

UNDERSTANDING THE INTERNATIONAL  
CRIMINAL LAW OF TOMORROW  
WHEN SERIOUS AND WIDESPREAD  
CORRUPTION THAT VIOLATES HUMAN RIGHTS  
SHOULD BE SEEN AS CRIMES AGAINST  
HUMANITY AT THE INTERNATIONAL LEVEL



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**Abstract**

It is recognised that challenges for international criminal law ‘go far beyond armed conflict’.<sup>1</sup> The international community provided the legal answer by creating a crime that protects against serious, widespread and long-term violations of human rights committed by a variety of actions and attacks and that threaten the human dignity of individuals and humanity as a whole – crimes against humanity.<sup>2</sup> Acts considered crimes against humanity are capable of long-term and widespread human rights infringement, thereby endangering the peace, security and well-being of the world. The category of

- 1 See more in Engelhart & Roksandić, 2021. The research conducted by this author for this joint article and the conclusions thereof are among the main sources for this article. The author is using both structure and text similar to that used in this joint paper. The main ideas concerning the prosecution of serious economic crimes come from a PhD thesis, later published as a book: Roksandić Vidlička, 2017.
- 2 For the origin of the term, see in Sands, 2017.

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Sunčana Roksandić (2025) ‘Understanding the International Criminal Law of Tomorrow. When Serious and Widespread Corruption that Violates Human Rights Should Be Seen as Crimes Against Humanity at the International Level’. In: Nóra Béres (ed.) *The ICC at 25: Lessons Learnt*, pp. 261–278. Miskolc–Budapest, Central European Academic Publishing.

[https://doi.org/10.54237/profnet.2025.nbicc\\_12](https://doi.org/10.54237/profnet.2025.nbicc_12)

crimes against humanity empowers the international community with a tool to respond to the gravest violations of human rights.<sup>3</sup>

However, of particular global concern, according to the author, should be that serious economic crimes (systematic and large-scale corruption) and deprivation of essential medicine and health care, as well as environmental crimes<sup>4</sup> are not yet seen as crimes against humanity although elements of Article 7(1) (k) of the International Criminal Court's Statute offer the possibility of such an interpretation. Many claim that economic and social rights have often been neglected in terms of the protection offered by international criminal law.<sup>5</sup>

In this article,<sup>6</sup> the author builds upon her previous research and texts which are used throughout this contribution, and provides, primarily for the scientific and expert community of Central European countries, her main arguments already published *in extenso*. The author is of the opinion that construction of crimes against humanity in today's realities should be discussed more (with pro and contra arguments) in Central Europe. The conference *The ICC at 25: Lessons Learnt, Might Have Been Learnt and Unlearnt* provided a platform for the exchange of ideas among scholars and experts in Central Europe. The author was invited to present her research to this conference, thereby opening up the topic for the discussion in the region.

This contribution provides key legal arguments in a concise manner for the international criminalisation of serious and widespread crimes involving corruption as crimes against humanity.

**Keywords:** Economic crimes, serious and widespread corruption, UNCAC, International Criminal Court (ICC), crimes against humanity

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## 1. Main idea<sup>7</sup>

As emphasised almost in all international criminal law textbooks,<sup>8</sup> and repeated in Engelhart & Roksandić, international criminal law has concentrated on large-scale atrocities against human beings in the last decades, resulting in an essential codification in the Statute of the International Criminal Court (hereinafter: ICCSt).<sup>9</sup> The

3 Roksandić Vidlička, 2020, pp. 141–168.

4 For this argument, see Engelhart & Roksandić, 2021.

5 See Schmid, 2016, p. 22.

6 See footnote 1.

7 Based on Engelhart & Roksandić, 2021.

8 Ibid., p. 261.

9 The Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998 as corrected and amended.

category of crimes against humanity empowers the international community with a tool to respond to the gravest violations of human rights. However, many (including the author) claim that in comparison to civil and political rights, economic and social rights have often been neglected in terms of the protection offered by international criminal law, particularly through the understanding and existing interpretation of crimes against humanity. Many scholars, NGOs and states are aware of the ICC's downsides, but also its advantages: 'the ICC will not put an end to the atrocities which continue to shock the conscience of humanity. However, with the support, it can deter some of the worst crimes and help uphold stability and the rule of law'.<sup>10</sup>

