FIGHTING CORRUPTION IN LATIN AMERICA AND THE CARIBBEAN AT A SUPRANATIONAL LEVEL: BALANCES AND CHALLENGES OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

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Abstract: The 1996 Inter-American Convention Against Corruption was the first treaty signed to tackle corruption at a transnational level. The Convention was adopted due to the increasing interest of the Organization of American States to protect democracy in the region, particularly regarding corruption and other vices of elected Governments. In that sense, the Convention promotes the convergence of national anti-corruption frameworks and international cooperation in transnational corruption cases. To improve its effectiveness, in 2001, the Organization created a Follow-Up Mechanism based on consensual and technical cooperation. In 2016 a further step was adopted with the creation of the Mission to Support the Fight Against Corruption and Impunity in Honduras, which was terminated in 2020 by the Honduras Government to protect national sovereignty. The Convention demonstrates that the greatest weakness of supranational responses to corruption is the lack of international enforcement mechanisms. To address that situation, the Organization of American States has created flexible instruments to supervise the fulfillment of the Convention based on the cooperation and collaboration of the states. However, the defense of the national sovereignty (due to the non-intervention principle) and the state fragility to implement anti-corruption policies have created further challenges.

Keywords: Inter-American Convention Against Corruption, Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption, Mission to Support the Fight against Corruption and Impunity in Honduras, transnational corruption, global law.

INTRODUCTION

On March 29, 1996, the member states of the Organization of American States (OAS) signed the *Inter-American Convention against Corruption* (IACAC) to "*prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance*" (Art. 1). It was the first treaty to address transnational mechanisms to prevent corruption.[1]

Until then, corruption was mainly a matter of concern at the national level within the state's boundaries. However, globalization demonstrated that corruption could also be global, and as a result, the domestic legal framework turned insufficient to tackle transnational corruption. In Latin America and the Caribbean, there was an additional reason to advance in the Inter-American anti-corruption framework: the fragility of the states. To reinforce the state capability, it was necessary to promote international strategies based on the Inter-American System.

The initial experience with the IACAC demonstrated one of the limitations of the transnational anti-corruption systems: the lack of international enforcement mechanisms. For that purpose, the member states created in 2001 the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC), which promotes the cooperation, coordination, and convergence of anti-corruption policies. A more innovative instrument was implemented in 2016 with the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH).

The Inter-American experience provides some lessons. From one side, in an era of transnational crimes, anti-corruption policies should promote a transnational framework as part of the Global Law. On the other side, the lack of international enforcement mechanisms forces innovative ways to overcome the traditional resistance towards the Global Law based on the non-intervention principle (particularly relevant in Latin America and the Caribbean).

[1] In this article, "transnational" refers to anti-corruption policies that go beyond the state and require supranational responses, that is, actions adopted from the International Law. See Zagaris, Bruce (2010), *International White Collar Crime*, Cambridge: Cambridge University Press, 144.

Also, the experience with the IACAC showed that transnational anti-corruption policies could not be restricted to international collaboration and cooperation to introduce legislative reforms because corruption can be boosted by the fragility of the state's capability. In fragile and conflict-affected states (FCAS), corruption is a consequence -among other causes- of the capability gaps that prevent the enforcement of the anti-corruption framework, including the international rules, such as the IACAC. Precisely, the MACCIH was designed to address the Honduran state fragility, which increased the conflicts with the non-intervention. Not surprisingly, in 2020, the Government decided to put an end to the mission.

This paper studies the supranational responses to corruption derived from the IACAC. For that purpose, the paper is divided into two parts. The first one summarized the theoretical framework that explains the development of international instruments to deal with corruption, considering the IACAC origins and content. The Convention addresses transnational corruption and the transnational effects of domestic corruption from democracy and development protection in the Inter-American System. The second part examines the experience of the two institutions created to promote the effective implementation of the Convention. The first one is the MESICIC, designed as a network between the states party of the Convention to promote, on a consensual and technical basis, the cooperation and coordination for the effective implementation of the IACAC. The second instrument was the MACCHI, created to support the capacity of the Honduras Government to address corruption. Finally, conclusions are presented.

I. THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION AS A REGIONAL EFFORT THAT TRANSCENDS NATIONAL BOUNDARIES

The non-intervention principle has deeply influenced the integration process in Latin America and the Caribbean, basically, as a reaction against the "interventionism" of the United States. Since the end of the 19th century, several "American States" conferences were convened to establish an international framework compatible with the sovereignty of the Latin American and the Caribbean countries affected by the "gunboat diplomacy".

Those conferences reinforced the non-intervention principle, adopted in the OAS Chart subscribed in 1948.[2]

The non-intervention principle in the region is deeply influenced by the conflictive relation with the United States and the states' fragility. Because the states in the region could not compel the intervention threat with force, they decided to buttress the non-intervention principle as a legal shield to defend the application of the Public Law over domestic affairs, including Government affairs. As a result, the decision-making process within the Government -namely, the public governance- was considered a domestic issue not regulated by the OAS chart. A demonstration of that approach was the *Estrada doctrine*, by virtue of what countries cannot make any decisions based on foreign governments' democratic or authoritarian nature.[3]

The democratization wave in the region during the 1970s and the democratic *zeitgeist* that followed the end of the Cold War prompted a renewed interest in the protection of democracy in the region.[4] In this context, the OAS extended its scope of action to the protection of democracy, even regarding elected Government deviations, as was ratified in 1994 during the *I Summit of the Americas.* For that purpose, democracy was defined considering its *constitutional* perspective, which led to include in the democratic agenda the protection of the constitutive elements of democracy, including fighting against corruption.[5]

Accordingly, the transnational approach over corruption in the Inter-American System was a consequence of expanding the OAS scope to protect democracy. Then, the IACAC is an instrument to protect democracy as a fundamental value within the Inter-American System.

1. *Transnational corruption and the Inter-American Convention Against Corruption*.

