

Fighting Corruption in Latin America and the Caribbean at a Supranational Level: Balances and Challenges of the Inter-American Convention Against Corruption**

La lucha contra la corrupción en América Latina y el Caribe: balances y retos de la Convención Interamericana Contra la Corrupción

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 against 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 Honduran 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 this 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

* Professor, Catholic University Andrés Bello, Venezuela. Fellow, Growth Lab at Harvard Kennedy School Invited professor at Castilla-La Mancha University (Spain), PUCMM (Dominican Republic), and Tashkent (Uzbekistan). E-mail: ignandez@gmail.com. ORCID ID: 0000-0003-1031-8541.

** Received on April 8th, 2023, approved on June 30th, 2023.

To quote the article: Hernández G., J. I. "Fighting Corruption in Latin America and the Caribbean at a Supranational Level: Balances and Challenges of the Inter-American Convention against Corruption", in *Revista Derecho del Estado*, Universidad Externado de Colombia, n.º 59, May - August, 2024, 261-290.

DOI: <https://doi.org/10.18601/01229893.n59.09>

of national sovereignty (due to the non-intervention principle) and the State's fragility to implement anti-corruption policies have created further challenges.

KEYWORDS

Inter-American Convention Against Corruption, Follow-up Mechanism for implementing the Inter-American Convention Against Corruption, Mission to Support the Fight against Corruption and Impunity in Honduras, transnational corruption, global law

RESUMEN

La Convención Interamericana Contra la Corrupción de 1996 fue el primer tratado firmado para combatir la corrupción en el ámbito transnacional. La Convención fue adoptada debido al creciente interés de la Organización de los Estados Americanos en proteger la democracia en la región, particularmente en relación con la corrupción y otros vicios de los gobiernos electos. En ese sentido, la Convención promueve la convergencia de los marcos nacionales anticorrupción y la cooperación internacional en casos de corrupción transnacional. Para mejorar su eficacia, en 2001, la Organización creó un Mecanismo de Seguimiento basado en la cooperación técnica y consensuada. En 2016 se dio un paso más con la creación de la Misión de Apoyo a la Lucha contra la Corrupción y la Impunidad en Honduras, la cual fue terminada en 2020 por el Gobierno de Honduras para proteger la soberanía nacional. La Convención demuestra que la mayor debilidad de las respuestas supranacionales a la corrupción es la falta de mecanismos internacionales de aplicación. Para hacer frente a esa situación, la Organización de los Estados Americanos ha creado instrumentos flexibles para supervisar el cumplimiento de la Convención basados en la cooperación y colaboración de los Estados. Sin embargo, la defensa de la soberanía nacional (debido al principio de no intervención) y la fragilidad del Estado para implementar políticas anticorrupción han creado nuevos desafíos.

PALABRAS CLAVE

Convención Interamericana Contra la Corrupción, Mecanismo de Seguimiento de la Implementación de la Convención Interamericana Contra la Corrupción, Misión de Apoyo contra la Corrupción y la Impunidad en Honduras, corrupción transnacional, derecho global

SUMMARY

Introduction. 1. Regional Solutions for a Global Problem: The Inter-American Convention Against Corruption and Its Role in Combatting Corruption.

1.1. Transnational Corruption and the Inter-American Convention Against Corruption. 1.2. The IACAC Enforcement, Soft Law, and the Inter-American *corpus juris*. 2. Reinforcing Inter-American Anti-Corruption Institutions: A Path Towards Global Anti-Corruption Governance in Latin America and the Caribbean. 2.1. The Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption (MESICIC). 2.2. Global Anti-Corruption Policies in a Fragile State: The Mission to Support the Fight Against Corruption and Impunity in Honduras (MACCIH) and the Effectiveness of the IACAC. Conclusions. References

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

Prior to the IACAC, corruption was primarily viewed as a domestic issue within a state’s boundaries. However, with the rise of globalization, it became apparent that corruption can have transnational effects, rendering domestic legal frameworks inadequate. In Latin America and the Caribbean, the fragility of the state provided another reason to advance the Inter-American anti-corruption framework. To enhance state capability, the IACAC advocated for strategies rooted in the Inter-American System.

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

The Inter-American experience provides valuable lessons. Firstly, anti-corruption policies should promote a transnational framework as part of the global law, given the transnational nature of corruption. Secondly, the lack of international enforcement mechanisms requires innovative ways to overcome traditional resistance toward 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 international law. See Zagaris, Bruce. *International White-Collar Crime*, Cambridge, Cambridge University Press, 2010, 144.

The IACAC experience also highlighted the need for transnational anti-corruption policies to go beyond legislative reforms and international collaboration. Corruption in fragile and conflict-affected states (FCAS) often results from capability gaps that prevent the enforcement of anti-corruption frameworks, including international rules like the IACAC. The MACCIH was explicitly designed to address the fragility of the Honduran state. However, the Honduran Government's decision to terminate the Mission in 2020 suggests that the non-intervention principle remains a barrier to innovative anti-corruption global policies.

This paper provides an analysis of the practical experience in implementing the IACAC, with a specific focus on regional oversight mechanisms. It does not examine the current state of corruption in the region or discuss domestic anti-corruption policies. Instead, the paper explores the solutions proposed within the IACAC for establishing these supranational oversight mechanisms, identifies their shortcomings, and proposes institutional reforms to enhance their effectiveness. Adopting a global law perspective, which is not commonly utilized in analyzing the IACAC, the paper concludes that while the MESICIC demonstrates innovative institutional design as a mechanism of global networking governance, its actions primarily concentrate on the *de jure* scope of anti-corruption policies, emphasizing common legislation and formal institutions inspired by Inter-American standards. However, corruption, particularly in Latin America and the Caribbean, is also linked to state fragility and the inadequate implementation of anti-corruption institutions, which extend to the *de facto* scope, encompassing social norms that perpetuate corrupt behavior. Therefore, Inter-American cooperation in combating corruption needs to progress by bridging the gap between the *de jure* and *de facto* scopes, developing effective capabilities to address corruption, and enhancing democratic quality. It is crucial to consider this objective despite the potential tensions that may arise with the non-intervention principle, as demonstrated by the experience of the MACCIH.

The paper supports its assertion by leveraging data collected by the V-Dem Institute, illustrating how anti-corruption policies have failed to improve in the region despite collective efforts promoted through the OAS. While the Corruption Perceptions Index of Transparency International indicates significant variations within the region – ranging from Uruguay to Venezuela – a consistent trend is the fragility of the state and the disparity between formal institutions inspired by the IACAC and their actual implementation. This gap serves as a distinguishing feature of Inter-American Law, which aims to address inequality in the most unequal region globally.

The main conclusion drawn is that global anti-corruption policies in the region should prioritize building capabilities for effectively implementing the IACAC and the MESICIC's guidelines. This implies a need for practical measures to bridge the divide between formal anti-corruption frameworks (*de jure*) and

their actual application (*de facto*), fostering a more equitable and corruption-resistant environment across the region.

To develop those ideas, the paper is divided into two parts. The first part summarizes the normative framework that explains the development of international instruments to deal with corruption, considering the IACAC's origins and content through the lens of the global law. The second part examines the experience of the two institutions created to promote the effective implementation of the Convention, namely, the MESICIC, and the MACCIH, considering the relationships between state fragility and corruption. Finally, the paper presents conclusions.

