

1. MATHEW STEPHENSON.

A. AN INTERNATIONAL ANTI-CORRUPTION COURT? A SYNOPSIS OF THE DEBATE.

Source: <https://www.u4.no/publications/an-international-anti-corruption-court-a-synopsis-of-the-debate.pdf>

- **Main Point:** Even though the International Anti Corruption Court is a good idea, there is no substantive plan that can address the challenges facing the court.
- **Benefit of the Proposed IACC:**
 - ✓ Deterrent effect
 - ✓ Political Symbolism
- **Challenges:**
 - ✓ Political feasibility – corrupt leaders won't join.
 - Non-participation of powerful countries.
 - Problem of aligning IACC's jurisdiction with that of United Nations Security Council. (Grand corruption cannot be said to be a threat to peace and security under Chapter VII of the UN Charter)
 - Making IACC membership a condition for membership of other institutions like the WTO and ICC will cement allegations of bias against states in the global south and may lead to loss of membership of those organisations.
 - ✓ Effectiveness – Limited investigatory powers
 - ✓ High operating costs.
- **Other Options to fight grand corruption:**
 - ✓ Expand ICC's jurisdiction.
 - ✓ Empower human rights courts to exercise jurisdiction over grand corruption.
 - ✓ Use of UN backed bodies in countries with high incidence of corruption.
 - ✓ Use of specialised domestic anti corruption courts.

- ✓ Build capacity for assets forfeiture and return.
- ✓ Strengthen international anti money laundering framework.
- ✓ Expand jurisdiction of domestic courts over private suits.
- ✓ Use targeted individual sanctions / travel bans.
- ✓ Use of expanded/strengthened regional/international peer review.

B. IS AN INTERNATIONAL ANTI CORRUPTION COURT A DREAM OR A DISTRACTION?

Date: October 4, 2018

Source: <https://globalanticorruptionblog.com/2018/10/04/guest-post-is-an-international-anti-corruption-court-a-dream-or-a-distraction/>

- **Main Point:** States are unlikely to grant “sweeping enforcement tools” to the IACC, which the IACC will need for its success. As such, it is better not to waste time on an idea that may never materialise.
- **Other points:**
 - ✓ States, especially African states “have interpreted the ICC experience as a demonstration of the hazards of joining an international institution that lacks global reach.
 - ✓ Powerful states will likely not join.
 - ✓ Referral power of the UNSC will be a problem as corruption cannot reasonably be said to be a threat to peace and security under Chapter VII of the UN Charter.
 - ✓ To be effective, the IACC investigators would need the cooperation of state parties which they likely will not get.

2. ALLAN ROCK.

A. IT'S TIME FOR AN INTERNATIONAL ANTI CORRUPTION COURT.

Date: February 8, 2021.

Source: <https://wrmcouncil.org/news/its-time-for-an-international-anti-corruption-court/>

By: Lloyd Axworthy and Allan Rock.

- **Main Point:** The write-up shows how the IACC can tackle corrupt states despite their refusal to become members.
- **Points in support:**
 - ✓ The problem of grand corruption is not caused by lack of laws, but by lack of enforcement.
 - ✓ The IACC would not be hamstrung by the refusal of corrupt states to join the IACC if member states in the IACC include the financial hubs of the world where kleptocrats keep their hidden wealth .
 - ✓ NGOs can be used to build support for the IACC.
 - ✓ Canada's faithful support for the international order, and the global reputation for integrity and impartiality that Canada's courts enjoy makes Canada a good choice to host the IACC.
 - ✓ World Refugee & Migration Council's proposal for freezing of assets of corrupt individual which was adopted by the Government of Canada will assist in fighting corruption by helping the government to freeze and confiscate such assets.

3. PETER MACKAY.

A. AN ANTI CORRUPTION COURT TO CRACK DOWN ON CORRUPTION.

Date: February 1, 2022.