As Neil Bosters concludes, transnational crime refers to any offense committed -in a broader sense- in more than one State. The element that identifies transnational crime is its geographical dimension, not the nature of the offense. However, because globalization is primarily an economic phenomenon, transnational offenses tend to be more common regarding

[2] Shea, Donald R. (1955), *The Calvo clause,* Minneapolis, University of Minnesota Press, 11.
[3] See: Jessup, P. (1931), "The Estrada doctrine" *American Journal of International Law 25*, 719
[4] For instance, see Fukuyama, Francis (2014), *Political order and political decay*, New York: Farrar, Strauss and Giroux, 259.
[5] Aguiar, Asdrúbal (2008), *El derecho a la democracia,* Caracas: Editorial Jurídica Venezolana.

economic illicit.[6] Therefore, corruption -specifically defined as the abuse of public power for economic gain- is particularly prone to transnational activities.[7]

Besides globalization, another phenomenon that promoted the interest towards a transnational framework for corruption was the emergence of the fragile state literature after the Cold War.[8] Without the capability to fulfill their goals, fragile states were captured by informal organizations that pursued economic gains, including through corruption.[9] The dimension of corruption as a symptom of the state's fragility has resulted in the study of corruption as an instrument of domination, that is, kleptocracy.[10]

The leading causes that justified the approach to transnational corruption were, thus, globalization and state fragility. As a result, the international community understood that cooperation was necessary to tackle corrupted activities developed in more than one country, particularly regarding the international financial system for money laundering.[11] Recently, the advantage of a transnational framework to tackle corruption has led to the proposal of an international anti-corruption court.[12] Those causes were considered by the OAS to advance in a transnational framework against corruption.

It should be noted that the creation of the OAS is deeply rooted in the non-intervention principle that reinforces the sovereignty on domestic affairs, including anti-corruption policies. Until the 1990s, the overall vision

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[6] Boister, Neil, (2018), *An Introduction to Transnational Criminal Law*. Oxford: Oxford University Press, 3 and 146.

[7] A landmark was, in that sense, the U.S. 1977 Foreign Corrupt Practices Act (FCPA). See Borlini, Leonardo and Arnone, Marco (2014), *Corruption: Economic analysis and international law,* Northampton: Edward Elgar Publishing, 209.

[8] Rose-Ackerman, Susan (1999), *Corruption and Government: Causes, Consequences, and Reform*, New York: Cambridge University Press, 1999, 177.

[9] Wabwile, Nyongesa (2015), "Transnational Corruption, Violations of Human Rights and States' Extraterritorial Responsibility: A Case for International Action Strategies", in *African Journal of Legal Studies, 8(1-2),* 87-114.

[10] Rather than focusing on a quantitative approach of grand corruption, we focused on a qualitative approach. The critical component of kleptocracy is the gradual substitution the bureaucratic domination by the domination through corruption as a symptom of the state fragility. See Chayes, Sarah (2015), *Thieves of state: Why corruption threatens global security*, New York: W.W. Norton & Company, 91 and Hirschfeld, Katherine (2015), *Gangster states: Organized crime, kleptocracy, and political collapse*, New York: Palgrave Macmillan, 68. See also Cooley, Alexander *et al*., (2018), 'The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations", in *Journal of Democracy, 29(1),* 39-53.

[11] Chaikin, David, and Sharman, J. (2009), *Corruption and Money Laundering: A Symbiotic Relationship,* New York: Palgrave Macmillan US, 7.

[12] For instance, see Wolf, Mark (2018), "The World Needs an International Anti-Corruption Court," *Daedalus 147(3)*, 144.

was that the domestic affairs of the OAS member states, particularly in Latin America, should be protected from any foreign intervention, even from the OAS. Consequently, domestic matters related to democracy, governance, and corruption were considered out of the scope of the OAS.

During the 1990s, that vision changed because democracy protection was considered a primary goal of the OAS, as was decided in the 1991 Resolution of the General Assembly n° 1080.[13] In that sense, a relevant milestone was Resolution n° 1159, adopted by the OAS's General Assembly in 1992, about corruption in international commerce.[14] Corruption was addressed from a transnational perspective considering its negative impact on development and democracy. As a result, the Inter-American Juridical Committee (CJI) studied international cooperation mechanisms to fight against corruption in the Americas.[15] In 1994, the General Assembly instructed the Permanent Council to create a Working Group about "*probity and public ethics*" (Resolution n° 1294)[16], based on the 1994 *Belm Do Par* Declaration adopted by the foreign ministers to promote the legal coordination against corruption.[17] Also, that year, during the *I Summit of the Americas* (Miami), the heads of state and government approved an Action Plan that included the cooperation to combat corruption, considered an issue of "serious interest" in the Western Hemisphere due to its adverse effect over democracy and governments legitimacy.[18]

In December 1994, the Venezuela representation before the OAS presented a draft of an Inter-American Convention against corruption. As part of the Working Group agenda, the draft proposed to tackle corruption from the International Law. In 1995 the General Assembly requested the CJI to study this draft. For that purpose, the CJI approved Resolution n° II-13/1995, dated August 18, 1995, about international cooperation to fight corruption. According to the Committee, the Convention should be focused on legal cooperation between member states to combat transnational corruption in three specific areas: extradition, asset recovery, and legal

[13] Since the 1991 *Santiago Commitment to Democracy and the Renewal of the Inter-American System* and the Resolution of the General Assembly n° 1080, the OAS has reinforced the protection of representative democracy and inclusive development.

[14] See: http://www.oas.org/juridico/spanish/ag-res97/Res1159.htm

[15] The America means, here, the continent. In 1992, Jorge Reinaldo A. Vanossi presented, before the Committee, a report about a "first approximation towards a legal approach on corruption in the Americas". See Inter-American Juridical Committee, *Annual report to the General Assembly*, dated December 7, 1994, 44.

[16] See http://www.oas.org/juridico/spanish/ag-res97/Res1294.htm

[17] Dated June 6, 1994: http://www.oas.org/juridico/spanish/Belem.htm

[18] See http://www.oas.org/juridico/english/SumcorI.html

assistance. That approach considered that the implementation of anti-corruption policies was a duty of the states and that, as a result, the primal objective of International Law should be to promote legal cooperation. Also, the Committee proposed that a member state could be suspended from the Convention in case of a violation of the representative democracy, following the Resolution n° 1080.[19]

On June 9, 1995, the General Assembly approved Resolution n° 1346, reinforcing the relevance of anti-corruption policies to protect democracy.[20] As was summarized in the 1995 *Declaration of Montrouis* approved by the General Assembly, democratic protection in the Western Hemisphere requires fighting against public and private corruption "*in all its forms*". For that purpose, the Assembly agreed to convene a specialized conference in Caracas (Venezuela) to "*support cooperation and the exchange of experiences to promote state modernization, transparency in government administration, and strengthen internal mechanisms for investigating and punishing acts of corruption*".[21]

The *I Summit of the Americas* and the *Declaration of Montrouis* demonstrated a change of vision towards corruption considered a regional threat against democracy and not only a domestic affair. For that purpose, in March 1996, the OAS organized in Caracas a Specialized Interamerican Conference on Corruption that resulted in the approval of the IACAC.[22]

The IACAC was the first treaty that tackled corruption[23]and the first time that the International Law had to decide how to assure the implementation of transnational anti-corruption policies that only domestic bodies could enforce. The CJI advised drafting the Convention based on international cooperation and not international enforcement. International cooperation

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[19] Inter-American Juridical Committee, *Annual report to the General Assembly*, dated February 1, 1996, 37. Also, in March 1995, the CJI approved Resolution n° II-13/95 regarding international cooperation against corruption (30). See also the report prepared by Miguel Ángel Espeche Gil, "International Cooperation to fight against corruption in American countries" (84)

[20] The Resolution n° 1346 affirmed that corruption endangers the representative democracy and inclusive development (http://www.oas.org/juridico/spanish/ag-res97/Res1346.htm).