1. REGIONAL SOLUTIONS FOR A GLOBAL PROBLEM: THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION AND ITS ROLE IN COMBATting CORRUPTION

The non-intervention principle has significantly impacted the development of public law in Latin America and the Caribbean, largely as a response to perceived “interventionism” by the United States. As early as the late 19th century, several conferences were held among American states to establish an international framework that would respect the sovereignty of countries in the region, which had frequently been threatened using “gunboat diplomacy”. These conferences reinforced the importance of the non-intervention principle, which was formally adopted as part of the OAS Charter in 1948.²

The State fragility has heavily influenced the non-intervention principle in the region. Due to the inability to defend against interventionist threats, the region has instead relied on the non-intervention principle as a legal shield to protect their domestic affairs and the application of public law, including within Government affairs. As a result, decision-making processes within the Government, or public governance, have been considered a domestic issue not subject to regulation under the OAS Charter. The Estrada doctrine exemplified this approach, holding that the international community cannot make decisions based on the democratic or authoritarian nature of foreign Governments.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 regional protection of democracy.⁴ In this context, the OAS expanded its scope of action to include the protection of democracy, even in cases where elected Governments deviated from democratic principles. During the

2 Shea, D. R. *The Calvo Clause*, Minneapolis, University of Minnesota Press, 1955, 11.

3 Jessup, P. “The Estrada doctrine”, *American Journal of International Law* 25, 1931, 719.

4 For instance, see Fukuyama, F. *Political Order and Political Decay*, New York, Farrar, Straus and Giroux, 2014, 259.

1994 *I Summit of the Americas*, the member states defined democracy from a constitutional perspective. As a result, the OAS added the protection of the fundamental elements of democracy, such as the fight against corruption, to its democratic agenda.⁵

1.1. Transnational Corruption and the Inter-American Convention Against Corruption

As Neil Boister 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 economic crimes.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 in a transnational framework to fight against 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 corruption.⁹ The dimension of corruption as a symptom of State fragility has resulted in the study of corruption as an instrument of domination, known as kleptocracy.¹⁰

5 Aguiar, A. *El derecho a la democracia*, Caracas, Editorial Jurídica Venezolana, 2008.

6 Boister, N. *An Introduction to Transnational Criminal Law*, Oxford, Oxford University Press, 2018, 3 and 146.

7 A landmark precedent in the development of a transnational framework was the U.S. 1977 Foreign Corrupt Practices Act (FCPA). See Borlini, Leonardo and Arnone, Marco. *Corruption: Economic Analysis and International Law*, Northampton, Edward Elgar Publishing, 2014, 209, and Davis, Kevin E. *Between Impunity and Imperialism: The Regulation of Transnational Bribery*, New York, Oxford University Press, 2019, 31.

8 Rose-Ackerman, S. *Corruption and Government: Causes, Consequences, and Reform*, New York, Cambridge University Press, 1999, 177.

9 Wabwile, N. “Transnational Corruption, Violations of Human Rights and States’ Extra-territorial Responsibility: A Case for International Action Strategies”, in *African Journal of Legal Studies*, 8(1-2), 2015, 87-114.

10 Rather than focusing on a quantitative approach to grand corruption, we focused on a qualitative approach. The critical component of kleptocracy is the gradual substitution of bureaucratic control by domination through corruption as a symptom of state fragility. See Chayes, Sarah. *Thieves of State: Why Corruption Threatens Global Security*, New York, W.W. Norton & Company, 2015, 91 and Hirschfeld, Katherine. *Gangster States: Organized Crime, Kleptocracy, and Political Collapse*, New York, Palgrave Macmillan, 2015, 68. See also Cooley, A. *et al.* “The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations”, in *Journal of Democracy*, 29(1), 2018, 39-53. Regarding the relationship between kleptocracy and political power, *vid.* Haugaard, M. “Kleptocracy, Authoritarianism and Democracy as Ideal Types of Political Power”, in *Journal of Political Power ahead-of-print* 2023, 1.

The main reasons that prompted the international community to address transnational corruption were globalization and State fragility. Consequently, there was a recognition that cooperation was essential to combat corrupt practices across multiple countries, especially concerning money laundering in the international financial system.¹¹ The OAS took these causes into account when advancing an anti-corruption transnational approach.

Until the 1990s, the prevailing view was that the OAS should not intervene in the domestic affairs of its member states, especially in Latin America, to safeguard their sovereignty. Therefore, issues related to democracy, governance, and corruption were regarded as being beyond the mandate of the OAS. But during the 1990s, that vision changed as the OAS prioritized the protection of democracy, as was decided in the 1991 Resolution n.º 1080 of the General Assembly.¹² In that sense, a relevant milestone was Resolution n.º 1159, adopted by the OAS's General Assembly in 1992, about corruption in international commerce.¹³ Corruption was addressed from a transnational perspective considering its negative impact on development and democracy. As a result, the Inter-American Juridical Committee (IAJC) studied international cooperation mechanisms to fight against corruption in the Americas.¹⁴ In 1994, the General Assembly instructed the Permanent Council to create a Working Group about “*probity and public ethics*” (Resolution n.º 1294)¹⁵, based on the 1994 *Belm Do Par* Declaration adopted by the foreign ministers to promote legal coordination against corruption.¹⁶ That year, during the I Summit of the Americas in Miami, the heads of State and government approved an Action Plan that considered corruption as an issue of “serious interest” in the Western Hemisphere due to its adverse effects on democracy.¹⁷

Based on this experience, in December 1994, the Venezuelan 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

11 Chaikin, D., and Sharman, J. *Corruption and Money Laundering: A Symbiotic Relationship*, New York, Palgrave Macmillan US, 2009, 7. Recently, the potential benefits of a transnational framework for tackling corruption have led to propose an international anti-corruption court. For instance, see Wolf, Mark. “The World Needs an International Anti-Corruption Court”, in *Daedalus* 147(3), 2018, 144.

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

13 See: www.oas.org/juridico/spanish/ag-res97/Res1159.htm [retrieved on Apr. 8, 2023].

14 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.

15 See www.oas.org/juridico/spanish/ag-res97/Res1294.htm [retrieved on Apr. 8, 2023].

16 Dated June 6, 1994: <http://www.oas.org/juridico/spanish/Belem.htm> [retrieved on Apr. 8, 2023].

17 See <http://www.oas.org/juridico/english/SumcorI.html> [retrieved on Apr. 8, 2023].

corruption from the international law standpoint. In 1995, the General Assembly requested the IAJC to study this draft. The IAJC approved Resolution n.º 11-13/1995, dated August 18, 1995, about international cooperation to fight corruption. According to this Resolution, the Convention should focus on legal cooperation between member states to combat transnational corruption in three areas: extradition, asset recovery, and legal assistance. That approach considered that implementing anti-corruption policies was a duty of the Government 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 Resolution n.º 1080.¹⁸

On June 9, 1995, the General Assembly approved Resolution 1346, reinforcing the relevance of anti-corruption policies to protect democracy.¹⁹ 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”.²⁰

The I Summit of the Americas and the Declaration of Montrouis marked a turning point in the perception of corruption as a regional threat to democracy rather than solely a domestic issue. This shift in perspective was further emphasized in March 1996, when the OAS held a Specialized Inter-American Conference on Corruption in Caracas, which resulted in the approval of the IACAC.²¹

The IACAC was the first treaty that tackled corruption²² and the first time that international law had to decide how to assure the implementation of transnational anti-corruption policies that only domestic bodies could enforce.

18 Inter-American Juridical Committee. *Annual Report to the General Assembly*, dated February 1, 1996, 37. Also, in March 1995, the CIJ approved Resolution n.º 11-13/95 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).

19 Resolution n.º 1346 affirmed that corruption endangers representative democracy and inclusive development, available at: <http://www.oas.org/juridico/spanish/ag-res97/Res1346.htm> [retrieved on Apr. 8, 2023].

20 General Assembly, Resolution number 95, dated June 7, 1995: <http://www.oas.org/en/pinfo/res/RESGA95/agd0008.htm> [retrieved on Apr. 8, 2023].

21 Luján, M. “Algunos aspectos de la lucha contra la corrupción en el ámbito interamericano”, in *Agenda Internacional* 11-22, 2005, 55-81.

22 Boister, Neil (n. 7), 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, L., and Ryder, N. “The global anti-corruption framework”,

The IAJC advised drafting the Convention based on international cooperation, not international enforcement. International cooperation means that the enforcement of the IACAC is vested in the member states and not in an international body with adjudication powers. Therefore, the primary objective of the IACAC is to promote cooperation among member states in two areas: (1) unifying rules and practices to combat corruption at the national level; and (2) addressing 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 performing public functions and acts of corruption specifically related to such performance.

