court because they would not voluntarily surrender control. Likewise, [Schaefer et al. \(2014, p. 12\)](#) argue that it is unlikely that a government populated with corrupt individuals would willingly submit to the authority of the IACC.

#### 3.2. Criticism 2

Alex Whiting wrote:

Judge Wolf imagines that IACC prosecutors would function like federal prosecutors in the U.S., able to spring into action, armed with powerful investigative tools to mount effective prosecutions when local authorities fail to act. However, the analogy is false and misleading. As Judge Wolf notes, “Federal investigators are

authorized to conduct undercover operations and secretly record conversations, and are adept at unraveling complicated financial transactions". In addition to these tools, federal prosecutors can subpoena records, compel witnesses to testify to the grand jury, get search warrants, and strike deals with cooperating witnesses. But prosecutors and investigators at the ICC, the model for the IACC, have few of these tools. By design, ICC prosecutors are almost entirely reliant on state cooperation to conduct their investigations. If they want to obtain documents or conduct any investigative actions requiring coercive legal measures—such as wiretaps or search warrants—they must make a request to state authorities. (Whiting 2018)

While Wolf stated that "[T]he IACC should employ elite prosecutors from around the world with the experience and expertise necessary to develop and present complex cases effectively" (Wolf 2018, p. 149), Whiting's point is that the establishment of prosecutors would be useless unless prosecutors were armed with strong investigative powers, the ability to compel witnesses, and the ability to compel the cooperation of domestic authorities. Schaefer et al. (2014, p. 11) make the same point.

### 3.3. Criticism 3

Matthew Stephenson wrote:

[To secure the participation of recalcitrant nations, advocates of the IACC] propose extreme coercive measures—like kicking states that don't join the court out of the WTO, denying them foreign aid, expelling them from UNCAC, etc.—that are unworkable and counterproductive. They're unworkable because (A) most of the kinds of coercive pressure envisioned require the agreement of several of the very states that would likely resist the IACC, and (B) because the states where IACC is most needed—kleptocracies—would likely reject the court even at great cost. These coercive proposals are counterproductive because (A) trade and aid sanctions, if imposed, would probably worsen the corruption problem, given that poverty and international isolation are significant drivers of corruption, (B) the threat of such sanctions would likely increase the citizenry's sympathy for the corrupt leaders, and (C) the threat of sanctions—almost certainly targeted at weak developing countries—would send the message that anticorruption is a kind of Western/Northern neo-imperialism (thus undermining two generations' worth of progress in refuting this old canard). (Stephenson 2016)

Stephenson argues that stripping recalcitrant states of membership in world organizations, expelling them from UNCAC,<sup>3</sup> and denying foreign aid would be unworkable, counterproductive, and send the message that the IACC is a neo-imperialist instrument that targets weak developing nations. Darling (2017, p. 439) makes a similar point.

## 4. Responses

Stephenson's first criticism—that high-level corruption is incompatible with the voluntary adoption of strong measures to fight corruption—is the most challenging of the three criticisms and requires a lengthy response. Criticisms #2 and #3 are, in comparison, easier to address. Therefore, I focus on Criticism #1.

I argue that Criticism #1 ignores the historical record. Below, I present counterexamples to Stephenson's argument demonstrating that high-level corruption is not incompatible with the voluntary adoption of strong measures to fight crime and corruption. The counterexamples include the United States, which experienced high levels of corruption in the late 19th- and early 20th centuries, numerous nations characterized by high-level corruption that are parties to the Rome Statute establishing the independent prosecutor and International Criminal Court, plus Romania, Guatemala, Honduras, and Ukraine.

<sup>3</sup> United Nations Convention against Corruption, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005) [hereinafter UNCAC].

I argue that Criticisms #2 and #3 may be addressed by combining Judge Wolf's proposed IACC with APUNCAC. I describe the advantages and rationale, and explain why the combination is desirable.

#### 4.1. Criticism 1

Stephenson argues that political leaders in states characterized by high-level corruption would not be willing to sign agreements permitting an international anticorruption court because they would not voluntarily surrender control. There is, however, a flaw in this logic. According to Stephenson's logic, no state that has experienced endemic corruption would ever ratify aggressive measures to fight corruption. However, history says otherwise. Government corruption was endemic in 16th- and 17th-century England, in Europe in the 18th-century, and in America during the late 19th- and early 20th centuries (Hoogenboom 1979; Keller 1979; Miller 1992; Peck 1979; Ramseger 2007; Steffens 2004). Public pressure for reform ultimately forced political leaders to sign legislation adopting checks and balances against corruption (Hoogenboom 1979; Peck 1979). This included the establishment of strong, independent, protected anticorruption prosecutors. The fact that effective checks and balances currently exist in Western countries indicates that public pressure was ultimately effective in installing powerful measures to fight corruption, despite the existence of endemic corruption. How, according to Stephenson's logic, could England, Europe, and America have transitioned from a state of endemic corruption to clean government if political leaders were unwilling to relinquish control?

