

## Recent Progress Toward a Proposed International Anti-Corruption Court: Key Features of the Draft Statute

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The initiative to create an International Anti-Corruption Court ('IACC'), which has a genesis of more than a decade, gained considerable momentum over the past two years. The initiative has now surpassed the ideation phase and has made significant progress in its technical evolution. In 2024, a 'zero draft' of a proposed IACC Statute was prepared and deliberated upon by a group of more than 70 experts following a series of round-table meetings convened at The New Institute in Hamburg.<sup>1</sup> Following further refinements, the draft Statute was shared in June 2025 with a number of States and civil society organizations for initial input and comment. The draft Statute will become available for broader consultation in due course. It is hoped that this process will ultimately lead to the adoption of a multilateral treaty, and the establishment of the IACC as a novel international tribunal with both prosecutorial and asset-recovery capabilities.

The IACC fills an important accountability and enforcement gap at the international level. The importance of effective global measures to address the scourge of grand corruption under the United Nations ('UN') Convention against Corruption ('UNCAC'), a milestone in international anti-corruption efforts, was highlighted previously by Mats Benestad in this Series.<sup>2</sup> The UNCAC, the only legally-binding international anti-corruption treaty with a global scope, has contributed to establishing robust legislation and institutions to prevent and combat corruption in numerous countries. However, concrete obligations to prevent and combat grand corruption are presently lacking in the international anti-corruption framework.<sup>3</sup>

This policy brief outlines key features of the current iteration of the draft Statute and the core lineaments of the proposed IACC. It also highlights areas which are likely to invite discussion or undergo further refinement.

### 1. Rationale and Approach

The IACC responds to the pervasive and corrosive nature of UNCAC offences, particularly when committed by heads of State or government officials. The term 'grand corruption' has been widely used even though it has never been defined by the UN or any other international body. International experts agree that large-scale, high-level corruption of this type deprives governments of resources required to provide vital public services such as health care, education, housing, food

and basic infrastructure.<sup>4</sup> It poses a threat to international peace, security and well-being, undermining the achievement of shared international priorities such as the eradication of poverty, addressing climate change and environmental crises, protecting global public health, and respect for human rights and the rule of law. Corruption disproportionately affects the most vulnerable communities, including women, children and Indigenous peoples by increasing the cost of essential services, reducing educational and health care opportunities, and hindering societal advancement. It is difficult to see any other crime resulting in more victims globally than corruption of this kind, many of whom lack recourse to remedial and reparative justice.

Corrupt heads of State and other high State officials enjoy impunity because they frequently control the administration of justice in the countries that they rule or because national systems are otherwise unable or unwilling to hold them to account. State or elite capture of power has long been identified as among the most predominant factors impeding institutional change.<sup>5</sup> The IACC seeks to deny safe havens to those who engage in transnational organized crime by addressing the effects of these crimes, and by enhancing modalities of co-operation at the international level.

The formulation of the draft Statute was an iterative process, following consultations with a wide variety of experts. Further consultations and refinements are envisaged. Designed to complement national efforts to combat corruption, the expert group identified lessons from other international criminal tribunals, incorporating features of the Statute of the International Criminal Court ('ICC') that have achieved widespread acceptance or which have withstood the test of time, eschewing others that have proved less effective in practice. Other features of the draft Statute are novel and specifically geared to the unique challenges of addressing grand corruption.

### 2. Core Crimes

The draft Statute includes a range of offences that all UNCAC States Parties are required to criminalize in their domestic legislation (such as bribery of a public official and embezzlement of public funds), and a few others that Member States are encouraged to criminalize (such as trading in influence, illicit enrichment, and private sector bribery). The aim was to identify a comprehensive and coherent list of offences that are widely-accepted and which endow the IACC with optimum capacity to address many of the major harms stemming from grand corruption.

There is substantial consensus regarding the range of offences which ought to be included in the draft Statute. All experts consulted consider that the IACC should encapsulate sufficiently-recognized crimes that are likely to lead to an effective court. The ultimate list of

<sup>1</sup> This expert group comprises international criminal lawyers, financial crimes experts, and asset recovery specialists and includes judges and other prominent experts from all regions of the world. The initiative is spearheaded by Judge Mark Wolf (United States) and Justice Richard J. Goldstone (South Africa).