The IACAC was designed to facilitate the convergence of domestic anti-corruption policies, including legislation regarding good governance, public official standards of conduct, income registers, and domestic enforcement (art. III). The IACAC also addresses the domestic jurisdiction for investigating corruption offenses, including illicit enrichment (arts. VI, VII, IX, and XII), asset recovery (art. XV), and bank secrecy (art. XVI). Also, it addresses transnational corruption offenses, including transnational bribery (art. VIII), extradition (art. XIII) and enabling legal assistance and cooperation (art. XIV).

Therefore, the IACAC was established not only to address transnational corruption but also to facilitate the harmonization of domestic legal frameworks in the fight against national corruption²³. The rationale behind this approach stems from the recognition that even domestic corruption can have adverse regional consequences, especially concerning democracy and inclusive development. Within the Inter-American System, the IACAC is perceived as a safeguard to protect democracy from the pitfalls associated with elected government²⁴. Consequently, the IACAC should be interpreted as being part of the effort promoted by the OAS to protect democracy, as was summarized

in Ryder, N. *et al.* (ed.). *Corruption, Integrity, and the Law: Global Regulatory Challenges*, New York, Law of Routledge, 2020, 3.

23 Altamirano, G. "The Impact of the Inter-American Convention Against Corruption", in *University of Miami Inter-American Law Review*, 38-3, Spring-Summer, 2006-2007, 487.

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

in Resolution n.º 1080. Precisely, the General Assembly approved the Inter-American Cooperation Program to Fight Corruption on June 5, 1997. This program included various measures aimed at promoting 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). 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 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. Cooperation and mutual assistance against corruption, following treaties and applicable law, are fundamental to promoting democratic governance.

The third wave of democratization in Latin America and the Caribbean revealed that democracy was at risks not only by military coups but also by poor performance and abuses of elected governments, including corruption. Therefore, anti-corruption policies under the IACAC also include measures to strengthen good governance following the democratic values embedded in the IADC, favoring the government’s capability to promote inclusive development based on efficiency, efficacy, transparency, and accountability principles.²⁷ The Inter-American Court on Human Rights has also noted that corruption negatively impacts human rights, particularly of vulnerable populations, undermining public trust in government.²⁸ Additionally, the Inter-American

to defend democracy against the serious threats of corruption, terrorism, and illegal narcotics, and to promote peace and security among our nations” (www.summit-americas.org/chileplan.htm).

25 Resolution n.º 1477, available: <http://www.oas.org/juridico/spanish/ag-res97/Res1477.htm> [retrieved on Apr. 8, 2023].

26 See: http://www.oas.org/xxxiiiiga/english/docs/agdoc4224_03rev3.pdf [retrieved on Apr. 8, 2023].

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 good governance standards. See Ferrajoli, Luigi. *Democracia y garantismo*, Madrid, Trotta, 2018, 25.

28 Ruling dated March 9, 2018, in *Ramírez Escobar y otros vs. Guatemala* (Serie C n.º 351), paragraphs 241 and 242. See Morales, M. “Aproximación a los estándares interamericanos sobre corrupción, institucionalidad democrática y derechos humanos”, in Tablante, C. and Morales, M.

Comission on Human Rights has consolidated Inter-American anti-corruption standards, grounded in a human rights perspective and based on the principles outlined in the IACAC.²⁹

Corruption has undergone a significant transformation, moving beyond its traditional confines within the political system governed by domestic public law to emerge as a regional threat against Inter-American democratic standards. This evolution is particularly notable given the region's deep-rooted principles of non-intervention and anti-colonialism. Corruption is perceived as an obstacle to achieving the ambitious, transformative mandates outlined in Inter-American Law, particularly those concerning economic, social, cultural, and environmental rights.

As a result, anti-corruption policies now extend beyond the realm of domestic public law to represent a crucial pillar of Inter-American Law. This evolution underscores the importance of collaborative regional efforts to combat corruption effectively. Such efforts must transcend national boundaries and address corruption as a multifaceted challenge with wide-ranging implications for the stability and prosperity of the region.

1.2. The IACAC Enforcement, Soft Law, and the Inter-American corpus juris

Enforcement is a critical question regarding the IACAC and any other anti-corruption treaty. Member states enforce anti-corruption policies using coercive power, usually through the criminal justice system. However, there are no international enforcement mechanisms to tackle transnational corruption. Consequently, the implementation of the international anti-corruption framework relies on soft law, which consists of provisions that, although not strictly binding, influence the states' decision-making process.³⁰ Usually, those provisions include guidelines and recommendations that could be interpreted as part of a global law.³¹

However, in the global context, the traditional rules classification as binding or non-binding loses relevance. Global rules cannot be directly enforced in the international order bar in exceptional cases such as the International Criminal Court. Therefore, the concept of binding force primarily applies to domestic law rather than global rules. However, despite lacking direct enforceability,

(ed.). *Impacto de la corrupción en los derechos humanos*, Querétaro, Instituto de Estudios Constitucionales del Estado de Querétaro, 2018, 335.

29 Inter-American Comission on Human Rights, *Corrupción y Derechos Humanos*, Washington D.C., 2019, 22-24.

30 Rose, C. *International Anti-Corruption Norms*, Oxford University Press, 2015, 13.

31 Cassese, S. *Advanced Introduction to Global Administrative Law*, Cheltenham, Edward Elgar Publishing Limited, 2021.

global law still holds sway over domestic decision-making processes.³² It could influence and guide the behavior of the government, contributing to the development of a cooperative international legal framework.³³

While it is true that soft law lacks the direct coercive power of binding legal authority, it is not accurate to simply define it as non-binding. The absence of global coercive power in international law limits the enforceability of any treaty, not just those related to anti-corruption efforts. Soft law is characterized by its flexible and general content, and not simply because it cannot be enforced using coercion. Thus, global anti-corruption law relies on soft law instruments to influence decision-making processes in the absence of global coercive power.³⁴

When the IACAC was drafted, the specificities of enforcing international law on anti-corruption policies were considered. The Convention can be understood as an embodiment of the global law in the Inter-American Human System. Therefore, the Convention does not establish enforcement mechanisms, such as an international body with adjudication power. Instead, it is based on legal cooperation among member states, with two primary objectives: (1) to promote convergence toward common rules and principles to address national corruption as part of the efforts to foster democratic governance; and (2) to facilitate cooperation in matters related to transnational corruption offenses, including extradition, asset recovery, and mutual legal assistance³⁵.

As a result, the IACAC promotes the collective action of member states toward basic topics, including the declaration of incomes, and assets, and the protection of whistleblowers. Also, the implementation of the IACAC has resulted in legislative guidelines related to conflict of interest, the obligation to report corrupt acts, oversight bodies, government hiring, and participation in public affairs.³⁶

The legal effects of the IACAC must consider that the treaty is part of the Inter-American *corpus juris*, a system of rules, principles, and values interpreted by the Inter-American Court of Human Rights. Consequently, member states have a duty to incorporate its principles and values into their national legal systems. While the Court lacks the direct power to enforce the IACAC,

32 Kingsbury, B. *et al.* "Global Administrative Law and Deliberative Democracy", in *The Oxford Handbook of the Theory of International Law*, Oxford University Press, 2016, 526.

33 Aman, A. *Administrative Law in a Global Era*, Ithaca, Cornell University Press, 1992, 131. See also: Cassese, S. *The Global Polity*, Sevilla, Global Law Press, 2012, 15.

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

35 Regarding the limits of this cooperative approach, see Florencia Tort, C. "The search for synergies: the utopian ideal of cooperation between international anti-corruption mechanisms", in Bismuth, R. *et al.* (ed.). *The Transnationalization of Anti-Corruption Law*, New York, Routledge, 2021, 505.