Lessons from America, Romania, the UK, Rome, Guatemala, Honduras, and Ukraine suggest that political decision-makers are influenced by internal domestic pressure, external international pressure, political expediency in the face of domestic and international pressure, and in some cases by the hubris that they can support—but will not be affected by—the installation of strong, independent courts and prosecutors.

##### 4.1.1. Lessons from America

In late 19th- and early 20th-century America, for example, public pressure for reform arose in response to the general deterioration of law and order and the rise of crime, mob violence, and pervasive corruption that reached the highest levels of government (Ma 2008, pp. 202–3). In response to demand for reform, state legislatures abolished private prosecution of crime and granted public prosecutors sole authority to institute prosecution (Ma 2008, p. 203). Prosecutors acquired monopoly control over prosecution (Ma 2008, p. 203; Ramsey 2002). In an effort to isolate prosecutors from political influence, state legislatures altered the process of selecting prosecutors. One state after another implemented legislation requiring popular election, rather than appointment, of prosecutors (Ma 2008, pp. 202–3). By 1945, all but two states had shifted to the elective system of selecting judges and prosecutors (Ma 2008, p. 202). Advocates of popular election sought to isolate prosecutors from the influence of political leaders who previously controlled the prosecutorial appointment process and expected loyalty in return.

These reforms intersected with reforms at the federal level. In 1870, the U.S. Department of Justice (USDOJ) was established (U.S. Department of Justice n.d.). In 1910, Congress passed the Mann Act, extending federal jurisdiction in the area of crime control.<sup>4</sup> In 1919, the Criminal Division of USDOJ was established (U.S. Department of Justice 2019). United States attorneys began investigating criminal complaints under the supervision and authority of the Attorney General.

It soon became clear, however, that corruption extended to the highest levels of government. By the spring of 1924, former President Warren G. Harding, Secretary of the Treasury Andrew Mellon, Attorney General Harry Daugherty, Bureau of Investigation Director William Burns, and numerous Congressmen had been implicated in the Teapot Dome bribery and corruption scandal (Potter 1998, p. 10). Former Vice President Calvin

<sup>4</sup> Mann Act, Pub.L. 61–277, 36 Stat. 825a (1910).

Coolidge asked for resignations (Potter 1998, p. 10). A National Crime Commission was created (O'Reilly 1982, p. 641). The Commission called for new measures to fight crime and corruption. In January 1934, President Franklin Roosevelt identified organized crime as a major threat to the nation's security (O'Reilly 1982, p. 641). Attorney General Homer Cummings described the wave of crime as "a war that threatens the safety of our country—a war with the organized forces of crime" (O'Reilly 1982, p. 641). Public criticism intensified. The President of the New York Bar Association traced the failure to weak local investigation and political corruption (Conley 1971, p. 34). Pressure for reform intensified, driven by outrage over political corruption and the view that government officials were inept, corrupt, and controlled by gangsters (Conley 1971, pp. 11, 36). A probe into parole and probation practices uncovered extensive corruption (Conley 1971, p. 30). The Federal Bar essentially acknowledged that local justice systems were corrupt and could not perform their basic crime control functions (Conley 1971, p. 31).

Public support grew for the creation of an elite force of federal investigators to fight racketeering and organized crime (Conley 1971, pp. 20, 22–25, 32). State governors, sensitive to public reaction and knowing that failure to act could be used against them as a campaign issue, chose to support the expansion of federal jurisdiction and control (Conley 1971, p. 31). In response, Congress passed nine legislative bills to expand federal jurisdiction and control organized crime (Conley 1971, pp. 34, 38, 39; O'Reilly 1982, p. 643). Federal prosecutors were empowered to take charge of specific cases at their discretion (O'Reilly 1982, p. 643). Officials vowed that federal agents would pursue corruption and criminal activity regardless of position, power, or status (Conley 1971, p. 47).

The reforms shaped the Federal Bureau of Investigation and the system of independent state and federal prosecutors that is now widely acknowledged as the world standard for integrity, competence, and effectiveness. U.S. Attorneys quickly established a reputation for relentless investigation of crime and corruption. Federal agents compiled an impressive record of arrests leading to convictions (Conley 1971, p. 51).

Reforms were implemented despite opposition from senior government officials, and in the face of high levels of corruption and organized crime. Attorney General William D. Mitchell argued vehemently against federal expansion of criminal law enforcement (Conley 1971, p. 48). Judges, prosecutors, and police officials from all levels of government argued against federal expansion (Conley 1971, p. 37).

Reforms were implemented despite the presence of corrupt actors in key positions. Senator Royal Copeland, the powerful chairman of the Senate Rules Committee, was responsible for chairing congressional hearings regarding racketeering. A beneficiary of the Tammany Hall patronage machine, he displayed little interest in exploring allegations that Tammany Hall was linked to organized crime and a major cause of corruption (Conley 1971, pp. 27, 28, 83).<sup>5</sup> The Committee accomplished little in the way of substantive investigation and submitted no final report (Conley 1971, p. 28). The Committee hearings primarily served to burnish Copeland's crime-fighting image (Conley 1971, p. 28).

