RIGA GRADUATE SCHOOL OF LAW

Grand Corruption from the Perspective of International Criminal Law and International Human Rights Law

MASTER'S THESIS

AUTHOR: Arina Kirse
LL.M 2022/2023 year student
student number M020038

SUPERVISOR: Gizem Güney, PhD

DECLARATION OF HONOUR:
I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

.....

RIGA, 2023

ABSTRACT

Corruption and its impact on human rights have gained significant attention from the academic community in recent decades. Despite increased academic interest, the topic remains understudied. The research aims to determine the factors that justify recognizing freedom from corruption as a human right and how this recognition influences the handling of corruption-related crimes in international human rights and international criminal law. The paper explores the unique characteristics of corruption that warrant the establishment of a new human right, assesses opportunities within the existing international legal framework to address corruption as a human rights issue, and investigates prosecution possibilities for grand corruption under the Rome Statute. By synthesising existing knowledge and research, this paper contributes to the ongoing efforts to combat corruption and protect human rights. Ultimately, the paper emphasises the need for a comprehensive approach to combat corruption as an international crime that undermines fundamental rights and human values.

SUMMARY

The relationship between corruption and human rights has gained academic interest, yet it remains the least studied aspect of international law. While some argue that corruption always leads to human rights violations, there is no consensus on this. The question of whether freedom from corruption should be a universal human right or seen as a crime violating human rights is also debated. Ndiva Kofele-Kale introduced the concept of a corruption-free society as a fundamental human right as early as 2000, and the 2008 financial crisis sparked even more interest in financial crimes, including corruption. Understanding this complex relationship between grand corruption and human rights is vital for effective anti-corruption efforts and for upholding human rights globally.

The establishment of a standalone human right to be free from corruption is supported by various perspectives, including the principles of natural law, cross-cultural universals, the link between economic, social, cultural, civil, and political rights, the enhancement of governance, and the need for a global change in attitude towards corruption.

From a natural law perspective, the works of philosopher John Locke emphasise the importance of limiting the abuse of public power and protecting citizens from the harmful effects of corruption. Locke's focus on liberty implies the right to be free from corruption, as corruption breaches the social contract and violates basic human rights.

Cross-cultural universals also contribute to the recognition of the right to a corruption-free society. Philosophies like Confucianism highlight the importance of the rule of virtue and the absence of corruption as essential for legitimate governance. Similarly, Islamic law promotes honesty, self-discipline, and the avoidance of corruption as fundamental values. The historical influence of these philosophies in China and the Middle East demonstrates that the idea of freedom from corruption transcends Western cultural boundaries.

The link between economic, social, cultural, civil, and political rights further justifies the recognition of the right to be free from corruption. The right to economic self-determination, derived from the ICESCR and the ICCPR, encompasses the control and use of state resources. Corruption violates this right by transferring ownership of resources to the corrupt and impeding state leaders. Recognizing freedom from corruption strengthens the connection between different sets of human rights and promotes their indivisibility and interdependence.

Expanding human rights obligations and reinforcing governance is another compelling reason for establishing a right to a corruption-free society. A human rights approach to corruption

provides a comprehensive perspective on the political, social, and economic implications of state capture by private interests. It shifts the focus from criminalising corrupt conduct to improving governance and enhancing the capacity, efficiency, and fairness of governments worldwide. Furthermore, it underlines corporate responsibility and accountability for human rights breaches resulting from abuse of public power.

The analysis conducted in the paper demonstrates that prosecution opportunities for grand corruption cases exist within existing international legal frameworks, particularly within the jurisdiction of the International Criminal Court (ICC) established by the Rome Statute. The most egregious acts of grand corruption can satisfy the elements of crime and meet the requirements to be considered a crime against humanity, qualifying as "other inhumane acts." In cases where grand corruption is linked to crisis situations such as armed conflicts, applying ICC jurisdiction can extend to crimes beyond "other inhumane acts," including war crimes enabled by underlying corruption.

However, challenges are likely to arise in prosecuting grand corruption cases through the ICC mechanisms, such as the complexity of investigations and the dependence on state cooperation, which may be lacking. Additionally, seeking prosecution for grand corruption cases using the mechanisms offered by the Rome Statute has limitations. The magnitude of the misappropriation and the vulnerability of the affected population are crucial considerations when examining grand corruption through the prism of crimes against humanity. Recognizing the colossal differences in the circumstances of such crimes limits the opportunities for bringing grand corruption cases to trial via the ICC.

While attempts to prosecute grand corruption as an "other inhumane act" are well-intentioned, they do not fully address the problem. Misconduct associated with grand corruption revolves around the abuse of power entrusted by the people to public officials for personal gain, thus, a crime is consummated regardless of whether the corrupt acts ultimately cause suffering. Therefore, it is important to continue researching grand corruption as a standalone international crime, as it poses a significant threat to human rights and democratic institutions, and it is crucial to develop effective strategies to combat it.

TABLE OF CONTENTS

1. INTRODUCTION

The topic of corruption and the analysis of its effect on human rights has seen an increased amount of interest from the academic community in the past three decades, however, "the relationship between corruption and human rights remains the least studied question in the field of international law".[1] While analysing corruption through the lens of human rights is considered to be beneficial in anti-corruption efforts, there is no consensus as to corruption always leading to human rights violations. While some academics reject the statement that corruptions always lead to human rights violations[2], others argue that human rights, such as right for liberty, "are violated when officials confer benefits in contravention of standing law, official duty, and the public good"[3], in other words, when public officials resort to corruption. There is also no consensus as to whether freedom from corruption or a right for a corruption-free society can and should be considered a universal human right or should rather be seen as a crime capable of and often violating established human rights.[4] Ndiva Kofele-Kale first introduced the idea of a corruption-free society as a basic human right in 2000, when he argued that "life, dignity, and other important human values" depend on the right to be free from corruption.[5] In his later work he refers to corruption both as a grave economic crime and as a violation of human rights.[6] More recently, the interest in the topic of financial crimes, including corruption, was fuelled by the economic crisis of 2008, in the aftermath of which the term "economic crimes against humanity" was first coined by Shoshana Zuboff in 2009.[7]

The focus of this work will be to analyse the determinants for elevating the freedom from corruption to the status of a human right and how those determinants influence the future path for corruption-related crimes in international human rights and international criminal law. Therefore, the paper will focus on the following research questions:

---

[1] Kolawole Olaniyan, "Towards a Human Rights Approach to Corruption." In Andreas von Arnauld, Kerstin von der Decken, and Mart Susi, eds. "The Right to Freedom from Corruption." Part. In *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, 515–38. Cambridge: Cambridge University Press, 2020, pp. 531-532.
[2] Kevin E Davis, Corruption as a Violation of International Human Rights: A Reply to Anne Peters, *European Journal of International Law* 29, no. 4, (2018), Pages 1289–1296.
[3] Andrew B. Spalding, "Corruption, Corporations, and the New Human Right", *Washington University Law Review* 91, no. 6, (2014): 1365-1428, pp. 1397-1398.
[4] Anne Peters. *Corruption and Human Rights*. Basel Institute on Governance, 2015.
[5] Ndiva Kofele-Kale, "The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law." *The International Lawyer* 34, no. 1 (2000): 149-78., p. 163.
[6] Ndiva Kofele-Kale, *The international law of responsibility for economic crime: holding state officials individually liable for acts of fraudulent enrichment.* (Hampshire: Ashgate Publishing, 2006).
[7] Libia Arenal, Economic Crimes against Humanity: a legal challenge for the positive regulation of crimes against humanity in the Article 7 of the Rome Statute, *The Spanish Yearbook of International Law 24* (2020): 242.

1) What are the distinguished features of corruption calling for the acknowledgement of a new human right, the right for a corruption-free society, in preference to recognizing corruption as a crime affecting already established human rights?

2) What applicable opportunities exist within the international legal doctrine that could be employed for the purpose of addressing corruption from the human rights perspective, both within the existing legal framework and via the establishment of a new free-standing right?

3) What prosecution opportunities for grand corruption exist based on the established definition of crimes against humanity in the Rome Statute of the International Criminal Court ("Rome Statute") and statutes of other international criminal tribunals?

This work can contribute to the existing body of research on corruption from the perspective of international human rights law and international criminal justice in several ways. Firstly, it will summarise the current state of knowledge on the issue of the connection of corruption to human rights and particularly on the topic of elevating freedom from corruption to the status of a standalone human right. Secondly, it will synthesise available knowledge on the reasoning behind such an elevation and views challenging the human rights approach to tackling grand corruption. Thirdly, the paper will provide an overview of suggested methods for addressing corruption via the human rights approach, both via the formalisation of a new human right for a corruption-free society within the international legal framework, as well as with the help of already established human rights mechanisms and institutions. Fourthly, the paper will systemize existing assessments in academic research with respect to the legal framework of the International Criminal Court (further - the ICC or the Court) to conclude whether acts of grand corruption fall under the definition of any of the crimes defined in the Rome Statute. The goal of this paper is to contribute to the systematisation of existing knowledge and research linked to the topic of corruption-related crimes, thus advancing the academia's efforts to combat "one of the gravest problems in the world today in terms of the suffering caused".[8]

This paper is structured as follows: (2) the subsequent section offers a summary of existing literature and academic research laying out the contextual background for this paper; (3) the third section outlines the methodology utilised to review existing scholarly works and make a selection of academic articles for the goal of answering the specified research questions, as well as the data description; (4) the fourth section gives an overview of the acquired results; (5) the fifth section tries to interpret the outcomes highlighted in the earlier section and the restrictions of

[8] Sonja B. Starr, "Extraordinary Crimes at Ordinary Times: International Justice Beyond Crisis Situations." *Northwestern University Law Review* 101, no. 3 (2007): 1257–1314, p. 1281.

the study; (6) the sixth section furnishes the conclusions that can be derived based on the conducted research.

2. BACKGROUND AND CONTEXT

2.1. The definition of corruption

In order to conduct an in-depth analysis of the existing academic body related to corruption, it is important to inspect whether there exists an accepted definition of "corruption" in academia and international legal frameworks, and if so, how it is expressed.

According to Peters, "corruption is not a technical term", meaning not only that there is a lack of a formalised definition for corruption in international legal treaties, but also that the act of corruption is often not considered a criminal offence in many jurisdictions worldwide.[9] A most commonly referred to definition is that formulated by Transparency International, a global coalition against corruption, and is expressed as "the abuse of entrusted power for private gain".[10] Transparency International additionally establishes standalone definitions for "petty corruption", which reads as the "everyday abuse of entrusted power by public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies"[11], and "grand corruption", referred to as "the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society"[12]. Peters points out that these definitions do not create a legal distinction between specific acts of corruption but describe the same subject matter of different magnitudes.[13] Offences related to such corruptive abuse include "active and passive bribery, criminal breach of trust, graft, illicit enrichment" as well as "anti-competitive practices and regulatory offences".[14] This is also reflected in the definition by "the only legally binding universal anti-corruption instrument"[15], the United Nations Convention against

[9] Anne Peters, "Corruption as a Violation of International Human Rights," *European Journal of International Law* 29, no. 4 (November 2018): pp. 1251-1287, https://doi.org/10.1093/ejil/chy070, 1254.
[10] "What Is Corruption?", Transparency.org, accessed February 27, 2023, https://www.transparency.org/en/what-is-corruption.
[11] "Petty Corruption - Corruptionary A-Z," Transparency.org, accessed February 27, 2023, https://www.transparency.org/en/corruptionary/petty-corruption.
[12] "Grand Corruption - Corruptionary A-Z," Transparency.org, accessed February 27, 2023, https://www.transparency.org/en/corruptionary/grand-corruption.
[13] Anne Peters, *supra* note 9, p. 1255.
[14] *Ibid*.
[15] "UNCAC," UNCAC | The only legally binding anti-corruption instrument, accessed February 27, 2023, https://star.worldbank.org/focus-area/uncac.

Corruption ("UNCAC"), which "classifies corruption as: bribery, illicit enrichment, embezzlement, trading in influence and abuse of office".[16] Despite the significant number of various offences that may be classified as corruption, at the heart of all of them lies a conflict of interests and the fact that "someone-the agent-is given authority to allocate the resources of others-the principals".[17]

For the purpose of answering the third research question raised in this paper, I will be specifically focusing on "grand corruption". According to the Rome Statute, the crimes it concentrates on endanger peace, welfare and safety worldwide, thus, becoming a matter worth to be addressed by the international community as a whole.[18] Specifically when reaching the scale of grand corruption, abuses such as bribery and illicit enrichment become the crimes potentially falling under the scope of international treaties and the Rome Statute in particular. Apart from Transparency International, several academics have attempted to define grand corruption over the past decades. Rose-Ackerman describes grand corruption as offences attributed to the highest level of political offices in a given country, often including the country's political leader.[19] Subverted top-level politicians undermine the trust of citizens by obtaining benefits at the expense of their country's financial resources.[20] Starr provides a crisp description of grand corruption as "the large-scale ransacking of public treasuries and resources by heads of state and their families and associates".[21] Ocheje outlines that modern-day grand corruption can be characterised firstly by offences involving huge amounts of money, secondly, by the fact that "the theft of public funds and pillage of the economy are a carefully planned and meticulously executed enterprise" and thirdly the abuse of state power.[22] Similarly to Starr, he notices that grand corruption schemes increasingly involve family members of state leaders (though, unlike Starr, he specifically links this characteristic to African countries).[23]

---

[16] Kolawole Olaniyan, *supra* note1, p. 533.
[17] Moisés Naim, "The Corruption Eruption," *Trends in Organized Crime* 2, no. 4 (June 1997): p. 60, https://doi.org/10.1007/s12117-997-1082-3.
[18] International Criminal Court, *Rome Statute of the International Criminal Court* (last amended 2011), 17 July 1998, accessed February 27, 2023, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf. (Further - Rome Statute).
[19] Susan Rose-Ackerman, "Democracy and 'Grand' Corruption," *International Social Science Journal* 48, no. 149 (1996): pp. 365-380, https://doi.org/10.1111/1468-2451.00038, 365-366.
[20] *Ibid*.
[21] Sonja B. Starr, *supra* note 8, p. 1281.
[22] Paul D. Ocheje, "Refocusing International Law on the Quest for Accountability in Africa: The Case against the 'Other' Impunity," *Leiden Journal of International Law* 15, no. 4 (2002): pp. 749-779, https://doi.org/10.1017/s0922156502000341, pp. 753 - 755.
[23] *Ibid*., p. 756.