Other serious threats to the international community, like systemic corruption or environmental crimes that lead to large-scale violations of human rights, have not yet been the focus of international criminal law, although their impact on societies, on individuals and (especially in the case of environmental damage) on all mankind is no less grave.<sup>11</sup> The same holds true for other violations of social rights, like systemic deprivation of access to essential medicine and medical care. Human rights are indivisible.<sup>12</sup>

Serious environmental and economic crimes, including crimes involving corruption as proscribed in the UN Convention against Corruption, violate all human rights, including economic, social and environmental rights.<sup>13</sup>

The main theme of this contribution is that the shift in global politics, understanding the notion of security as human security and the existence of widely accepted and ratified international instruments such as the UN Convention against Corruption (hereinafter: UNCAC) and UN Convention Against Transnational Organized Crimes (hereinafter: UNTOC), together with the development of human rights as indivisible rights, calls for a redefinition and/or shift in understanding and interpreting provisions of crimes against humanity to include serious crimes involving corruption as inhumane acts of a similar character, intentionally causing great suffering or serious injury to body or to mental or physical health, as defined in Article 7(1)k of the Statute of the International Criminal Court.

Human rights law has developed and economic, social and cultural rights are widely recognised, as well its indivisibility.<sup>14</sup> Crimes involving corruption are listed in the UNCAC<sup>15</sup> and the importance of the UN Guiding Principles on Business and Human Rights should also not be underestimated.<sup>16</sup> In addition to these, organised

10 Kirsch, 2008.

11 Roksandić Vidlička, 2017, as cited in Engelhart & Roksandić, 2021.

12 Laplante, 2007.

13 See more in Engelhart & Roksandić, 2021, and in Ziccardi Capaldo, 2018.

14 See generally Vasilka, 2021.

15 UN Convention against Corruption, adopted by the UN General Assembly: 31 October 2003, by Resolution 58/4 (entry into force 14 December 2005), 190 State Parties <https://www.unodc.org/unodc/en/corruption/uncac.html>.

16 The UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2021.

crime – which could also serve as an enabler and facilitator of core crimes – is addressed in the UNTOC.<sup>17</sup> However, there is no overall international criminal framework for the most serious of such crimes.<sup>18</sup>

Recommendations 46-47 of the Oslo Outcome Statement on Corruption involving Vast Quantities of Assets<sup>19</sup> (14 June 2019) call on experts to conduct analysis and explore ideas that contribute to a solution of these issues, for example, the establishment of regional mechanisms for prosecution, or international mechanisms – such as an international anti-corruption court<sup>20</sup> with respect for the sovereignty of states; the establishment of an international special rapporteur for anti-corruption; the development of a protocol to the UNCAC on Corruption involving Vast Quantities of Assets (hereinafter: VQA) and exploring the possibility of extending the jurisdiction of the ICC to include corruption involving VQA.<sup>21</sup>

As underlined by Ryngaert in 2022, ‘Momentum is building globally for the establishment of an international anti-corruption court, which would have jurisdiction over acts of grand corruption and fill the domestic accountability vacuum in kleptocratic regimes’.<sup>22</sup> However, this author is of the opinion that current and existing legal mechanisms should be strengthened and existing international courts should be used also to prosecute serious and widespread crimes involving corruption. In addition, and on both a national and an international level, crimes against humanity with its open clause ‘other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health’ should be interpreted to include crimes involving corruption as defined by the UNCAC, as well as ecocide and other serious violations of economic and social rights, when they reach the needed threshold, for example, systemic deprivation of access to essential medicine and medical care. “Ecocide” could be defined as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.<sup>23</sup>

