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To: The High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (“FACTI Panel”)

From: Mark L. Wolf, Chair, Integrity Initiatives International

RE: Strengthening the Enforcement of Criminal Laws to Combat Grand Corruption

Date: 24 May 2020

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As Chair of Integrity Initiatives International (“III”), I thank the FACTI Panel for providing Judge Claudia Escobar and me the opportunity to speak on May 1 and 8, 2020, and for inviting this written submission to amplify our remarks. As we discussed, grand corruption – the abuse of public office for private gain by a nation’s leaders (“kleptocrats”) – does not flourish in many countries because of a lack of laws. 187 countries are parties to the United Nations Convention against Corruption (“UNCAC”). Almost all of them have criminal laws prohibiting extortion, bribery, money laundering, and misappropriation of national resources. However, kleptocrats have impunity in the countries that they rule because they control the administration of justice, including the weak and corrupt judiciaries Judge Escobar described.

Therefore, we urge the FACTI Panel to focus on means to strengthen the implementation of the UNCAC and the enforcement of existing criminal laws against kleptocrats. There are several means by which this could be done, including by the creation of national special anti-corruption courts, regional anti-corruption courts, and hybrid efforts such as the International Commission against Impunity in Guatemala (“CICIG”). While III supports such efforts, their potential is limited by the fact that kleptocrats frequently move their stolen assets abroad.

As grand corruption involves global activity and has global consequences, a global institution is needed to fill a critical gap in the international framework for combatting it. An International Anti-Corruption Court (“IACC”) would address that gap, and make a vital contribution to enhancing accountability, deterring grand corruption, and recovering and repatriating assets needed to finance achievement of the 2030 Sustainable Development Goals (“SDGs”).

The IACC, which is discussed most fully in my [2018 Daedalus article](#), is a natural and necessary extension of the UNCAC. A fundamental premise of the UNCAC is that the genuine threat of criminal prosecution and punishment is essential to deterring corruption and diminishing the economic and human harm it inflicts. The UNCAC has made a significant contribution to the international anti-corruption framework by prompting virtually every country to enact statutes

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criminalizing corrupt conduct by their highest officials, among others. Article 26 of the Vienna Convention on the Law of Treaties requires that each country make a good faith effort to perform its treaty obligations, including by enforcing the laws against their own leaders when necessary.

However, as the government of Colombia stated to the FACTI Panel on April 24, 2020, “the UNCAC is only as good as its implementation.” Too many countries that are parties to the UNCAC are led by kleptocrats who rule with impunity and enrich themselves at the expense of their citizens’ human rights and health. The IACC would provide the necessary forum for enforcing domestic criminal laws required by the UNCAC, or a new international uniform counterpart of them, against kleptocrats and their criminal collaborators. Operating on the principle of complementarity, the IACC would only prosecute if a country were unwilling or unable to prosecute itself. Among other things, IACC investigators, prosecutors and judges would serve as sources of expert advice and assistance for countries striving to improve their domestic capacity, as CICIG was for Guatemala.

A common criticism of the IACC is that the International Criminal Court (“ICC”) on which it is modeled is not worthy of emulation. However, some of the criticism of the ICC is not well-founded. The threat of prosecution in the ICC is impacting the actions of subjects of investigations (see e.g. [here](#) and [here](#)). For example, as discussed briefly in my Daedalus article, the experience in Colombia, where both former government officials and rebels asked for stronger sanctions in the initial draft of their peace treaty, indicates that the ICC is realizing its potential to prompt countries to strengthen domestic enforcement. In addition, the fact that Philippines President Rodrigo Duterte objected to the ICC after a warning that he might be investigated is evidence of the fundamental fact that criminals fear the prospect of punishment and, therefore, the genuine threat of prosecution has the power to deter.

It is unfortunate that major powers, including the United States, have not joined the ICC and may not, at least initially, join the IACC. However, the fact that the United States is now being investigated by the ICC for possible war crimes in Afghanistan, which is a member, is a reminder than an international court without universal membership nevertheless has potentially far reaching impact.

There are also fair criticisms of the ICC. Justice Richard Goldstone of South Africa, the first Chief Prosecutor for the International Criminal Tribunal for the Former Yugoslavia and Rwanda, and a founder of III, is now chairing a committee of international experts tasked with recommending ways to improve the ICC. There are lessons to be learned from the imperfections of the ICC and from the work of Justice Goldstone’s committee, which will be important in constituting the IACC; for example, in contrast to the ICC, the judges of the IACC should be required to have prior judicial experience and the demonstrated ability to preside in complex cases.