<sup>2</sup> See Mats Benestad, "Let Us Get Serious about Grand Corruption: An Indispensable Priority for the 2021 UN General Assembly Special Session", Policy Brief Series No. 110, Torkel Opsahl Academic EPublisher, Brussels, 2020 (<https://www.toaep.org/pbs-pdf/110-benestad/>).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

offences (and their scope) may attract further discussion. All included offences are widely-recognized and criminalized in a large number of jurisdictions (with their criminalization being either mandated or strongly encouraged by UNCAC). However, not all are universally accepted or uniformly understood.

There was also unanimity (within the drafting committee and other experts consulted) that a meaningful approach to accountability at the international level must encapsulate the private sector enablers of grand corruption, although how best to embody this in the draft Statute proved technically challenging.<sup>6</sup>

The IACC's intended focus is on offences beyond the capacities of States to adjudicate, including kleptocrats who, by virtue of their privileged positions within national systems, are more likely to enjoy impunity at the national level. However, the Statute contains neither a gravity threshold nor a jurisdictional limitation upon those in high-level leadership positions. This recognizes that the seriousness of corruption can be difficult to gauge in dollar terms alone. Further, an exclusive focus on those in senior-most *de jure* positions may unduly tie the hands of a future prosecutor and not always capture those most responsible in factual terms. The high number of potential offences that could fall within the purview of the IACC may require some filter: this is currently reflected in a few bracketed provisions (such as those pertaining to bribery in the private sector), to invite discussion.

### 3. Natural and Legal Persons

The IACC's jurisdiction extends to both natural and legal persons. These novel provisions build on unsuccessful attempts to incorporate legal persons within the ICC Statute, and the growing consensus since that a robust liability framework for legal persons is vital to addressing accountability gaps in the anti-corruption sphere. There has been a substantial solidification of the norms surrounding the attribution of liability for legal persons since the Rome Conference, and greater convergence in the approach to attributing liability to them at the national level. These provisions in the draft Statute align with these evolving norms within various national anti-corruption laws. They also draw on language considered during the Rome Conference, as well as relevant provisions in international treaties, including UNCAC.

The draft Statute does not conclusively define the notion of a legal person. It instead aims to provide sufficient breadth and flexibility for the IACC to interpret these provisions over time in line with evolving legal standards, given the diversity of approaches to attributing criminal liability to legal persons amongst States. Reflecting the multifaceted nature of corruption, the legal responsibility of corporations and individuals is independent and not mutually exclusive: the responsibility of a legal person does not require the concurrent prosecution of a natural person. The current draft additionally contains bracketed text suggesting the inclusion of a potential offence of failure to prevent corruption. It is recognized that this concept may not be universally agreed. It is included to present a wide range of options in the interests of the creation of a maximally effective court and to invite further discussion.

The IACC's jurisdiction does not extend to States, except for aspects of the Assets Division's jurisdiction.

### 4. Jurisdiction

The jurisdiction of the IACC is in essence an opt-in regime. The bases of jurisdiction include well-established grounds such as the nationality and territoriality principles. Territorial jurisdiction exists where an offence, or an element of it, occurred on a State Party's territory. Further-reaching versions of extended territorial jurisdiction are incorporated in the draft Statute, in line with those already commonly

<sup>6</sup> The present draft Statute contains bracketed alternatives. Further, many private entities perform State functions, and in some countries, private sector corruption has been increasingly impacting the public sector, as goods and services that historically sat in the public sphere have been outsourced to the private sector. The Statute unambiguously applies to private persons who may not be public officials, but who nevertheless exercise State power or perform State functions, alone or with public officials. This is reflected in the definitional provisions.

used in anti-corruption prosecutions worldwide.

Many States conventionally associated with grand corruption are unlikely to join the IACC. However, their conduct may touch others which do. In particular, the proceeds of corruption are likely to be located in numerous States, including States Parties. Crucially, certain capacities of the Assets Chamber to identify and recover misappropriated assets permit non-States Parties and other entities to petition the Court on an *ad hoc* basis. The *in rem* character of IACC proceedings and the modality the Court offers to any affected State (and other victims of grand corruption) to seek recovery of these assets will be critical to the effectiveness of the future Court, and a real incentive for many to engage with it.