A related term often found in academic research is kleptocracy. Sharman uses the terms kleptocracy and grand corruption interchangeably in his book when referring to "instances of corruption committed by senior public officials involving large sums of money that are held in a foreign country".[24] Eboe-Osuji also refers to kleptocracy in his research, where he suggests that to commit kleptocratic offences is to "dishonestly [misappropriate] public wealth or property with the intention of permanently depriving the public of such wealth or property".[25]

Kofele-Kale uses the term "indigenous spoliation" to refer to high-level corruption and defines it as "an illegal act of depredation committed for private ends by constitutionally responsible rulers, public officials, or private individuals", which seems to be broader than the earlier-mentioned definitions proposed by other scholars.[26] Kofele-Kale also suggests the introduction of another term - "patrimonicide", to describe corruption, which he refers to as a "new international economic crime". Such a proposal is inspired by the term "genocide" and comes from a combination of two Latin words ("patrimonium" meaning property and "cide" meaning killing).[27] As Kofele-Kale points out such a word seems appropriate as acts of grand corruption are nothing else but the "destruction of the sum total of a state's endowment, the laying waste of the wealth and resources belonging by right to her citizens, and the denial of their heritage".[28]

Kirch-Heim summarises that based on the existing definitions of grand corruption in academic research, as well as similar terms such as patrimonicide, indigenous spoliation and kleptocracy, for corruption to be considered "grand", four elements must be present: (1) it has to be committed by a public official; (2) an offence should be characterised by the abuse of power entrusted to such an official; (3) "acts of corruption must have a certain degree of seriousness"; and (4) the offender must be acting with the ambition to secure personal benefits.[29]

For the sake of clarity, further in this paper, "grand corruption" will be used to refer to actions of organised and large-scale public resource misappropriation for the sake of personal benefit.

---

[24] J. C. Sharman, *The Despot's Guide to Wealth Management: On the International Campaign Against Grand Corruption* (Ithaca: Cornell University Press, 2017), p. 18.
[25] Chile Eboe-Osuji, Kleptocracy: A Desired Subject of International Criminal Law That is in Dire Need of Prosecution by Universal Jurisdiction, in: E. Ankumah/E. Kwakwa, *African Perspectives on International Criminal Justice*, 121-132 (2005).
[26] Ndiva Kofele-Kale, "Patrimonicide: The International Economic Crime of Indigenous Spoliation," *Vanderbilt Journal of Transnational Law* 28, no. 1 (January 1995): pp. 45-118, https://doi.org/10.4324/9781315092591-7, 48.
[27] *Ibid.*
[28] *Ibid.*
[29] Claudio Kirch-Heim, "Grand Corruption – A New Crime under International Law?," *Bucerius Law Journal* 1 (2009): pp. 35-40, http://law-journal.de/wp-content/uploads/2013/09/BLJ_Ausgabe_2009_01.pdf, 35.

2.2. The right for a corruption-free society

At present, "human rights law neither explicitly refers to corruption nor prohibits it".[30] Though there is an increasing interest in making the link between corruption and human rights in academia, currently there is no mention of the standalone human right to be free from corruption in the political arena or in legal doctrine.[31] In other words, "we do not yet recognise, in theory or in practice, the existence of a fundamental human right to be free from official, systemic corruption".[32]

As early as 1989, Reisman expressed an opinion that spoliations by high government can be considered "violations of the internationally guaranteed rights of peoples to use their national wealth for national welfare".[33] Though he does not yet argue for the establishment of a new human right with regard to corruption, he goes on to conclude that when violations of international legal rights occur, spoliation "may itself constitute an international legal wrong".[34] The author presents a proposal to address such wrongdoings by describing them as law violations both in domestic and international jurisdictions and obliging states to exchange information and cooperate in the process of investigating spoliation.[35] According to Reisman, an important tool for the international community to address spoliation could be "an international high commission for the retrieval of diverted national wealth" created by the United Nations and responsible for the task of locating and returning "purloined funds".[36] In a more recent work, Starr opines that while the establishment of such a tool remains possible, State parties are not likely to allow for a corruption-oriented commission to possess serious enforcement powers.[37] She argues that even if created, such a commission's main enforcement instrument would be economic sanctions, which are not necessarily effective as despite "cutting off kleptocrats' supply of funds, they cannot restore assets to victims and may in fact harm them".[38]

A decade later, in 2000, Kofele-Kale first introduced the idea of a corruption-free society as a free-standing human right as part of the research where he critiques the existing

[30] Kolawole Olaniyan, *supra* note 1, p. 534.
[31] Andrew B. Spalding, "Anti-Corruption: Recaptured and Reframed." In Andreas von Arnauld, Kerstin von der Decken, and Mart Susi, eds. "The Right to Freedom from Corruption." Part. In *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, 515–38. Cambridge: Cambridge University Press, 2020., p. 517.
[32] *Ibid.*
[33] Reisman, W. Michael. "Harnessing International Law to Restrain and Recapture Indigenous Spoliations." *American Journal of International Law* 83, no. 1 (1989): 56–59. https://doi.org/10.2307/2202791, p. 58.
[34] *Ibid*.
[35] *Ibid*.
[36] *Ibid*., p. 59.
[37] Sonja B. Starr, *supra* note 8, p. 1294.
[38] *Ibid.*

anti-corruption regime and analyses the obstacles to the emergence of anti-corruption customary international law.[39] The justification for the right to a corruption-free society is presented in the notion that other important human rights depend on the right to a corruption-free society, such as the right to life and the right to human dignity.[40] According to Kofele-Kale, this right can also be distilled from the International Covenant on Civil and Political Rights (the ICCPR), particularly, the right for economic self-determination and "the right of a people to exercise permanent sovereignty over their natural resources".[41]

David Kinley, a prominent scholar in the field of human rights, came forward with an idea to establish a free-standing human right battling corruption at the international law level, what he refers to as "the right to freedom from corruption" or "RFFC".[42] The author highlights four main reasons behind his idea, the first and most important being the pursuit to acknowledge the significance of corruption spread, "to appreciate its immensely corrosive impact on very nature of the human rights project".[43] Though a link is often made between corruption and its impact on the way societies enjoy human rights, according to Kinely, without a free-standing RFFC, "the impact of corruption is reduced to just one of a number of contributory factors to the infringement of various human rights".[44] Secondly, the author argues that an individual RFFC will contribute to improving "the capacity, efficiency and fairness of government".[45] The third argument in favour of the introduction of the RFFC is the expansion of state obligations and domestic laws incorporating international human rights principles and binding for corporations, as "the misuse of public power by private actors" may lead to grave consequences similar to grand corruption in the public sector.[46] Finally, Kinley suggests that RFFC may serve as a "missing link" in the human rights doctrine between civil and political rights and the economic, social and cultural rights.[47] In the author's view, the most efficient option would be to establish such a right via Optional Protocols (OPs) to two covenants - the above-named ICCPR and the

[39] Ndiva Kofele-Kale, "The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law." *The International Lawyer* 34, no. 1 (2000): 149-78.
[40] *Ibid*., p. 163.
[41] *Ibid*., p. 164.
[42] David Kinley, "A New Human Right to Freedom from Corruption," *SSRN Electronic Journal*, February 2014, https://doi.org/10.2139/ssrn.2393205, p. 3.
[43] *Ibid*., p. 10.
[44] *Ibid*., p. 11.
[45] *Ibid.*
[46] *Ibid.*
[47] *Ibid.*

International Covenant on Economic, Social and Cultural Rights (the ICESCR).[48] The author maintains that OPs would not only allow to avoid problems associated with the negotiation of an entirely new corruption-related human right treaty, but would also underline "the systemic nature of the RFFC" - a vital link for the fulfilment of both civil and political, and economic, social and cultural rights.[49] Despite the confidence that the RFFC is "ready for enactment, and, above all, enforcement", Kinley highlights that the process of its establishment is bound to face political resistance, difficulties in the practical side of protocols' implementation, counteraction from powerful parties with vested interests joined by the debate on cultural differences led by those who opine that "one man's corruption is another's culture".[50]

Ramasastry in her research considers in detail the idea of the right to be free from corruption and analyses three potential approaches to combating corruption in the modern world.[51] One of the approaches reviewed by Ramasastry is addressing both grand and petty corruption through the lens of international human rights law.[52] While the author recognizes that both governments and NGOs have made efforts over the past decades to connect corruption and human rights violations, as well as to make sure that anti-corruption measures are part of the public human rights agenda, she also notes that "citizens are still waiting for assets that have been looted, and treasuries that have been drained, to actually recover ill-gotten gains", thus, showing that the human rights approach has not yet managed to be productive from the perspective of corruption victims.[53] Ramasastry also points out that between the advocates of the human rights approach, there are academics exploring the option of introducing a new standalone treaty-based human right to be free from corruption. She mentions Kinley's suggestion to establish such a right and describes it as a prospective one as such, though it "would require states to agree on new binding mechanisms".[54] She opines that creating a new human right is challenging as it would "require civil society to engage in a resource-intensive campaign to realise their rights".[55]

Spalding further develops the idea of establishing "a universal human right to be free from corruption" and provides three main arguments in favour of such an approach.[56] According

[48] *Ibid*., p. 12.
[49] *Ibid.*
[50] *Ibid*., p. 15.
[51] Anita Ramasastry, "Is There a Right to Be Free from Corruption?," *UC Davis Law Review* 49, no. 2 (2015): pp. 703-739, https://lawreview.law.ucdavis.edu/issues/49/2/symposium/49-2_Ramasastry.pdf.
[52] *Ibid*., pp. 718-723.
[53] *Ibid*., p. 722.
[54] *Ibid*., p. 716.
[55] *Ibid.*, p. 723.
[56] Andrew B. Spalding, *supra* note 31, p. 518.

to the author, including corruption in the human rights framework and acknowledging a standalone human right can contribute to battling a common misconception that corruption is cultural, which often halters anti-corruption activities.[57] More importantly, such an approach can improve the effectiveness of anti-corruption enforcement by steering its focus "towards improving the conditions in which victims of bribery live".[58] Finally, a rights-based framework for corruption may help elevate the topic's importance in the arena of public policy as rights violations are historically viewed as more atrocious actions rather than torts or crimes.[59] Spalding strongly believes that "corruption should be regarded as a first-order harm, a violation of the most basic principles of government".[60] In spite of the fact that the above-mentioned human right is not yet recognized in positive law, freedom from corruption should not be deprived of its "status as a right".[61] As Spalding concludes, "if rights are indeed what all people deserve by virtue of being human, they deserved them before the Universal Declaration of Human Rights or the Magna Carta or any other formal legal recognition" and states that the right for a corruption-free society falls well under the category of such rights.[62]

Contrarily to Kofele-Kale and Spalding, and similarly to Ramasastry, Peters suggests that there is no requirement for a new right to be formalised within the legal doctrine, as "corruption affects the recognized international human rights as they have been codified by the UN human rights covenants".[63] She clarifies that corrupt activities undermine mostly social rights established in the ICESCR such as the right to education (Article 13 of the ICESCR), and the right to the highest attainable standard of health (Article 10 of the ICESCR).[64] Nevertheless, liberal rights may also be affected by instances of corruption, in particular, the right to humane conditions of detention (Article 10 of the ICCPR), the right to protection from slavery and servitude (Article 8 of the ICCPR) and the right to a fair trial without undue delay (Article 14 of the ICCPR).[65]

Olaniyan provides an opinion similar to Peters, emphasising that "any initiative to develop a right to freedom from corruption is best developed within the existing human rights framework rather than as an entirely separate, new, independent, free-standing human right".[66]

---

[57] *Ibid*.
[58] *Ibid*., p. 519.
[59] *Ibid*.
[60] *Ibid*.
[61] *Ibid*., p. 530.
[62] *Ibid*.
[63] Peters, *supra* note 9, p. 1256.
[64] *Ibid*.
[65] *Ibid*.
[66] Kolawole Olaniyan, *supra* note1, p. 533.

The author is convinced that the most effective, enforceable and comprehensive way to do that would be via an introduction of "a protocol to existing human rights treaties to establish a clear, unambiguous and identifiable freedom from corruption in the long term", a mechanism similar to the one earlier suggested by Kinley though without going as far as to establish a new human right.[67] As suggested earlier by Peters and Kinley, Olaniyan turns to the ICCPR and the ICESCR and considers them the most suitable treaties to be amended by such a protocol due to their far-reaching coverage of human rights categories and wide acceptance by state parties.[68] The above-mentioned protocol would formulate corruption as an offence against human rights contained in respective treaties, thus, complementing them.[69] The treaties, in turn, would offer existing implementation mechanisms "to enforce, monitor and file complaints, and to report on states' efforts to eliminate human rights violations arising from acts of corruption".[70] Though Olaniyan concludes that such a solution may be one of the most fitting ways to design a comprehensive human rights framework to halt corruption, he also acknowledges, in the same manner as Kinley, that "the lack of political will" is one of the major threats to the implementation of additional protocols.[71] Among other potential challenges he names "little appetite for additional normative standards", obstacles in reaching an agreement as to what aspects of corruption amount to human rights violations, and "the notorious principle of sovereignty associated with the fight against corruption".[72]

While the suggestion of incorporating corruption in the existing human rights framework via additional protocols to the ICCPR, the ICESCR and the UNCAC is mentioned by several scholars referred to above, it is important to note that the main drawback of such suggestions is the optionality of additional protocols. While an optional protocol is a legally binding instrument referring to the issues not covered whatsoever or covered insufficiently in the parent treaty, its ratification is voluntary rather than mandatory.[73] This means that states are not obliged to become parties to optional protocols even if they have signed and ratified its parent conventions or treaty.[74] Taking into consideration the huge political aspect associated with corruption and the

[67] *Ibid*., p. 534.
[68] *Ibid*.
[69] *Ibid*.
[70] *Ibid*.
[71] *Ibid*., pp. 534-535.
[72] *Ibid*., p. 535.
[73] "Chapter Three: Monitoring the Convention and the Optional Protocol," United Nations (United Nations), accessed March 24, 2023, https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-three-monitoring-the-convention-and-the-optional-protocol-3.html.
[74] *Ibid*.

vast material interests of both public and private actors at stake, OPs may be seen as an available but not an effective tool in combating corruption just yet.

2.3. Grand corruption as a crime

Academics started drawing attention to the urgency of addressing grand corruption and its status in the international legal frameworks at the end of the previous century.