[21] General Assembly, Resolution number 95, dated June 7, 1995: http://www.oas.org/en/pinfo/res/RESGA95/agd0008.htm

[22] Luján, María del (2005) "Algunos aspectos de la lucha contra la corrupción en el ámbito interamericano", *Agenda Internacional 11-22,* 55-81.

[23] Boister, Neil, (n.1), 150. In 1997 was approved the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (or the OECD Anti- Bribery Convention), and in 2003 the *African Union Convention on Preventing and Combating Corruption,* among other instruments. That same year the United Nations approved the *Convention against Corruption*. See also Pasculli, Lorenzo, and Ryder, Nicholas (2020), "The global anti-corruption framework," in Ryder, Nicholas, et al. (ed), *Corruption, Integrity, and the Law: Global Regulatory Challenges,* New York: Law of Routledge, 3.

means that the enforcement of the IACAC is vested in the member states and not in an international body with adjudication powers. Therefore, the first goal of the IACAC is to promote cooperation among the member States in two senses: *(i)* to unify the rules and practices to fight corruption at the national level, and *(ii)* to tackle transnational corruption. In that sense, according to Art. II.1, the purposes of the Convention are:

> "1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and
> 2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance."

The first purpose is intended to promote the convergence of domestic policies to tackle corruption in the following areas: *(i)* measures to prevent corruption, mainly through good governance, in topics such as standards of conduct for the correct, honorable, and proper fulfillment of public functions; systems for registering the income, assets, and liabilities of persons who perform public functions; and oversight bodies to implement modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts (Art. III); *(ii)* the domestic jurisdiction to investigate corruption offenses (Art. V) including illicit enrichment (Arts. VI, VII, IX, and XII), asset recovery (Art. XV), and bank secrecy (Art. XVI). The second objective is specially related to the transnational corruption offenses, including transnational bribery (Att. VIII), extradition (Art. XIII), and legal assistance and cooperation (Art. XIV).

Therefore, the IACAC was not developed exclusively to tackle transnational corruption but also to promote the convergence of the domestic legal framework to fight national corruption. The justification for that approach was that even national corruption could have a negative regional effect, particularly regarding democracy and inclusive development. In the Inter-American System, the IACAC was conceived as a

tool to protect democracy against the vices of elected governments, both at the national and supranational level[24]

Consequently, the IACAC should be interpreted as part of the effort promoted in the OAS to protect democracy, as was summarized in Resolution n° 1080. As a result, the *Inter-American Cooperation Program to Fight Corruption*, approved by the General Assembly on June 5, 1997, included several measures to promote good governance to prevent corruption.[25] The relation between corruption and good governance was reinforced in 2001 when the General Assembly approved the Inter-American Democratic Charter (IADC), which Art. 4 emphasized that "*transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy*". Also, the General Assembly, on June 10, 2003, approved the *Declaration of Santiago on Democracy and Public Trust: a new commitment to good governance for the Americas* that affirmed:[26]

> "Corruption and impunity weaken our public and private institutions, distort our economies, and undermine the social values of our peoples. Responsibility for preventing and containing these problems lies with all branches of government in collaboration with society as a whole. Cooperation and reciprocal assistance against corruption, following treaties and applicable law, are fundamental factors in the promotion of democratic governance."

The third wave of democratization demonstrates that the only risk against democracy in Latin America and the Caribbean was not the military coups but the poor performance and abuses of the elected Governments. As a result, since 1991, with Resolution n° 1080, the OAS expanded the concept of democracy to promote good governance standards. As part of these efforts, the OAS promoted cooperation in the region to tackle corruption at the national and transnational level, considering that corruption impairs

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[24] According to the preamble, "*corruption undermines the legitimacy of public institutions and strikes at society, moral order, and justice, as well as at the comprehensive development of peoples*." In contrast, the "*representative democracy, an essential condition for stability, peace, and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance*." As the *II Summit of America* held in Santiago in 1998 concluded, "*we further resolve to defend democracy against the serious threats of corruption, terrorism, and illegal narcotics, and to promote peace and security among our nations*" (http://www.summit-americas.org/chileplan.htm).

[25] Resolution n° 1477, retrieved here: http://www.oas.org/juridico/spanish/ag-res97/Res1477.htm

[26] See: http://www.oas.org/xxxiiiga/english/docs/agdoc4224_03rev3.pdf

those standards. Good governance prioritizes that democracy should deliver goods and services to promote inclusive development following general principles such as efficiency, efficacy, transparency, and accountability.[27] As the Inter-American Court on Human Rights has concluded, corruption has negative consequences over human rights, particularly regarding vulnerable sectors of the population, hindering the public trust towards the Government.[28]

2. *The IACAC enforcement and the soft law*

A key question regarding the IACAC -and any other treaty related to corruption- is the enforcement. The states enforce anti-corruption policies through their coercive power, commonly by the criminal law justice system. Even though there is an international framework to address transnational corruption, no international enforcement mechanisms exist. As a result, the implementation of the international anti-corruption framework is based on the so-called *soft law*, that is, provisions that, although not strictly binding, influence the states' decision-making process.[29]

The concept of soft law results from rules and principles that international organizations cannot enforce because law enforcement is an exclusive attribute of states. That is characteristic of the Global Law, a Law beyond the State.[30] The Global Law implementation is based on indirect measures through which the decision-making process in the global order influences the domestic order, commonly through the coordination among Governments, mainly through networks.[31] The Global Law rules are not directly enforced, but they influence domestic rules and enforceable decisions. This indirect binding effect creates a legitimacy problem because

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[27] The "right to democracy" has a multifunctional scope in the Inter-American System because it exceeds electoral democracy. Also, that right includes standards that promote the effective delivery of goods and services following the constitutional democratic standards that promote the good governance. See Ferrajoli, Luigi (2008), *Democracia y garantismo*, Madrid: Trotta, 25.