The temporal jurisdiction of the IACC is mainly prospective. It is retroactive in a limited range of circumstances, such as in relation to property acquired as the proceeds of corruption prior to the entry into force of the Statute, but where the crimes in question were completed during the Court's temporal jurisdiction. The current provisions ensure that any new crimes that are included in the Statute are subject to the IACC's jurisdiction on a prospective basis, in order to avoid offending the *nullum crimen* principle. The novel features of *in rem* proceedings before the Assets Division invite a different, but arguably uncontroversial, approach *vis-à-vis* retroactivity, particularly where the proceeds of crimes are concerned.<sup>7</sup> There is a recognized jeopardy in criminal law around retrospectivity: a person ought to know in advance whether their conduct will attract a penal consequence. The jeopardy in the Assets Division is different, as the consequences are non-criminal and pertain to property. Further, actors in this space understand that corruption is unacceptable, and that implicated property is at risk. This is reflected in international norms beyond UNCAC.<sup>8</sup>

Jurisdictional limitations based on *nullum crimen*, *nulla poena*, and the non-applicability of statutes of limitation are largely drawn from equivalent provisions of the ICC Statute. The principle of *ne bis in idem* protects against double jeopardy and is the underpinning of the complementarity regime in the draft Statute.

### 5. Complementarity

As the IACC complements rather than supplants genuine national prosecutions and investigations, the draft Statute addresses the inter-relationship between the IACC and national proceedings. Complementarity, as expressed in the ICC Statute, reflects concerns that may have abated since the Rome Conference. The IACC sought a more streamlined approach, dispensing with a Pre-Trial Chamber on cost-saving and efficiency grounds. The draft Statute conceptualizes complementarity proceedings before the IACC as in substance deferral requests. The modalities for deciding these nonetheless refer to notions of unwillingness or inability (of a State to genuinely undertake investigations or prosecutions), drawing on the collective experience of the ICC in adjudicating these questions. Due to the specificity of the Assets Chamber's jurisdiction and the IACC's focus on both natural and legal persons, the ICC complementarity regime (which is focused on criminal prosecutions of natural persons) provided inspiration, but also resulted in substantial adaptation. For example, the draft Statute contains provisions for *ex parte* and *in camera* proceedings due to the need to protect whistle-blowers,<sup>9</sup> which (in common with all serious corruption cases) will likely be a substantial concern before the IACC. The draft statutory provisions in these complex and challenging areas will probably evolve further.

<sup>7</sup> The definitions of proceeds and instruments of corruption are applied respectively.

<sup>8</sup> For example, see Financial Action Task Force (FATF), "The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation", June 2025 (<https://www.legal-tools.org/doc/n552f8gc/>).

<sup>9</sup> The term 'whistle-blower' is not used in the Statute, which prefers the phrase 'reporting persons' or 'those vulnerable for having provided information to the Court'.

## 6. The Assets Division

A novel feature of the draft Statute is the Assets Division. This Division is competent to hear applications regarding the disposition of property believed to be the proceeds or instruments of corruption. States Parties are entitled to bring applications as of right, while non-States Parties may submit to the jurisdiction of the Assets Division on an *ad hoc* basis.

The property identified as the proceeds or instrument of corruption is itself the subject of proceedings. Several types of proceedings can occur before the Assets Division, ranging from restraint of the asset, seizure of the property, and an order to dispose of or to create encumbrances on the property. The Assets Division can act to prevent individuals from retaining property acquired through acts of corruption, locate and identify assets, and assist victims through the management and disbursement of recovered assets.

The Assets Division will only be effective if there are identified assets to attach an order to. It is thus empowered to locate and identify relevant property through investigations, information sharing, disclosures, unexplained wealth orders,<sup>10</sup> and other techniques. States Parties have an obligation to give effect to these orders. The draft Statute requires them to ensure that their domestic legal processes provide that enforcement of orders from the Assets Division takes precedence over any other claims to the assets.

Due process considerations are embedded at all stages of proceedings before the Assets Chamber, including discretion to not make an order where to do so would be contrary to the interests of justice. Responsible and legitimate owners, as well as affected third parties, may be granted standing to protect their demonstrated interests in the property concerned.

The Assets Division will oversee escrow accounts for court-confiscated property, ensuring effective management of recovered assets. It may also direct a property manager to take steps necessary to manage assets or deal with those that have a rapidly diminishing value, and otherwise manage and disburse recovered assets consistent with the public policy goals of the Statute.

An asset recovery order is a final disposition on the property rights to assets. The draft Statute addresses how assets are to be distributed following a final asset recovery order by empowering it to make a disposition order that it considers most just and equitable in the circumstances. It enables States and appropriate institutions to invoke the Court's powers in a broad range of situations, including where they are in possession of property that they consider might be the proceeds of corruption and want direction in how to dispose of it, or where they know of assets that belong to them and require the assistance of the Court to require the custodial State to relinquish them. There is often a tension in the current international system between the accountability demands made (typically in places like Switzerland) and countries victimized by corruption: the IACC could provide a neutral and trusted forum to adjudicate these disputes.