In 1995, Moisés coined the term "corruption eruption" to describe the phenomenon of corruption becoming "a political lightning rod" with more societies around the globe turning less tolerant to high-level corruption and an increasing number of allegations of spoliation towards public officials.[75] The author analyses the social, political and economic peculiarities that could contribute to combating corruption and concludes that globalisation, market-oriented economic policies and democratisation all encourage societies to move forward with "creating incentives for businesses and government officials to stay clean, and the regulatory and penal frameworks to punish them when they do not".[76] Moisés' paper becomes a strong voice calling for the need "to strengthen the forces and trends that have lowered the tolerance for corruption, and to continue to heighten the consciousness of how these things pollute and endanger everyone's environment".[77]

In the same year of 1995, Ndiva Kofele-Kale does not only provide a definition for the term "indigenous spoliation" and suggests the introduction of another term - "patrimonicide" - as mentioned above but also analyses why domestic remedies in less developed countries often cannot conquer grand corruption and proposes an alternative international legal framework for combating the problem, especially focusing on the individual responsibility of high-ranking government officials. Kofele-Kale points out that an international response to the problem of grand corruption in its modern form is required as it is impossible to imagine government officials driving spoliation to the atrocious levels that they do without "the assistance, direct or indirect, they receive from the international community".[78] He also argues that in cases when human lives are at stake, as they are in cases of patrimonicide and its "dire consequences", heads of state and other high-ranking public officials responsible for grand corruption "should not be eligible for protection under the various sovereign immunity doctrines".[79] Based on the above, a reasonable response, according to Kofele-Kale, could be an international treaty or convention (an

[75] Moisés Naim, *supra* note 17, p. 1.
[76] *Ibid.*, p. 13.
[77] *Ibid.*
[78] Ndiva Kofele-Kale, *supra* note 26, p. 102.
[79] *Ibid*, p. 107.

idea earlier expressed by Reisman and referred to above), following "the approach of the Genocide Convention and the Nuremberg war crimes prosecutions." [80] He is certain that the international community should criminalise patrimonicide, thus, enabling it to "open the door for individual criminal liability to attach to those who engage in the proscribed acts".[81] Courts of both states from where national funds and resources are looted, and states "where spoliated funds are found or an accused is given sanctuary" shall have jurisdiction.[82] Finally, Kofele-Kale declares that spoliators "should be regarded as *hostis humani generis*, an enemy of mankind.[83]

In his more recent work, Kofele-Kale furthermore contributes to the body of academic knowledge in the area by researching grand corruption both as a grave economic crime and as a violation of human rights.[84] He explores the existing frameworks for accountability and responsibility for corruption under international law and analyses the legal basis for state responsibility and individual responsibility of corrupt rulers. Kofele-Kale argues that the only way to fight corruption is by giving it a status of "a crime of universal interest", which does not only call for individual responsibility but is also subject to universal jurisdiction.[85] He demonstrates that corruption is a crime of universal interest by establishing links between indigenous spoliation and human rights violations and arguing that it goes beyond being a property dispute. His main argument lies in the idea that a right for living in a corruption-free society is a fundamental right, and state leadership appropriating wealth and state resources effectively deprives citizens of the enjoyment of their basic rights.

More than that, some academics go beyond the suggestion of analysing grand corruption through the lens of international human rights law, and propose a perspective stemming from international criminal law, namely, the concept of crimes against humanity.

Bantekas in his research focuses on determining the extent to which corruption has been perceived as an international offence over the past decades and, more importantly, on whether such an offence may qualify as a crime against humanity, inducing "criminal liability not only of government members but also of multinational corporations".[86] He believes that conceptualising corruption as a crime against humanity "does away with the jurisdictional limitations encountered

[80] *Ibid*, p. 108, p. 117.
[81] *Ibid*.
[82] *Ibid*.
[83] *Ibid*.
[84] Ndiva Kofele-Kale, *supra* note 6.
[85] *Ibid.*, p. xi.
[86] I. Bantekas, "Corruption as an International Crime and Crime against Humanity: An Outline of Supplementary Criminal Justice Policies," *Journal of International Criminal Justice* 4, no. 3 (May 2006): pp. 466-484, https://doi.org/10.1093/jicj/mql025, p. 467.

in anti-corruption treaties, thus paving the way for universal jurisdiction".[87] More than that, this approach results in the ICC having jurisdiction for prosecuting acts of corruption.[88] According to Bantekas, there is no reason why corruption affecting the civilian population should not be considered a crime against humanity, especially in cases where "it culminates in famine, disease and lack of medical care that leads to death", as the notion of such crimes has been broadened to cover atrocities beyond armed conflicts and wars.[89]

Starr greatly contributes to the existing body of research with her paper on applying international justice beyond situations widely understood as crises, most of which are wars.[90] The author argues that there is no specific reason for international criminal tribunals to exclusively focus on crimes committed during times of crisis, such as war atrocities and war crimes. Such exclusive focus may lead to poor resource allocations by international tribunals, some of which, such as the ICC, "may actually be better equipped to respond to serious long-term crimes than to emergency situations".[91] Starr claims that a more reasonable approach for case prioritisation by tribunals could be that selecting cases could contribute the most to reducing human suffering.[92] Such an approach would not redirect tribunals' attention away from the most atrocious crimes, "rather, it would mean recognizing that extraordinary crimes do not just take place at extraordinary times".[93] Starr's most important conclusion relevant for this paper is the one asserting that the most outrageous instances of grand corruption "can be prosecuted as crimes against humanity, even with no link to crisis situations".[94] The author comes to this conclusion by considering in great detail the current wording of the Article 7(1)(k) of the Rome statute, referring to the category of "other inhumane acts" under the umbrella of crimes against humanity, and drawing that in certain situations grand corruption may satisfy all of the compulsory components characterising such crimes.[95]

Among other academics supporting the broadening of ICC's jurisdiction is Ocheje, who argues that expanding "the ICC's jurisdiction to cover political corruption, especially the looting of public funds, will underscore the dangerous implication of this conduct for international peace

[87] *Ibid.*, p. 484.
[88] *Ibid*.
[89] *Ibid*.
[90] Sonja B. Starr, *supra* note 8.
[91] *Ibid.*, p. 1258.
[92] *Ibid.*, pp. 1258 - 1259.
[93] *Ibid*.
[94] *Ibid*., p. 1305.
[95] *Ibid*., p. 1297.

and security".[96] Unlike Bantekas and Starr, he believes the Rome Statute does require amendments aimed at "creating a special jurisdiction over looted funds".[97] The return of looted funds would then become a responsibility of a specifically created commission overlooked by the United Nations, which would be accepting and reviewing requests for looted funds' tracing from member states and call for either negotiations or judicial actions to address raised concerns (an approach similar to the above-mention one suggested by Reisman).[98]

Kirch-Heim contributes to the body of academic research by conducting a detailed analysis of corrupt acts from the perspective of the Rome Statute and the characteristics of the crimes against humanity.[99] As a result of his analysis, the author points out that extreme cases of kleptocracy may indeed meet all the requirements to be considered an "other inhumane act" under the umbrella of crimes against humanity.[100] However, according to him, trying to categorise corrupt acts "as a subset of crimes against humanity without also recognizing it as an international crime on its own" only addresses part of the problem.[101] Any act of grand corruption on its own constitutes a crime and while in specific circumstances it may also fulfil all the elements to be prosecuted as a crime against humanity, "the very essence of grand corruption is the perpetrator's breach of a fiduciary duty owed to the people" irrespective of whether such a breach also causes great suffering to the civilian population or not.[102] Therefore, Kirch-Heim states that "grand corruption is an international *jus cogens* crime" as it can be considered "both a threat to international peace and security and a shock to the conscience of humanity even if it is committed in a rich country that can ultimately bear the economic loss".[103] The reasoning behind such a conclusion stems from the fact that grand corruption compromises society's major values (the rule of law, social and political justice and stability) as well as violates basic human rights, such as the right to socio-economic self-determination.[104]

Schmidt similarly to Kirch-Heim conducts an evaluation of grand corruption crimes for the fulfilment of all the elements of crime constituting crimes against humanity as per the Rome

---

[96] Ocheje, *supra* note 22, p. 779.
[97] *Ibid.*
[98] *Ibid.*
[99] Claudio Kirch-Heim, *supra* note 29.
[100] *Ibid.*, p. 38.
[101] *Ibid.*
[102] *Ibid.*
[103] *Ibid.*, p. 39.
[104] *Ibid.*

Statute.[105] The emphasis in the evaluation is on a detailed review of the mental element of the crime, the awareness of committing an atrocious attack against the civilian population while causing great suffering to victims in a systematic manner.[106] The analysis demonstrates that in certain conditions grand corruption cases could be conceptualised as "other inhumane acts" in a subset of crimes against humanity.[107] Schmidt emphasises that the ICC may serve as a prospective venue for the potential prosecution of grand corruption cases despite obvious obstacles, such as the unwillingness of state parties to cooperate.[108] Employing the Rome Statute framework is only one of many steps in addressing grand corruption, however, Schmidt believes that the ICC is stronger than often regarded and the reprimand associated with Court's prosecutions "would constitute a powerful disincentive for kleptocrats".[109]

Ramasastry in addition to the earlier discussed human rights approach to combating corruption, also analyses how corruption could be addressed from the perspective of international criminal law. The author brings up several ways to do that such as, firstly, prosecuting corruption as a crime against humanity with the ICC as the venue, supported by above-mentioned academics such as Bantekas and Ocheje, and secondly, establishing a new tribunal meant for specifically prosecuting corruption-related cases, an International Anti-Corruption Court, as suggested by Judge Mark L. Wolf[110].[111] She argues that both options seem implausible and even if ever in place, would not contribute to empowering society as a whole but rather leave the decision-making power "to prosecute or pursue claims in the hands of states".[112] Therefore, Ramasastry suggests a more realistic way to address corruption by way of building on existing corruption-related treaties. Namely, she brings into view the treaty which is currently in force with more than 140 signatories, UNCAC, and emphasises the importance of Article 35 of the convention related to damages' compensation for victims of corruption.[113] Ramasastry believes that while this Article does not explicitly spell out requirements for member states on how to provide civil remedies to corruption victims, such formulation should be viewed as an opportunity rather than a

[105] Bärbel Schmidt, "The Fight against Impunity for Grand Corruption – Prosecuting Kleptocracy as an International Crime," in *The European Conference on Politics, Economics and Law 2015: Official Conference Proceedings* (Brighton, 2015), pp. 49-60.
[106] *Ibid*.
[107] *Ibid*.
[108] *Ibid*., pp. 59-60.
[109] *Ibid*.
[110] Mark L. Wolf, "The World Needs an International Anti-Corruption Court," *Daedalus* 147, no. 3 (2018): pp. 144-156, https://doi.org/10.1162/daed_a_00507.
[111] Ramasastry, *supra* note 51, pp. 713-717.
[112] *Ibid*., p. 718.
[113] *Ibid.*, p. 724.

disadvantage of the UNCAC as it allows "to build and innovate in different national jurisdictions to create a more robust right to a remedy".[114]

In their recent work, Naomi Roht-Arriaza and Santiago Martínez demonstrate how the crimes against humanity taking place in Venezuela are related to "grand corruption" in the country.[115] The authors opine that atrocious crimes and grand corruption often both result from "the impunity of powerful public actors and their private sector allies".[116] More than that, they emphasise that such crimes as "murders, rapes, forced displacement or torture by organized crime syndicates, gangs, or paramilitary thugs" are nowadays committed with the participation or for the benefit of public officials, often for the sake of enabling grand looting schemes.[117] Therefore, Roht-Arriaza and Martínez argue that examining the situation in Venezuela and crimes against humanity through the lens of corruption can result in a more thorough understanding of the case by the ICC, as it would allow for a broader scope when assessing human rights violations.[118] They state that such an approach should also be used by courts beyond the ICC, as making the link between corruption and crimes against humanity will strengthen the fight against both.[119]

Libia Arenal in her work analyses the importance of acknowledging grave economic crimes or so-called "economic crimes against humanity", a term first coined by Shoshana Zuboff in 2009.[120] Arenal emphasises the complexity of the idea of inclusion of economic crimes against humanity in the scope of the Article 7 of the Rome Statute, dealing with crimes against humanity.[121] She contributes to the existing body of academic knowledge by attempting to define "economic crimes against humanity" and pinpointing which of the existing concepts codified in the Rome Statute could be applied to economic crimes, in particular, the definitions of "attack against civilian population" and "organisation" in the context of economic crimes. In her work she urges for the development of international criminal law to protect humans from the abuses of economic power similar to how the law evolved after World War II to protect humans from the abuses of political power.[122]

---

[114] *Ibid.*, p. 725.
[115] Naomi Roht-Arriaza, Santiago Martínez, Grand Corruption and the International Criminal Court in the 'Venezuela Situation', *Journal of International Criminal Justice* 17, no. 5, (2019): 1057–1082.
[116] *Ibid*., p. 1062.
[117] *Ibid*., p. 1063.
[118] *Ibid*., p. 1081.
[119] *Ibid*., p. 1082.
[120] Libia Arenal, *supra* note 7.
[121] *Ibid.*
[122] *Ibid.,* p. 271.

3. METHODOLOGY

The motivation for this paper comes from the fact that though corruption is not a newly-emerging concept in the fields of human rights and international criminal law, consensus is yet to be reached on whether and how it can be recognized and formalised in the legal frameworks concerning human rights. There is an ongoing academic debate on whether the right to be free from corruption qualifies as a new human right, thus, creating legal opportunities for prosecuting crimes involving corruption in a manner similar to the prosecution of other crimes involving human rights violations. While the debate with regard to the human rights approach to corruption is yet to bear its fruits and potentially translate into some changes in positive law, the academic and legal practitioners' community are considering other available opportunities to aid corruption victims, including, but not limited to, the expansion of the ICC jurisdiction to address grand corruption as a grave crime affecting the way people have access to and enjoy basic human rights.

3.1. Research methods

For answering the formulated research questions, qualitative research design will be applied. In particular, semi-systematic literature review will be applied as the dominant research methodology. This research methodology has been chosen for answering the specified research questions as it is well-suited for detecting tendencies and commonalities related to a specific topic within a discipline.[123] This type of research methodology is also useful for documenting the current state of knowledge related to an issue and map out considerations for further research on that issue.[124] The approaches used within the selected methodology will include thematic and content analysis, to allow for synthetizing of patterns on existing research and case law related to the interrelation of corruption and human rights, the freedom from corruption as a new human right and the legal basis for criminal prosecution in corruption-related cases.

The challenge in applying this methodology lies in the requirement for transparency both in the selection of relevant sources and in the method used to analyse them and draw conclusions.[125] Though semi-systematic literature review is a tool allowing for analysis of

[123] Hannah Snyder, Literature review as a research methodology: An overview and guidelines, *Journal of Business Research* 104 (2019): 333-339, p. 334.
[124] *Ibid.*
[125] *Ibid.*

complex topics, suitable for the present research, it also calls for structure and clarity in defining research design.

3.2. Data description

To answer the posed research questions, the author starts by identifying academic articles in the fields of international human rights law, international criminal law, international humanitarian law, international organised crime and international financial crime referring to corruption and establishing (or refuting) a link between corruption and human rights. For this purpose, advanced search mechanisms are utilised, which are available on the following academic platforms: HeinOnline, Oxford Journals Online, Cambridge Core, EBSCO, JSTOR, Google Scholar, and ScienceDirect. An important strategy for identifying relevant books and articles is a close review of informational resources the most recent articles in the field rely on, as they build upon the existing knowledge and help to gather a sample of the most influential works on corruption and its links to human rights. Once relevant articles are identified, they are then reviewed for information that can potentially aid in answering the research questions posed in this paper. After the relevant articles are filtered out, a closer review is once again carried out as well as the analysis to identify and summarise analogies and dissimilarities in the view of academics on acknowledging a standalone human right to be free from corruption.

In addition to the selected scholarly articles, for the purpose of answering the first two research questions, the author refers to such primary sources as the United Nations Convention against Corruption, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the Declaration on the Right to Development.

To answer the third research question, in addition to the chosen scholarly articles, the author refers to a set of relevant legal documents such as: the Rome Statute of the International Criminal Court, the Statute of the International Criminal Tribunal for the former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, the Elements of Crime document prepared by the ICC.