[28] Ruling dated March 9, 2018, in the case *Ramírez Escobar y otros Vs. Guatemala* (Serie C No. 351), paragraphs 241 and 242.

[29] Rose, Cecily (2015), *International Anti-Corruption Norms,* Oxford: Oxford University Press, 13.

[30] Global Law refers to the legal system in international law that includes international organizations that exert powers like the government's executive, legislative, and judicial branches. As a result, those organizations create a derivative law with a degree of autonomy before treaties. The study of Global Law has been relevant in the Administrative Law field. See Cassese, Sabino (2021), *Advanced Introduction to Global Administrative Law*, Cheltenham: Edward Elgar Publishing Limited.

[31] Kingsbury, Benedict, et al. (2016), "Global Administrative Law and Deliberative Democracy", in *The Oxford Handbook of the Theory of International Law*, Oxford: Oxford University Press, 526.

non-democratic policymakers in the global order influence domestic decisions adopted by democratic policymakers.[32]

The Global Law is a consequence of globalization (or mundialization of the Law, according to the French doctrine).[33] Therefore, the transnational anti-corruption Law can be analyzed through the lens of the Global Law. Because corruption is a global phenomenon[34], it requires a global framework. Hence, the Global anti-corruption Law can be defined as the international framework that regulates anti-corruption policies in the global space.[35]

The rules in the Global Law cannot be enforced in the global space, but that does not mean that they are non-binding. On the contrary, they are binding rules but within the global space. The "global" binding effect of the rules means that although they are not directly enforceable, they influence the decision-making process of domestic Governments.[36] An essential attribute of the global binding effect is the coordination principle, in the sense that the coordination among governmental bodies -organized through networks- facilitates the implementation of common policies.

The soft law concept does not capture this complexity. The idea tends to be the opposite of the *hard law*, that is, the binding rules.[37] However, in the global space, the categories of binding and non-binding rules are not applicable because, as a general principle, global rules cannot be directly enforced in the global order. In some cases, the International Law creates international judicial or quasi-judicial bodies with authority to enforce the International Law, even in criminal law, as happens with the International Criminal Court. Nevertheless, the global rules cannot be interpreted through the attribute of the binding force because, as a principle, this is an exclusive attribute of the domestic order.

Those conclusions were considered when the IACAC was drafted. The Convention can be interpreted as a manifestation of the Global Law in the

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[32] The primary justification of the Global Administrative Law is to tackle the democratic deficit of the international organizations that exerts powers like the Government's functions. See Aman, Alfred, (1992), *Administrative Law in a Global Era*, Ithaca, Cornell University Press, 131.

[33] Auby, Jean-Bernard (2001), "Globalización y descentralización", in *Revista de Administración Pública 156,* 7.

[34] Webb, Philippa (2005), "The United Nations Convention Against Corruption-Global achievement or missed opportunity?" *Journal of International Economic Law, 8(1),* 191. 9

[35] Cassese, Sabino (2012), *The global polity,* Sevilla: Global Law Press, 15.

[36] The Spanish doctrine refers to the *de facto* binding effect of the soft law, such as international standards. See Darmaculleta Gardella, M. Mercé "La producción de normas en un mundo global" (2020), in Arrojo Jiménez, Luis et al., *Derecho Público Global*, Madrid: Iustel, 245.

[37] Rose, Cecily (n. 29).

Inter-American Human System.[38] As a result, the Convention does not create enforcement mechanisms. On the contrary, the Convention was based on the legal cooperation among the member states with two purposes: *(i)* promote the convergence of common rules and principles to tackle national corruption as part of the efforts to promote democratic governance, and *(ii)* facilitate cooperation regarding transnational corruption offenses, particularly regarding extradition, asset recovery and mutual legal assistance.

As a result, the IACAC applies not only to transnational anti-corruption policies but also to national anti-corruption policies, favoring the convergence of the domestic framework through model laws, such as the declaration of incomes, assets, and liabilities, and protection of whistleblowers. Also, the implementation of the IACAC has derived in legislative guidelines related to conflict of interest, the obligation to report corrupt acts, oversight bodies, government hiring, and participation in public affairs.[39] As can be seen, the Convention has inspired the domestic anti-corruption framework in the region.

But there is an additional reason to mitigate the soft law concept. The IACAC is part of the Inter-American sources of law, and it is a binding treaty to the party states. Its purpose was not to create an Inter-American body to enforce anti-corruption policies but to promote cooperation and collaboration. Cooperation refers to the assistance between the states, for instance, through legal assistance treaties. Collaboration encompasses all the join actions to promote the convergence of rules and standards. In that sense, although the Inter-American Court cannot enforce the IACAC, it can use the Convention as a guideline to interpret the American Convention on Human Rights. Consequently, rather than softs laws, the IACAC provisions must be studied as part of the Inter-American *corpus juris*.

[38] The Inter-American Human Rights System considered all the treaties enacted under the scope of the OAS Chart, including the IACAC. The Convention is part of the different sources of law of the Inter-American System, that conform the Inter-American *corpus juris*. See Urosa, Daniela and Hernández G., José Ignacio, "La Corte Interamericana de Derechos Humanos y el Derecho procesal convencional. Un estudio del Derecho Procesal Público Global" (2021), in Brewer-Carías, Allan and Ayala, Carlos (ed), *Libro homenaje al Dr. Pedro Nikken, Vol. I,* Caracas: Academia de Ciencias Políticas y Sociales,

[39] See http://www.oas.org/en/sla/dlc/mesicic/default.asp

II. BUILDING GLOBAL ANTI-CORRUPTION GOVERNANCE IN LATIN AMERICA AND THE CARIBBEAN: HOW TO IMPROVE THE INTER-AMERICAN ANTI-CORRUPTION INSTITUTIONS

Although the IACAC was drafted as an instrument that cannot be directly enforced by international organizations, the first experience with its implementation showed the necessity to improve its effectiveness. Instead of creating an international anti-corruption body, the OAS worked in a formal body of coordination to oversight the performance of the IACAC, mainly through a network of anti-corruption experts.

For that purpose, in 2001, the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) was created as specialized networking to promote the coordination in the effective implementation of the IACAC. The MESICIC balanced two principles: *(i)* the necessity to improve the IACAC effectiveness as part of the effort to strengthen democracy, and *(ii)* the respect of the non-intervention principle, avoiding any foreign intervention on domestic affairs. Therefore, the MESICIC was designed not as an enforcement mechanism but as an advanced coordination tool based on international cooperation.