17 United Nations Convention against Transnational Organized Crime and the Protocols, adopted by the UN General Assembly on 15 November 2000, by Resolution 55/23, entry into force 29 September 2003. State Parties: 190, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

18 Roksandić Vidlička, 2017.

19 Oslo Statement on Corruption involving Vast Quantities of Assets, 14 June 2019, Oslo, Norway.

20 Wolf, 2014. pp. 1–15.

21 Emphasis by the author.

22 Briefing - Ryngaert, C. 2022. This Briefing identifies key issues which the European Parliament should assess and consider when forming its position. However, as emphasised by Ryngaert: ‘irrespective of its support for an International Anti-Corruption Court, the European Parliament may also want to strengthen other mechanisms enhancing legal accountability, such as existing international courts or extraterritorial jurisdiction. It may also continue to promote more indirect tools for advancing the fight against impunity such as anti-corruption clauses in trade agreements, targeted sanctions, and global asset recovery’.

23 Stop Ecocide International, The independent expert panel for the legal definition of ecocide <https://www.stopecocide.earth/legal-definition>.

## 2. Understanding corruption as a threat to stability and development

As emphasised in Engelhart & Roksandić:<sup>24</sup>

Responses to globalisation – especially those following the COVID-19 pandemic – that stressed the importance of protecting health rights, are having a significant effect on international law and institutions that seek to protect economic and social human rights,<sup>25</sup> human security and human dignity.<sup>26</sup> It is also clear today that as well as being driven by ideology, armed conflicts are largely driven by the potential for financial enrichment.<sup>27</sup> Hence, economic violence occurs in every conflict. For Sharp, the notion of economic violence presents the discourse on violations occurring in transitional periods. Economic violence within the transitional justice discourse<sup>28</sup> includes, but is not limited to, violations of economic and social rights, corruption and the plundering of natural resources.<sup>29</sup> Policies and practices in the field of transitional justice demonstrate that corruption can lead to conflict as a result of the illegal exploitation of natural resources and other forms of organised crime.<sup>30</sup> These destabilising activities can both cause and sustain conflict. They often continue to be present after a conflict formally ends, preventing the attainment of sustainable peace and possibly even leading to the conflict being resumed.<sup>31</sup> It is also widely recognised today that crimes against humanity can be committed both during an armed conflict and also in peacetime.

When addressing this topic, it is also crucial to emphasise, as the author has done in her previous individual and joint publications, that addressing corruption and bribery in all their forms and in a significant way is one of the areas targeted by the 2030 Sustainable Development Goal (SDG) 16<sup>32</sup> (on Peace, Justice and Strong Institutions). In the same vein, the recovery of assets stolen through corruption remains high on the global agenda and is mentioned in SDG 16 (16.4). The SDG are a call for action by all countries – poor, rich and middle-income – to promote prosperity while protecting the planet. They recognise that ending poverty must go hand-in-hand with strategies that build economic growth and address a range of social needs,

24 Englehart & Roksandić, 2021, including sources.

25 See for example Shelton, 2002.

26 See for example regarding the concept of human security, Human Development Report Matwijkiw & Matwijkiw, 2017.

27 See for example on this topic, Brunnschweiler & Bulte, 2009; Wisner, 2018.

28 Sharp, 2014, pp. 2–3.

29 Ibid.

30 See more on the topic in UNODC, Anti-corruption module series, particularly Module 11: Corruption, peace and security.

31 See Rose-Ackerman, 2008.

32 Sustainable Development Goals (SDG) for 2030.

including education, health, social protection and job opportunities, while tackling climate change and ensuring protection of the environment.<sup>33</sup>

Although the connection between corruption, peace and security seems obvious today, it took the international community a while to achieve a global political consensus on this issue.<sup>34</sup> At the United Nations Security Council's First-Ever Meeting on Corruption in 2018,<sup>35</sup> United Nations Secretary-General António Guterres emphasised that 'corruption breeds disillusion with government and governance and is often at the root of political dysfunction and social disunity'. He also noted that corruption is closely intertwined with other forms of instability, such as illicit trafficking in arms, drugs and people, terrorism and violent extremism.<sup>36</sup> In-depth research on corruption conducted by the Global Initiative against Transnational Organized Crime in the Western Balkans<sup>37</sup> confirmed that organised corruption flourishes and sometimes includes elements of state capture.<sup>38</sup>