4. ANALYSIS OF RESULTS

4.1. Human rights approach to grand corruption

As demonstrated in Chapter 2.2 above, there is no obvious consensus in the academic community with respect to establishing a new human right which would formalise the privilege of humans to live in corruption-free societies. While some scholars, like Ndiva Kofele-Kale, Andrew Spalding and David Kinley come forward with a strong opinion on the urgency of acknowledging the existence of a new human right and finding a way to formulate it in positive law, others, such as Anne Peters, Anita Ramasastry and Kolawole Olaniyan, accentuate major challenges associated with this approach and suggest addressing the problem of grand corruption within existing human rights and criminal law frameworks. Spalding emphasises that indeed the view that of "corruption as a means of violating other rights" is a prevailing one in both academic and civil discussions.[126] To address the first and the second research questions, this part of the paper aims to analyse the works of scholars in both camps and systemize arguments supporting the introduction of a new human right to be free from corruption and as well as respective challenges and opposing arguments most often linked to this idea. It is important to note that while initially the author's goal was to limit further analysis on strictly doctrinal arguments related to the topic, all the selected for examination scholarly articles highlight the complex nature of the phenomenon of corruption referring to its social, political, economic and cultural components. Thus, both the arguments and challenges listed below go beyond the formalised legal doctrine to encompass the multifaceted nature of corruption and the fact that legal doctrine does not develop in isolation from external influences of various natures, be it political pressure, distinctive societal features or economic progress.

4.1.1. Following natural law as the foundation

The first and, arguably, the most foundational of all bases for acknowledging a new human right for a corruption-free society stems from natural law and specifically the works of the English philosopher John Locke.[127] Despite the fact that Locke did not specifically spell out the term "corruption" in his works, the importance of limiting public power abuse can be inferred from several perspectives when looking at his writings more closely.[128] Furthermore, Spalding is

[126] Andrew B. Spalding, *supra* note 31, p. 523.
[127] *Ibid*., p. 525.
[128] *Ibid*.

confident that "the well-known Lockean right to liberty is actually just another name for the right to be free of corruption", as the idea of guarding citizens against the harmful effect of abuse of power by public officials was one of the central to Locke's rights theory.[129]

When referring to government as formed by the so-called 'civil society', Locke emphasises that it "is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees"[130]. He declares that civil government is not only required to follow laws declared by people, but that all its actions are " to be directed to no other end, but the peace, safety, and public good of the people.[131] Such state administration by no means may put in jeopardy human liberty, as the goal of state law is "not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law".[132] To avoid any ambiguity as to what is to be considered as 'liberty' in a civil society, Locke expounds that "freedom of men under government is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man".[133]

Spalding summarises the above in contemporary terms as human liberty being conditional upon government officials refraining from exploiting their official positions for personal benefit, meaning abstaining from engaging in corrupt activities.[134] Kofele-Kale shares the opinion that even though Locke does not mention corruption in his theory of rights, it can be presupposed that humans as owners of basic rights, such as the rights to life, liberty and property, should not give these rights up to the state but should rather see the state as the agent enforcing these rights.[135]

One can also infer what is acceptable in a society, even when that is not explicitly formulated in writing, by analysing the formalised prohibitions or frowned-upon behaviour.

---

[129] *Ibid*.
[130] John Locke, *The Two Treatises of Civil Government* (Hollis ed.; London: A. Millar et al., 1689), available at: https://oll.libertyfund.org/title/hollis-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_207, accessed May 1, 2023, §131 (https://oll.libertyfund.org/title/hollis-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_338).
[131] *Ibid.*
[132] *Ibid.*, §57. (https://oll.libertyfund.org/title/hollis-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_258).
[133] *Ibid.*, §22 (https://oll.libertyfund.org/title/hollis-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_223).
[134] Andrew B. Spalding, *supra* note 31, p. 525
[135] Ndiva Kofele-Kale, *supra* note 39, p. 163.

While Locke does not explicitly refer to corruption, he does define tyranny in the following way: "Where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another".[136]

Looking at the definition above from the present-day perspective, it is very clear that the philosopher is describing what we nowadays refer to as "corruption". Indeed, as can also be inferred from the definition, corruption does breach the concept of social contract, leads to the destruction of civil society and results in the violation of basic human right to liberty. Correspondingly, this only reinforces the idea that "our natural right to liberty can only exist in the absence of corruption".[137]

It is noteworthy to mention that a call for a new universal human right such as the right for a corruption-free society may not be derived from what is considered "a distinctly Anglo-American intellectual tradition", as that would only support the common misconception that corruption is cultural, "the most oft-heard objection to international anti-corruption initiatives".[138] Thus, the next sub-chapter concerns another basis for the emergence of the right to be free from corruption and explores the cultural aspect of both shared and divergent beliefs globally.

4.1.2. Recognizing cross-cultural universals

When it comes to recognizing a new human right, the point at issue is primarily demonstrating the existence of such a right before formulating it in positive law. One of the bases for identifying the existence of the right for a corruption-free society lies in the fundamental values related to state governance that are believed to be shared and equally respected across different cultures.[139] Albeit the above-mentioned Locke's theory of natural rights is often criticised for promoting a unique Western worldview with an emphasis on the individual, rather than the community and family, scholars demonstrate that the right for a corruption-free society can also be deduced from

[136] John Locke, *supra* note 130, § 202 (https://oll.libertyfund.org/title/hollis-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_413).
[137] Andrew B. Spalding, *supra* note 31, p. 525.
[138] *Ibid*., p. 518.
[139] *Ibid*., p. 526.

exceptionally non-Western cultures and thinkers.[140] For example, the political thought cultivated by the ancient philosopher Confucius highlights "the rule of virtue" as the most important condition for an efficient government.[141] According to Confucius, as Spalding puts it, "there could be no legitimate government without the absence of corruption".[142] This understanding can be derived from the fact that Confucius' view of the main pillars of good government starts with "the rule of virtue".[143] In accordance with this rule, governors and political rulers are bound by the same ethical rules as individuals and ethics should not be separated from or sacrificed for the sake of reaching political goals.[144] A ruler is believed to set an example to the people following him, and "like children learning from their parents' examples, the ruled also learn from the ruler", thus, he must be "benevolent, wise and reverent".[145] More than that, rulers' legitimacy is described as closely linked to their virtue inasmuch as when losing virtue, rulers automatically lose their mandate.[146] In essence, the absence of corruption could be thought of as "a fundamental, if not the most fundamental principle of good government", according to Confucius.[147]

Another prominent example to be mentioned stems from traditional Islamic law, a cumulative term, which is typically used to refer to the legal framework and principles as a whole linked with the Islamic religion.[148] Among the virtues most promoted within the Islamic law doctrine are those of self-discipline, honesty, morality, and huge importance is attributed to people fulfilling promises and avoiding lying.[149] At the heart of Islamic law lies the concept of Sharia, which literally translates to "the way to the watering place," representing a clear and defined path that believers must follow to gain guidance in this life and salvation in the afterlife.[150] It is widely accepted that Sharia, in its entirety, is designed to safeguard people against corruption and maleficence while promoting their well-being and facilitating benefit both

---

[140] *Ibid.*
[141] *Ibid.*
[142] *Ibid.*, p. 527.
[143] *Ibid.*, p. 526.
[144] *Ibid.*, pp. 526-527.
[145] Zhuoyao Li, *Political Liberalism, Confucianism, and the Future of Democracy in East Asia* (Springer International Publishing, 2020), p. 98.
[146] *Ibid*., pp. 99-100.
[147] Andrew B. Spalding, *supra* note 31, p. 527.
[148] Mohamed A. Arafa, *"Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?",* 18 Golden Gate Ann. Surv. Int'l & Comp. L. 171 (Spring 2012), available at: https://ssrn.com/abstract=2149982, accessed May 3, 2023, p. 174.
[149] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008), p. 29.
[150] *Ibid*., p. 14.

for the society and the individual.[151] According to Sharia, corruption is a significant danger that poses a severe risk to maintaining an appropriate balance within society, the economy, and the environment.[152] Thus, Islamic law considers the state's function to guarantee freedom from corruption one of the most fundamental and significant.[153] From that perspective, "statutory legislation that seeks to prevent corruption and facilitate benefit is bound to be in harmony with the principles of Sharia".[154] When it comes down to details and forbidden corrupt acts, Islamic jurists have historically been taught that "law must prohibit various forms of corruption, including the acceptance of gifts, embezzlement, compromising official duties in exchange for bribes or basing official decisions on family or tribal considerations".[155] It may be argued, however, that not all the Islamic norms and values described above are always appreciated and respected by Muslim state leaders.[156] Spalding argues that such a dissonance between the conventional legal theory and modern implementation highlights even more the importance of acknowledging that the entitlement to be free from corruption is a universal right, regardless of currently prevailing governmental actions or statements.[157]

Currently Confucianism is seen as a reviving influence on the governance style in modern China, while Islamic law has influenced civil law systems of states in the Middle East and South Asia in a significant way.[158] Both demonstrate that the idea of the individual's right to be free from corruption and the government's responsibility for guaranteeing this right is historically shared across cultures, nationalities and beliefs, far beyond what is presently considered the Western world.

4.1.3. Linking ESC and CP rights

In the majority of scholarly works related to grand corruption and approaching it from the perspective of human rights, one can find mention of the ICESCR and the ICCPR. Most often the reference is made to the common first article of both covenants reading as follows:

"Article 1

[151] *Ibid*., pp. 32-33.
[152] Mohamed A. Arafa, *supra* note 137, p. 172.
[153] Andrew B. Spalding, *supra* note 31, p. 527.
[154] Mohammad Hashim Kamali, *supra* note 149, p. 243.
[155] Andrew B. Spalding, *supra* note 31, p. 527.
[156] *Ibid*., pp. 526-527.
[157] *Ibid.*
[158] *Ibid*.

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."[159]

Kofele-Kale argues that the right to freedom from corruption flows from the articles above which outline "the right of a people to exercise permanent sovereignty over their natural resources and wealth, that is, their right to economic self-determination".[160] The idea of permanent sovereignty developed as a result of international debate between capital-exporting states and states rich in natural resources, and as a result was formalised in 1962 via the United Nations General Assembly Resolution 1803 (XVII) on Permanent Sovereignty Over Natural Resources[161].[162] Along with other UN documents on the topic, the above-mentioned Resolution contributed to the expansion of the definition of permanent sovereignty to include as people's heritage over which that sovereignty may be exercised "not just wealth derived from natural resources but all the wealth-generating activities in the society".[163] Thus, according to Kofele-Kale, two rights whose ultimate goal is economic self-determination can be derived from the expanded definition: the right of states to control state wealth and resources, and the right of individuals within the state to make use of the same state wealth and resources "in the supreme interest of their national development".[164] The individual's right for economic self-determination may get violated in several ways enabled by acts of corruption, often grand in scale.[165] The violations include the transfer of ownership over state resources (people's patrimony) to those in positions of power within the state in question, the transfer of ownership outside of the state in

---

[159] International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), entered into force January 3, 1976, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights, accessed May 1, 2023, Article 1 [Further Covenant on ESC Rights]; International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), entered into force March 23, 1976, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights, accessed May 1, 2023, Article 1 [Further Covenant on CP Rights].

[160] Ndiva Kofele-Kale, *supra* note 39, pp. 163-164.

[161] United Nations General Assembly, Resolution 1803 (XVII) on Permanent Sovereignty Over Natural Resources (New York: United Nations, 1962), available at: https://digitallibrary.un.org/record/204587?ln=en, accessed May 1, 2023.

[162] Ndiva Kofele-Kale, *supra* note 39, p. 164.

[163] *Ibid*.

[164] *Ibid*., p. 165.

[165] *Ibid*.

question, often to foreign companies, and, finally, the refusal to state nationals to exercise their right for use and exploitation of national resources for the sake of advancing their development.[166] Therefore, the right to a society free of corruption can be recognized as a basic human right because, as demonstrated above, "other important human values depend on this right".[167]

More than that, a standalone human right can be understood as a necessary link between the two sets of human rights established in the ICESCR and the ICCPR. Kinley argues that while the current human rights practice does not seem to promote the proclaimed principle that "all human rights are universal, indivisible and interdependent and interrelated"[168], establishing the right to freedom from corruption is a beneficial and powerful step in the direction of linking economic, social, cultural, civil and political rights.[169] The Universal Declaration of Human Rights, seen as the foremother of the ICESCR and the ICCPR, stresses the importance of an unobstructed, unrestrained, and egalitarian government as an essential component in safeguarding and advocating for the complete spectrum of human rights.[170] The right to freedom from corruption bears the same idea at its foundation, once again affirming its significance in the way humans can enjoy all the other well-established basic human rights.[171] Furthermore, the link between the two above-mentioned sets of rights can be deduced from the fact that the right for a corruption-free society also implies "the collective right to development".[172] As the Declaration on the Right to Development, adopted in 1986, defines it, the right to development is "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized".[173] As it can be understood, the declaration asserts that the right to development is an innate right of every

---

[166] *Ibid*.
[167] *Ibid*.
[168] United Nations General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action, accessed May 11, 2023, para. 5.
[169] David Kinley, *supra* note 42, p. 11.
[170] UN Nations General Assembly. *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights, accessed May 11, 2023, Art. 21.
[171] David Kinley, *supra* note 42, p. 11.
[172] Ndiva Kofele-Kale, *supra* note 39, p. 165.
[173] United Nations General Assembly, *Declaration on the Right to Development : resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development#:~:text=The%20right%20to%20development%20is%20an%20inalienable%20human%20right%20by,freedoms%20can%20be%20fully%20realized, accessed May 11, 2023, Art. 1.

individual. However, corruption by public officials is known to obstruct the achievement of these praiseworthy objectives.[174] When it comes to the human rights context, in the presence of corruption and, as a result, in the absence of development, be it of economic, social or political nature, the respect and protection of individual rights is not feasible.[175]

4.1.4. Expanding human rights obligations and reinforcing governance

A strong motivation for recognizing the right for a corruption-free society stems from the fact that such a development in the human rights doctrine will positively affect governance globally and encourage initiatives "to enhance the capacity, efficiency and fairness of government".[176] While presently the anti-corruption movement is more significantly motivated by efforts to criminalise corrupt conduct and create opportunities for its prosecution, the human rights approach will expand the scope to a wider, more comprehensive perspective on the political, social, and economic implications of state capture by private interests.[177] The recognition of freedom from corruption would establish a fundamentally new powerful tool within positive law requiring states and governments to take action to combat corruption.[178] As a matter of fact, this tool also has the potential to contribute to improving the living conditions of bribery victims. Although the effects of foreign bribery are felt by various parties, the primary sufferers are the citizens who are governed by corrupt regimes, and they may only experience the benefits of enhanced corporate governance indirectly.[179] Adopting a rights-oriented framework, the focus of enforcement endeavours can be shifted to bettering the circumstances in which bribery victims reside.[180]

While the above-mentioned point concerns acts of corruption specifically in the public sector, the argument considering the potential effect of the human rights approach to corruption in the private sector cannot be discarded. As pointed out by Kinley, lifting the right to freedom for corruption to the status of an established stand-alone human right is bound to revive the debate related to the corporations' responsibility for their actions, specifically the abuse of public power in their interests, resulting in human rights' breaches.[181] In particular, the introduction of a

[174] Ndiva Kofele-Kale, *supra* note 39, p. 165.
[175] *Ibid.*
[176] David Kinley, *supra* note 42, p. 11.
[177] *Ibid.*
[178] *Ibid.*
[179] Andrew B. Spalding, *supra* note 31, p. 519.
[180] *Ibid.*
[181] David Kinley, *supra* note 42, p. 11.

free-standing right would broaden the scope of the UN's 2011 Guiding Principles on Business and Human Rights, which have not, at least not explicitly, stated the responsibility of states to ensure that companies within their jurisdiction are held accountable under domestic laws that align with international human rights obligations.[182]

4.1.5. Changing attitude towards corruption globally

In addition to the above-mentioned bases, scholars advocating for the establishment of a standalone right to be free from corruption are in unison that such a development will help to change the attitude towards corruption in the global society.