A new step was adopted in 2016 when the OAS and the Government of Honduras signed the agreement to create the MACCIH. The mission was designed as an international, technical, and consultive body to promote the effectiveness of anti-corruption policies, particularly regarding the fragility of the Honduran institutions. However, due to tensions with the non-intervention principle, the mission was terminated in 2020.

1. The *Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC)*

On June 5, 2000, the General Assembly of the OAS approved Resolution number 1723 to *strengthen the probity in the Western Hemisphere and continue the Inter-American program on anti-corruption cooperation*.[40] The Resolution requested the Permanent Council to study the international follow-up mechanism regarding anti-corruption policies that could be implemented concerning the IACAC.

[40] See http://www.oas.org/juridico/spanish/ag00/agres_1723_sp.pdf

International Law has created supervisory instruments to oversee compliance with international obligations that exert adjudication powers, that is, the authority to issue and enforce decisions that declare the infringements of obligations and order restitution measures. International supervision is not a settlement mechanism for binding adjudication but a voluntary instrument based on cooperation and collaboration among states. These cooperative instruments are networks through which the states collaborate in the decision-making process regarding international obligations, as commonly happen in the treaties regarding corruption.[41]

The OAS Permanent Council considered all those conditions in Resolution number 783, dated January 18, 2001[42], that proposed a follow-up mechanism of the Convention based on the collaboration of the member states, including technical cooperation. The mechanism should respect the non-intervention principle, and as a consequence, it could not result in binding decisions. The Permanent Council discarded the idea of an adjudication instrument and favored collaborative agreements based on the voluntary decisions of the member states to contribute to the achievement of the IACAC goals. Also, to reinforce the compatibility with the non-intervention principle, the Permanent Council recommended that the follow-up mechanism be objective, impartial, and technical, based on a network of experts appointed by the member states (the Experts Committee).[43] The proposal was endorsed in April 2001 during the *III Summit of the Americas* (Quebec).[44]

Between May 2-4, 2001, the state parties of the IACAC gather in Buenos Aires (Argentina), in the *First Meeting of the IACAC State Parties* to approve the follow-up mechanism guidelines, in the "*Buenos Aires Text*", that reiterated the technical and consensual basis of the mechanism. The General Assembly approved the proposal in Resolution number 1784 dated June 5, 2001, that formally created the mechanism.[45]

The MESICIC can be defined as a network of the state parties to advance in the implementation of the Convention through two main actions: *(i)* the cooperation to promote the convergence of anti-corruption domestic legal frameworks and *(ii)* the voluntary review of the fulfillment of the

[41] See See Borlini, Leonardo and Arnone, Marco (n.7), 443.
[42] See http://www.oas.org/consejo/sp/resoluciones/html/res783.htm
[43] The Working Group about probity and public ethics advanced in the study of the follow-up mechanism during March 2001. See http://www.oas.org/juridico/spanish/23_octubre_2001.htm:
[44] See http://www.summit-americas.org/iii_summit.html
[45] See http://www.oas.org/juridico/spanish/doc_buenos_aires_sp.pdf

Convention through the Experts Committee. The technical nature of the committee was a counterbalance to ensure the accomplishment of the non-intervention principle. As a result, the MESIC is based on the review among peer experts. The coordination to implement the MESICIC work was vested in the States Parties Meeting, suggesting recommendations to the committee. The two bodies of the MESICIC are, then, the Experts Committee[46] and the Member States Conference.[47]

The IACAC follow-up is based on two instruments, *(i)* the review process and *(ii)* the cooperation and coordination on anti-corruption rules and policies. The review process is based on "rounds", that is, examining the Convention implementation regarding specific provisions. The Experts Committee prepares a questionnaire to gather information from each expert for that purpose.[48] The reviewed state answers the questionnaire, and additional information is collected in an on-site visit.[49] Also, the experts can interact with civil society organizations.[50] The Committee approves the final report. [51] In that sense, the Experts Committee has organized six rounds[52] and has held thirty-six meetings.[53]

Also, the Experts Committee favors the cooperation on national anti-corruption rules policies through the recompilation of national best

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[46] See the Rules of Procedures and other Provisions, approved on September 12, 2014, at: http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic4_rules_en.pdf. According to its art. 3, the Experts Committee "shall be responsible for the technical analysis of the implementation" of the IACAC.

[47] See the *Rules of procedure of the Conference of the State Parties to the Mechanism for Follow-Up on Implementation of the Inter-American Convention Against Corruption,* adopted during the First Meeting, here: http://www.oas.org/juridico/english/followup_conf_rules.pdf.

[48] Art. 18, *Rules of procedure of the Conference of the State Parties to the Mechanism for Follow-Up on Implementation of the Inter-American Convention Against Corruption.*

[49] Art. 19, 20, and 21. See the *Methodology for Conducinting On-Site Visits* here http://www.oas.org/en/sla/dlc/mesicic/docs/met_onsite.pdf.

[50] Art. 36.

[51] Art. 25.

[52] The first round reviewed Article III, paragraphs 1, 2, 4, 9, and 11; Article XIV; and Article XVIII (methodology approved on May 24, 2002); the second reviewed Article III, paragraphs 5 and 8; and Article VI (methodology approved on March 31, 2006); Article III, paragraphs 7 and 10; and Articles VIII, IX, X, and XIII were reviewed during the third round based on the methodology approved on December 8-12, 2008; the methodology of the fourth round, approved on September 12-16, 2011, included the "oversight bodies" (Article III, paragraph 9), as well as the update of the conclusions of the first round; the fifth round reviewed Article III, paragraphs 3 and 12 according to the methodology adopted on March 16-20, 2015, and finally, the sixth and current round was adopted on March 9-12, 2019, relating to Article XVI. See the documents here: http://www.oas.org/en/sla/dlc/mesicic/documentos.html

[53] See http://www.oas.org/en/sla/dlc/mesicic/documentos_reuniones.html

practices[54] and the formulation of law modes, guidelines, and recommendations. This cooperation facilitates the convergence of the national anti-corruption framework under the scope of the Inter-American System, in a sort of *jus commune* in the region.

To summarize, the MESICIC was created to strengthen the implementation of the IACAC, considering that an international body cannot enforce the Convention. For that purpose, the MESICIC was designed as a network in which the party states cooperate and collaborate to advance the implementation of the Convention regarding transnational corruption and favoring the convergence of the domestic anti-corruption framework. Since its creation in 2001, the MESICIC has been actively working through the Committee Experts that have reviewed the fulfillment of the Convention based on a consensual collaboration, proposing law models and guidelines, and favoring the systematization of the best anti-corruption practices in the region. Consequently, the MESICIC created incentives for the effective implementation of the Convention.