Also, as proclaimed by the International Chamber of Commerce, the new Rules on Combating Corruption (2023) constitute the cornerstone of the Chamber of Commerce's anti-corruption work, serving both as a tool for self-regulation by business and as a roadmap for governments in their efforts to fight extortion and bribery.<sup>39</sup>

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### 3. Defining crimes involving corruption and following the principle of legality

There is no universally accepted definition of crimes involving corruption or international economic crimes,<sup>40</sup> but it also leaves room for choosing the most appropriate definitions of economic offence(s) in correspondence with the contemporary world order, to serve as the core international offence standards that at the same time protect human rights, primarily ESC rights as well as 'peace, security and the well-being of the world'.<sup>41</sup>

33 Ibid., as cited in Engelhart & Roksandić. For more, particularly concerning policy making, see Kempe, 2020.

34 Ibid.

35 UN Meetings Coverage and Press Releases, UN Security Council 8346th meeting, 10 September 2018 (29 September 2021, 2:40 PM)

36 Ibid.

37 Zvekić & Roksandić, 2021.

38 Ibid, Part 3.

39 International Chamber of Commerce, *The ICC Rules on Combating Corruption*, These Rules are intended as a way for businesses to self-regulate against the background of applicable national law and key international legal instruments.

40 Particularly for economic crimes or international economic criminal law, see in detail in Roksandić Vidlička, 2017. Also see Jessberger, Kaleck & Singelstein 2015.

41 Engelhart & Roksandić 2021.

Although corruption is ‘a complex and contested concept’,<sup>42</sup> criminal offences falling into this category are, in the author’s opinion, easier to define and at the same time follow the principle of legality which is the main principle in (international) criminal law, particularly in the period following World War II and the Cold War.

As underlined in Roksandić Vidlička (2017),<sup>43</sup> in dealing with the principle of legality in the landmark case of *C.R. v. The United Kingdom*,<sup>44</sup> the ECtHR specified that Article 7 ‘cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen’. As Schabas points out<sup>45</sup> for the application of Article 7(1), the ECtHR often seems to be inspired by the same approach adopted by the International Military Tribunal and endorsed by Kelsen.<sup>46</sup> One result of this is the rejection of pure legal positivism in favour of “reasonably foreseeable” and “accessible” tests. The principle of *nullum crimen sine lege* does not bar the development of the law through clarification or interpretation – ‘provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen’.<sup>47</sup> Therefore, it is the “very essence” of the offence that governs.<sup>48</sup>

The UNCAC defines and criminalises various forms of corruption, including bribery (in both the public and private sectors), embezzlement, trading in influence, illicit enrichment, money laundering and the abuse of functions. These different forms of corruption have been accepted and criminalised by most states, given the almost universal acceptance of the UNCAC.<sup>49</sup> This Convention is the only legally binding universal anti-corruption instrument, a fact that has its own legal value and meaning.<sup>50</sup> However,<sup>51</sup> of all the offences in the UNCAC, state parties are obliged to establish<sup>52</sup> the following as criminal offences: active and passive bribery of national public officials (Article 15), active bribery of foreign public officials and officials of public international organisations (Article 16, para. 1), embezzlement, misappropriation or other diversion by a public official (Article 17), laundering of the proceeds of crime (Article 23), obstruction of justice (Article 25) and participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with the Convention (Article 27, para. 1).