Firstly, such a change in the human rights framework will draw attention to the importance of the global issue which grand corruption is. It will aid in recognizing the destructive effect that corruption has on human rights and place an emphasis on the states' obligation to govern with fairness, equity, and legality, which in turn should lead to the eradication or, at least, reduction of corruption.[183] In the absence of an exclusive right to freedom from corruption, the significance of corruption is diminished to being merely one of the several elements that contribute to the violation of human rights.[184] Therefore, if a right to a corruption-free society were to be established, it would unite multiple global anti-corruption initiatives in a single definite objective of addressing corruption as a human rights concern.[185] Moreover, regarding corruption as a violation of an established human right would lend greater normative authority to these initiatives, thereby increasing their significance in discussions concerning public policy.[186]

Secondly, recognizing an inherent and universal right to freedom from corruption, can help to effectively counter the frequently raised argument against global anti-corruption campaigns, which is that corruption is a product of cultural influences.[187] Presently, the idea that we could completely eradicate corruption from society is often dismissed as unrealistic and absurd but for anti-corruption initiatives to have a lasting impact, this perspective must shift.[188] Although complete elimination of corruption may not be achievable, significant reduction of it is possible if people change their mindset that corruption is an inherent feature of human society.[189]

---

[182] David Kinley, *supra* note 42, p. 11.
[183] *Ibid*., p. 10.
[184] *Ibid.*, p. 11.
[185] *Ibid.*
[186] Andrew B. Spalding, *supra* note 31, p. 527.
[187] *Ibid*., p. 518.
[188] *Ibid.*
[189] *Ibid.*

Each person has a right to a government that implements reasonable measures to address corruption and a rights-based framework can encourage this line of thinking.[190]

4.2. Formalising the human rights approach to corruption

The analysis above outlines what academics believe to be the most significant motivating factors for choosing to establish a new standalone human right in pursuit to combat grand corruption. However, in addition to demonstrating the foundation for the establishment of a new independent right to freedom from corruption, it is important to indicate the most efficient and realistically attainable approach to formalising such a right within the international human rights doctrine. Though it should be pointed out that the cited academics themselves deem the establishment of a stand-alone right both a lengthy and a procedurally complicated endeavour. At the same time, there are scholars who support applying the human rights approach to grand corruption but come forward with the idea of doing so within the already existing international human rights framework. The intention of this part of the paper is to define the two ways the human rights approach to corruption can be applied when it comes to positive law, thus demonstrating different means for reaching apparently similar goals.

4.2.1. Utilising the existing human rights framework

As noted above, the human rights approach can debatably be employed with regard to corruption without the explicit need to formulate a new free-standing right. Olaniyan opines that the effective utilisation of human rights for addressing corruption will not be determined by numerous interpretations (including those aiming to formulate a standalone right to freedom from corruption), but by a more feasible and practical step like the creation of a new protocol to augment the existing human rights treaties, such as the ICCPR and ICESCR.[191] These covenants provide extensive coverage of all human rights categories and have near-universal acceptance, making them ideal for acknowledging corruption as a violation of the rights stipulated in the treaties.[192] Recognizing corruption as a violation of the rights mentioned in both treaties would result in "complementing the treaties' provisions and giving them their full effect".[193]

---

[190] *Ibid.*
[191] Kolawole Olaniyan, *supra* note 1, p. 534.
[192] *Ibid.*
[193] *Ibid.*

In terms of its substance, the protocol proposed by Olaniyan would ideally incorporate content that integrates human rights and criminal law instruments, as well as explicitly grants victims, NGOs, and other interested parties the right to approach national courts, human rights bodies, and tribunals for remedies.[194] Furthermore, it should encompass guidelines on the culpability of financial institutions that harbour embezzled funds, thus, contributing to a multidisciplinary approach to combating corruption.[195]

While the current mechanisms for implementing human rights may have room for improvement, they still provide the essential usefulness of the covenants themselves as the most effective means for establishing a global human rights framework to combat corruption.[196] Despite the fact that detailed procedural rules would need to be established to determine issues such as admissibility criteria for potential complaints, the ICCPR and ICESCR already present established channels for enforcing, monitoring, complaining, and reporting on states' initiatives to eradicate human rights abuses.[197] The main advantage of supplementing existing protocols is that it would save time and resources (especially for convincing nations to adopt a new, self-contained human right) and would not necessitate the formation of new structures or institutions.[198] This is especially important when it comes to the potential need of negotiating new legal instruments with nations that offer shelter to illicitly acquired assets.[199] As a matter of fact, the majority of such states are already signatories to the ICCPR and the ICESCR. Correspondingly, the states' governments must provide cooperation and assistance at the international level to fulfil human rights. Thus, a protocol in this area would foster coordination with significant actors from developing nations (which suffer from corruption the most) and guarantee that the assets, knowledge, and technology of Western countries aid the fight against corruption.[200] Among the disadvantages of the above-described approach the most significant one is that associated with the required political will, especially considering the sluggish pace of the anti-corruption movement and the international community's reluctance to take decisive action despite recognizing corruption as a severe problem.[201] Olaniyan argues that to make the concept of a global protocol a reality, civil society and international NGOs, such as Transparency

---

[194] *Ibid.*
[195] *Ibid.*
[196] *Ibid.*
[197] *Ibid.*
[198] *Ibid.*
[199] *Ibid.*
[200] *Ibid.*
[201] *Ibid.*

International and Amnesty International, must use their influence, global membership, and networks to mobilise the international community, especially powerful Western nations.[202]

4.2.2. An independent, free-standing human right

When it comes to the advocates of the idea of formalising the inherent right to freedom from corruption in positive law, there is no single opinion regarding the practicalities of the formalisation process.

For example, Spalding, who expresses strong support for employing the human rights approach to grand corruption, takes a unique stance by endorsing the recognition of the right to freedom from corruption at the conceptual and rhetorical levels.[203] He acknowledges that the discussion regarding the formal recognition of such a right in positive law, and the specific instruments or legal mechanisms that would be involved, is a separate matter outside the scope of his research.[204] Nevertheless, he still holds that the lack of a formal shape in legal doctrine does not imply that the right to freedom from corruption does not exist.[205]

At the same time, Kinley can be found at the other end of the spectrum as he states that the new human right can take various forms within the international law.[206] According to him, the options range from substantial measures like instituting a new human rights treaty dedicated to combating corruption or recognizing it as a crime within international criminal law, to more subtle approaches such as inferring different aspects of the right to a corruption-free society within established treaty rights like fair trial, participation in government, non-discrimination, and economic self-determination.[207] When it comes to the less monumental options, some argue that the expectation for individuals and society to be free from corruption can be regarded as a component of corporate social responsibility (CSR).[208] However, there is considerable doubt regarding how well the related CSR principles operate in practice.[209] Interestingly, the most practically applicable and feasible approach, according to Kinley, would be to include the right to freedom from corruption within a set of Optional Protocols to the ICESCR and the ICCPR.[210]

---

[202] *Ibid.*
[203] Andrew B. Spalding, *supra* note 31, p. 529.
[204] *Ibid*.
[205] *Ibid*.
[206] David Kinley, *supra* note 42, p. 12.
[207] *Ibid*.
[208] *Ibid*.
[209] *Ibid*.
[210] *Ibid*.

Though similar in some aspects to Olaniyan's suggestion discussed above, Kinley specifies some of the major characteristics of the Optional Protocols like the following:

- The preamble should include both the acknowledgment of the prominent international anti-corruption instruments and initiatives and the recognition of the detrimental impact of corruption on the realisation of existing human rights.[211]
- The declaration of the Right to Freedom from Corruption may be formulated as follows: "State Parties shall prohibit corrupt practices within their respective jurisdictions, whether undertaken by public officials or private actors, by all appropriate means including criminalization through legislation."[212]
- The scope of scope and the corresponding obligations of states, encompassing both the offering and acceptance of bribes and Illicit enrichment.[213]
- The established jurisdiction should apply both within and beyond national boundaries.[214]
- It should be emphasised that there is an obligation for state parties to identify and provide compensation to victims of corruption, including individuals and groups, and to establish appropriate mechanisms for securing restitution for identifiable victims using recovered funds.[215]

It is highlighted that a notable advantage of employing optional protocols would be the clear message it sends regarding the bridging potential between the two sets of rights.[216] By being framed as optional protocols to established human rights treaties, the systemic nature of the right for a corruption-free society would be underscored, highlighting its integral role in the realisation of the full range of civil and political rights, as well as economic, social, and cultural rights that states are obligated to uphold under international human rights law.[217] Like Olaniyan, Kinley emphasises that adopting the optional protocols' approach would help circumvent many of the initial challenges that typically accompany the establishment of entirely new human rights treaties alluding to the political will and cooperation required of state parties.[218]

---

[211] *Ibid*., p. 13.
[212] *Ibid*.
[213] *Ibid*.
[214] *Ibid*.
[215] *Ibid*.
[216] *Ibid*., p. 12.
[217] *Ibid*.
[218] *Ibid*.

4.3. Criminal law approach to grand corruption

As follows from the analysis of the existing body of academic works related to corruption and its effect on the way human rights are enjoyed by people around the globe, it can be drawn that one of the major obstacles to prosecuting corruption-related crimes in international tribunals is the lack of understanding whether such crimes may fall under the established legal frameworks and definitions of violations, require for a new framework to be created or the established ones to be updated with relevant clarifications. The latter two pose a number of challenges as both require not only time for changes to be introduced but also consensus between the involved parties on whether the changes are needed and their respective scope.[219] For example, for the changes in the Rome Statute to become effective, the ratification of seven-eighths of State parties is required.[220] More than that, any State party not willing to ratify the changes "may withdraw from this Statute with immediate effect".[221] According to Starr, this means that even in a situation where many State parties agree to spell out grand corruption as a crime in positive law, "many of the most crucial states - kleptocracies and money-laundering havens - would probably refuse to sign on" for political reasons.[222] Ramasastry supports this point of view concluding that while an amendment of the Rome Statute to expressly include "grand corruption" as a criminal offence is very implausible, "even if such an amendment were adopted, would be circumscribed to the extent that states choose not to accept it as part of their treaty obligations".[223] Therefore, to contribute to halting corruption prior to express codification, I maintain the importance of analysing prosecution opportunities based on the current language of international tribunals' statutes.

One of the legal frameworks that show significant promise for potential prosecution opportunities of corruption-related crimes (and grand corruption as a crime on its own) is that established by the ICC, the Rome Statute.

Initially, it is important to lay out the formal legal framework for further analysis and to note that Article 7(1) of the Rome Statute is the one that gives the most room for potential prosecution of grand corruption. It reads as follows:

"**Article 7**

[219] Sonja B. Starr, *supra* note 8, p. 1297.
[220] Rome Statute, *supra* note 18, Art. 121(4).
[221] *Ibid*., Art. 121(6).
[222] Sonja B. Starr, *supra* note 8, p. 1297.
[223] Anita Ramasastry, *supra* note 51, p. 716.

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."[224]

As seen, there is no specific mention of grand corruption (or any other related definition - kleptocracy, patrimonicide, indigenous spoliation, etc.) in the text, however, there is academic research linking corruptive deeds with "other inhumane acts", referred to in point (k) of Article 7(1). The Statute of the International Criminal Tribunal for the former Yugoslavia mentions "other inhumane acts" as a sub-category of crimes against humanity in Article 5(i)[225] and the Statute of the International Criminal Tribunal for Rwanda in Article 3(i)[226], though neither offer a description of what such crimes might be as Article 7(1)(k) does.

---

[224] Rome Statute, *supra* note 18, Art. 7(1).

[225] The Statute of the International Criminal Tribunal for the former Yugoslavia, U.N. Doc. S/RES/827 (May 25, 1993), available at https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf, accessed May 1, 2023, Art. 5(i).

[226] *The Statute of the International Criminal Tribunal for Rwanda*. U.N. Doc. S/RES/1901 (2009). Available at: https://www.legal-tools.org/doc/8732d6/pdf, accessed May 11, 2023, Art. 3(i).

Another important piece of positive law that I will be referring to is the Elements of Crimes document produced by the ICC aimed at helping the Court with the application and interpretation of Articles 6, 7 and 8 of the Rome Statute. For the purposes of this paper, I will closely look at the elements of "other inhumane acts" explained as follows:

"**Article 7 (1) (k)**

Crime against humanity of other inhumane acts

Elements

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.
3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[227]

As Starr highlights, if the above-mentioned elements are found in a deed, no specific definition of the exact inhumane act is required meaning that "to convict a person for an "other inhumane act", an international criminal tribunal need not define "grand corruption," or any similar term" .[228]

Lastly, to fully set out the core of the legal framework, I have to mention Article 30 of the Rome Statute. This is an important piece of the ICC regulation as awareness or *mens rea* as it is often referred to in academic research, is one of the constitutional elements (based on Article 7(1)(k) and the Elements of Crimes) of the crimes against humanity. The article specifically refers to the mental state of the perpetrator and reads as follows:

"**Article 30**

Mental element

[227] International Criminal Court, *Elements of Crimes*, 2011, ISBN No. 92-9227-232-2. Available at: https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf. [Further Elements of Crimes].
[228] Sonja B. Starr, *supra* note 8, p. 1299.

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
   (a) In relation to conduct, that person means to engage in the conduct;
   (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly."[229]

Having outlined the legal framework referred to in this paper, the author proceeds with the analysis below that lays out and systemises academic arguments in favour of associating spoliation crimes with the above-mentioned Articles, paying close attention to the elements of crimes and highlighting potential challenges for employing these arguments in criminal tribunals for the sake of prosecuting grand corruption. Following a similar approach to that employed by Starr, the main elements that should be satisfied for a grand corruption to fall under the definition of Article 7(1)(k) of the Rome Statute are outlined. For each of the elements, arguments are compiled from the five academic papers chosen to address the third research question in the tables below. If one of the authors of the selected academic works does not specifically address some element in their research, their paper is not included in the respective analysis table. After each table a recap is provided of what opinion is shared by scholars regarding a specific element of crime. Once all the tables and recaps have been presented below, the obtained insights are used to answer the third research question.