36 See <http://www.oas.org/en/sla/dlc/mesicic/default.asp> [retrieved on Apr. 8, 2023].

it possesses the authority to interpret the Convention in conjunction with the American Convention on Human Rights. By doing so, it enables the harmonization of national anti-corruption policies and facilitates transnational efforts in combating corruption.³⁷ Hence, the IACAC could be considered part of global constitutionalism.³⁸

The global law theory offers the most suitable framework for analyzing the Inter-American Convention Against Corruption (IACAC). A conventional approach from International public law falls short because, as a treaty, the IACAC has significant implications for the domestic activities of member states. In essence, the IACAC governs interactions between states, such as legal cooperation, and influences activities within states. These intra-state effects demonstrate how the traditional distinctions between Constitutional and Administrative Law on one side and international law on the other are becoming less rigid, paving the way toward a global public law framework.

Consequently, the treaty does not stand alone as the sole source of law. Instead, the inter-American anti-corruption framework has evolved into innovative mechanisms, explained in the next section. This transnational effect is further bolstered by the human rights perspective and the role of anti-corruption policies as fundamental institutions in upholding democratic standards within the purview of the OAS.³⁹

2. REINFORCING INTER-AMERICAN ANTI-CORRUPTION INSTITUTIONS: A PATH TOWARDS GLOBAL ANTI-CORRUPTION GOVERNANCE IN LATIN AMERICA AND THE CARIBBEAN

After its approval, the IACAC demonstrated the problems derived from the lack of a coercive enforcement mechanism. Following its principles based on coordination among member states, it was necessary to design a non-coercive mechanism to improve the fulfillment of the Convention's mandates.

To achieve this purpose, in 2001, the member states established the MESICIC. The Follow-up Mechanism is a specialized network of experts that promotes effective coordination for implementing the IACAC. It balances two principles:

37 The Inter-American Human Rights System encompasses all the treaties enacted under the scope of the OAS Charter, including the IACAC. The Convention is considered art of the various sources of law within the Inter-American System, which collectively form the Inter-American *corpus juris*. See Urosa, D. and Hernández G., J. I., "La Corte Interamericana de Derechos Humanos y el derecho procesal convencional. Un estudio del derecho procesal público global", in Brewer-Carías, A. and Ayala, C. (ed.). *Libro homenaje al Dr. Pedro Nikken*, vol. 1, Caracas: Academia de Ciencias Políticas y Sociales, 2021.

38 Zysset, A. "International crimes through the lens of global constitutionalism", in *Global Constitutionalism*, 12: 1, 2023, 59.

39 Brewer, A. *Sobre la democracia*, Editorial Jurídica Venezolana, Caracas, 2019, 146-172.

(1) the need to enhance the effectiveness of the IACAC as part of the effort to strengthen democracy; and (2) respect for the principle of non-intervention, avoiding foreign interventions over 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 consultative body to promote the effectiveness of anti-corruption policies, particularly regarding the fragility of Honduran institutions. However, due to tensions with the non-intervention principle, the mission was terminated in 2020.

2.1. The Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption (MESICIC)

On June 5, 2000, the OAS General Assembly approved Resolution 1723 to *strengthen the probity in the Western Hemisphere and continue the Inter-American program on anti-corruption cooperation*.⁴⁰ The Resolution directed the Permanent Council to study a model for an international follow-up mechanism on anti-corruption policies to be implemented in connection with the IACAC.

International law creates supervisory mechanisms to oversee compliance with international obligations. These mechanisms do not exert adjudicatory powers but promote cooperation and collaboration among states. They are networks through which governments collaborate in the decision-making process regarding international obligations, as commonly happens in transnational economic crimes.⁴¹

In Resolution number 783, dated January 18, 2001, the OAS Permanent Council proposed a follow-up mechanism for the Convention based on collaboration among member states, including technical cooperation.⁴² The mechanism should respect the non-intervention principle and could not result in binding decisions. Therefore, it was designed to avoid the establishment of an adjudication body and instead promote collaborative agreements based on voluntary contributions by member states. To further ensure compatibility with the non-intervention principle, the Permanent Council recommended that the follow-up mechanism should be objective, impartial, and technical, based on a network of experts appointed by the member states (the Experts

40 Available here: http://www.oas.org/juridico/spanish/ag00/agres_1723_sp.pdf [retrieved on Apr. 8, 2023].

41 See Borlini, Leonardo and Arnone, Marco (n. 7), 443.

42 Available here: <http://www.oas.org/consejo/sp/resoluciones/html/res783.htm> [retrieved on Apr. 8, 2023].

Committee).⁴³ The III Summit of the Americas in Quebec in April 2001 endorsed the proposal.⁴⁴

Between May 2-4, 2001, the state parties of the IACAC gathered 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”. The guidelines reiterated the technical and consensual basis of the mechanism. Finally, the General Assembly approved the proposal in Resolution number 1784, dated June 5, 2001, that formally created the mechanism.⁴⁵

These precedents help to define the MESICIC’s nature. It is a global network of experts based on a cooperative dialogue, with the final purpose of facilitating collective actions regarding formal anti-corruption policies that can have a spillover effect in the domestic legal order. The network fulfills two primary goals: (1) the cooperation to promote the convergence of anti-corruption domestic legal frameworks; and (2) the voluntary review of the fulfillment of the Convention through the Experts Committee. The committee’s technical nature served as a counterbalance to uphold the non-intervention principle. As a result, the MESICIC 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 Committee⁴⁶ and the Member States Conference.⁴⁷

Two tools form the basis of the IACAC follow-up, (1) the review process and (2) the cooperation and coordination on anti-corruption rules and policies. The review process is based on “rounds”, 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 experts collect additional

43 The Working Group about probity and public ethics advanced in the study of the follow-up mechanism during March 2001. Available here: http://www.oas.org/juridico/spanish/23_octubre_2001.htm: [retrieved on Apr. 8, 2023].

44 Available: http://www.summit-americas.org/iii_summit.html [retrieved on Apr. 8, 2023].

45 Available here: http://www.oas.org/juridico/spanish/doc_buenos_aires_sp.pdf [retrieved on Apr. 8, 2023]. See Michele, R. “The Follow-up Mechanism of the Inter-American Convention Against Corruption: a Preliminary Assessment: Is the Glass Half Empty?”, in *Southwestern Journal of Law and Trade in the Americas*, 10-2, 2004, 295.

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 [retrieved on Apr. 8, 2023]. According to 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, available here: http://www.oas.org/juridico/english/followup_conf_rules.pdf [retrieved on Apr. 8, 2023].

48 Art. 18, Rules of Procedure of the Conference of the State Parties to the Mechanism for Follow-Up on Implementing the Inter-American Convention Against Corruption.

information in an on-site visit.⁴⁹ Also, the experts can interact with civil society organizations.⁵⁰ The Committee approves the final report.⁵¹ Additionally, the Experts Committee promotes cooperation among member states by compiling national best practices, formulating guidelines, recommendations, and even model laws.

These tools extend beyond being mere formal procedures, as they actively facilitate interactive dialogue among states, reducing political friction that may arise due to the technical nature of assessments. Despite being soft instruments, they establish conditions that foster the formulation of shared guidelines and policies aligned with the IACAC objectives. In this regard, the MESICIC stands as a noteworthy example of designing global institutions without adjudication powers, effectively creating incentives for aligning anti-corruption policies based on inter-American standards.⁵²

From a global administrative law perspective, the MESICIC operates as a network of domestic experts that facilitates cooperation and alignment of anti-corruption policies.⁵³ While the network issues recommendations, the review process creates incentives for their effective implementation within domestic frameworks. Consequently, despite the non-binding nature of its decisions, they could have a significant impact on domestic policymaking. Therefore, the IACAC demonstrates the strong interactions between domestic public law and the recommendations adopted by the global network, fostering convergence based on Inter-American standard.