Source: <https://nationalpost.com/opinion/peter-mackay-an-international-court-to-crack-down-on-corruption>

- **Main Point:** The need to establish an IACC and why it can be successful.
- **Pros:**
 - ✓ Increased government spending in relation to Covid-19 and climate-related development financing coming from the developed countries to developing countries makes greater protection of the resources of corrupt governments necessary.
 - ✓ IACC will serve as a warning to kleptocrats and will lead to effective information-sharing that can help root out the diversion of public funds.
 - ✓ IACC will learn from and will avoid the mistakes of other established international courts and tribunals; IACC will cover its cost through dedicating a minor fraction of asset recoveries and the remaining fraction of recovered assets will be returned to the owner state.
 - ✓ Bill S-217 Frozen Assets Repurposing Act will allow repurposing frozen assets for the benefits of victims that are forcibly displaced and the communities that are hosting them.
 - ✓ Growing number of countries enforcing or attempting to enforce the Magnisky legislation is “encouraging and inspirational” to the IACC.
 - ✓ Canada has a good criminal justice system/record (robust justice system, respect for rule of law and strong independent judiciary) and the political parties

(Conservative and Liberal) are both committed to fighting corruption.

- ✓ IACC's stable of expert personnel could make Canada emerge as a leader in anti-corruption enforcement.

B. CANADA AND THE CORRUPTION COURT.

Date: January 20, 2021.

Source: <https://diplomatonline.com/mag/2021/01/canada-and-the-corruption-court/>

- **Main Point:** Arguments in support of the establishment of an IACC.
- **Points:**
 - ✓ An IACC will achieve accountability and will be able to track illegal activities that flow across jurisdictions and flout national and international law.
 - ✓ IACC will afford a higher standard of cooperation needed to address the scourge of corruption.
 - ✓ Notwithstanding Canada's own failings, including "corruption convictions of Canada's companies and allegations of political interference, Canada has the potential to be the host for the IACC.
 - ✓ The movement for an IACC has strength and could gain momentum with the right backing, leadership and resources.

4. DR. JUANITA OLAYA GARCIA.

DEALING WITH THE CONSEQUENCES: REPAIRING THE SOCIAL DAMAGE CAUSED BY CORRUPTION.

Date: January 2016.

Source: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475453

Main Point: Reparation for the social damage, including for the loss of trust in public institutions, should be sought for victims of corruption.

Points:

- ✓ Fighting corruption is not a goal in itself; it should translate to better services or life for the citizens. Hence, the public good and social trust that was lost to corruption should be repaired.
- ✓ Even though it may have dissuasive effect, compensations and reparations are not tools for fighting corruption.
- ✓ Reparation for social damage caused by corruption finds a legal basis in the provisions of Articles 34 and 35 of UNCAC which enjoin state parties to take measures to address the consequences of corruption, and to ensure that victims of corruption can initiate proceedings in order to obtain compensation respectively.
- ✓ Human Rights framework can be used in seeking redress in cases of corruption, and human rights instruments like ECOWAS ECCJ (in an environmental law context), have held that public interest rights should be protected where the breach affects a large section of the society and not just a few individuals.
- ✓ Nationally, redress can be sought through explicit reparation mechanisms for collective damage, as done in Costa Rica, where the criminal process code allows prosecutors to ask for damages where public interests have been affected and it has been successfully applied to corruption cases (Alcatel) .
- ✓ Class actions, and public interest actions can be used; civil law mechanisms can be used whether linked to criminal procedure or not; constitutional law and administrative law litigation also provide

opportunities for addressing redress for damage to the public interest that was caused by corruption.

- ✓ Internationally, asset recovery proceedings abroad may also be used.
- ✓ Closely related to the issue of reparation is the need for accurate/precise measurement of the actual damage that has been caused. Even though more research needs to be done, it is not impossible for the courts to overcome this need for precise quantification of damages challenge by:
 - using the proof of damage as a form of measurement in itself.
 - adopting the standards used in measuring damages in other non-corruption cases.
 - understanding that things are not always rebuilt the same way they are destroyed.
- ✓ More research needs to be done in at least five areas with the aim of:
 - understanding the legal framework available for public interest litigation in every country.
 - pulling together measurement experts and all involved in the legal process to explore different ways of measuring social damage and then learn from each other.
 - Finding reasonable and transparent means to fund reparation efforts.
 - Ensuring awarded damages “reaches the intended victims”.
 - Finding “how international efforts can help to make victim’s redress for social damage more effective, and the role that spaces like the UNCAC and its review mechanism can play.”