

## **Notes for IPU Panel**

1. The United Nations Convention Against Corruption (UNCAC) is one of the most widely ratified international conventions - 187 parties as at February last year.
2. UNCAC requires member states to enact domestic anti-corruption laws. Those laws are required to prohibit extortion, bribery and money-laundering. A majority of the States Parties have done so.
3. Those laws have hardly deterred grand corruption or kleptocracy. The reason is not difficult to locate - UNCAC is government driven and relies on governments to implement the Convention and the laws promulgated pursuant thereto. The kleptocrats are invariably in control of their own governments.
4. UNCAC says very little about the mechanisms for enforcement of the provisions of the Convention or the domestic laws. Its provisions against political corruption, not surprisingly, are weak.
5. The consequence is that every year corruption has diverted trillions dollars from public resources such as healthcare, education and economic opportunity.
6. The COVID-19 pandemic has resulted in enormous corruption by public officials in many countries, including my own. It is a sad commentary on human nature that so many women and men are prepared, for their on selfish interests, to deprive the victims of the pandemic of the care that they require for their very survival.
7. In most cases, kleptocrats operate with impunity. They steal vast sums and, in most cases, launder their ill-gotten gains in safe

havens such as Switzerland, Singapore, the Cayman Islands and elsewhere.

8. The conclusion, unfortunately, is that we must recognise that UNCAC has substantially failed to curb or deter grand corruption.
9. The criminals are protected by their control of their own criminal justice systems. They control the police and prosecuting authorities and, sometimes, the courts themselves.
10. The solution can only lie in an international mechanism with authority and power to freeze the laundered money, and to investigate and punish the kleptocrats.
11. One obviously thinks of the International Criminal Court. However, for it to be effective in this field, the Rome Statute would require amendment. That would require a long process including a two-thirds majority vote by its States Parties for adoption. And, even if that is attained, it would not enter into force until seven-eighths of the States Parties ratify it. This is not practically feasible. Even apart from that difficulty, it is highly unlikely that an ICC Prosecutor would prioritise economic crimes above egregious war crimes including genocide.
12. The only solution is an International Anti-Corruption Court. It would be staffed by experienced judges and prosecutors and have authority to enforce relevant domestic laws as well crimes of corruption defined in its founding statute.

13. The IACC would operate on the basis of complementarity; that is, its jurisdiction would be triggered only if the domestic authorities of the state of the kleptocrat were unable or unwilling to investigate the crimes.
14. An important benefit of complementarity is that it would encourage domestic investigations and prosecutions.
15. Whether or not there are domestic prosecutions, the IACC would be empowered to order the disgorgement and restitution of illicit assets for the benefit of the victims. The IACC could also be partly funded by the proceeds of stolen assets.
16. Would the IACC be politically feasible? A common criticism of the IACC is that the kleptocrats would not permit their countries to join such a court. Apart from the fact that kleptocrats sooner or later are likely to be out of office, the IACC could seize assets that are held in States that join the IACC and in which the illicit assets are situated. If the IACC is able to attract the membership of 20-25 countries, some of which are financial centres in which kleptocrats launder their money, it would have the capacity to prosecute kleptocrats from non-party states.
17. The IACC has made great progress since, a few years ago, Colombia announced that it would call on the UN to establish the IACC. In June of this year, the UN General Assembly is convening a Special Session on Corruption known as UNGASS 2021. There is some hope that Canada might take a leading role in establishing such a court.

18. I would suggest, that if one is serious about deterring kleptocracy, there is no alternative but to establish the IACC.