To summarize, the OAS created the MESICIC to strengthen the implementation of the IACAC, recognizing that the Convention does not create an international body with coercive power. 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. Consequently, the MESICIC introduces a pioneering institutional design based on networking governance. By emphasizing technical cooperation, it enables the facilitation of standardized anti-corruption policies that extend beyond

49 Art. 19, 20, and 21. See the Methodology for Conducting On-Site Visits, available here http://www.oas.org/en/sla/dlc/mesicic/docs/met_onsite.pdf [retrieved on Apr. 8, 2023].

50 Art. 36.

51 Art. 25.

52 As a result, it is possible to study the “Inter-Americanization” of the national anti-corruption policies in the sense that the IACAC could influence domestic policies, favoring the democratic quality. About this “Inter-Americanization” effect, see Huerta, C., “Los estándares del Sistema Interamericano de Derechos Humanos en el fortalecimiento del Estado de derecho y la transformación de la legislación administrativa en México”, in Von Bogdandy, A. *et al.*, *La interamericanización del Derecho Administrativo en América Latina*, Max Planck Institute for Comparative Public Law and International Law-Instituto de Estudios Constitucionales del Estado de Querétaro, Querétaro, 2022, 63.

53 Cassese, S. (n. 30).

the traditional focus on criminal and civil consequences. The MESICIC also takes a preventive approach, seeking to reinforce democratic governance by addressing the underlying factors contributing to corruption. However, it is essential to note that the Mission primarily promotes cooperation concerning formal policies, such as legislation to implement the IACAC. While this is a crucial aspect, it is equally important to understand how governments enforce these formal policies in practice. Hence, an additional relevant variable to consider is State capability.

In summary, viewing the IACAC through the lens of global law highlights the need to move beyond distinctions between binding and non-binding sources of law. On a global scale, what matters is not the absence of coercion to enforce provisions but rather understanding how global networks foster the convergence of policies that permeate domestic systems. This downstream movement, labeled as “soft” in contrast to coercive “hard” approaches, nonetheless influences domestic anti-corruption policies.

A prime example is the systematization of good practices, like conflict of interest prevention. The exchange of these practices facilitates the infusion of common standards inspired by the IACAC. This methodology relies on practical Comparative Law exercises, where experts exchange best practices, identifying common trends irrespective of differences in legal systems. For instance, despite their differences, Belize and Argentina share practices inspired by good governance standards⁵⁴.

Despite its technical nature, the MESICIC mechanism has not garnered much attention in legal studies. However, it demonstrates that global law is not merely a theoretical construct but a reality already in motion. This gradual process contributes to establishing an Inter-American Law that surpasses mere treaty obligations.

2.2. Global Anti-Corruption Policies in a Fragile State: The Mission to Support the Fight Against Corruption and Impunity in Honduras (MACCIH) and the Effectiveness of the IACAC

In Latin America and the Caribbean, it is crucial to view corruption as a multi-faceted issue caused by several dynamic factors. One of the significant factors is the historical fragility of states in the region, which results in a weak capacity to implement adequate checks and balances.⁵⁵ Tackling corruption in these fragile states cannot rely solely on institutional or legal approaches, such as promoting legislative agendas.⁵⁶ The success of anti-corruption legal

54 www.oas.org/es/sla/dlc/mesicic/buenas-practicas.html [retrieved on Dec. 20, 2023].

55 Mazzuca, S. *Latecomer State Formation: Political Geography and Capacity Failure in Latin America*, New Haven, Yale University Press, 2021, 387.

56 This is why legal – or institutional – reforms can have a reduced impact on promoting

frameworks relies on the ability of capable bodies to enforce them. Therefore, in fragile states, anti-corruption policies should focus not only on the legal framework but also on building state capability and enhancing the capacity of civil society.

In the region, the anti-corruption domestic framework is fragile because 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 inspired by the IACAC, corruption in the region has an increasing and pervasive impact, demonstrating that the national rules cannot be effectively implemented, creating a gap.⁵⁸

The fragility in State capacity could result in “areas of limited statehood” -domains where the State is unable to enforce its legal and institutional framework⁵⁹, which can result in the emergence of informal institutions to fulfill the tasks the weak government cannot perform, including corruption.⁶⁰ In response, civil society tends to be organized to fulfill the tasks the fragile State cannot address. Over time, these societies may embrace values that encourage corruption to circumvent the state's fragility, a situation that scholars describe as “social norms”.⁶¹

In Latin America, the situation is even more complicated due to authoritarian regimes that act with a veneer of legality. This is the case in the hybrid regimes in which the Constitutional Law covers authoritarian behaviors.⁶² In that context, besides State fragility, corruption can be promoted through

development. See Andrews, M. *The limits of institutional reforms in development*, New York, Cambridge University Press, 2017, 5.

57 Brinks, D., Levitsky, S., and Murillo, V., *Understanding Institutional Weakness. Power and design in Latin American institutions*, Cambridge, Cambridge University Press, 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, T. “Governance in Areas of Limited Statehood”, in Risse, Thomas *et al.*, *The Oxford Handbook of Governance*, Oxford, Oxford University Press, 2019, 700.

60 Rotberg, R. “Repressive, Aggressive and Rogue Nation-States”, in Rotberg, R. (ed.). *Worst of the Worst. Dealing with Repressive and Rogue Nations*, Cambridge, World Peace Foundation and Brookings Institution Press, 2017, 1. See also Rotberg, R. *The Corruption Cure: How Citizens and Leaders Can Combat Graft*, Princeton, Princeton University Press, 2017, 18.

61 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, can emerge in areas of limited statehood to pursue private benefits. See Scharbatke-Church, Cheyane, and Chigas, Diana. *Understanding Social Norms. A Reference Guide for Policy and Practice*, The Fletcher School, 2019. See Johnson, Jespen. *Anti-Corruption Strategies in Fragile States: Theory and Practice in Aid Agencies*, Northampton, Edward Elgar, 2016, 39.

62 Tushnet, M. “Authoritarian Constitutionalism: Some Conceptual Issues”, in Ginsburg, T. and Simpser, A. (ed.), *Constitutions in Authoritarian Regimes*, Cambridge, Cambridge University Press, 2018, 1 and 36.

autocratic legalism, namely, measures that adopt legal forms to pursue corrupted purposes, for instance, through emergency decrees that justify simplified procurement procedures. The poster child of this situation in the region is Venezuela, paradoxically, the country where the IACAC was signed.⁶³

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, the Government deviated billions of dollars. The pervasive Venezuelan corruption is based on formal institutions that promote social norms to capture the oil rent. Since 2013, 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.⁶⁴ Venezuela is ranked 177th – out of 180 – in the Corruption Perceptions Index as one of the most corrupt countries in the world.⁶⁵

Setting aside this extreme example, there have been no significant advances in controlling corruption in the region. According to indicators measured by the V-Dem Institute, regime corruption – which measures the extent to which political actors use political office for private or political gain – has shown no significant improvement since the signing of the IACAC.⁶⁶ Similarly, the political corruption index indicates that corruption remains similar to 1996.⁶⁷

A more detailed analysis reveals disparate outcomes among states. While Uruguay, Barbados, Chile, Bahamas, Saint Vincent and the Grenadines, Dominica, and Costa Rica rank within the top 45 positions of the Corruption Perception Index 2023, Venezuela, Nicaragua, Haiti, Honduras, Guatemala, and Paraguay rank in the lowest 45 positions. These differences could be attributed to variations in State capacity and institutional quality rather than solely to differences in implementing the IACAC.

The ambition of the IACAC and the results reflected in corruption indexes in the region demonstrate a gap between the *de jure* and *de facto* rule of law, primarily attributable to State fragility. Corruption is not the only field in

63 Corrales, J. “Autocratic Legalism in Venezuela”, in *Journal of Democracy*, 26(2), 2015, 37-51.

64 Hernández G., J. I. “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> [retrieved on Apr. 8, 2023].

65 Transparency International, Corruption Perception Index 2023, available here: <https://www.transparency.org/en/cpi/2023> [retrieved on Feb. 9, 2023].