[229] Rome Statute, *supra* note 18, Art. 30.

	Bantekas (2006)	Starr (2007)	Kirch-Heim (2009)	Schmidt (2015)	Arenal (2020)
Element of crime: great suffering	● The author does not explicitly analyse this element of crime, however, it may be deduced from his work that only corruption cases resulting in "famine, disease and lack of medical care that leads to death" are up for consideration as potential crimes against humanity.[230] He, thus, does not consider it necessary to evaluate whether such consequences amount to "great suffering".	● The distinction between garden-variety and grand corruption is required, as great suffering may be caused only by the latter, consequently creating an opportunity for prosecuting it as an international crime[231]; ● An important note is that it is not obligatory for the suffering to "be an immediate consequence of the crime"[232]; ● In the same manner, there is no requirement to pinpoint specific individual victims of criminal acts that	● Corruption can undoubtedly lead to the civilian population's great suffering as a result of countries' resources getting expropriated, "thereby ruining social services and health systems and causing massive poverty and famines"[235]; ● Misappropriation and embezzlement may lead to severe suffering and pain in the meaning of Article 7 "as they deprive people of necessary means is subsistence"[236]; ● Bribery, on the other hand, rather creates motivation for public officials to "commit potentially inhumane acts after and because they have been bribed"[237]; ● Therefore, a distinction should be made when	● The author heavily relies on the argumentation with regard to suffering as an immediate consequence outlined by Starr[240]; ● Building on Starr's arguments, the author claims that embezzlement of funds or goods, especially such as food and medicine, may easily result in great suffering[241]; ● It is, thus, reasonable to conclude that similar acts of grand corruption would meet the *actus reus*	● Arenal provides her argumentation not exclusively for corruption, but for the umbrella term of "economic crimes against humanity", which includes, among others, "acts of corruption, illicit enrichment, embezzlement, kleptocracy, bribery, money laundering, influence peddling, abuse of functions, falsification, identity theft, tax evasion or tax fraud and cybercrimes"[243]; The perspective of the author is that above-mentioned crimes cause crises resulting in what can be considered "great suffering", especially when it comes to "speculation with essential goods for the protection of human life, such as food, but also others such as water, housing, vaccines or medicine"[244]; ● Arenal argues that the 2009 financial crisis, the food crisis in countries like Indonesia, Cambodia and Nigeria related to the

[230] I. Bantekas, *supra* note 86, p. 484.
[231] Sonja B. Starr, *supra* note 8, p. 1301.
[232] *Ibid.*
[235] Claudio Kirch-Heim, *supra* note 29, p. 37.
[236] *Ibid.*
[237] *Ibid*.
[240] Sonja B. Starr, *supra* note 8.
[241] Bärbel Schmidt, *supra* note 105, p. 52.
[243] Libia Arenal, *supra* note 7, p. 244.
[244] Libia Arenal, *supra* note 7, p. 244.

		result in collective harm[233]; ● Based on the above, in cases of grand corruption, "the prosecution need not prove that any particular act of corruption caused any particular victim to suffer".[234]	prosecuting different forms of corruption, as misappropriation and embezzlement of state funds may be considered to satisfy this element of crime, however, the same is not true for the acts of accepting and soliciting bribes[238]; The author emphasises that for this element to be satisfied, particular actions of a particular perpetrator must result in great suffering, rather than suffering just somehow arising due to "a corrupt scheme".[239]	requirement set forth in Article 7(1)(k) of the Elements of Crimes.[242]	production of biofuels, policies adopted due to COVID-19 as well as actions of pharmaceutical companies associated with COVID-19 vaccines fall into the list of recent events to have caused suffering to societies worldwide[245]; ● When it comes to corruption in particular, the author emphasises that there is more than one example globally where patrimonicide has resulted in "the submission of populations to extreme living conditions while those responsible for that behaviour often go unpunished" and specifically points to "the precedents in Equatorial Guinea, Philippines; the Military Regime of the Chilean dictatorship, Venezuela".[246]

To summarise the table above, it is accurate to note that there is no disagreement in the view of academics with regard to the *actus reus* element of crime, that is the infliction of great suffering to the victims of "other inhumane acts". The views in all the analysed works coincide in that acts of grand corruption may and often do lead to great suffering through the deprivation of food, water and medicine experienced by the civilian population, while the same is not true for garden-variety cases of corruption. Thus, it is reasonable to conclude that, according to cited academics, the first element of Article 7(1)(k) is generally satisfied when it comes to acts of patrimonicide and large-scale misappropriation.

[233] *Ibid*
[234] *Ibid*
[238] *Ibid*.
[239] *Ibid*.
[242] Bärbel Schmidt, *supra* note 105, pp. 49-60.
[245] Libia Arenal, *supra* note 7, p. 245.
[246] Libia Arenal, *supra* note 7, p. 245.

	Bantekas (2006)	Starr (2007)	Kirch-Heim (2009)	Schmidt (2015)	Arenal (2020)
Element of crime: act similar to others in Article 7	● The author does not explicitly discuss this element of crime, however, he does bring up deportation, forcible transfer and extermination, with an emphasis on the definition of the latter, which incorporates "deprivation of access to food and medicine that is calculated to bring about the destruction of part of a population";[247] ● In addition, when analysing a hypothetical scenario with acts of grand corruption and their aftermath in developing countries, the author also chooses a scenario where corrupt public officials may forcibly displace population while also restricting their access to food and medicine[248];	● The most atrocious cases of grand corruption undoubtedly share similarities with crimes listed under Article 7 as "they inflict severe deprivation affecting the fundamental conditions of life", similarly to deportation, forcible transfer, and economic persecution[249]; ● In the same way as apartheid, grand corruption can be characterised as a state regime which "systematically oppresses part of the population in order to benefit those imposing the system"[250]; ● One of the most probable distinctions between acts of kleptocracy and other inhumane acts is "the kleptocrat's lack of	● The author specifies a list of offences falling under Article 7 and points out that "other inhumane acts" should be of similar severity to be considered crimes against humanity;[253] ● The main argument for patrimonicide to be considered matching other crimes against humanity in severity is "the devastating consequences of large-scale and systematic corruption".[254]	● The author expresses the opinion that acts of grand-scale misappropriation "share significant similarities with other listed acts such as murder and extermination as they kill people, often in large numbers"[255]; ● Starr's argumentation is referred to with regard to all of the listed crimes affecting essential conditions of human life.[256]	● Grand corruption, together with other crimes that the author is calling to recognize as "economic crimes against humanity", result in "significant human, social, environmental and economic damage they create for the fundamental living conditions of the population".[257]

[247] I. Bantekas, *supra* note 86, p. 474.
[248] I. Bantekas, *supra* note 86, p. 474.
[249] *Ibid*.
[250] *Ibid*.
[253] Claudio Kirch-Heim, *supra* note 29, p. 36.
[254] *Ibid*, p. 37.
[255] Bärbel Schmidt, *supra* note 105, p. 52.
[256] *Ibid*.
[257] Libia Arenal, *supra* note 7, p. 255.

	● By doing so, parallels are drawn between the consequences grand corruption and other crimes against humanity explicitly stated in Article 7 may cause.	active antipathy toward the victims"[251], which is not vital for this element of crime to be fulfilled as crimes against humanity may be committed purely for the sake of personal benefit.[252]			

To conclude, all the referred to academics in their works, either directly or indirectly, confirm that the second element of Article 7(1)(k), the requirement for an "other inhumane act" to be of similar characteristics as other listed crimes against humanity, can undoubtedly be satisfied when it comes to grand corruption acts. The main argument for such a stance is the fact that in its worst manifestations, kleptocratic regimes lead to catastrophic consequences for populations by destructively affecting what is regarded as "fundamental conditions of life". Similarly, as with the first element of crime analysed above, whether corrupt practices qualify as similar acts heavily depends on the scale and severity of such practices.

	Bantekas (2006)	**Starr (2007)**	**Kirch-Heim (2009)**	**Schmidt (2015)**	**Arenal (2020)**
Element of crime: awareness of the nature of the act (inhumane) by the perpetrator	● Though it may be argued that in cases of grand corruption "direct intent to eventually destroy part of a population is missing", the Rome Statute allows for another option to demonstrate the satisfaction of this	● The element of intent and mental state can be viewed as "the most significant limit on the prosecution of grand corruption" and at the same time a characteristic setting apart graft and negligence from	● Building up on the above-mentioned Banktekas' argument, *dolus eventualis* can be considered sufficient, as well as recklessness[268]; ● It is enough to demonstrate that the perpetrator was consciously aware that	● An emphasis is set on the fact that intent must be shown with respect to both conduct (engaging in alleged crimes "voluntarily and with some degree of knowledge") and consequence (meaning to cause or being aware	● The author refers to the 1991 Draft Code of crimes against peace and security of mankind (further, the Draft Code) for a broader approach to the question of the perpetrators' intent and knowledge of the

[251] *Ibid*.
[252] *Prosecutor v. Miroslav Kvocka et al. (Appeal Judgement)*, IT-98-30/1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 28 February 2005, available at: https://www.refworld.org/cases,ICTY,48ad2b772.html, accessed May 11, 2023.
[268] Claudio Kirch-Heim, *supra* note 29, p. 37.

	element of crime for acts of grand corruption[258]; In particular, as outlined above, Article 30(2)(b) emphasises that a person can be considered to act with intent in cases when meaning to cause specific consequences or being aware that such consequences should occur in the ordinary course of events[259] [260]; Therefore, the author argues that such *dolus eventualis* is enough "to hold the members of government responsible for crimes against humanity perpetrated against their own people in peacetime by placing them in conditions of life,	spoliation[262]; ● The usage of the word "intentionally" in Article 7(1)(k) combined with the language in the Elements of Crimes ("factual circumstances that established the character of the act") raise a question as to what shall be seen as intent by the ICC[263]; ● Though the Elements of Crimes do not mention Article 30 of the Rome Statute with regard to the "other inhumane acts", it does apply to all statutory crimes. When interpreted, it can be distilled that "consequences need not be certain; rather, they must be what one would ordinarily expect"[264];	their corrupt actions would result in the deprivation of necessary means of subsistence for civilian population[269]; ● Referring to Starr, the author emphasises that such proof may be assumed from factual circumstances, especially in situations where "the population is obviously vulnerable and if the dimension of the misappropriation is sufficiently severe".[270]	of the consequences caused by alleged crimes)[271]; Similar to other cited authors, Schmidt considers remonstrating intent with regard to conduct straightforward as "the perpetrator is orchestrating a scheme of corrupt acts"[272]; ● When it comes to establishing intent with regard to consequence, the author relies on the argumentation of Starr[273] significantly on the scale of corruption and vulnerability of the population falling victims to it; ● The author, however, analyses Article 30 in greater detail, specifically considering what level of awareness is required by it - *dolus*	carried out act[278]; ● Translating the ideas from the Draft Code to the field of economic abuses, the author opines that criminal acts resulting in "extensive, long-term and serious damage" may still constitute crimes against humanity "regardless of whether the purpose had been or not been to cause damage"[279]; ● Thus, even in cases of grand corruption carried out with the goal of personal gain and committed by "using methods or means that have not yet been conceived to cause specific damage to a civil population", damaging consequences for future victims can

[258] I. Bantekas, *supra* note 86, p. 474.
[259] Rome Statute, *supra* note 18, Art. 30.
[260] I. Bantekas, *supra* note 86, p. 474.
[262] Sonja B. Starr, *supra* note 8, p. 1301.
[263] *Ibid.*
[264] Sonja B. Starr, *supra* note 8, p. 1301.
[269] *Ibid*.
[270] Claudio Kirch-Heim, *supra* note 29, pp. 37-38.
[271] Bärbel Schmidt, *supra* note 105, p. 52.
[272] *Ibid*.
[273] Sonja B. Starr, *supra* note 8.
[278] Libia Arenal, *supra* note 7, p. 259.
[279] Libia Arenal, *supra* note 7, p. 259.

	which in the ordinary course of events would deprive them of access to sufficient food and medical care".[261]	• From the perspective of Elements of crime, awareness of factual circumstances contributing to devastating consequences ("the extremely poor population, pervasive threats of preventable disease, the cash-strapped government") should not be intricate to prove as those should clearly be known to high-level public official involved in patrimonicide[265]; • From the perspective of Article 30, the proof of predictability of consequences can be inferred from circumstances. It should be obvious to the perpetrator that acts of corruption will be followed by great suffering and pain in situations where "a population is sufficiently vulnerable		*directus* in the first degree (knowing and wanting to achieve specific consequences), *dolus directus* in the second degree (acknowledging the inevitability of consequences) or *dolus eventualis* (acknowledging the possibility of consequences)[274]; • It is argued that acts of grand corruption will usually be characterised by *dolus eventualis* (similarly as claimed by Bantekas[275] and Kirch-Heim[276]) rather than *dolus directus*, as kleptocrats often if not always recognize the likelihood of potential disastrous consequences of their actions, but accept them as "a possible cost of attaining the aimed goal"[277];	often be foreseen[280]; • Theerefore, the lack of direct intent to bring about destruction and suffering, the classification of grand corruption-related acts as "crimes against humanity" cannot be automatically ignored.[281]

[261] I. Bantekas, *supra* note 86, p. 474-475.
[265] *Ibid*., p. 1303.
[274] Bärbel Schmidt, *supra* note 105, pp. 53.
[275] I. Bantekas, *supra* note 86.
[276] Claudio Kirch-Heim, *supra* note 29.
[277] Bärbel Schmidt, *supra* note 105, p. 53.
[280] Libia Arenal, *supra* note 7, p. 259.
[281] *Ibid.*

		and a diversion of funds sufficiently large relative to the total amount available to serve that population needs".[266] ● Thus, whether this particular Element of Crime is satisfied depends heavily on the scale of corruption as well as on the vulnerability of the population falling victim to it.[267]			

To summarise the table above it must be pointed out that all the cited academics are in unison about the *mens rea* element of the crime being the most intricate and complex to demonstrate for the purposes of prosecution in the ICC. More importantly, despite the complexity of the proof, there is agreement between scholars that it is possible to establish that certain acts of grand corruption meet this element of crime. As acknowledged by the majority, demonstrating *dolus eventualis* is the most reasonable approach in kleptocracy-related cases and the one that should be sufficient for the court. That is, the accused of grand corruption must not have committed legally wrongful acts with the intention of causing great suffering to the population of his country; the awareness of the fact that destructive consequences may follow his actions in the ordinary course of events is enough to demonstrate the presence of intent. Another important thought shared by academics is that meeting the mental requirement of the crime, especially using the *dolus eventualis* approach, is closely linked to the relative scale of corrupt acts and the degree of the vulnerability of the population experiencing the consequences of these acts.