2. *Fighting corruption at a supranational level: the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) and the fragile states in Latin America and the Caribbean*

In Latin America and the Caribbean, corruption should be examined as a complex phenomenon caused by several dynamic causes. A crucial element is the states' historical fragility, which results in a weak capacity to implement the checks and balances system.[55] Corruption in fragile states cannot be tackled exclusively from an institutional or legal perspective, promoting a legislative agenda to reinforce the checks and balances. The anti-corruption legal framework requires capable bodies to enforce it. Therefore, if corruption is caused by state fragility, the anti-corruption legal framework will not be effectively applicable, regardless of its content.[56]

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[54] See the *Methodology for presenting best practices on preventing and combating corruption and for compiling them, disseminating them, and promoting their use*, at: http://www.oas.org/en/sla/dlc/mesicic/0_PORTAL_files/docs/methodology_best_practices_2018.pdf

[55] Mazzuca, Sebastián (2021), *Latecomer State Formation: Political Geography and Capacity Failure in Latin America*, New Haven; Yale University Press, 387.

[56] This is why legal -or institutional reforms can have a reduced impact promoting development. See Andrews, Matt (2017), *The limits of institutional reforms in development*, New York: Cambridge University Press, 5.

In Latin America and the Caribbean, the anti-corruption domestic framework is fragile in the sense that there are gaps between the rules' scope and their actual implementation, that is, the *de jure* and the *de facto* scope.[57] The *de jure* scope encompasses domestic rules on corruption, while the *de facto* scope describes how those rules are implemented. Despite the advantages of the national anti-corruption frameworks, corruption in the region has an increasing and pervasive impact, demonstrating that the national rules cannot be effectively implemented, creating a gap.[58]

This gap creates "areas of limited statehood", that is, areas in which the states cannot enforce their framework[59]. In those areas tend to emerge informal instruments to fulfill the task that the weak Governments cannot perform, including corruption.[60] Also, civil society tends to organize to accomplish those tasks.[61] Eventually, the society can embrace values that encourage corruption to circumvent the state fragility, a situation that has been described as "social norms".[62] Consequently, corruption does not depend exclusively on the quality of the domestic legal framework but on the Government's capability to implement that framework and the social norms adopted by the society.

In Latin America, the situation is even more complicated due to authoritarian regimes that act with a veneer of legality. This is the case of the hybrid regimes in which the Constitutional Law covers authoritarian behaviors.[63] In that context, besides the state fragility, corruption can be promoted through autocratic legalism, namely, measures that adopt legal

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[57] Brinks, Daniel *et al.* (2019), *Understanding Institutional Weakness. Power and design in Latin American institutions,* Cambridge: Cambridge University Press, Cambridge, 2019, 11.

[58] Organization for the Economic Co-operation and Development (2018), *Integridad para el buen gobierno en América Latina y el Caribe. De los compromisos a la acción*, Paris: OECD Publishing, 2.

[59] Risse, Thomas (2019), "Governance in Areas of Limited Statehood", in Risse, Thomas, *et al., The Oxford Handbook of Governance*, Oxford: Oxford University Press, 700.

[60] Rotberg, Robert (2007), "Repressive, Aggressive and Rogue Nation-States", in Rotberg, Robert (ed), *Worst of the worst. Dealing with repressive and rogue nations,* Cambridge: World Peace Foundation and Brookings Institution Press, 1. See also Rotberg, Rotberg, (2017). *The Corruption Cure: How Citizens and Leaders Can Combat Graft*, Princeton, Princeton University Press, 18.

[61] Pritchett, Lant, *et al.* (2018), *Deals and Development,* Oxford: Oxford University Press, 24.

[62] Society can endorse corrupt behaviors by creating incentives to embrace corrupt practices. Those informal conducts are "social norms" that, particularly in fragile and conflict-affected states (FCAS), can emerge in areas of limited statehood to pursuit private benefits. See Scharbatke-Church, Cheyane, and Chigas, Diana (2019), *Understanding social norms. A reference guide for policy and practice*, The Fletcher School. See Johnsøn, Jespen, (2016), *Anti-corruption strategies in fragile states: theory and practice in aid agencies*, Northhampton: Edward Elgar, 39.

[63] Tushnet, Mark (2018) "Authoritarian Constitutionalism: Some Conceptual Issues", in Ginsburg, Tom and Simpser, Alberto (ed.), *Constitutions in Authoritarian Regimes*, Cambridge: Cambridge University Press, 1 and 36.

forms to pursue corrupted purposes, for instance, through emergencies that justified simplified procurement procedures. In the region, the poster child of this situation is Venezuela, paradoxically, the country in which the IACAC was signed.[64] After the election of an authoritarian-populist leader in December 1998, the rule of law was gradually dismantled amidst the most significant oil *boom* in Venezuela's history. The Government created formal institutions to distribute the oil rents through clientelism, patronage, and corruption. As a result, billions of dollars were deviated. The pervasive Venezuelan corruption was based on formal institutions that promoted social norms to capture the rent. Since 2013, and due to the political crisis, the state's capability started to collapse, and Venezuela became a fragile state with kleptocratic institutions. However, the Anti-Corruption Law -which follows the IACAC principles- is still in force.[65]

In cases like Venezuela, trying to tackle corruption exclusively through legal and regulatory reforms is insufficient because the leading cause of corruption is not flawed rules but the weak state capability and social norms. This creates a limitation because the MESICIC was designed to work on the formal scope, promoting legislative changes and other reforms to fulfill with the IACAC. However, in weak states, the best rules inspired in the IACAC will not be applicable, and corruption would emerge in the areas of limited statehood.

Consequently, anti-corruption policies should include, also, policies to rebuild the state capability, a task that goes beyond the MESICIC mandate.[66] In that sense, and according to the fragile state theory, international cooperation can help rebuild that capacity through international cooperation mechanisms. Developing an Inter-American framework towards corruption was challenging due to the non-intervention principle. Creating an international cooperation mechanism to rebuild the capability state was an even more significant challenge. That happened with the MACCIH.

Honduras has faced several challenges due to pervasive corruption resulting from complex causes, including state fragility. In June 2015, the political crisis -boosted by corruption- triggered mass protest for the

[64] Corrales, Javier (2015), "Autocratic Legalism in Venezuela", in *Journal of Democracy, 26(2),* 37-51.