66 The regime corruption index in 1996 was 0.52; in 2022, it was 0.49. The scale ranges from low to high (0-1), indicating that the political system in the region remains fundamentally neo-patrimonial. As a reference, in OECD countries, the index in 2022 is 0.12. The index is available here: https://v-dem.net/data_analysis/VariableGraph/ [retrieved on Feb. 9, 2023].

67 This index measures how pervasive is corruption. See: https://v-dem.net/data_analysis/VariableGraph/ [retrieved on Feb. 9, 2023].

which this gap exists. On the contrary, as has been concluded regarding Latin America, its institutions – including public law – tend to be fragile because the goals that the State must achieve are not fully implemented.⁶⁸ Another dimension of this fragility, highlighted during the pandemic, is that despite ambitious, transformative mandates toward equality, the region remains the most unequal in the world.⁶⁹

This gap highlights a missing link in the design of the IACAC and the MESICIC: they predominantly focus on improving the quality of the *de jure* scope without fully considering the capability required to fulfill anti-corruption standards. Promoting the convergence of anti-corruption policies is undoubtedly a major advance achieved in the region, as it reinterprets the non-intervention principle to consider that democratic governance is not purely a domestic affair. However, it is necessary to go further and include recommendations within the tasks of the MESICIC aimed at building anti-corruption capabilities.

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

Anti-corruption policies must include measures to rebuild the state's capability, a task that goes beyond the mandate of the MESICIC.⁷⁰ The fragile State theory suggests that international cooperation can help rebuild State capacity through various mechanisms, including international anti-corruption missions, such as the International Commission against Impunity in Guatemala (CICIG).⁷¹ If developing an Inter-American framework to address corruption was challenging due to the non-intervention principle, creating an international cooperation mechanism to rebuild State capacity was an even more significant challenge. In the case of Honduras, this challenge was particularly daunting.

Honduras has faced numerous challenges due to pervasive corruption resulting from various complex causes, including State fragility. This type of corruption contributed to the political crisis that erupted in June 2015, which led to mass protests demanding the president's resignation.⁷² Due to

68 Brinks, D., Levitsky, S., and Murillo, V. (n. 56).

69 Hernández, J. I. *La pandemia de la covid-19 y el Derecho Administrativo en América Latina*, Tirant lo Blanch, Universidad del Rosario, Bogotá, 215-249.

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

71 Andrade Viera, S. "Institucionalización de políticas anticorrupción a través del apoyo de misiones internacionales", in *Opera*, 30, 2022, 197.

72 "Thousands march in Honduras to demand resignation of president", Reuters, June 26, 2015, at: <https://www.reuters.com/article/us-honduras-protest-idUSKBN0P703V20150627>

the risk to Honduran democracy, the OAS and the United Nations promoted a national dialogue against corruption and impunity. As a result, the government of Honduras sought support from the OAS to effectively implement anti-corruption policies.⁷³ 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 Government⁷⁴

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 (CIACC), 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 MACCIH was created as an advisory body without adjudication powers, overseen jointly by the Secretariat for Strengthening Democracy (SSD) of the OAS, the Secretariat for Legal Affairs through the MESICIC, and the Secretariat for Multidimensional Security, along with the Justice Studies Center of the Americas (CEJA-JSCA). The Mission focused its objectives on supporting domestic institutions responsible for preventing, investigating, and punishing acts of corruption, including those within the judiciary. Also, the Mission proposed legislative and institutional reforms to strengthen the accountability mechanisms of civil society. One key difference between the MACCIH and the MESICIC was that the former had an expanded mandate to include recommendations for improving enforcement capabilities in the public sector and civil society. 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 information regarding the criminal justice system. Transparency was conceived as a critical instrument to prevent corruption.⁷⁵

The MACCIH prepared seven reports with a summary of its activities between 2016 and 2019, covering areas such as legislative reforms on finance,

[retrieved on Apr. 8, 2023]. The case that triggered the protests was the purported deviation of 200 million dollars from the social security institute. See "OEA actuará como mediador en la convulsión Honduras", Reuters, August 8, 2015, at: <https://www.reuters.com/article/portada-honduras-oea-idLTAKCNOQD0PE20150808>.

⁷³ 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 [retrieved on Apr. 8, 2023].

⁷⁴ Available here: <https://www.oas.org/documents/eng/press/agreement-MACCIH-jan19-2016.pdf> [retrieved on Apr. 8, 2023].

⁷⁵ Available here: www.oas.org/en/spa/dsdsm/maccih/new/observatorio.asp [retrieved on Apr. 8, 2023].

transparency, and accountability of electoral campaigns, the reform of the national police, and the improvement of constitutional democracy. In its works, the Mission adopted a comprehensive perspective on corruption following the IADC and the IACAC. For that purpose, the Mission viewed corruption as a criminal offense and a threat to democracy that requires building capacities in the public and private sectors to combat malpractices and eradicate social norms favorable to clientelist policies.⁷⁶ In addition, the Mission emphasized the social cost of corruption, underscoring that it undermines not only constitutional democracy but also hinders inclusive development.⁷⁷

The implementation of the Mission's recommendations relied on the decisions and capabilities of the Honduran Government, as there was no oversight body in place to ensure their implementation. However, in November 2019, the Government and the OAS reached a decision to establish a board that would evaluate the effectiveness of the MACCIH from a multidisciplinary perspective. This initiative aimed to address this gap and provide a mechanism for assessing and monitoring the mission's impact.⁷⁸ In the meantime, the Mission, together with the Public Prosecutor's Office, supported the criminal investigation related with a former president's brother⁷⁹ Nonetheless, the political tension increased in October 2019, when a United States court found guilty the brother of the then president in a case related to narcotics.⁸⁰

The unfolding circumstances intensified political tensions directed toward the Mission, leading to significant opposition. In December 2019, the Honduran Congress recommended against renewing the agreement with the OAS, asserting that the Mission had encroached upon the country's Constitution and sovereignty.⁸¹ In January 2020, the Government decided not to renew the

76 See MACCIH. *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, 2019.

77 Feingebblatt, Hazel (ed.). *Los costos sociales de la corrupción*, Tegucigalpa, MACCIH, 2019.

78 Available here: https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-102/19 [retrieved on Apr. 8, 2023].

79 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 the brother of former president Porfirio Lobo (2010-2014). Available here: <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> [retrieved on Apr. 8, 2023].

80 "Honduran President's Brother Is Found Guilty of Drug Trafficking", *The New York Times*, October 18, 2019, available here: <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) [retrieved on Apr. 8, 2023].

81 "¿Qué le espera a la MACCIH en Honduras?", in *InSight Crime*, December 27, 2019 available here: <https://es.insightcrime.org/noticias/noticias-del-dia/futuro-maccih-honduras/> [retrieved on Apr. 8, 2023].

agreement, and the Mission's mandate expired. According to Luis Almagro, the General Secretary of the OAS,⁸²

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 MACCIH, the OAS General Secretariat considers that it would be imperative for the Mission to continue providing this service to the country's democratic institutions.

The experiences of the MACCIH have revealed two critical lessons. Firstly, addressing corruption at a transnational level requires more than just international cooperation based on the implementation of common policies and frameworks inspired by the IACAC. While the main objective of the MESICIC is to promote such cooperation, its effectiveness is often limited to the *de jure* realm. In fragile states like Honduras, corruption is intricately linked to inadequate implementation of anti-corruption policies and overall State fragility. Therefore, transnational efforts to combat corruption must also focus on building capabilities within the public and private sectors.

The second lesson learned is that promoting international cooperation in building these capabilities can give rise to political frictions due to the principle of non-intervention. The MESICIC has been successful in mitigating such frictions due to its consensual and technical nature. However, the development of corruption-fighting capabilities necessitates deeper interaction with domestic institutions. The MACCIH, precisely because it expanded beyond the scope of the MESICIC, faced political conflicts with domestic institutions, highlighting the challenges involved in navigating these dynamics.

