Proposal for International Anti-Corruption Court Seeing “Significant” Momentum

By Carey L. Biron

WASHINGTON, Nov 21 2014 (IPS) - The key U.S. advocate of a proposal to create a multilateral body mandated to investigate allegations of political corruption says the idea is receiving significant interest from civil society, politicians and major business leaders.

Mark L. Wolf, a U.S. federal judge, first proposed the idea of an International Anti-Corruption Court (IACC) in two articles this summer (available here and here). Since that time, Wolf told a recent briefing at the U.S. Congress, the proposal has seen “remarkable progress”.

“There are, of course, challenges to refining the concept of an IACC,” Wolf told a House of Representatives committee last week, “However, since July 2014 significant support has developed for meeting these challenges.”

Wolf reported ongoing meetings with U.S. officials and the World Bank, and reported that the new United Nations high commissioner for human rights, Zeid Ra’ad Hussein, has made the IACC proposal a “personal priority”. Hussein was a key force in the creation of the International Criminal Court, a potential model for the IACC.

This week, Wolf is addressing representatives of major global companies.

“American companies generally want to behave ethically and, in addition, are significantly deterred by the threat of prosecution,” Wolf stated. “They know they would benefit from the more level playing field an IACC would provide.”

Indeed, many say the speed with which the congressional committee moved to hold last week’s briefing is remarkable. It underscores a uniquely broad consensus, both domestically and internationally, around the need to crack down on what is referred to as “grand corruption” – the abuse of political office for personal gain.

Increasingly, this issue is being seen as less one of theft than of basic human rights.

“Today’s briefing seeks to foster an understanding that human rights and anti-corruption efforts are inseparable,” James McGovern, the member of Congress who chaired the committee’s discussions, stated in opening remarks.

“Currently, there is a lack of reference to human rights in international anti-corruption commitments and, conversely, the lack of reference to corruption in international human rights instruments.”

140,000 children a year

Grand corruption is today thought to eat up more than five percent of global gross domestic product. According to estimates cited by Judge Wolf, illicit financial flows out of developing countries are 10 times larger than the foreign assistance those countries receive – losses that have direct human consequences.

“In the developed world we can make the mistake of seeing corruption as merely stealing money, but in fact political corruption kills more people than war and famine put together – 140,000 children a year, by our estimates,” Akaash Maharaj, the executive director of the Global Organization of Parliamentarians Against Corruption (GOPAC), told IPS.

“If a political actor were to kill that many people, there would be very few people who wouldn’t say that we have to deal with this problem. But those who bring about human suffering through political corruption are no less guilty.”

GOPAC, which includes legislators from almost every country, has been mobilising around the need for concerted international action against corruption for the past three years. Maharaj says that his organization’s membership has lost faith in the ability of many countries to deal with political corruption at the national level.

While there are international mechanisms that threaten penalties for egregious human rights abuse, for the most part corruption continues to fall into a nebulous zone of national responsibility. Existing multilateral agreements, including the United Nations Convention Against Corruption, which came into effect in 2003, lack substantive enforcement mechanisms.

Yet while anti-corruption legislation exists in almost every country, advocates note that many of the most corrupt officials are often able to use their wealth and power to subvert these laws. These figures are typically the least likely to face domestic justice, and thus can come to expect impunity.

“There are certain crimes so beyond the pale and beyond state capacity to prosecute that it becomes appropriate for the international community and for international law to become engaged. Certainly the harm grand corruption causes in many developing countries is enormous,” Zorba Milan, a legal adviser with Global Witness, a watchdog group, told IPS.

“An international court would be a good mechanism for trying to translate that momentum into meaningful accountability, which we haven’t really seen so far. It’s important to frame the discussion in terms of ending impunity, and this court would be one piece of that, together with other legal anticorruption tools at the domestic level.”

Under Wolf’s proposal, an IACC would be mandated to investigate and prosecute officials from countries that are unable or unwilling to undertake such actions on their own. He suggests making acceptance of the proposed court’s jurisdiction a pre-condition for membership under the Convention Against Corruption or at the World Trade Organisation, or for obtaining loans from multilateral banks.

Inevitable, unclear action

The global discussion today is increasingly conducive to some sort of concerted global action against political corruption. In part, this trend is driven by strengthened concern around the effects that tax evasion is having on public coffers in both developed and developing countries.

“Unquestionably, there is today more momentum and awareness on the issue of grand corruption, and that’s the major reason these issues are rising on the international agenda,” Milan says.

GOPAC’s Maharaj agrees. “I’m struck by the extraordinary level of consensus across the world,” he says. “This is absolutely inevitable. It’s not a matter of if, but when.”
Exactly what should be done about the issue, however, remains highly contentious. There are multiple potential options, after all, with an international court being just one.

Others include expanding the purview of the International Criminal Court or other regional human rights courts. Likewise, the jurisdiction of national judicial systems could be enlarged to be able to deal with allegations of corruption in other countries.

Another possibility could be to coordinate national legislation – and priority – in developed countries, aimed at seizing the assets of or denying visas to corrupt officials. While this would not result in jail time, it would make it harder to spend ill-gotten wealth while simultaneously emphasising international disapproval.

Importantly, some countries have become increasingly aggressive in this regard in recent years, particularly the United States and Switzerland. Watchdog groups say these nascent initiatives are important and already having impact.

“Over the last eight years there’s been growing official action against kleptocracy in the U.S. and elsewhere,” Arvind Ganesan, the head of the business and human rights programme at Human Rights Watch, told IPS.

“Strengthening those efforts now – meaning fully resourcing and expanding them, and pushing other countries to put in place similar policies – will build momentum towards an International Anti-Corruption Court.”

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