Despite this type of interference by corrupt actors, public pressure for reform meant that the vast majority of elected officials, including state legislators, U.S. Representatives and Senators, governors, and the President, benefited from their public advocacy and support for reform. The reforms placed control of prosecution in the hands of dedicated public prosecutors and U.S. attorneys, shifted the system of selecting public prosecutors to an elective system, established the Criminal Division of the U.S. Department of Justice, created an elite force of federal investigators to fight racketeering and organized crime, expanded federal jurisdiction to control organized crime, and empowered federal prosecutors to take charge of specific cases at their discretion. The reforms were the consequence of public

<sup>5</sup> Tammany Hall was a New York City political organization that served as the main local political machine of the Democratic Party and played a major role in controlling New York City and New York State politics from the 1790s to the 1960s. It typically controlled Democratic Party nominations and used its patronage resources to build a loyal, well-rewarded core of district and precinct leaders. Tammany Hall famously served as an engine for graft and political corruption under William M. "Boss" Tweed in the mid-19th century. In 1928, New York Governor Al Smith, supported by Tammany Hall, won the Democratic presidential nomination.

pressure for reform and calculations by elected officials that the reputational benefits of supporting the reforms outweighed the risk that the reforms could be turned against them. The reforms shaped the American system of independent state and federal prosecutors that is now widely acknowledged as the world standard for integrity, competence, effectiveness, and relentless investigation of crime and corruption.

The shift to the elective system transformed the role of the American prosecutor (Ma 2008, p. 203). As an elected official endowed with discretionary power by the constitution or by state statutes, the prosecutor's decisions are virtually unreviewable (Gilliéron 2014, p. 51; Ma 2008, pp. 206–7). The prosecutor has absolute discretion in deciding which laws to enforce and which laws to ignore (Gilliéron 2014, p. 51; Ma 2008, pp. 206–7). The change from appointed to elected status meant that prosecutors were directly answerable to the people, not beholden to those who had appointed them, and free to pursue investigations and prosecutions at the highest levels of government (Gilliéron 2014, p. 51).

The laws mandating these changes were passed during an era of endemic corruption by legislatures widely viewed as riddled with corrupt individuals. Political leaders supported and signed legislation, regardless of their probity and personal ethics, out of political expediency, or when compelled by veto-proof majorities. They calculated that the political benefits outweighed the possibility that the new laws might be turned against them. This dynamic explains how strong anti-crime legislation was signed into law despite the existence of corrupt actors in positions of power.

#### 4.1.2. Lessons from Romania and the UK

A case study of Romania suggests an alternative explanation—that political leaders frequently miscalculate the possibility that new laws might be turned against them (Schnell 2018). Between 2000 and 2004, Romania adopted a series of anti-corruption reforms. In 2012, the Prime Minister who led the reforms—Adrian Nastase—was sentenced to jail for corruption (Ciobanu 2012). The case analysis concluded that the existence of widespread corruption can breed complacency among decision makers. Decision makers adopt anti-corruption policies because they want to signal their integrity and gain reputational benefits, but miscalculate the consequences. They incorrectly assume they will be able to control implementation and avoid becoming ensnared by the laws they helped to install. Leaked transcripts showed the ruling Social Democratic Party leaders discussing how they could control and manipulate the judiciary, media, and civil society (Schnell 2018, p. 422). The evidence suggests that they did not really expect the anti-corruption policies they had installed to be enforced (Schnell 2018, p. 422). The Social Democratic Party, according to civil society measures, had by far the most “tainted”—i.e., corrupt—electoral candidates (Schnell 2018, p. 421). The civil society assessments were based on asset and income disclosures required by the 2003 anti-corruption law (Schnell 2018, pp. 420–21). The prime minister and leader of the Social Democratic Party, who ensured the adoption of the 2003 law, was Adrian Nastase. He had defended the law in parliament as sending “a very clear signal to the political class, the Romanian society, and our external partners” that the government intended to start a massive anti-corruption effort (Schnell 2018, p. 422). He ensured the passage of the anti-corruption reforms because he desired the reputational benefits, but miscalculated the consequences.

Once the reforms were installed, they were difficult to remove. Every attempt at weakening the laws provoked not only international rebukes, but also domestic public and political outrage (Schnell 2018, p. 423). The public viewed opposition to the laws as evidence of corrupt intent (Schnell 2018, p. 424). This made opposition to the policies politically costly, which made the policies difficult to reverse and increased pressure for more stringent enforcement (Schnell 2018, p. 424). In sum, decision makers in high-corruption countries adopt anti-corruption policies because they seek to signal their honesty and integrity, and assume they will be able to control the implementation of the policies (Schnell 2018, p. 425).

A study of anticorruption legislation in the UK found the same dynamic: “Few politicians can ignore or resist the political credibility that can be gained” by supporting reform (Worthy 2017, p. 188). Once installed, the reforms were difficult to remove:

Any backing down would disappoint and raise suspicions as to why and, almost inevitably, what there is to hide, and could create a dangerous narrative about betrayal of people, principle or ‘radical’ intent. A government’s or leader’s trust and faithfulness would be eroded, and with it their capacity to make powerful moral arguments, especially if linked to the ‘betrayal’ of a particular promise. This symbolic betrayal could then have real political consequences. (Worthy 2017, p. 189)

Rejection “would be likely to become a recurrent trope and line of attack for opponents, as well as a policy ‘gift’ to other political parties”, leading to a loss of trust and erosion of legitimacy (Worthy 2017, p. 189).