42 Ibid. See more on corruption in the UNODC, Module 1 of the E4J Anti-Corruption Series.

43 This paragraph is cited from Roksandić Vidlička, 2017, pp. 133–134.

44 European Court of Human Rights, *C.R. v. The United Kingdom*, Series A, No. 335-B, para. 41.

45 Schabas, 2011.

46 Kelsen, 1947. For an endorsement of Kelsen’s approach, see the reasons given by Justice Peter Cory in *R. v. Finta* (1994), Supreme Court Reports 701, at 874 (all cited in Schabas, Ibid., p. 615).

47 Judgment *C.R. 22 November 1995*, A. 335-C, para. 34.

48 This paragraph is cited from Roksandić Vidlička, 2017, p. 134.

49 As of January 2024, there are 190 parties to the UNCAC.

50 Roksandić Vidlička, 2017, at 62.

51 Also emphasised in Engelhart & Roksandić, 2021.

52 “shall”

Concerning the bribery of foreign public officials, the main legal source, although limited in terms of state parties but important in its influence and scope, is the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>53</sup>

Therefore, in the author's opinion, the principle of legality also requires that the protective aim of Article 7 of the ICCSt be clearly identified. The *Rechtsgut* in need of protection by prosecuting crimes involving grand corruption<sup>54</sup> on an international level is the 'security, peace and well-being of the world', as given in the preamble to the ICCSt.

If such an understanding is widely accepted, serious and widespread crimes of corruption could be interpreted as 'other inhuman acts' (Article 7(1)(k) ICCSt) under crimes against humanity if the chapeau element is fulfilled.

Crimes against humanity are committed when one of the acts<sup>55</sup> listed in Article 7 of the ICCSt is committed as part of a widespread or systematic deliberate attack directed against any civilian population. Beside the explicitly defined acts, crimes against humanity can also be subsumed under 'other inhumane acts of similar character intentionally causing great suffering, or serious injury to body, mental or physical health', as described in Article 7 para. 1(k) of the ICCSt. According to the ICC's Elements of Crime, "Attack directed against a civilian population" is understood to mean a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the ICCSt against any civilian population, pursuant to or in furtherance of a state or organisational policy to commit such attack. The acts need not constitute a military attack. It is understood that "policy to commit such attack" requires that the state or organisation actively promote or encourage such an attack against a civilian population.<sup>56</sup> A policy which has a civilian population as the object of the attack would be implemented by state or organisational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organisational action.<sup>57</sup> Also, in the Pre-Trial Chamber Decision in the Bemba Gombo case<sup>58</sup> it has

53 The Convention entered in force in February 1999. All OECD and seven non-OECD countries were signatories.

54 For the definition, see also Transparency International's definition of grand corruption: <https://www.transparency.org/en/our-priorities/grand-corruption>

55 Murder, extermination, deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity; 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 recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime.

56 See also, as an example, the definition of the attack in Article 7(2)(a): the attack need not be violent; see the case law of the ICTR, e. g. in the Prosecutor v. Akayesu 581.

57 See fn.6 of Article 7., Elements of crime.

58 Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the Prosecutor against Jean-Pierre Bemba Gombo, Pre-Trial Chamber II | 15 June 2009 | ICC-01/05-01/08-424.



been clearly confirmed as well: Concerning the definition of the term “attack”, the Elements of Crimes clarify that it does not necessarily equate with a “military attack”. Rather, the term refers to a campaign or operation carried out against the civilian population, the appropriate terminology used in article 7(2)(a) of the Statute being a “course of conduct”. The commission of the acts referred to in article 7(1) of the Statute constitute the “attack” itself and, beside the commission of the acts, no additional requirement for the existence of an “attack” should be proven (para. 75).