	Bantekas (2006)	**Starr (2007)**	**Kirch-Heim (2009)**	**Schmidt (2015)**	**Arenal (2020)**

[266] Sonja B. Starr, *supra* note 8, p. 1303.
[267] *Ibid.*

Element of crime: a widespread or systematic attack directed against a civilian population	● The link between crimes against humanity and armed conflicts is not a must, according to the definition of such crimes in customary law and the recent Court practice.[282] ● Nevertheless, the definition does include the condition of an attack being directed against a "civilian" population. Outside of armed conflicts, during peacetime, such formulation can be considered irrelevant as "the entire population is civilian".[283]	● It is important to understand that the Rome Statute "does not imply malice against victims" with this element of crime[284]; ● To be precise, an attack is defined as "a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack"[285]; ● Multiple acts' requirement is undoubtedly met for acts of grand corruption as those are usually "deeply embedded" in the government and are "part of a broader pattern of corrupt	● "By its definition grand corruption consists of widespread and systematic practices", however, it is less clear whether such practices may constitute an attack against civilian population, which entails violence and aggressive acts[292]; ● Considering that the goal of this element of crime is to establish that a prosecuted deed is not of unique isolated nature, but rather part of a broader system, massive corruption may be found to satisfy this point.[293]	● Similarly to Starr, the author emphasises that according to Article 7 of the Elements of Crimes[294], an attack need not be of military nature to be considered one in the sense meant by the Statute, and like Starr draws attention to the definition of "attack"[295]; ● Relying on similar argumentation as Starr, Schmidt opines that from the perspective of the earlier mentioned definition, the requirement for multiple acts is clearly met in cases of systematic corruption, however, the policy condition does not seem as straightforward, having been interpreted differently by the Court's judges[296];	● The author applies an expansive approach to the notion of "attack" and elaborates it to be relevant to her newly introduced term of "economic crimes against humanity"[299]; ● Arenal builds her case on similar arguments employed by other academics cited in this table, referring to the non-necessity of the attack being military and even of violent nature, thus, demonstrating that the definition of attack may include behaviour and illegal acts outside of those listed in Article 7 of the Rome Statute as "crimes against humanity"[300]; ● To expand the notion of attack, it is suggested to move away from using

[282] I. Bantekas, *supra* note 86, p. 474.
[283] *Ibid.*
[284] Sonja B. Starr, *supra* note 8, p. 1304.
[285] Elements of Crimes, *supra* note 123, Article 7.
[292] *Ibid*.
[293] *Ibid*.
[294] Elements of Crimes, *supra* note 123, Article 7.
[295] Bärbel Schmidt, *supra* note 105, p. 53.
[296] Bärbel Schmidt, *supra* note 105, p. 53.
[299] Libia Arenal, *supra* note 7, pp. 257-260.
[300] Libia Arenal, *supra* note 7, p. 257.

		acts”[286]; ● The “policy” aspect of the definition though is more complicated to be demonstrated and at the same time more significant[287]; ● Starr refers to Bassiouni, who singles out the “policy” element as the one creating a fundamental difference between crimes against humanity and other cases of “mass victimisation”, which can occur without “state action or policy” (while crimes against humanity cannot) and fall within domestic jurisdiction (while crimes against humanity are considered “an international category of crime that has risen to the level of *jus cogens*”[288])[289];		● Nonetheless, the author believes that large-scale misappropriation is described by corruption being “part of the system, the state institutions and in particular the government”, thus, meeting the policy condition as well[297]; ● The widespread and systematic element is by definition satisfied, according to the author, when it comes to cases of true large-scale kleptocracy, characterised by “the involvement of high-level government officials in carrying out state policy to serve private interests”.[298]	the word “against” in its definition as the practice of international tribunals proves to interpret such wording as an indication of civilian population being “the main target of the attack, rather than an incidental victim”[301]; ● The wording of an “attack *on* civilian population” allows for the inclusion of cases when victims are both direct targets of economic abuses and indirect ones, being “an inherent consequence to the development of the economic crimes causing damage or destruction”[302]; ● Moreover, in the context of economic abuses (grand corruption being one of them), it is proposed to detach the term “attack” from its etymological

[286] Sonja B. Starr, *supra* note 8, p. 1304.
[287] *Ibid*.
[288] M. Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (The Hague: Kluwer Law Internat., 1999), https://books.google.lv/books?id=MbiedpEFzbYC&printsec=frontcover&hl=lv&source=gbs_ge_summary_r&cad=0#v=onepage&q=policy%20element&f=false, pp. 244-245.
[289] Sonja B. Starr, *supra* note 8, p. 1304.
[297] *Ibid*.
[298] *Ibid*.
[301] Libia Arenal, *supra* note 7, p. 258.
[302] Libia Arenal, *supra* note 7, p. 259.

		● The author summarises that while standalone small-scale acts of corruption within an otherwise non-corrupt state do not constitute state policy, true kleptocracy with corrupt state leaders "embeds corruption in its system of government", thus, making it the only realistic scenario - that systematic misappropriation of public resources falls within the scope of state policy, though this policy may not even need to be formalised;[290] ● Lastly, the requirement for the character of the attack to be systematic and widespread will essentially always be met for "the cases of grand corruption that are worth pursuing".[291]			origin and the meaning of a violent act executed for the purpose of causing harm and destruction, and rather gravitate to the idea that an economic attack is "undertaken principally to obtain a profit, benefit or maintain a position or balance of political-economic power, however, not with the express purpose of doing harm"[303]; ● Such a re-formulation should ideally result in establishing the term of "economic attack", which is "central to establishing a solid connection between crimes against humanity and the so-called "economic crimes against humanity"".[304]

The fourth element of crime outlined in Article 7(1)(k) of the Elements of Crime has all the cited academics in agreement that an attack need not be part of a military crisis, the same way as it need not take the form of an act of violence directly targeted at the civilian population. Scholars refer to the definition of attack outlined in Article 7 of the Rome Statute and split it into two major parts, the requirement for the existence of multiple acts and the requirement for the existence of a state policy. While the majority conclude

[290] Sonja B. Starr, *supra* note 8, p. 1304.
[291] *Ibid*.
[303] Libia Arenal, *supra* note 7, p. 259.
[304] *Ibid*.

that grand corruption by definition satisfies the condition of the presence of multiple acts, they note that demonstrating the "policy" aspect of the definition is more complicated, though it is emphasised that for state policy to exist it need not be formalised. In spite of the complicated nature of this condition, academics admit that true cases of kleptocracy, the ones worth considering crimes against humanity and prosecuting via the ICC framework, cannot be detached from state policy as corruption is then embedded in the actions of political leaders and public officials and coexists with other government policies.

	Starr (2007)	**Kirch-Heim (2009)**	**Schmidt (2015)**
Element of crime: awareness of the link to a systematic attack by the perpetrator	● As far as kleptocrats themselves are concerned, it is demonstrable that they are aware of the nexus between their acts and "the broader attack";[305] ● The same, however, is not true for other parties involved in grand corruption, especially those based overseas[306]; ● The author believes that the success in proving specific parties' involvement is not impossible (as experienced players are often "well aware of the underlying circumstances"), but heavily depends on facts, while this element of crime serves as a helpful hurdle to prevent prosecuting parties who are too minor for international litigation.[307]	● Showing that this element of crime is satisfied should not be burdensome "as perpetrators will usually be well aware that their corrupt practices are part of a large-scale and systematic pattern of corruption".[308]	● The author opines that demonstrating this element of *mens rea* is less intricate than the previously described element of intent[309]; ● As acts of grand corruption are often committed on more than a single occasion by public officials of the highest level in a given state, "the perpetrator of such acts necessarily knows of the nexus between his acts and the broader context of his actions".[310]

The last but not the least in terms of the importance element of crime captured in Article 7(1)(k) is often referred to as another part of the *mens rea* condition, as it also concerns the awareness of the perpetrator, but now with regard to the nexus between his acts and the existence of a wider systematic attack against civilian population. As concluded by the majority of the cited scholars, it is hard to

[305] Sonja B. Starr, *supra* note 8, p. 1305.
[306] *Ibid.*
[307] *Ibid.*
[308] Claudio Kirch-Heim, *supra* note 29, p. 38.
[309] Bärbel Schmidt, *supra* note 105, pp. 49-60.
[310] *Ibid*..

imagine a case of grand corruption with multiple corrupt acts taking place where the perpetrator is not aware of the wider context of his deeds. It is agreed that true cases of kleptocracy by definition take place where state leaders and high-level public officials are well-aware of the large scale of their actions and the fact that those actions form a system of government operations. It is also noted that this element of crime serves as an appropriate filter for prosecuting only the parties relevant and big enough for the ICC to consider.

In addition to all the elements outlined above, Starr also analyses the very foundational requirement for a crime to be considered a crime against humanity, which is the fact that an inhumane act indeed took place.[311] In her reasoning, she refers to the interpretation of "inhumane acts" provided by the ICTY Appeals Chamber ("an act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity")[312] and the definition of "inhumane" from the Webster II New Riverside Dictionary ("lacking pity or compassion: cruel")[313]. The author concludes that when corrupt acts cause serious consequences such as destitution, severe preventable health harm, extreme poverty or widespread disease, it should be unequivocal to confirm the lack of pity and compassion as long as the prosecution can demonstrate that the perpetrator acted knowingly.[314] Thus, such intentional acts causing great suffering can beyond question be considered "inhumane".[315]

To answer the third research question of the paper, the analysis above confirms that prosecution opportunities for grand corruption cases exist within the existing international legal frameworks, with the most realistic opportunity presented within the framework established by the ICC and the Rome Statute. As the examination of all the components in the tables above demonstrates, the most atrocious acts of grand corruption can indeed satisfy all the elements of crime stated in Article 7(1)(k), qualifying as an "other inhumane act". In instances where grand corruption is furthermore linked to crisis situations, such as armed conflicts, the case for applying ICC jurisdiction becomes more straightforward and can refer to crimes beyond "other inhumane acts" (such as war crimes, for example, in cases where those were enabled by underlying corruption).[316] However, it is important to acknowledge that potential prosecution of grand corruption cases via the ICC mechanisms is very likely to meet obstacles related to the complexity of investigation of such cases as well those linked to the dependence on state cooperation and the potential lack thereof".[317] More than that, the cited academics themselves acknowledge that seeking prosecution for grand corruption cases via the crimes against humanity approach and the mechanisms offered by the ICC is limiting.[318] When looking at grand corruption

[311] Sonja B. Starr, *supra* note 8, pp. 1299-1300.
[312] *Prosecutor v. Milomir Stakic (Appeal Judgement)*, IT-97-24-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 March 2006, available at: https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-97-24-A/JUD154R0000147379.TIF, accessed May 11, 2023.
[313] *Webster's II New Riverside Dictionary*. Boston: Houghton Mifflin Co., 1996, p. 357.
[314] Sonja B. Starr, *supra* note 8, p. 1300.
[315] *Ibid.*
[316] *Ibid*., p. 1305.
[317] Bärbel Schmidt, *supra* note 105, p. 55.
[318] Sonja B. Starr, *supra* note 8, pp. 1303-1305; Claudio Kirch-Heim, *supra* note 29, pp. 38-39.

through the prism of crimes against humanity, one of the key details is "the relationship between the magnitude of the diversion and the underlying vulnerability of the population".[319] Thus, misappropriations of similar dollar amounts by officials in countries with drastically different budgets cannot be treated similarly, as "the magnitude of crimes is measured by the suffering it causes, not by an arbitrary dollar figure".[320] It is undeniable that international criminal prosecution must recognize colossal differences in crimes' circumstances and this very factor limits opportunities for bringing to trial grand corruption cases via the ICC mechanisms. As Kirch-Heim puts it, trying to fit corruption-related crimes in the crimes against humanity framework rather than recognizing them as a standalone international crime "misses the very essence of grand corruption", which "is a different crime that addresses a different mischief".[321] This does not mean though that grand corruption should not be prosecuted as a crime against humanity in cases where corrupt acts meet all the necessary requirements of such a crime and result in great suffering and pain to the civilian population.[322] Rather, it implies that misconduct associated with grand corruption is ultimately about the abuse of power entrusted by people to public officials for the purpose of extracting personal benefits, and that legal misconduct and crime "is consummated irrespective of whether the corrupt acts ultimately cause suffering or not".[323] While the attempts to create opportunities for prosecuting grand corruption as an "other inhumane act" are well-intentioned, they do not address the problem wholly. As Kirch-Heim pursues to demonstrate in his work, there are legitimate grounds for considering grand corruption "an international crime *sui generis"*, and even for bringing it to the level of "an international *jus cogens* crime"[324], however, the *jus cogens* angle of the discussion is outside of the scope of this paper.

[319] Sonja B. Starr, *supra* note 8, p. 1303.
[320] *Ibid*., p. 1304.
[321] Claudio Kirch-Heim, *supra* note 29, p. 38.
[322] *Ibid*.
[323] *Ibid*.
[324] *Ibid.*, pp. 38-40.

5. DISCUSSION OF RESULTS

This section aims to discuss the results obtained when answering the research questions posed in this paper.

When it comes to the human rights approach to grand corruption, the implications of the analysis carried out in this paper can be significant to various parties in the anti-corruption movement, encompassing scholars, attorneys, and experts. The paper offers a comprehensive overview of the current state of knowledge on the relation of grand corruption and human rights, especially accentuating its attention on the underrepresented suggestion of elevating the right for a corruption free society to the status of a basic human right. Thus, the paper may serve as a valuable resource for the academic community and legal professionals as it summarises areas of unanimity while also identifying research gaps, such as the need for consensus on the most efficient way to treat corruption within the human rights framework, that warrant further exploration and deliberation.

The implications of this research concerning the international criminal law approach to grand corruption are relevant for several groups, among which are academics, legal professionals and practitioners, non-governmental organisations, and, in more practical terms, for victims of high-level corruption. Firstly, for the academic community this paper presents a thorough summary of the existing body of knowledge related to grand corruption outlining areas where there is academic consensus and laying out areas for further research and discussion. For legal professionals and practitioners, especially those involved in prosecutions on the international tribunals' level, this paper may be a valuable piece of evidence that the time has come for the legal doctrine to evolve and accommodate the need for opportunities to prosecute grand corruption. Though this paper presents academic opinions that the Rome Statute may be considered to provide such an opportunity already now, it should be clearly stated that this does not fully address the problem of bringing misappropriation cases to trial. Atrocious cases of grand corruption may fall under the definition of "crimes against humanity" and should then be prosecuted as such, though it may not always be the case.[325] As rightly outlined by Kirch-Heim, in spoliation cases, "the main charge is that a public official abused her authority for personal gain", "irrespective of whether the corrupt acts ultimately cause suffering or not".[326] For the

[325] Claudio Kirch-Heim, *supra* note 29, p. 38.
[326] *Ibid*.

victims of indigenous spoliation and those representing their legal interests, this paper may be a good starting point for understanding prosecution options for grand corruption already available in the international legal framework. As the Office of the Prosecutor (OTP) of the ICC already engages in financial investigations as part of their case work, with part of the goals being to "to trace, freeze and seize assets of the accused", ICC investigators can be considered well-equipped to take on grand corruption cases. More than that, scholars emphasise that despite the complexity of potential prosecution of grand corruption cases at the ICC, it "offers the unique option for victims of crimes to participate in the proceedings with the possibility to receive reparations".[327] For non-governmental organisations this paper may be a relevant source for grasping the direction in which their energy should be directed if their goal is to bring about change to positive law to integrate the essence of spoliation crimes.