A number of contemporary challenges may also be easier to address by an impartial international body able to weigh all competing considerations, particularly where there are enormous public benefits in ensuring that property be redistributed in a fair, just and equitable manner. The prospect of the IACC being able to act as a safeguard in relation to billions of dollars currently being allocated, for example, to climate mitigation efforts in the coming years, funds seized from oligarchs or warmongers as a result of international sanctions, or looted by various actors from States whose institutions are weakened or entirely collapsed as a result of armed conflict are just some of the potential uses of these provisions and may be a powerful incentive to many States to support an IACC.

The Assets Division may also act upon the request of international organizations, non-governmental organizations, or the Prosecutor or Victims and Witnesses Unit. The ability of the Prosecutor and victims

to petition the Assets Division where assets have or can be recovered is a significant feature of the Court, and a fresh alternative to existing forms of victim participation before international criminal tribunals, which have frequently proved administratively burdensome for courts and disappointing for victims. Where funds have been traced or can be identified by the Assets Division and subject to redistribution, the possibility that identified victims or groups may be able to obtain restitution for harms suffered will likely be very much welcomed.

The draft Statute contains a small number of innovative remedies drawn from domestic jurisdictions.<sup>11</sup> They are included in the interests of providing options for an effective, innovative court and for broader discussion. It also establishes the Assets Division as solely competent to deal with all financial questions. The precise relationship between the Criminal and Assets Divisions (where pecuniary penalties are concerned) and the Registry (when representing victims on issues of reparation) may require further development.

## 7. Victim Participation and Reparation

The IACC Statute envisages a more streamlined and cost-effective alternative to the systems of victim participation before the ICC and Extraordinary Chambers in the Courts of Cambodia ('ECCC').<sup>12</sup> It empowers the Victims and Witnesses Unit to make representations concerning the rights and potential remedies for victims before any Chamber, including entitlement to assets identified or recovered by the Assets Division as reparations. This recognizes that in many cases, the victims of IACC crimes will often be collectivities: potentially all nationals of several countries. Individualized requests may thus be impracticable or risk overburdening the Court.

Overall, reparation may be more meaningful in circumstances where the Assets Chamber has or will be able to recover assets. In this respect, the powers of the Assets Division to award financial compensation<sup>13</sup> have been left as unfettered as possible, enabling it to make determinations that reflect the wide range of circumstances that might come before it and to weigh all competing considerations.

## 8. Criminal Proceedings

The absence of a Pre-Trial Chamber and a Prosecutor with *proprio motu* powers means that criminal proceedings before the IACC more closely resemble those before the *ad hoc* Tribunals. The Statute addresses appeal rights, penalties, the enforcement of sentences, disclosure, and witness and whistle-blower protections, amongst other issues, many of which will be more substantially fleshed out in later Rules of Procedure and Evidence.

As a further anti-impunity measure, the draft Statute contains a placeholder concerning the possibility of *in absentia* trials, which, in any event, require a determination by a Trial Chamber that this is required in the interests of justice.<sup>14</sup> *In absentia* trials may be a stumbling block for many States<sup>15</sup> – yet the only practical modality

<sup>11</sup> For example, damages recovery orders are based on a United States statute (the 1863 False Claims Act), with a number of adaptations. In essence, they permit private actors to initiate civil cases against wrongdoers. Financial rewards, ranging from 15 to 30 per cent of the amount recovered through the action, strongly incentivize whistle-blowers to come forward with sensitive information.

<sup>12</sup> Reparations before the ICC allows individuals who have suffered harm to receive reparations after the conviction of an accused. The application process is highly time- and resource-intensive, generating high costs and not always ensuring prompt or adequate reparations for victims. Compensation has been largely symbolic relative to the gravity of the crimes suffered. The capacity of the Trust Fund for Victims to raise funds is dwarfed by the size of the victim class and the seriousness of harm suffered.

<sup>13</sup> The limitation in this provision to financial compensation is deliberate, given complexities that have arisen before the ICC and ECCC concerning non-pecuniary reparations, and the absence of any provision for a Trust Fund in the IACC Statute.