#### 4.1.3. Lessons from Rome, Guatemala, Honduras, and Ukraine

One cannot argue that the conditions for establishing strong, independent, protected prosecutors only existed in England, Europe, and America, or only in the distant past. Consider the past two decades. The Rome Statute established an independent International Criminal Court (ICC) and an independent prosecutor with the capacity to initiate cases *proprio motu*.<sup>6</sup> The Rome Statute was signed by 123 nations, including many nations characterized by endemic corruption, meaning that 123 nations are States Parties to an international convention that requires the surrender of domestic sovereignty with regard to the types of crimes covered by the Rome Statute. In these nations, no domestic political leader is immune to prosecution by the independent prosecutor or the International Criminal Court. The ICC has been effective in conducting successful investigations, indicting alleged criminals for committing mass atrocities, executing arrest warrants with the assistance of domestic authorities, and bringing suspects to trial.<sup>7</sup> The ICC’s success demonstrates that it is not a paper tiger, and adoption and ratification are not empty gestures by politicians to placate the international community. The ICC is bringing criminals to justice in cases covering Uganda, the Democratic Republic of the Congo, Darfur/Sudan, and the Central African Republic.<sup>8</sup> The evidence suggests that international investigators can be effective and can obtain the cooperation and assistance of domestic authorities in executing arrest warrants, even in nations characterized by high corruption and weak rule of law.

In Guatemala, the Commission against Impunity in Guatemala (CICIG) was created through an international agreement with the United Nations.<sup>9</sup> The agreement stated that “CICIG shall enjoy complete functional independence in discharging its mandate”.<sup>10</sup> Carlos Castresana, CICIG’s first head, was a respected Spanish career prosecutor who had no Guatemalan connections. Castresana recruited other Spanish-speaking prosecutors and investigators to staff CICIG, individuals who could pass a rigorous integrity check and were also strangers to Guatemala. CICIG enjoyed tremendous success over its 12-year mandate, securing the conviction of dozens of senior military and political leaders and

<sup>6</sup> Rome Statute of the International Criminal Court, *opened for signature* 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) [hereinafter Rome Statute].

<sup>7</sup> There are numerous examples of successful ICC investigations and prosecutions. See Yeh (2015). Why UN Inspections? Corruption, Accountability, and the Rule of Law. *South Carolina Journal of International Law and Business* 11: 227–60.

<sup>8</sup> “Situations Under Investigation”, INT’L CRIM. CT., [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx) (last visited 16 November 2017).

<sup>9</sup> Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala, *opened for signature* 12 December 2006, 2472 UNTS 47 (entered into force 4 September 2007) [hereinafter CICIG Agreement]. After CICIG opened an investigation into President Jimmy Morales, his brother, and son, he declined to renew CICIG’s mandate, effectively ending the commission after 12 years of operation and over 400 convictions, and despite public opinion polls demonstrating that over 70 percent of Guatemalans support CICIG. This outcome underlines the importance of establishing a permanent international institution insulated from domestic tampering and dedicated to the investigation of corruption.

<sup>10</sup> CICIG Agreement, art. 2 para. 2.

forcing a sitting president and vice president to resign over corruption charges (Call and Hallock 2020b, p. 2).

Remarkably, CICIG's initial 2-year mandate was renewed in April 2009, in January 2011, in April 2015 and again in April 2016 (United Nations n.d.). What explains the fact that CICIG's mandate was repeatedly renewed by one president after another when some proved to be deeply corrupt and had every reason to fear a CICIG investigation into their corrupt dealings? A report by the Center for Latin American and Latino Studies (CLALS) found the same pattern of presidential hubris and miscalculation that characterized Romania's Adrian Nastase. One president after another renewed CICIG's mandate only to suffer the consequences of CICIG's aggressive anticorruption investigations:

Why did president after president keep acquiescing to the international presence and efforts to help combat corruption when some proved to be deeply corrupt? What sort of hubris or blind optimism exists for decision-makers to create (and renew) a mechanism whose mandate is to uncover their own criminal behavior? (Call and Hallock 2020b, p. 72)

The answer was domestic and international pressure:

These choices cannot be explained without acknowledging the pressures to approve such mechanisms from both domestic and international actors. (Call and Hallock 2020b, p. 72)

Apparently, this pressure can be decisive. This offers a reason to think that domestic and international actors might also apply the same type of pressure to force the adoption of CICIG-like investigative bodies such as the type of body that would be established by APUNCAC, even when corrupt actors control the office of the president in potential States Parties to APUNCAC.