International missions dedicated to anti-corruption policies may indeed prove more effective than international cooperation solely focused on the *de jure* scope. It is noteworthy that between 2013 and 2015, Honduras experienced an improvement in its Corruption Perception Index. However, since 2018, the index has shown a deep decline. While it is difficult to establish a direct correlation between the suppression of the Mission and the deterioration of the corruption perception index, the active engagement of the Mission did create incentives to enhance the quality of anti-corruption policies in the country. This suggests that the presence and efforts of international missions can encourage and motivate improvements in the overall quality of anti-corruption measures.

Considering the lessons gleaned from the experiences of the MACCIH, it could be beneficial for the MESICIC to broaden its mandate to encompass measures

82 Press release dated January 17, 2020, available here: https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-003/20 [retrieved on Apr. 8, 2023].

aimed at enhancing the state's capacity to enforce anti-corruption policies effectively. This would entail strengthening the capabilities of civil service and judicial system officials, as well as empowering civil society to actively participate in anti-corruption endeavors and challenge societal norms that perpetuate corruption. It is crucial to recognize that obstacles in implementing the IACAC are not solely attributable to inadequate policies but also stem from gaps in the state's capabilities. By addressing these gaps, the MESICIC can promote transparency, accountability, and the rule of law throughout the region.⁸³

In conclusion, the establishment of the MACCIH marks another significant advancement in Inter-American Law, as it signifies the creation of an international body aimed at building State capacities necessary for the effective implementation of the IACAC while bolstering democracy and good governance standards. However, the failure of this initiative underscores the ongoing need to reevaluate the interpretation of non-intervention principles, prioritizing the primacy of human rights and specifically, anti-corruption policies as essential tools for achieving the good governance standards outlined in the IADC. Therefore, a more nuanced approach could involve expanding the MESICIC's mandate to encompass tasks such as assessing State fragility and devising policies to bridge the gap between *de jure* and *de facto* standards. The technical nature of this mechanism mitigates the risk of conflict with non-intervention principles and enhances the effectiveness of inter-American standards. For instance, challenging cases like Guatemala could be better addressed through this global network rather than establishing new international bodies like the CICIG.⁸⁴

CONCLUSIONS

Global administrative law, and by extension, global public law, may appear abstract legal theories at first glance. However, the evolution of Inter-American Law illustrates that global public law, functioning beyond the confines of the state, is indeed a reality. Comparative approaches actively shape this discipline,

⁸³ 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 in July 2021, concluding, "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", available here: www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf [retrieved on Apr. 8, 2023].

⁸⁴ The OAS has closely monitored the political developments in Guatemala, issuing warnings regarding severe threats to its democratic governance. See: <https://www.vozdeamerica.com/a/oea-discute-acontecimientos-en-guatemala-que-impactan-gobernabilidad-democratica/7383800.html> [retrieved on Dec. 8, 2023].

aiding in establishing common Inter-American principles that promote good governance. Such principles are necessary for achieving ambitious, transformative mandates focused on inclusion.

The promotion of anti-corruption policies within the scope of the OAS serves as a tangible demonstration of this transition. The IACAC's approval in 1996 was a significant milestone for Latin America and the Caribbean, representing a new interpretation of the non-intervention principle and the compatibility of domestic sovereignty with an international anti-corruption framework. While the member states drafted the Convention to tackle transnational corruption, it also covers the transnational effects of national corruption, reaching the first goal of the Convention to promote cooperation among the member states to fight corruption domestically and transnationally. The new interpretation underscores the link between democracy and corruption, emphasizing that protecting Inter-American democratic standards requires extensive cooperation on domestic anti-corruption policies.

The initial experience with the implementation of the IACAC demonstrates the necessity to improve the cooperation among the member states, avoiding frictions with the non-intervention principles. Consequently, in 2001 the member states decided to create the MESICIC, as a supranational network of experts that through non-binding decisions, create incentives for collective actions to adopt legal frameworks and best practices inspired by the IACAC. The MESICIC incentivizes collective actions to adopt legal frameworks and best practices inspired by the IACAC. Although its findings are non-binding, the MESICIC facilitates the adoption of common anti-corruption measures through a spillover effect of expert recommendations. This has not caused significant tension with the non-intervention principle thus far. Instead of categorizing the Mission's decisions as soft law, they should be viewed as an innovative mechanism of global networking governance, moving beyond traditional distinctions between binding and non-binding sources of law.

However, the MESICIC was designed to work on the *de jure* scope, or the formal anti-corruption institutions. Yet, corruption, especially in the region, is also connected to weak capabilities for effectively implementing these institutions. To address this gap and build such capabilities, the OAS proceeded with the creation of the MACCIH in partnership with the Government of Honduras. The MACCIH complemented the work of the MESICIC by promoting cooperation in building anti-corruption capabilities. Consequently, tensions emerged with the non-intervention principle, ultimately resulting in the termination of the Mission in 2020.

The experiences with the MESICIC and the MACCIH in the Inter-American System demonstrate that effective anti-corruption policies require deep cooperation based on the IACAC's principles and values. It is inevitable that this cooperation will create tensions with the non-intervention principle. From a legal perspective, it is crucial to recognize that corruption is not solely a

domestic matter but a vice that undermines the quality of democracy and threatens the promotion of inclusive development. 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 fragility.⁸⁵

Therefore, it is necessary to move forward the cooperation promoted by the MESICIC in the *de jure* scope, that is, promoting legislations and policies inspired by the Inter-American standards. In addition, the Mechanism could promote cooperation-building capabilities in the public and private sectors to effectively implement the legislation and other formal institutions inspired by the IACAC. Rather than create other regional bodies – such as international missions – we suggest relying on the successful experience of the MESICIC to expand the experts' network to build anti-corruption capabilities, a task that can be encouraged by the Inter-American Development Bank.⁸⁶ The final goal should be to address the root causes of corruption related to the state's 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 of rules and best practices but also the coordination to build capabilities – in the Government and civil society – to implement anti-corruption policies effectively.

The transition from a *de jure* to a *de facto* scope is crucial, given that, despite advancements in Inter-American anti-corruption standards, the region still grapples with numerous challenges undermining the government's ability to effectively promote social and economic equality in line with the democratic values embedded in the IADC. The 2023 Corruption Perception Index Report highlights that the region comprises countries with the lowest rankings, largely due to constraints such as the lack of capacity within justice systems to apply the law impartially and to provide checks on other branches of government. Consequently, impunity is becoming a growing concern, eroding citizens' trust.⁸⁷

To bridge this gap, the region has innovated by designing a transnational anti-corruption system, incorporating unique institutions that promote the diffusion of Inter-American standards in a soft yet effective manner. However, moving forward, Inter-American Law must focus on building capacities within the State and civil society to address the areas of limited statehood

85 See, for instance, Coralie Pring and Jon Vrush. *Global Corruption Barometer. Latin America and the Caribbean 2019. Citizens' view and experience of corruption*, International Transparency, 2019, available here: https://images.transparencycdn.org/images/2019_GCB_LatinAmerica_Caribbean_Full_Report_200409_091428.pdf [retrieved on Apr. 8, 2023].

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

87 Transparency International, *Corruption Perceptions Index 2023*, Berlin, 2023, 14.

resulting from State fragility. The human rights perspective embedded within anti-corruption policies supports this change, recognizing corruption as a severe vice that undermines human rights, particularly from economic, social, cultural, and environmental perspectives, exacerbating poverty and inequality.

Addressing this situation requires more than merely enacting legislation and formal institutions. Instead, the root causes of corruption, particularly those related to areas of limited statehood, must be tackled effectively. Therefore, leveraging innovative tools of global law to build the necessary capabilities is crucial to enhancing the efficiency of the IACAC.