In any event, the IACC would have inherent advantages compared to the ICC. Evidence of genocide, war crimes, and other crimes against humanity typically remains within the country controlled by the perpetrators and, therefore, is difficult to obtain. In addition, there is usually little documentary evidence of these crimes, and witnesses with evidence against high-level officials are few and rarely willing to testify. In contrast, kleptocrats do not keep their illicit assets in their

own countries. Rather, they regularly launder the proceeds of their crimes through major financial centers.

While kleptocrats are unlikely to allow their country to join the IACC, some of the countries which are international financial centers may well join. For example, Singapore has joined the [International Anti-Corruption Coordination Centre](#) and Switzerland participates in its work. Each may find it in its national interest to join the IACC as well. If, for some reason, an IACC member state is unwilling or unable to prosecute a dangerous kleptocrat who has engaged in money laundering or another crime of corruption in its jurisdiction, he or she would be subject to prosecution in the IACC, just as the United States may be prosecuted in the ICC for possible war crimes in Afghanistan.

The capacity to track illicit assets is now being enhanced by the efforts of new public institutions, such as the International Anti-Corruption Coordination Centre, and private organizations, such as international investigative firms, that are increasingly employed by looted national banks. The efforts of both would benefit greatly from an IACC as a forum to utilize the evidence they are developing.

By creating the genuine threat that corrupt leaders and their collaborators will be prosecuted and punished the IACC will deter and diminish grand corruption. Thus, it will preserve for proper use vast sums that should be dedicated to financing the achievement of the 2030 SDGs.

In addition, criminal prosecution of kleptocrats has great, untapped potential to recover stolen assets. A successful prosecution of a kleptocrat in the IACC would not only result in his or her incarceration. It would also include an order of restitution or disgorgement of illicit assets, for the benefit of victims. In 2018, the United Kingdom announced that its prosecutors had in four years recovered more than £49m for overseas victims of corruption and other economic crimes, including funds that it repatriated to buy ambulances in Kenya and allocated to benefit the poorest people in Chad. The IACC could recover much more.

In addition, as explained in my 2014 [Brookings Institute article](#), the capacity of the IACC to recover and repatriate the proceeds of grand corruption would be magnified greatly if the court were empowered to decide civil corruption cases brought by private whistleblowers. The United States False Claims Act authorizes such suits, which have resulted in the recovery of billions of dollars in the United States. Comparable cases in the IACC would do the same for many countries, and provide a vital forum for evidence developed by courageous whistleblowers in the many countries with judiciaries that are dominated by kleptocrats and often themselves corrupt.

Understandable questions may be raised concerning the feasibility of creating an IACC at a time when hostility to international institutions is at its apex and kleptocrats are unlikely to enlist their countries in a court that could prosecute them. However, there is a powerful counter current of people throughout the world who are indignant about grand corruption. From Mexico, to Slovakia, to Malaysia, to Ukraine, they are replacing corrupt leaders with evidently honest successors, who should find joining the court advantageous.

The IACC could be created initially by as few as 20-25 representative countries and, as indicated earlier, be effective if it included several major financial centers through which kleptocrats regularly launder their money. A coalition to create the IACC, led by the Global South, is emerging. Colombia has called upon the United Nations to create the Court and to discuss doing so at the 2021 General Assembly Special Session against corruption. Peru co-hosted a side session at the 2019 United Nations General Assembly, which focused on the creation of the IACC. In 2018, speaking on the [twentieth anniversary of the ICC](#), the President of Nigeria, advocated the creation of a similar court to recover and return illicit assets.

Creation of the IACC is supported by international leaders, including Nobel Peace Laureate Juan Manuel Santos; non-governmental organizations such as Global Witness, The Sentry, and Human Rights Watch, among others; and, perhaps most significantly, courageous young people whose indignation at grand corruption has resulted in the removal of kleptocrats in Ukraine and around the world.

In January 2020, the Presidents of the United Nations General Assembly and of the Economic and Social Council, who initiated the FACTI Panel, emphasized the [“need to catalyze transformative actions”](#) to achieve the 2030 SDGs. There are admittedly important questions concerning the operation of the IACC that have to be addressed. However, in June 2019, in the [Oslo Statement on Corruption Involving Vast Quantities of Assets](#), 140 experts identified creation of the IACC as an “innovative idea to end impunity” that should be explored in advance of the 2021 United Nations Special Session of the General Assembly against corruption. My colleagues in III, and many others, hope that the FACTI Panel too will advance this proposal.