The experience of CICIG in Guatemala suggests what could be accomplished in potential States Parties to APUNCAC through a CICIG-like treaty arrangement that operates through domestic laws and courts:

The International Commission Against Impunity in Guatemala (CICIG) represents an innovative effort to curb criminal threats to democratic rule and to strengthen state capacity that diverged from the dominant mode of technical assistance. Working through treaty-based international authority, this "hybrid" U.N.-backed mission combined international and national capacities working through Guatemalan laws and courts. The Commission successfully investigated and helped prosecute multiple high-ranking Guatemalan officials, ex-military officers and business elites. Those investigations precipitated anti-corruption protests that ousted the sitting president and vice president in the "Guatemalan Spring" of 2015. CICIG investigations led to 1540 indictments in 120 cases involving over 70 illicit networks. The mission showed Guatemalans that the rule of law can be applied even to the most powerful, had far-reaching political impact, and contributed to the effectiveness of the Attorney-General's office. (Call and Hallock 2020a)

Honduras implemented a version of CICIG that assigned supervisory, evaluative and, by delegation of the attorney general, investigative and prosecutorial roles to independent international prosecutors experienced with high-level corruption cases.<sup>11</sup> Ukraine implemented a system where a council of non-Ukrainian international experts review and vet individuals nominated for Ukraine's anticorruption court (Council of Europe 2018; Zabokrytsky 2020). Ukrainian President Petro Poroshenko, a corrupt Ukrainian

<sup>11</sup> Agreement between the Government of the Republic of Honduras and the General Secretariat of the Organization of American States for the Establishment of the Mission to Support the Fight against Corruption and Impunity in Honduras. Accessed 9 September 2020. <http://www.oas.org/documents/eng/press/agreement-MACCIH-jan19-2016.pdf> [hereinafter MACCIH]. In four years of operation, MACCIH assisted in the prosecution of 133 individuals, involving 14 cases. On 17 January 2020, the Organization of American States (OAS) and the Government of Honduras announced that they had failed to reach an agreement to renew the Agreement's original four-year mandate. This underlines the need for the type of permanent investigative body that would be established by APUNCAC.

oligarch, signed the law establishing the High Anti-Corruption Court on 26 June 2018 (UNIAN 2018).

These examples indicate that it is feasible to obtain agreements permitting independent international inspectors, dedicated domestic anticorruption courts, and independent vetting of judges selected for those courts—even in nations where corruption thrives and even in cases where corrupt individuals control the president’s office. The examples from Guatemala, Honduras, and Ukraine, as well as the example of the Rome Statute establishing an independent international court and an independent prosecutor with the capacity to initiate cases *proprio motu*, demonstrate that it is feasible to secure agreements where domestic control is relinquished to international investigators and prosecutors.

APUNCAC combines these ideas. APUNCAC seeks to implement aggressive measures to fight corruption and impunity, including United Nations inspectors who would conduct independent investigations into allegations of corruption and hand cases to dedicated domestic anticorruption courts. Similar to CICIG, APUNCAC involves a treaty arrangement that operates through domestic laws and courts. Similar to CICIG, APUNCAC would create a body of experienced investigators endowed with strong investigative powers. Similar to Guatemala and Honduras, APUNCAC would involve the assumption of investigative roles by international investigators experienced with high-level cases of corruption. Similar to Ukraine, APUNCAC would establish dedicated domestic anticorruption courts and implement a system of reviewing and vetting individuals nominated to serve those courts. Similar to the Rome Statute, the CICIG Agreement, the agreement establishing the Honduran MACCIH, the law establishing Ukraine’s anticorruption court, the 2003 Romanian anticorruption laws, and every strong measure establishing independent prosecutors endowed with strong powers to investigate corruption in England, Europe, and America over the past 150 years, APUNCAC would rely on domestic and/or international pressure to force the hand of political leaders who might otherwise oppose APUNCAC. Numerous studies have investigated APUNCAC’s provisions (Yeh 2011a, 2011b, 2012a, 2012b, 2013, 2014a, 2014b, 2015, 2020a, 2020b, 2020c, forthcoming).

#### 4.2. Criticism 2

Whiting notes that Wolf’s proposal for an IACC assumes the existence of independent investigators endowed with strong investigative powers. The idea of combining the IACC with APUNCAC would address this gap by creating a body of UN-funded and supported inspectors with powers similar to the powers of CICIG’s UN-funded and supported inspectors. CICIG successfully employed the type of investigative tools that Whiting believes are necessary for effective investigation and prosecution. CICIG employed wiretaps to link Guatemalan Attorney General Conrad Reyes to a criminal conspiracy designed to undermine CICIG (Open Society Foundations 2016, p. 53). CICIG employed wiretaps and seized documents to prove that President Otto Pérez Molina and Vice President Roxana Baldetti were the leaders of the criminal La Linea state corruption scheme (Open Society Foundations 2016, p. 85). CICIG was extraordinarily effective in Guatemala, achieving numerous high-profile successes, including the arrest and imprisonment of President Otto Pérez Molina and Vice President Roxana Baldetti (Open Society Foundations 2016, p. 6). The creation of an independent body of UN inspectors with the same powers as CICIG investigators would address a major criticism of the IACC—that it does not include independent investigators endowed with strong investigative powers.