<sup>14</sup> *In absentia* proceedings are, uncontroversially, envisaged for indictment confirmation proceedings. They may be less controversial in relation to proceedings before the Assets Division.

<sup>15</sup> They do, however, find favour within several civil law jurisdictions.

<sup>10</sup> An unexplained wealth order requires a respondent to explain the provenance of a particular asset.



to achieve a modicum of justice concerning certain prominent kleptocrats whose States are unlikely ever to join the IACC. A bracketed provision has been included to gauge the current views of States and other stakeholders, and to prompt discussion.

## 9. Head of State Immunities

Inspired by the ICC Statute, the draft Statute provides that an official's position as a head of State cannot prevent their prosecution before the IACC. The irrelevance of head of State immunity is predicated upon the IACC's existence as an international court.<sup>16</sup> The draft Statute seeks to create a multilateral instrument, constituting a court of international character. In the drafters' view, the IACC would unambiguously have this quality by virtue of its modality of creation and its jurisdiction over offences which are universally proscribed. All crimes within its subject-matter jurisdiction are criminalized in all or the vast majority of States, with their criminalization being either mandated or strongly encouraged by UNCAC. Other views on this question are possible.

## 10. Composition, Financing and Governance

The IACC's structure includes a Presidency, Chambers (with distinct Criminal and Assets Divisions), an Office of the Prosecutor, and Registry. The draft Statute also outlines governance and oversight mechanisms in the form of an Assembly of States Parties ('ASP'), with enhanced powers to address disciplinary and State Party non-compliance questions. Beyond assessed contributions, novel mechanisms to place the Court on more sustainable financial footing (such as through fines imposed on convicted persons) are bracketed, recognizing that these need careful elucidation and may not garner universal consensus. Being features common to most multilateral treaties, the draft Statute's concluding provisions (concerning entry into force, signature, ratification, reservations, amendment, and official and working languages) are largely drawn from the ICC Statute.

## 11. International Co-operation

Investigations concerning corruption, financial crimes and transnational money laundering require evidence from multiple jurisdictions. The drafting process identified the international co-operation provisions of the ICC Statute that have in practice worked well (and others that have not), and specific features of international co-operation and assistance likely to be vital to an effective global fight against corruption.<sup>17</sup> The draft Statute equips the IACC with various cross-border evidence collection capabilities.<sup>18</sup> Best practices in international co-operation, and additional streamlined processes that States Parties may authorize in the future, suggest that the Court ideally should be authorized to collect cross-border evidence by issuing IACC warrants and orders that directly apply in the domestic jurisdiction of States

<sup>16</sup> International Court of Justice, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 14 February 2002 (<https://www.legal-tools.org/doc/c6bb20/>).

<sup>17</sup> An increasing number of investigations rely on digital evidence located on servers and cloud storage facilities outside the investigating jurisdiction and which is able to be obtained only through mutual legal assistance: channels that are now overburdened. Simultaneously, the revolution in digital payments platforms and cryptocurrencies has created an array of new money-laundering opportunities, complicating evidence trails pursued by criminal investigators.

<sup>18</sup> Concrete measures addressed include execution of searches and seizures, arrests and transfers, and the questioning of witnesses. The Statute also grants the Court the power to restrain and dispose of assets.

Parties whenever practicable. A model which perceives the IACC as an extension of a States Parties' domestic jurisdiction also presents an alternative co-operation model to that of the ICC, which has been criticized by many as ineffective.

## 12. Conclusion

The draft IACC Statute combines the collective experience of other international criminal tribunals and novel features addressing the unique challenges of combating grand corruption, at a time when the need to do so on the international level has become increasingly apparent and urgent. While efforts to improve the draft continue, early feedback has been encouraging.<sup>19</sup> It is hoped that a draft Statute, reflecting a high level of consensus and technical proficiency, will facilitate both the treaty adoption process and the Court's ultimate success.

There are many obstacles to the establishment of an IACC in the present climate. However, it would be an important corrective against those who seek to undermine the rules-based international legal order. Nor is an IACC incompatible with other efforts: momentum on it may, in fact, lend impetus to other complementary initiatives. The most compelling argument for an IACC is the potentiality that could be unleashed if even some of the billions currently misdirected through grand corruption could instead be channelled towards the greater public good. The present draft Statute is a bellwether to gauge what is technically necessary to achieve these aims, and whether the collective political will to do so can be effectively harnessed.

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<sup>19</sup> The accompanying commentary, which explains the various drafting choices made, will likely become an important record of the drafting history of the Statute.



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