[65] See our analysis in Hernández G., José Ignacio, "The Limits of the Rule of Law to Address Systemic Corruption", November 4, 2021, at https://www.corruptionjusticeandlegitimacy.org/post/the-limits-of-the-rule-of-law-to-address-systemic-corruption

[66] Rose-Ackerman. (2001), "Trust, honesty, and corruption: reflection on the state-building process", in *Archives Européennes de Sociologie. European Journal of Sociology, 42(3*), 526

president's resignation.[67] Due to the risk on Honduran democracy, the OAS and the Organization of the United Nations promoted a national dialogue against corruption and impunity, and as a result, the Honduras Government requested the OAS support for the effective implementation of anti-corruption policies.[68] Based on those conversations, on January 19, 2016, the Government of Honduras and the OAS signed an agreement to create a specialized mission to support the fight against corruption, the MACCIH. According to the agreement, the Government:[69]

> "has entered into international commitments in the area of the fight against corruption for the implementation of integral reforms and effective mechanisms that protect and ensure access to information and for the timely prevention, detection, investigation, and punishment of acts of corruption following the Inter-American Convention against Corruption (CICC), adopted in the framework of the OAS in 1996, and the recommendations of the MESICIC, which it joined in 2001, as well as the United Nations Convention against Corruption (UNCAC), adopted in 2003."

The MACCHIH was designed as an advisory body with no adjudication powers, coordinated by the Secretariat for Strengthening Democracy (SSD) of the OAS, in coordination with the Secretariat for Legal Affairs through the MESICIC, and the Secretariat for Multidimensional Security and the Justice Studies Center of the Americas (CEJA-JSCA). Its objectives were centered on supporting the domestic institutions responsible for preventing, investigating, and punishing corruption acts, including the judiciary. Also, the mission proposed legislative and institutional reforms to strengthen the accountability mechanisms from civil society. The main difference regarding the MESICIC was that the mission also included recommendations to improve the enforcement capabilities, not only from the

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[67] "Thousands march in Honduras to demand resignation of president", Reuters, June 26, 2015, at: https://www.reuters.com/article/us-honduras-protest-idUSKBN0P703V20150627 The case that triggered the protests was the purportedly deviation of 200 million dollars from the social security institute. See "OEA actuará como mediador en convulsionada Honduras", Reuters, August 8, 2015, at: https://www.reuters.com/article/portada-honduras-oea-idLTAKCN0QD0PE20150808

[68] See the press release dated September 28, 2015, from the OAS: https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-303/15

[69] See https://www.oas.org/documents/eng/press/agreement-MACCIH-jan19-2016.pdf

public sector but also from the civil society.[70] To improve citizens' participation and the accountability principle, the mission recommended the creation of observatories, that is, bodies that gather information about anti-corruption policies and disseminate themes, particularly regarding the criminal justice system. Transparency was conceived as a critical instrument to prevent corruption.[71]

The MACCIH prepared seven reports with a summary of its activities between 2016 and 2019, covering areas such as legislative reforms on finance, transparency, and accountability of electoral campaigns, the reform of the national police, and the improvement of the constitutional democracy.[72] The mission adopted a holistic perspective about corruption following the IADC and the IACAC. Corruption was viewed as a criminal offense and a threat to democracy. Consequently, addressing corruption requires rebuilding the state's capacity and civil society to identify, prevent, and combat malpractices and eradicate social norms favorable to clientelist policies.[73] Also, the mission highlighted the corruption social cost to demonstrate that besides its negative impact on constitutional democracy, corruption also diminishes inclusive development.[74]

The implementation of the mission´s recommendation depended on the decisions and capacity of the Government. Regardless of the follow-up mechanism, the agreement between Honduras and the OAS did not cover any supervision mechanism. Of course, there was no coercive instrument to assure the implementation of the recommendations. For that purpose, in November 2019, the Government and the OAS decided to create a board to evaluate the MACCIH effectiveness from a multidisciplinary perspective.[75] In the meantime, the mission, together with the Public Prosecutor Office, supported the advance of the criminal investigation of the brother of a former president.[76] In October 2019, a United States court found guilty the

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[70] See https://www.oas.org/en/spa/dsdsm/maccih/new/mision.asp
[71] See https://www.oas.org/en/spa/dsdsm/maccih/new/observatorio.asp
[72] See https://www.oas.org/en/spa/dsdsm/maccih/new/informes.asp
[73] See MACHI (2009), *Observatorio del sistema de justicia penal. Documento conceptual. El papel de la sociedad civil en la lucha contra la corrupción y la impunidad en Honduras*, Tegucigalpa: MACCIH
[74] See Feingeblatt, Hazel (ed.) (2009), *Los costos sociales de la corrupción*, Tegucigalpa: MACCIH
[75] See https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-102/19
[76] On December 11, 2019, the mission announced its collaboration in the "*definitive forfeiture and asset preservation order for the assets in the name of Ramón Lobo Sosa, involved in the "Case of the Brother´s Petty Cash*." Lobo is brother of the former president Porfirio Lobo (2010-2014). See https://www.oas.org/en/spa/dsdsm/maccih/new/docs/MCH-018en.Integrated-MACCIH-UFECIC-Team-Requests-Definitive-Forfeiture-of-Illicit-Assets-in-the-Case-of-the-Brothers-Petty-Cash.pdf?sCodigo=MCH-018/19

brother of the then president in a case related to narcotics as evidence of the pervasive corruption that the mission was trying to address.[77]

Those circumstances elevated the political tensions against the mission. In December 2019, the Honduran congress recommended not renewing the OAS agreement, considering that the mission was violating the Constitution and the sovereignty of Honduras.[78] In January 2020, the Government decided not to renew the agreement, and as a result, the mission was terminated. According to Luis Almagro, the general secretary of the OAS:[79]

> "The OAS General Secretariat must declare that the termination of the MACCIH tasks in Honduras constitutes an adverse event in the country's fight against corruption and impunity.
> Although the Government of Honduras' sovereignty allows the termination of the MACCHI, the OAS General Secretariat considers that it would be very important for the Mission to continue providing this service to the country's democratic institutions"

The MACCIH experiences left two main lessons. The first one is that fighting corruption at a transnational level cannot be limited to the international cooperation and collaboration to fulfill the IACAC mandates because corruption is also caused by state capabilities gaps that cannot be covered through institutional reform. On the contrary, it is necessary to build the state's capability to enforce anti-corruption policies and reinforce the role of civil society, overcoming the social norms that promoted corruption. The second lesson is that any effort to build the state's capability to enforce anti-corruption policies will conflict with the non-intervention principle, particularly in Latin America.