In addition, APUNCAC creates incentives and procedures for private parties to fight corruption. APUNCAC would permit private parties to file civil actions to recover damages related to corruption. APUNCAC incorporates the provisions of the False Claims

Act.<sup>12</sup> APUNCAC also incorporates a version of the Racketeer Influenced and Corrupt Organizations (RICO) Act, including the treble damages provision.<sup>13</sup> This provision would allow private litigants to commence a civil action and recover three times the amount of their damages. While few nations have implemented broad RICO-style laws designed to attack racketeering, the endemic corruption that is the target of APUNCAC and the IACC often involves the type of systematic, organized crime that spawned RICO and was effectively fought using RICO. RICO-style laws are arguably needed to fight endemic corruption. The paucity of laws designed to fight endemic corruption indicates that new laws are needed.

#### 4.3. Criticism 3

The proposal to combine IACC + APUNCAC means that Judge Wolf's coercive measures designed to compel participation could be dropped. The benefits of ratifying IACC + APUNCAC would be substantial and could be emphasized to incentivize ratification. APUNCAC contains innovative, aggressive measures to fight money laundering and terrorist financing that would plug a major gap in the international sanction regime against terrorist financing. This would be highly attractive to the United States, the UK, the OECD member states, and reform-oriented elements in each potential State Party.

Innovative APUNCAC provisions would permit investigators to trace international flows of funds into and out of bank secrecy havens such as the British Virgin Islands, the Cayman Islands, and Panama and would permit investigators to follow and prosecute funding of terrorism, transnational criminal organizations, and criminal activities of corporations and executives that currently go unpunished (Yeh 2020a, 2020b, 2020c). These provisions would be attractive to the U.S. and its allies because their efforts to halt terrorist financing have been stymied by the ability of terrorists to hide their funds in offshore havens. In addition, the U.S. and its allies are likely to be supportive of the proposed treaty as a means of addressing government corruption in developing nations that promotes resentment, extremism and terrorism. The APUNCAC provisions would be attractive to reform-oriented elements in every potential State Party where corrupt elites utilize the international banking system to move illicit funds offshore and hide the funds in anonymous offshore accounts.

If the U.S., the UK, and the OECD nations become parties to APUNCAC, many (but not all) African, Asian, and Latin American nations could be expected to follow. They would not wish to be seen as pariah states that refuse to adopt international conventions to fight corruption. The same type of pressure was effective in securing widespread adoption of the United Nations Convention against Corruption (UNCAC), the Rome Statute, and the United Nations Convention against Transnational Organized Crime (UNTOC). This type of pressure has been cited as a reason that Uganda, for example, adopted the Rome Statute (Struett 2008). Uganda viewed ratification as a signal to the international community that it would fulfill its commitments to the World Bank, IMF, and international financial institutions and justify continued concessions regarding aid, trade, and debt relief (Struett 2008).

### 5. APUNCAC + IACC

In principle, passage of IACC + APUNCAC could be obtained through the same type of coordinated campaign waged by the Coalition for the International Criminal Court (CICC) that led to the Rome Statute establishing the International Criminal Court. While

<sup>12</sup> Judge Wolf advocates the implementation of an international convention modeled on the False Claims Act that would permit private parties to pursue civil actions. Wolf, Mark L. 2014. *The Case for an International Anti-Corruption Court*. Washington, DC: Brookings. See also Darling (2017). *I Can Resist Everything except Temptation: An International Solution to African Resource Corruption*. *Texas International Law Journal* 52: 421–48. (arguing that an international civil statute modeled on the False Claims Act, permitting private parties to pursue civil actions, could be a powerful tool to fight corruption). See also Ramasastry (2015). *Is There a Right to Be Free from Corruption?* *UC Davis Law Review* 49: 703–39. (arguing that civil litigation can be a powerful tool to fight corruption).

<sup>13</sup> Racketeer Influenced and Corrupt Organizations Act, Pub. L. No. 91–452, s.901(a), 84 Stat. 922–3 (1970) (codified at 18 U.S.C. ss.1961–1968 (2018)).

Alex Whiting (2018) disagrees, arguing that the Rome Statute was a special case enabled by a golden moment that is unlikely to be repeated, this dissent ignores the previously recited historical record. In England, Europe, and America, as well as Guatemala, Honduras, Ukraine, and the 123 nations that are parties to the Rome Statute, the record indicates that it is possible to obtain agreements or the passage of laws establishing strong independent prosecutors, and to do so in spite of endemic corruption that reaches the highest levels of government. Public pressure can, and has, forced the hand of political leaders, regardless of their personal preferences and ethics. They signed agreements or laws in response to domestic and/or international pressure, out of political expediency, or when legislation was passed with veto-proof majorities.

The difficulties encountered by the ICC in conducting investigations and arresting accused individuals raise concern that the IACC would encounter similar problems. The proposal to combine IACC + APUNCAC addresses that concern by creating a body of UN inspectors modeled on CICIG, with all of the powers of CICIG's investigators, but without the time-limited mandate that eventually ended CICIG. CICIG's 12-year record of achievement demonstrates the viability of that model of UN-supported investigators operating through domestic laws and courts, even in a state characterized by mafia-like control of major government departments.