Therefore, I argue that, alongside environmental<sup>59</sup> crimes, serious crimes of corruption, and particularly corruption offences as described in the UNCAC, find their place in Article 7 para. 1(k) as ‘other inhumane acts’<sup>60</sup> following Article 21 of the ICCSt and in accordance with the principle of legality (Articles 22 and 23 of the ICCSt). The phrase “intentionally causing great suffering or serious injury to body or to mental or physical health” is an effort to define this paragraph in a way that can still be considered consistent with the principle of *nullum crimen sine lege*.<sup>61</sup> As underlined by Broomhall, ‘the requirement of strict construction of criminal statutes is said to form part of the *nullum crimen principle*. To that extent, its express inclusion here simply reassures States as to the moderation with which the Court will interpret its Statute’.<sup>62</sup>

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#### 4. Art. 21 of the Statute of the International Criminal Court – Legal basis for interpreting Art. 7 of the ICCSt

The process of connecting narratives of international criminal law with discourses on international human rights law (based on Article 21 of the ICCSt) aiming to protect economic and social rights is still ongoing. Article 21 of the ICCSt gives the applicable law for the interpretation of the provisions of the ICCSt and reads as follows:

*1. The Court shall apply:*

*(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;*

*(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;*

*(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws*

<sup>59</sup> See here also, as an example, Lambert, 2017.

<sup>60</sup> See also Starr, 2007; Bantekas, 2006.

<sup>61</sup> Boot, 2008.

<sup>62</sup> Broomhall, 2008. p. 723.

*of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognised norms and standards.*

*2. The Court may apply principles and rules of law as interpreted in its previous decisions.*

*3. The application and interpretation of law pursuant to this article must be consistent with internationally recognised human rights, and be without any adverse distinction founded on grounds such as gender as defined in Article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.*

Clearly, the link between transnational and core crimes – between UNCAC and UNTOC crimes and core international crimes – exists.<sup>63</sup>

Therefore, Article 21 of the ICCSt should serve as the legal basis for understanding that serious and widespread crimes of corruption should be interpreted as ‘other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health’.

As noted in Engelhart & Roksandić, neither the current application of the UNCAC, the UNTOC, nor the ICCSt seem to provide the final step that is urgently needed: to effectively prosecute the implied serious environmental and economic crimes, including crimes of corruption, that are systematic and widespread and violate all human rights as international crimes. The lack of universal acceptance of the latter by all relevant stakeholders is striking.

Concerning the ICC, one sign of progress was the Office of the Prosecutor’s (hereinafter: OTP) policy from 2016 which specifically mentions financial crimes.<sup>64</sup> According to the Policy Paper on Case Selection and Prioritization,<sup>65</sup> the Office of the Prosecutor of the ICC will select cases for investigation and prosecution in light of the gravity of the crimes, the degree of responsibility of the alleged perpetrators and the potential charges. The impact of the crimes may be assessed in light of, inter alia, the suffering endured by the victims and their increased vulnerability, the terror subsequently instilled or the social, economic, and environmental damage inflicted on the affected communities.<sup>66</sup> In the same policy paper on case selection and prioritisation, it is added that the Office will give particular consideration to prosecuting ICCSt crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land. Unfortunately, if one wishes to follow its one criteria, it is not enough to only prescribe that the OTP will also seek to cooperate and provide

63 See in particular UNODC Module 11.

64 ICC, The Office of the Prosecutor, *Policy Paper on Case Selection and Prioritization* (September 2016.)

65 Ibid.

66 Para. 44 of the Policy Paper. For case prioritisation criteria, see para. 47 of the Policy. See also Proserpi & Terrosi, 2017.

assistance to states, upon request, to conduct what constitutes a serious crime under national law such as the illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing or the destruction of the environment.<sup>67</sup>

Although this sounds very promising on paper and is in line with the arguments used by the author in the course of her own research, its practical implementation is far from satisfying. Despite over a decade of efforts by legal scholars and NGOs, not a single case has yet been taken in which serious corruption has been treated as a crime against humanity.<sup>68</sup>

It is also important to underline the policy approach used in the EU. As emphasized in Engelhart & Roksandić:

At the EU level,<sup>69</sup> as identified by Ziccardi Capaldo, the European Court of Justice's innovative approach to tax fraud from a human rights perspective (respect for the protection of the basic economic and social rights of the person) in the *Taricco I* judgment could be an opportunity to 'develop a judicial dialogue between international and national courts aimed at strengthening the paradigm of the no-impunity-imprescriptibility of the new criminal jurisdiction centred on the International Criminal Court (ICC)'. The ICC is not formally extending its jurisdiction to financial (economic) crimes, 'but this process has begun'.<sup>70</sup> This approach implies acceptance that the perpetrators of such crimes should not go unpunished.<sup>71</sup>