5.1. Limitations and suggestions for further research

The purpose of this section is to elucidate the restrictions of this paper and propose potential questions for future exploration.

Firstly, it is noteworthy to mention that most of the paper is applicable for corruption cases of relatively significant scale only. The relativity of the corruption scale is especially substantial for the analysis carried out to answer the third research question. While any corrupt act is a legal wrongdoing which deserves to be prosecuted, only those involving misappropriations of extreme amounts (relative to the total state budget) and affecting especially vulnerable populations have the potential to amount to crimes against humanity and meet the elements of crime analysed in detail in Part 4 of the paper.

The international legal framework would benefit if academic efforts related to grand corruption continued both in the human rights field and in that of international criminal law. With regard to the human rights area, it is important for academics and legal practitioners to concentrate on strengthening their cooperation with the goal of figuring out the most efficient way of treating grand corruption within the international human rights framework. This paper only confirms the widely-acknowledged fact that kleptocracy seriously affects the way people may enjoy basic human rights globally. While the emphasis of the paper is on the arguments in favour of the establishment of a new standalone right to freedom from corruption, it is noteworthy to recognize that the scholarly community is far from consensus on whether this

[327] Bärbel Schmidt, *supra* note 105, p. 55.

would be the most sensible way to treat grand corruption. However, such a consensus needs to be reached for the sake of improving the lives of corruption victims, preventing kleptocratic regimes from turning more civilians into injured parties, expanding human rights obligations and encouraging better governance and more just public offices. Finding the most appropriate approach to grand corruption from the perspective of human right law should, thus, remain the focus of further research in the field as well as public debate.

When it comes to criminal law, scholars may consider for further research issues such as potential measures to be undertaken by the academic and practitioners' community for grand corruption to become recognized as crime *sui generis*, ways to encourage states to acknowledge the importance and urgency of addressing kleptocracy as an international crime and obtaining political consensus on the necessity of establishing effective enforcement and compensation mechanisms for victims of this crime.

6. CONCLUSION

Corruption as a social and economic phenomenon has been part of our society for as long as humankind exists, however, it has only relatively recently gained international attention for the atrocious effect it may have on its victims. Within the last three decades significant progress has been made in making the global fight against corruption an important facet of contemporary international law and acknowledging corruption as a universal issue that causes poverty and threatens the rule of law and the foundation of a just state. However, the topic of the peculiar relation between human rights and corruption still remains one of the least-researched. While prior opinions related to grand corruption may have frequently considered it an unavoidable given, shaped by the culture of the society where it occurs, the thought presently prevailing among scholars tends to treat grand corruption as a situation resulting in often extreme violations of human rights. Such a tendency results in an ongoing debate on how grand corruption crimes should be treated from the perspective of human rights law. Though the dominating idea is to approach corruption-related crimes, including patrimonicide, as a human rights violation, some academics come forward with a suggestion to formulate an autonomous human right to a corruption-free society. As this paper demonstrates, such a claim is not unsound and the motivation for the elevation of the right to freedom from corruption to a standalone privilege rests on such arguments as the principles of natural law and inherent human rights derived from Locke's works, the fundamental values of fair state governance shared across cultures and beliefs, and the motivation to link economic, social and cultural rights to the civil and political rights with the help of the newly established human right. Despite the logical reasoning behind the motivation, the formulation of a new human right is a lengthy process requiring the consent and incitement of many significant parties involved, such as nations and their leaders, academics and legal professionals, as well as human rights tribunals and NGOs' representatives. With an increasing volume of research on the relationship between grand corruption and human rights, the discussion between the above-mentioned parties has definitely been kicked off and the society is impatient to see its results.

Considering the fact that consensus is yet to be reached by the international community on how to best apply the human rights approach to combating corruption, especially grand at scale, it is important to identify currently available opportunities to prosecute corrupt public officials and improve living conditions for victims of corruption-related crimes. The analysis in this paper confirms that the international criminal law framework may offer prosecution

opportunities for grand corruption cases, particularly through the mechanisms of the ICC and the Rome Statute. Academics are in agreement that particularly atrocious cases of grand corruption can be demonstrated to satisfy all the criteria of "other inhumane acts" under the crimes against humanity umbrella. Nevertheless, viewing grand corruption as a crime against humanity has limitations, as it must consider the context of the crime, the vulnerability of the population falling victim to such a crime and the suffering it causes rather than just the dollar amount involved. It is also important to acknowledge investigation complexities and dependence on state cooperation that may pose obstacles to prosecution. Such a limited application potential of the Rome Statute arguably proves that trying to fit acts of corruption in existing legal frameworks misses the essence of the crime. The abuse of power and national resources by public officials is a wrongdoing per se worth prosecution, regardless whether it meets the criteria of other already recognized sets of crimes such as crimes against humanity. Grand corruption itself is a distinctive international crime, an act which undermines fundamental rights and human values, thus, efforts of the global community to combat should not stop until a universal and practically applicable solution to protect, prevent and prosecute related cases is not instituted.

7. BIBLIOGRAPHY

Primary sources

Prosecutor v. Milomir Stakic (Appeal Judgement), IT-97-24-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 March 2006. Available at: https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-97-24-A/JUD154R0000147379.TIF. Accessed May 11, 2023.

Prosecutor v. Miroslav Kvocka et al. (Appeal Judgement), IT-98-30/1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 28 February 2005, available at: https://www.refworld.org/cases,ICTY,48ad2b772.html, accessed May 11, 2023.

International Criminal Court, *Rome Statute of the International Criminal Court (last amended 2011)*, 17 July 1998. Available at: https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf. Accessed February 27, 2023.

International Criminal Court, *Elements of Crimes*, 2011, ISBN No. 92-9227-232-2. Available at: https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf. Accessed April 27, 2023.

International Covenant on Civil and Political Rights. Adopted December 16, 1966. G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966). entered into force March 23, 1976. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. Accessed May 1, 2023.

International Covenant on Economic, Social and Cultural Rights. Adopted December 16, 1966. G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). Entered into force January 3, 1976. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights. Accessed May 1, 2023.

The Statute of the International Criminal Tribunal for the former Yugoslavia. U.N. Doc. S/RES/1877 (2009). https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf. Accessed May 11, 2023.

The Statute of the International Criminal Tribunal for Rwanda. U.N. Doc. S/RES/1901 (2009). Available at: https://www.legal-tools.org/doc/8732d6/pdf. Accessed May 11, 2023.

United Nations General Assembly, *Declaration on the Right to Development : resolution / adopted by the General Assembly*, 4 December 1986, A/RES/41/128. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development#:~:text=The%20right%20to%20development%20is%20an%20inalienable%20human%20right%20by,freedoms%20can%20be%20fully%20realized. Accessed May 11, 2023.

United Nations General Assembly. *Resolution 1803 (XVII) on Permanent Sovereignty Over Natural Resources*. New York: United Nations, 1962. Available at: https://digitallibrary.un.org/record/204587?ln=en. Accessed May 11, 2023.

United Nations General Assembly. *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights. Accessed May 11, 2023.

United Nations General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action. Accessed May 11, 2023.

Secondary sources

Achim, Monica Violeta, and Sorin Nicolae Borlea. *Economic and Financial Crime: Corruption, Shadow Economy, and Money Laundering*. Springer , 2020.

Arafa, Mohamed A.. "Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?" 18 Golden Gate Ann. Surv. Int'l & Comp. L. 171 (Spring 2012). Available at: https://ssrn.com/abstract=2149982. Accessed May 3, 2023.

Arenal, Libia. Economic Crimes against Humanity: a legal challenge for the positive regulation of crimes against humanity in the Article 7 of the Rome Statute, *The Spanish Yearbook of International Law 24* (2020): 241-271.

Bantekas, Ilias. “Corruption as an International Crime and Crime against Humanity: An Outline of Supplementary Criminal Justice Policies.” *Journal of International Criminal Justice* 4, no. 3 (2006): 466–84. https://doi.org/10.1093/jicj/mql025.

Bassiouni, M. Cherif. *Crimes against Humanity in International Criminal Law*. The Hague: Kluwer Law Internat., 1999. https://books.google.lv/books?id=MbiedpEFzbYC&printsec=frontcover&hl=lv&source=gbs_ge_summary_r&cad=0#v=onepage&q=policy%20element&f=false.

"Chapter Three: Monitoring the Convention and the Optional Protocol." United Nations. United Nations. Accessed March 24, 2023. https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-three-monitoring-the-convention-and-the-optional-protocol-3.html.

Chile Eboe-Osuji, Kleptocracy: A Desired Subject of International Criminal Law That is in Dire Need of Prosecution by Universal Jurisdiction, in: E. Ankumah/E. Kwakwa, *African Perspectives on International Criminal Justice*, 121-132 (2005).

Corruption and Human Rights: Making the Connection. Versoix: International Council on Human Rights Policy, 2009. https://assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf.

Davidsson, Elias. "Economic Oppression as an International Wrong or as Crime against Humanity." *Netherlands Quarterly of Human Rights* 23, no. 2 (2005): 173–212. https://doi.org/10.1177/016934410502300202.

Kamali, Mohammad Hashim, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).

Kevin E Davis, Corruption as a Violation of International Human Rights: A Reply to Anne Peters, *European Journal of International Law* 29, no. 4, (2018), Pages 1289–1296, https://doi.org/10.1093/ejil/chy074.

Kinley, David. "A New Human Right to Freedom from Corruption." *SSRN Electronic Journal*, February 2014. https://doi.org/10.2139/ssrn.2393205.

Kirch-Heim, Claudio. "Grand Corruption – A New Crime under International Law?" *Bucerius Law Journal* 1 (2009): 35–40. http://law-journal.de/wp-content/uploads/2013/09/BLJ_Ausgabe_2009_01.pdf.

Kofele-Kale, Ndiva. "Patrimonicide: The International Economic Crime of Indigenous Spoliation." *Vanderbilt Journal of Transnational Law* 28, no. 1 (January 1995): 45–118. https://doi.org/10.4324/9781315092591-7.

Kofele-Kale, Ndiva. *The international law of responsibility for economic crime: holding state officials individually liable for acts of fraudulent enrichment.* Hampshire: Ashgate Publishing, 2006.

Kofele-Kale, Ndiva. "The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law." *The International Lawyer* 34, no. 1 (2000): 149–78. http://www.jstor.org/stable/40707514.

Li, Zhuoyao. *Political Liberalism, Confucianism, and the Future of Democracy in East Asia*. Springer International Publishing, 2020.

Locke, John. *The Two Treatises of Civil Government.* (Hollis ed.). London: A. Millar et al., 1689. Available at: https://oll.libertyfund.org/title/hollis-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_207. Accessed May 1, 2023.

Naim, Moisés. "The Corruption Eruption." *Trends in Organized Crime* 2, no. 4 (June 1997): 60–60. https://doi.org/10.1007/s12117-997-1082-3.

Naomi Roht-Arriaza, Santiago Martínez, Grand Corruption and the International Criminal Court in the 'Venezuela Situation', *Journal of International Criminal Justice* 17, no. 5, (2019): 1057–1082, https://doi.org/10.1093/jicj/mqz038.

Olaniyan, Kolawole. "Towards a Human Rights Approach to Corruption." In Andreas von Arnauld, Kerstin von der Decken, and Mart Susi, eds. "The Right to Freedom from Corruption." Part. In *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, 515–38. Cambridge: Cambridge University Press, 2020.

Organisation for Economic Co-operation and Development, OECD. *Corruption: A Glossary of International Standards in Criminal Law*. OECD Publications, 2008.

Pasculli, Lorenzo, and Nicholas Ryder. *Corruption in the Global Era: Causes, Sources and Forms of Manifestation*. New York, NY: Routledge, 2019.

Paul D. Ocheje, "Refocusing International Law on the Quest for Accountability in Africa: The Case Against the Other Impunity," Leiden Journal of International Law 15, no. 4 (December 2002): 749-780

Peters, Anne. *Corruption and Human Rights*. Basel Institute on Governance, 2015, https://www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20151.pdf

Peters, Anne. "Corruption as a Violation of International Human Rights." *European Journal of International Law* 29, no. 4 (November 2018): 1251–87.

https://doi.org/10.1093/ejil/chy070. https://academic.oup.com/ejil/article/29/4/1251/5320164.

Ramasastry, Anita. “Is There a Right to Be Free from Corruption?” *UC Davis Law Review* 49, no. 2 (2015): 703–39. https://lawreview.law.ucdavis.edu/issues/49/2/symposium/49-2_Ramasastry.pdf

Reisman, W. Michael. “Harnessing International Law to Restrain and Recapture Indigenous Spoliations.” *American Journal of International Law* 83, no. 1 (1989): 56–59. https://doi.org/10.2307/2202791.

Rose-Ackerman, Susan. “Democracy and ‘Grand’ Corruption.” *International Social Science Journal* 48, no. 149 (1996): 365–80. https://doi.org/10.1111/1468-2451.00038. https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2451.00038

Schmidt, Bärbel. “The Fight against Impunity for Grand Corruption – Prosecuting Kleptocracy as an International Crime.” In *The European Conference on Politics, Economics and Law 2015: Official Conference Proceedings*, 49–60. Brighton, 2015. https://papers.iafor.org/wp-content/uploads/papers/ecpel2015/ECPEL2015_15913.pdf

Sharman, J. C. *The Despot's Guide to Wealth Management: On the International Campaign Against Grand Corruption*. Ithaca: Cornell University Press, 2017.

Skogly, S.I. “Crimes against Humanity - Revisited: Is There a Role for Economic and Social Rights?” *The International Journal of Human Rights* 5, no. 1 (2001): 58–80. https://doi.org/10.1080/714003700.

Snyder, Hannah. “Literature review as a research methodology: An overview and guidelines.” *Journal of Business Research* 104 (2019): 333-339.

Spalding, Andrew B. “Anti-Corruption: Recaptured and Reframed.” In Andreas von Arnauld, Kerstin von der Decken, and Mart Susi, eds. “The Right to Freedom from Corruption.” Part. In *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, 515–38. Cambridge: Cambridge University Press, 2020.

Spalding, Andrew B. “Corruption, Corporations, and the New Human Right.” *Washington University Law Review* 91, no. 6, (2014): 1365-1428, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6100&context=law_lawreview.

Starr, Sonja B. “Extraordinary Crimes at Ordinary Times: International Justice Beyond Crisis Situations.” Northwestern University Law Review 101, no. 3 (2007): 1257–1314.

Webster's II New Riverside Dictionary. Boston: Houghton Mifflin Co., 1996.

Wolf, Mark L. "The World Needs an International Anti-Corruption Court." *Daedalus* 147, no. 3 (2018): 144–56. https://doi.org/10.1162/daed_a_00507.