An advantage of combining IACC + APUNCAC is that the combination may serve to address the major criticisms levied by Stephenson and Whiting regarding the proposal for a single supranational international court—i.e., IACC alone. APUNCAC would implement dedicated domestic anticorruption courts, with strong measures to protect the integrity of those courts. It would be difficult for a critic to assert that those courts violate domestic sovereignty, lack legitimacy, or are a one-size-fits-all solution. APUNCAC courts would be tailored to local culture and conditions and implemented and operated locally. Jurisdictions based on the British civil law legal system would implement APUNCAC courts aligned with the civil law system. Jurisdictions based on the common law legal system would implement APUNCAC courts aligned with the common law system.

When combined with APUNCAC, the IACC could serve as a hammer, and could be reserved for cases where corrupt elites undermine the APUNCAC courts and cause them to be unable or unwilling to prosecute egregious cases of corruption. It would presumably be in the best interests of domestic elites wishing to avoid referrals to the IACC to accept the APUNCAC courts and avoid the type of obvious interference that would prompt referrals to the IACC.

The proposal to combine IACC + APUNCAC would defuse the argument that the IACC represents an unacceptable intrusion on domestic sovereignty. Only cases where the APUNCAC courts are compromised would result in referrals to the IACC. Presumably, the vast majority of cases would be handled by the domestic APUNCAC courts and would never reach the IACC.

The proposal to combine IACC + APUNCAC defuses the key arguments against the IACC. It shifts the burden of adjudication to the domestic court system. It reinforces and supports the domestic court system. It distributes the task of adjudication across a large number of domestic courts. It builds capacity to handle a large number of cases. It avoids overloading the IACC with a large number of cases. It avoids a one-size-fits-all approach by implementing a system of domestically operated APUNCAC courts tailored to local conditions.

By addressing the key arguments against the IACC, the proposal to combine IACC + APUNCAC may enable broad public support in nations that would require public support in order to secure ratification. Public support for ratification would be critical in overcoming entrenched elites who benefit from the continuation of corruption. Events in Tunisia, Libya, and Egypt indicate the significance of public sentiment in overcoming powerful authoritarian leaders who engage in corruption. The same events indicate that powerful leaders are not immune to pressure for reform. Leaders know that they cannot blatantly defy public opinion for long periods of time and expect to remain in power.

Regardless of their true feelings, it would be difficult to refuse support if a compelling reform is posed as a public litmus test of their willingness to fight corruption.

## 6. Conclusions

Matthew Stephenson's and Alex Whiting's critiques of Judge Wolf's IACC raise important issues. The first issue is the apparent contradiction of asking heads of state who may themselves be corrupt to sign an agreement that would give an international anti-corruption court the power to try and convict any citizen of a State Party to the agreement—including the heads of state. Why would a corrupt head of state ever agree to subject himself (or herself) to the jurisdiction of this type of anti-corruption court?

The historical record reviewed above suggests that the answer involves a mixture of political expedience and hubris. When domestic and international actors frame the issue as a litmus test, i.e., a test of whether or not a head of state truly supports strong anticorruption measures, it can be politically costly for a head of state to reject those measures. The historical record repeatedly demonstrates that heads of state choose to publicly sign and support anticorruption measures, regardless of their probity and personal ethics. They appear undeterred by the many instances where heads of state have been ensnared by the anticorruption measures they helped to install. Their hubris is the belief that they are above the law and will not be caught by the law. This hubris is reinforced by the blatant impunity that persists in one state after another. This hubris can infect any head of state. These individuals act as if they are above the law. They believe that they are above the law. They advocate tough laws. They sign tough laws. The act of signing tough laws is an act of bravado. It signals to the world that this person is a strong leader, a person who knows right from wrong, and a champion of safety and security.

There are enormous political benefits. Public safety and security are perennial issues. Political corruption is a perennial issue. Voters prefer the candidate who appears to be tough on crime. Voters hunger for candidates who campaign on a promise that they will "drain the swamp" of government corruption.

The significance of the historical record reviewed above is that it challenges the assertion that states characterized by high-level corruption cannot be induced to adopt strong measures to fight corruption. Falsification of this type of assertion involves the presentation of counterexamples that disprove the assertion. The historical record reviewed above involves counterexamples from America, Romania, the UK, Rome, Guatemala, Honduras, and Ukraine; involves all 123 nations that signed and ratified the Rome Statute; and involves all of the states that previously experienced endemic corruption, including England, European states, and America, but now exhibit strong prosecutors and independent courts. These nations represent a majority of the 193 UN Member States and almost all of the OECD Member States, and include nations such as Romania, Guatemala, Honduras, and Ukraine where high-level corruption appears to be endemic. The number of nations (123) that implemented the Rome Statute establishing an independent prosecutor and the independent International Criminal Court—including nations characterized by endemic corruption—strongly suggests that it is feasible to establish independent prosecutors and independent courts across a range of jurisdictions, in nations characterized by high levels of corruption, and despite the existence of corrupt actors who seek to thwart the implementation of strong measures, independent prosecutors, and independent courts. CICIG was effective in addressing corruption at the highest levels of government despite mafia-like control of the office of the President, the office of the Vice-President, and key government departments. This challenges the notion that endemic corruption would prevent the implementation of strong measures to fight corruption.