The question of retroactivity also plays a role when discussing economic crimes. Croatia is an examples of the prosecution of transitional economic crimes and war profiteering. In 2010, Croatia abolished the statute of limitations for transitional economic offences with retroactive effect,<sup>72</sup> based on the justification that these crimes are regarded 'as extremely grave crimes for which it is necessary, right and justified to rule out the application of the statute of limitations, particularly keeping

67 As cited in Englehart & Roksandić.

68 For example, the Socio-Economic Rights and Accountability Project (SERAP) petitioned the Prosecutor of the ICC on 20 April 2012 to investigate '*whether the widespread and systematic corruption over the \$6 billion in the fuel subsidy scheme (...) amounted to inhumane acts which intentionally caused great suffering (or serious injury to body or to mental or physical health)*'. See more in Roksandić Vidlička, 2017, p. 387. The independent Prosecutor of the ICC may proprio motu trigger proceedings, requiring only the concurrence of judges of the ICC Pre-Trial Division (Articles 13 and 15 of the ICCSt).

69 Also see Deutsche Welle, 2021.

70 Ziccardi as cited.

71 As researched in more detail in Engelhart & Roksandić, 2021.

72 Constitutional Amendments Official Gazette 76/2010, Article 31(4) of the Constitution: The statute of limitations shall not apply to the criminal offences of war profiteering, nor any criminal offences perpetrated in the course of economic transformation and privatization and perpetrated during the period of the Homeland War and peaceful reintegration, wartime and during times of clear and present danger to the independence and territorial integrity of the state, as stipulated by law, or those not subject to the statute of limitations under international law. Any gains obtained by these acts or in connection therewith shall be confiscated.

in mind circumstances of perpetration and consequences caused'.<sup>73</sup> According to the explanation given by the legislator for this constitutional amendment, such crimes are considered extremely serious and continue to undermine Croatian society; such crimes – and their offenders – should therefore not be afforded any privilege under the country's statute of limitations. However, on 24 July 2015, almost five years later, the Constitutional Court narrowed the possibility of the retroactive application of such crimes. According to its 2015 decision,<sup>74</sup> the abolition of retroactivity cannot apply to offences for which the statute of limitations has expired before 16 June 2010. This decision significantly limited the ability of the state to prosecute and punish economic offences committed in the transitional period as the statute of limitations had already expired for the great majority of privatisation and ownership transformation crimes committed during the Homeland War.<sup>75</sup>

The case of Croatia concerning transitional economic crimes is evidence that, similarly to core crimes, national states are not always able to and/or are unwilling to prosecute serious and systemic crimes involving corruption. When such crimes have the potential to undermine the peace, security and well-being of the world they could be considered as international crimes.

To conclude, 'with regard to economic (corruption) crimes – with some exceptions in the ICC Statute when a reference is made to plundering and the environment in the context of war crimes<sup>76</sup> – these are to be found in international treaties'.<sup>77</sup>

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## 5. Proposal for the future based on the accepted notion of human security

Core crimes that affect all mankind and are a threat to international peace and security and the well-being of the world are listed in the ICCSt.

When one defines security, a broader concept of human security should be invoked. The concept of human security partly emerged from the UNDP Development Report (1994), which lists seven types of security: economic, food, health, environment, personal, community and political security. With the adoption of the SDGs, the United Nations General Assembly has reaffirmed the notion of human security and the concept of human security has shifted its focus from a state-centred to a

<sup>73</sup> The decision proposal to amend the Constitution of Croatia 2009, 8.

<sup>74</sup> Croatian Constitutional Court, decision No. U-III-4149/2014, 24 July 2015.