From the MESICIC perspective, those lessons recommended to include, as part of the mechanism mandate, the improvement of the state capability to enforce the rules and other institutions adopted under the scope

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[77] "Honduran President's Brother Is Found Guilty of Drug Trafficking", The New York Times, October 18, 2019, at: https://www.nytimes.com/2019/10/18/world/americas/honduras-president-brother-drug-trafficking.html The case is related to Juan Antonio Hernández, brother of the then-president Juan Orlando Hernández (2014-2022).

[78] "¿Qué le espera a la MACCIH en Honduras?", *InSight Crime*, December 27, 2019 at: https://es.insightcrime.org/noticias/noticias-del-dia/futuro-maccih-honduras/

[79] Press release dated January 17, 2020, at: https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-003/20 Originally in Spanish.

of the IACAC, particularly reinforcing the professional capability of the civil service and the judicial system officials, as well as the civil society capacity to actively engage in anti-corruption policies, eradicating social norms that promote opportunistic behaviors. The deviation in the implementation of the IACAC is not the only consequence of inadequate rules and policies but also a result of state capability gaps.[80]

CONCLUSIONS

The approval of the IACAC in 1996 was a consequence of the renewed interest in the Inter-American System to address corruption as a democratic vice, as was concluded during the *I Summit of the Americas* held in Miami in 1994. For Latin America and the Caribbean, the approval of the IACAC was a milestone because it demonstrates a new interpretation of the non-intervention principle and the compatibility of domestic sovereignty with an international anti-corruption framework.

The IACAC can also be explained because of the emergence of global corruption, transnational criminal offenses that could not be addressed exclusively from a domestic perspective. In that sense, the IACAC was the first treaty signed to face transnational corruption.

However, the IACAC scope is not reduced to transnational offenses because the Convention also covers the transnational effects of national corruption, considering its pervasive effects on democracy. Therefore, the first goal of the Convention is to promote cooperation among the member States in two senses: *(i)* to unify the domestic rules and practices to fight corruption, and *(ii)* to tackle transnational corruption. Therefore, the Convention was not drafted to be enforced by the international organization but implemented by the party states following the cooperation and collaboration principles.

The first experience implementing the IACAC demonstrated that it was necessary to improve international cooperation to accomplish the Convention´s goals effectively. For that purpose, the Convention should be

[80] The U.S. has adopted a similar approach regarding migration flows from Central America. See the U*.S. strategy for addressing the root cause of migration in Central America*, July 2021, concluding that "*Governance challenges, including widespread corruption, undercut progress on economic opportunity, protection of human rights, and civilian security. Private companies cite corruption as an impediment to investment. Weak democratic institutions, coupled with rampant impunity, have lowered citizens' trust in their governments and the independence of judicial systems. Contested elections and opaque government decision-making have led to violence*", at https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf

analyzed within the Global Law theory and not from the dichotomy between binding and non-binding rules. To solve that dichotomy, scholars have proposed to study the international anti-corruption framework through the lens of soft law. However, in the Inter-American System, the IACAC is more than a soft law because it is part of the Inter-American *corpus juris*.

To improve the quality in the implementation of the Convention, in 2001, the party states created a follow-up mechanism, the MESICIC, designed as a network of representatives appointed by the states to cooperate on the mutual review of the Convention implementation on a consensual and technical basis. The main body of the MESICIC -the Experts Committee- has advanced not only in a peer review of the performance of the Convention but also in the convergence of the domestic frameworks, through law models, guidelines, and the compilation of best practices. Consequently, the MESICIC is a supranational body that promotes supranational anti-corruption policies regarding transnational corruption and the domestic framework.

The supranational corruption approach within the Inter-American System advanced in 2016 when the Government of Honduras and the OAS created a mission to contribute to the fight against corruption and impunity. The MACCHI was designed as an international and advisory body mainly focused on the fragilities of the Honduran state that promoted corruption in areas of limited statehood. The creation of the mission demonstrated that anti-corruption policies in fragile states (FCAS) could not be limited to legislative or institutional reforms because, in the absence of capable law enforcement bodies, corruption would arise regardless of the content of the domestic framework. However, the mission also showed the tensions between the international anti-corruption policies and the non-intervention principle when the Honduras Government terminated the mission in 2020.

The Inter-American anti-corruption experiences demonstrate that anti-corruption policies cannot be limited to the domestic spaces in a global era. Not only does transnational corruption justify international guidelines, but the transnational adverse effects of domestic corruption justify a supranational approach. The principal weakness of supranational anti-corruption policies is the lack of enforcement mechanism because the implementation of those policies depends on the willingness and capability of the states, mainly through its criminal justice system. The MESICIC was created to alleviate this weakness, developing international mechanisms to

promote collaboration and cooperation among the states to implement the IACAC, based on a consensual basis.

Corruption is considered one of the causes of poverty, inequality, and citizens' distrust in Latin America and the Caribbean vices aggravated by the COVID-19 pandemic. At the same time, corruption is a symptom of state fragilities.[81] Consequently, the democratic protection on the Inter-American System requires the effective implementation of the IACAC, and the effective performance depends on the state capabilities and also, a new vision towards the non-intervention principle to overcome the idea -as the Honduras cases demonstrate- that the Convention cannot interfere with domestic politics.

Under those circumstances, thinking in advance in complex transnational instruments, such as an international anti-corruption court, is not feasible in Latin America and the Caribbean, at least in the short term. On the contrary, the objective should work within the current transnational institutions, namely, the IACAC and the MESICIC. Also, the Inter-American Development Bank can help build state capacities to effectively implement the regional and national anti-corruption frameworks, considering that corruption is an adverse condition to promote development.[82] The final goal should be to address the root causes of corruption, related to the state fragilities, and not only the inadequacy of the formal rules and practices. That objective will require expanding the mandate of the MESICIC to cover not only the coordination on rules and best practices but also the coordination to build capabilities -in the Government and the civil society- to implement anti-corruption policies effectively.

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[81] See, for instance, Coralie Pring, Jon Vrushi (2019), *Global Corruption Barometer. Latin America and the Caribbean 2019. Citizens' view and experience of corruption*, International Transparency, at: https://images.transparencycdn.org/images/2019_GCB_LatinAmerica_Caribbean_Full_Report_200409_091428.pdf

[82] See, also, Engel, Eduardo *et al*., (2018), *Informe del Grupo Asesor de Expertos en anticorrupción, transparencia e integridad para América Latina y el Caribe,* Banco Interamericano de Desarrollo: Washington, D.C., 3.