Stephenson's assertion that states characterized by high-level corruption cannot be induced to adopt strong measures to fight corruption is contradicted by the historical record in one state after another. Strong prosecutors and independent courts were installed despite endemic corruption, in the presence of endemic corruption, and in the presence of corrupt actors who sought to forestall strong measures to fight corruption.

The issue is not whether it is possible to establish strong prosecutors and independent courts in states characterized by endemic corruption, but how the international community can accelerate the process. The historical record suggests that a sufficient condition is strong international and domestic pressure for reform. Pressure may be exerted by public outrage regarding corruption, transparency regarding acts of corruption, media exposure of corruption, a public litmus test in the form of an international convention or a domestic legislative bill, desire to maintain concessions regarding aid, trade, or debt relief, political expediency, or calculations that the political cost of failure to support strong measures outweighs any concern that strong measures might ultimately be used against the leaders who sign and support those measures.

When political leaders sign strong measures, they calculate that the immediate political benefits outweigh what may seem to be the remote possibility that those reforms could lead to investigations and convictions of the same leaders. "Hubris" is an appropriate characterization of this phenomenon. However, neither APUNCAC nor Wolf's proposal for an IACC rely on the existence of hubris. It is sufficient to say that all political leaders calculate the political benefits of supporting strong measures against the possibility that those leaders might be ensnared by those measures. Political leaders are realists. Their actions are calculated to maximize their current and future political careers. When they sign strong measures to fight corruption, they calculate that the political benefits exceed the potential cost, in terms of the possibility that the measures could be used against them.

The significance of the APUNCAC and IACC proposals is that they create public litmus tests that cannot be easily ignored by political leaders, regardless of their personal ethics, probity, and preferences. A political leader might prefer to engage in conduct that is unfettered by strong prosecutors and independent courts, but when a public litmus test demands a public answer, and when the answer determines the outcome of a public referendum regarding the career of that political leader, that leader may calculate that his or her political future is best served by signing agreements and publicly supporting the installation of strong prosecutors and independent courts.

Alex Whiting raises a second issue. He correctly notes that Judge Wolf's IACC assumes the existence of a body of independent investigators armed with strong investigative powers. In the absence of this body of investigators, the IACC would have no means of collecting evidence and preparing cases.

APUNCAC would, on the other hand, create a body of experienced, independent investigators supported by the United Nations, endow the investigators with strong investigative powers, endow the investigators with all of the tools available to domestic prosecutors, and enable the investigators to hand cases to dedicated anticorruption courts staffed by prosecutors and judges vetted by the UN Commission on Crime Prevention and Criminal Justice. APUNCAC would install a mechanism to ensure the accountability of prosecutors and judges serving the dedicated anticorruption courts.

The creation of independent investigators endowed with strong investigative powers and the capacity to refer corrupt elements of domestic judicial and law enforcement systems to robust anticorruption courts would serve to punish corrupt individuals, restore the capacity of competent individuals to advance through the ranks of government and, over time, restore the type of clean, efficient government that promotes and facilitates the efforts of independent investigators and courts. UN inspectors may initially be hindered to the extent that domestic law enforcement is corrupt and ineffective, but inspectors would, over time, root out corrupt individuals, restore clean government, and reap the benefits of clean government. This process would take time, but the formula has been effective in all jurisdictions previously characterized by high levels of corruption, including America, the UK, Europe, Hong Kong, and Singapore.

It would make sense to combine IACC + APUNCAC into a single unified proposal. APUNCAC would create independent investigators endowed with strong investigative powers and the capacity to refer cases to dedicated domestic anticorruption courts, with strong measures to protect the integrity of those courts. Primary reliance on this type of

protected, domestic court would reduce the concern that the IACC is an international court that violates domestic sovereignty and is a one-size-fits-all solution. The role of the IACC would, instead, be reserved for cases where corrupt elites undermine the APUNCAC courts and cause them to be unable or unwilling to prosecute egregious cases of corruption.

The proposal to combine IACC + APUNCAC means that Judge Wolf's coercive measures designed to compel participation could be dropped. APUNCAC contains innovative, aggressive measures to fight money laundering and terrorist financing that would plug a major gap in the international sanction regime against terrorist financing. The provisions would be highly attractive to the United States, the UK, the OECD member states, and reform-oriented elements in each potential State Party. The substantial benefits of ratifying IACC + APUNCAC could be emphasized to incentivize ratification.

While American leaders have previously displayed reluctance to sign any type of international agreement that could subject them to investigation and prosecution, rejection of an international convention that would fight corruption and implement aggressive measures to fight money laundering and terrorist financing would be contrary to American interests, inconsistent with stated goals, and difficult to explain to American citizens. In any case, the Rome Statute was rejected by the U.S. but adopted by 123 other UN Member States. The U.S. might choose the same route with regard to IACC + APUNCAC but the other 186 parties to UNCAC may decide that aggressive measures are needed to fight corruption.

The combination of IACC + APUNCAC would eliminate the coercive aspects of Judge Wolf's proposal for an IACC, add attractive benefits, and address major concerns. It would make sense to combine the two proposals and push them forward as a package.

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