REFERENCES

- Altamirano, G. "The Impact of the Inter-American Convention Against Corruption", in *University of Miami Inter-American Law Review*, 38-3, 2006-2007, 487-547.
- Aguiar, A. *El derecho a la democracia*, Caracas, Editorial Jurídica Venezolana, 2008.
- Aman, A. *Administrative Law in a Global Era*, Ithaca, Cornell University Press, 1992.
- Andrade Viera, S. "Institucionalización de políticas anticorrupción a través del apoyo de misiones internacionales", in *Opera*, 30, 2022.
- Andrews, M. *The limits of institutional reforms in development*, New York, Cambridge University Press, 2017.
- Boister, N. *An Introduction to Transnational Criminal Law*, Oxford, Oxford University Press, 2018.
- Borlini, L., and Arnone, M. *Corruption: Economic Analysis and International Law*, Northampton, Edward Elgar Publishing, 2014.
- Brewer, A.R. *Sobre la democracia*, Editorial Jurídica Venezolana, Caracas, 2019.
- Brinks, D., Levitsky, S., and Murillo, V., *Understanding Institutional Weakness. Power and design in Latin American institutions*, Cambridge, Cambridge University Press, Cambridge, 2019.
- Cassese, S. *The Global Polity*, Sevilla: Global Law Press, 2012.
- Cassese, S. *Advanced Introduction to Global Administrative Law*, Cheltenham: Edward Elgar Publishing Limited, 2021.
- Chaikin, D, and Sharman, J. *Corruption and Money Laundering: A Symbiotic Relationship*, New York, Palgrave Macmillan US, 2009.
- Chayes, S. *Thieves of State: Why Corruption Threatens Global Security*, New York, W. W. Norton & Company, 2015.
- Cooley, A. *et al.* "The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations", in *Journal of Democracy*, 29(1), 2018.

- Coralie P, and Jon V. *Global Corruption Barometer. Latin America and the Caribbean 2019. Citizens' view and experience of corruption*, International Transparency, 2019.
- Corrales, J. "Autocratic Legalism in Venezuela", in *Journal of Democracy*, 26(2), 2015.
- Davis, K. E. *Between Impunity and Imperialism: the Regulation of Transnational Bribery*, New York, Oxford University Press, 2019.
- Michele, R. "The Follow-up Mechanism of the Inter-American Convention Against Corruption: a Preliminary Assessment: Is the Glass Half Empty?", in *Southwestern Journal of Law and Trade in the Americas*, 10-2, 2004.
- Engel, E. *et al. Informe del Grupo Asesor de Expertos en anticorrupción, transparencia e integridad para América Latina y el Caribe*, Banco Interamericano de Desarrollo, Washington, D.C., 2018.
- Feingebblatt, H. (ed.). *Los costos sociales de la corrupción*, Tegucigalpa, MACCIB, 2019.
- Ferrajoli, L. *Democracia y garantismo*, Madrid, Trotta, 2018.
- Florencia Tort, C. "The search for synergies: the utopian ideal of cooperation between international anti-corruption mechanisms", in Bismuth, R. *et al.* (ed.). *The Transnationalization of Anti-Corruption Law*, New York, Routledge, 2021.
- Fukuyama, F. *Political Order and Political Decay*, New York, Farrar, Strauss and Giroux, 2014.
- Hernández G., J.I., "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>.
- Hernández, J.I. *La pandemia de la covid-19 y el Derecho Administrativo en América Latina*, Tirant lo Blanch-Universidad del Rosario, Bogotá.
- Haugaard, M. "Kleptocracy, Authoritarianism and Democracy as Ideal Types of Political Power", in *Journal of Political Power ahead-of-print 2023*.
- Huerta, C. "Los estándares del Sistema Interamericano de Derechos Humanos en el fortalecimiento del Estado de derecho y la transformación de la legislación administrativa en México", in Von Bogdandy, A. *et al.*, *La interamericanización del Derecho Administrativo en América Latina*, Max Planck Institute for Comparative Public Law and International Law-Instituto de Estudios Constitucionales del Estado de Querétaro, Querétaro, 2022.
- Hirschfeld, K. *Gangster States: Organized Crime, Kleptocracy, and Political Collapse*, New York, Palgrave Macmillan, 2015.
- Inter-American Commission on Human Rights, *Corrupción y Derechos Humanos*, Washington D.C., 2019.
- Jessup, P. "The Estrada doctrine", in *American Journal of International Law* 25, 1931.
- Johnsøn, J. *Anti-Corruption Strategies in Fragile States: Theory and Practice in Aid Agencies*, Northampton, Edward Elgar, 2016.

- Kingsbury, B. *et al.* “Global Administrative Law and Deliberative Democracy”, in *The Oxford Handbook of the Theory of International Law*, Oxford, Oxford University Press, 2016.
- Luján, M. “Algunos aspectos de la lucha contra la corrupción en el ámbito interamericano”, in *Agenda Internacional* 11-22, 2005.
- Mazzuca, S.. *Latecomer State Formation: Political Geography and Capacity Failure in Latin America*, New Haven, Yale University Press, 2021.
- Morales, M. “Aproximación a los estándares interamericanos sobre corrupción, institucionalidad democrática y derechos humanos”, in *Impacto de la corrupción en los derechos humanos*, Querétaro, Instituto de Estudios Constitucionales del Estado de Querétaro, 2018.
- Pasculli, L., and R., N. “The global anti-corruption framework”, in Ryder, N. *et al.* (ed.). *Corruption, Integrity, and the Law: Global Regulatory Challenges*, New York, Law of Routledge, 2020.
- Risse, T. “Governance in Areas of Limited Statehood”, in Risse, T. *et al.*, *The Oxford Handbook of Governance*, Oxford, Oxford University Press, 2019.
- Rose-Ackerman, S. *Corruption and Government: Causes, Consequences, and Reform*, New York, Cambridge University Press, 1999.
- Rose-Ackerman, S. “Trust, honesty, and corruption: reflection on the state-building process”, in *Archives Européennes de Sociologie. European Journal of Sociology*, 42(3), 2001.
- Rose, C. *International Anti-Corruption Norms*, Oxford, Oxford University Press, 2015.
- Rotberg, R. “Repressive, Aggressive and Rogue Nation-States”, in Rotberg, R. (ed.). *Worst of the Worst. Dealing with Repressive and Rogue Nations*, Cambridge. World Peace Foundation and Brookings Institution Press, 2017.
- Rotberg, R. *The Corruption Cure: How Citizens and Leaders Can Combat Graft*, Princeton, Princeton University Press, 2017.
- Scharbatke-Church, C., and Chigas, D. *Understanding Social Norms. A Reference Guide for Policy and Practice*, The Fletcher School, 2019.
- Shea, D. R. *The Calvo clause*, Minneapolis, The University of Minnesota Press, 1955.
- Transparency International, *Corruption Perceptions Index 2023*, Berlin, 2023.
- Tushnet, M. “Authoritarian Constitutionalism: Some Conceptual Issues”, in Ginsburg, T. and Simpser, A. (ed.), *Constitutions in Authoritarian Regimes*, Cambridge, Cambridge University Press, 2018.
- Urosa, D. and Hernández G., J.I., “La Corte Interamericana de Derechos Humanos y el Derecho procesal convencional. Un estudio del Derecho Procesal Público Global”, in Brewer-Carías, A. and Ayala, C. (ed.). *Libro homenaje al Dr. Pedro Nikken*, vol. 1, Caracas: Academia de Ciencias Políticas y Sociales, 2021.
- Wabwile, N. “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), 2015.

- Webb, P. “The United Nations Convention Against Corruption-Global achievement or missed opportunity?”, in *Journal of International Economic Law*, 8(1), 2005.
- Wolf, M. “The World Needs an International Anti-Corruption Court”, *Daedalus* 147(3), 2018.
- Zagaris, B. *International White-Collar Crime*, Cambridge. Cambridge University Press, 2010.
- Zysset, A. “International crimes through the lens of global constitutionalism”, in *Global Constitutionalism*, 12: 1, 2023.