<sup>75</sup> Engelhart & Roksandić, 2021. See more in Roksandić Vidlička, 2014.

<sup>76</sup> See Article 8(2)(b)(iv) ICCSt that mentions 'severe damage to the natural environment'. The ICCSt prohibits pillaging under Article 8(2)(b)(xvi) and (e)(v) of the ICCSt, thereby making pillage a war crime in both international and non-international armed conflict. For pillage see Engelhart & Roksandić 2021 for example, Steward, 2011.; Radics & Bruch, 2017.

<sup>77</sup> Engelhart & Roksandić, 2021.

people-centred approach. This puts more of a spotlight on the individual and collective interests of humans. The link between corruption and other crimes where corruption serves as a predicate or subsequent offence, was until recently often neglected in the discussion. To this extent, “grand corruption” is an international concern.<sup>78</sup>

In the author’s opinion, by ignoring serious and widespread crimes of corruption and violations of economic and social rights, international, transnational and national criminal law are no longer responding to the needs of societies and individuals. As already emphasised, it seems at least that world consensus exists that serious and widespread corruption, especially including VQA, does threaten international peace, security and global well-being.

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## 6. Conclusion – Proposals for discussion at the European level

On the international level, the author is of the opinion that one could interpret the ICCSt open-clause provision of Article 7 para. 1(k): ‘other inhumane acts of similar character intentionally causing great suffering, or serious injury to body, mental or physical health’ to include serious violations of economic and social rights by crimes of corruption as defined in the UNCAC. The main aim of this contribution, and the lecture delivered at the conference *The ICC at 25*, was to present this proposal to scholars and experts in Central Europe for reflection and further research.

As also proposed in Engelhart & Roksandić, a possible solution to transnational protection of serious and large-scale corruption with VQA, would be for the EU to endorse and show leadership in proposing a new protocol to the UNCAC and UNTOC that would cover those UNCAC, particularly crimes that are widespread and/or systematic in nature or crimes that include VQA and are transnational in nature. In addition, it might be necessary to think about specifically mentioning such forms of offences involving corruption in the form of a Directive.<sup>79</sup> On a national level, states could introduce a new offence, or introduce an aggravated form of corruption that would punish more severely those UNCAC crimes that are widespread and/or systematic in nature or when they include VQA and are transnational in nature.<sup>80</sup> In any case, the 2023 Eurobarometer survey data on the prevalence of corruption in EU indicates that the majority of Europeans (70% of all EU citizens as surveyed)

78 Engelhart & Roksandić, 2021.

79 Currently, the EU Commission is proposing a Directive on Combating Corruption. In relation to the entire EU anti-corruption package, see in Clementucci & Miekina, 2023.

80 Also proposal from Engelhart & Roksandić, 2021.

perceive corruption as a concrete problem and the last survey shows ‘growing scepticism among Europeans’.<sup>81</sup>

On a national level, states could also start interpreting national provisions of crimes against humanity to include serious violations of economic social rights or widespread corruption, environmental damage and systematic deprivation of health if there is a corresponding open clause to the provision of Article 7 para. 1(k) of the ICCSt: ‘other inhumane acts of similar character intentionally causing great suffering, or serious injury to body’.

An additional solution, as emphasised in Engelhart & Roksandić, could be drafting a new protocol to the UNCAC and UNTOC that would cover those UNCAC, particularly crimes listed that are widespread and/or systematic in nature or those that include VQA and are transnational in nature. In such a step, the strong link between corruption and organised, that was stressed by the 2020 EU security strategy,<sup>82</sup> could be taken up.

The distinction between crimes involving corruption on a national, transnational and international level should be made clear. Among those, crimes involving corruption with devastating consequences for human rights could be those that fall, if other elements are fulfilled, under the jurisdiction of the ICC, even if a special international anti-corruption court is established in the future.

81 For the details, see the European Commission, 2023.

82 European Commission, Communication from the Commission on the EU Security Union Strategy of 24.7.2020, COM (2020) 605 final, 20. See more in Roksandić, 2021.

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