**Presentation by Senior United States District Judge Mark L. Wolf for the discussion panel on 'Special Measures against grand corruption' at the UNCAC Implementation Review Group Briefing for NGOs in Vienna, Austria on 4 June 2015**

I am Mark L. Wolf, a Senior United States District Judge. Two articles I published in 2014 have started a rapidly growing movement for the creation of an International Anti-Corruption Court to prosecute high officials of countries, which lack the capacity or will to enforce the laws criminalizing various forms of corruption required by the United Nations Convention Against Corruption ("UNCAC"). As described in my attached July 23, 2014 Brookings Institute article [http://www.brookings.edu/research/papers/2014/07/international-anti-corruption-court-wolf), the proposal is based on my experience as a prosecutor and judge in the United States, where we regularly rely on federal, meaning United States, prosecutors and courts, to deal with corrupt state and local officials because state prosecutors and courts are unable to do so effectively.

The proposed International Anti-Corruption Court has been endorsed by the United Nations High Commissioner for Human Rights, international prosecutors including Luis Moreno Ocampo and Richard Goldstone, and Non-Governmental Organizations ("NGOs") including Transparency International, Human Rights Watch, Global Witness, and Global Parliamentarians Against Corruption, among others. It is intended to give integrity to the promises 175 nations have made in becoming parties to the UNCAC.

I appreciate this opportunity to address the Implementation Review Group ("IRG") on "Grand Corruption, UNCAC Monitoring, and the Need for an International Anti-Corruption Court."

The evolution of events since 2003 demonstrate that Secretary General Kofi Annan was correct when, in the foreword to the United Nations Convention Against Corruption, he characterized corruption as an "insidious plague." "Grand corruption" – which can be colloquially defined as the abuse of office by a nation's leaders – is particularly pernicious.

As you know, grand corruption is extraordinarily costly, in many developing countries and in many developed countries as well.

Corrupt regimes often provide safe havens for terrorists. In addition, countries recognized as among the world's most corrupt repeatedly violate the human rights of their citizens.

As Egypt, Nigeria, and Ukraine exemplify, indignation at grand corruption is destabilizing many countries and, in the process, endangering world peace and security. Therefore, the energetic engagement of the United Nations in combatting grand corruption is fully justified.

The UNCAC provides a basis for that engagement. The fundamental premise of the UNCAC is that the genuine threat of criminal prosecution and punishment is essential to deterring corruption and diminishing its devastating consequences. In the UNCAC, 175 nations have pledged to criminalize, prosecute, and punish bribery, diversion of national resources, money laundering and other corrupt activities, by their highest officials among others.

Article 26 of the Vienna Convention on the Law of Treaties requires that each nation make a good faith effort to perform its treaty obligations. Nevertheless, grand corruption, and the culture of impunity on which it depends, continue to characterize many countries.

Similar circumstances concerning the evils of genocide and other intolerable human rights abuses led to the creation of the International Criminal Court. An International Anti-Corruption Court, operating on comparable principles of complementarity, is now equally justified and necessary.

More specifically, when it is demonstrated that a nation's anti-corruption laws are not being enforced against its highest officials, the legitimacy of extraterritorial prosecution in a new International Anti-Corruption Court, or through the exercise of universal jurisdiction when authorized by countries pursuant to Article 42(6) of the UNCAC, should be recognized. Agreeing to the jurisdiction of such a court, under principles of complementarity, should be made a requirement of the UNCAC, as well as other relevant treaties.

Fundamental to such an approach to combatting grand corruption is robust and trustworthy monitoring to assure that, when justified, the statutes required by the UNCAC are being enforced, including against a state's highest officials. In 2013, Transparency International's UNCAC Progress Report noted that UNCAC monitoring has focused excessively on whether such statutes have been enacted and insufficiently on whether they are actually enforced. In my experience, this view is well-founded.

It is imperative that the UNCAC review process be strengthened by addressing its evident weaknesses. While I know many states allow in-country visits, they should no longer be permitted to prevent them. This power provides the ability to limit the scope of visits that are permitted, and may ultimately injure the opportunity for indigenous organizations and individuals to provide important information. I understand that the Organization for Economic Cooperation and Development and The Group of States

Against Corruption have the authority to conduct in-country visits. UNCAC monitors should have such an unqualified right too.

In addition, UNCAC monitors should have the authority and responsibility to follow-up on country reviews to determine if identified deficiencies have been addressed.

The review process should be revised to provide that reports will be presented to, and considered by, the IRG and COSP. In any event, a state should no longer be allowed to prevent the completion of a review report without its consent; an opportunity to respond to any such report would be more appropriate. In addition, a state should not be allowed to limit public disclosure of a review report to only an Executive Summary acceptable to it.

Greater transparency, and therefore accountability, in the UNCAC review process should also be created. The fact that some nations adamantly oppose allowing NGOs to observe IRG meetings raises serious questions about what they are trying to hide. In addition, improved mechanisms should be developed to receive, investigate, and act upon information from NGOs and "whistleblowers." As called for by Resolution 4/3 of the Marrakesh Declaration, meaningful opportunities to contribute should also be created for young people, who from Tahir Square to Maidan have demonstrated that they will no longer accept corruption generally, and grand corruption especially, as a way of life.

In the absence of effective monitoring to determine whether there is actual enforcement of required laws to combat grand corruption, and of the credible threat of extraterritorial prosecution if monitoring demonstrates that those laws are not being enforced, UNCAC may be doing more harm than good by permitting corrupt leaders to rob their citizens and abuse their human rights while being treated as respected members of the international anti-corruption community. It is not only wrong, it is dangerous to perpetuate any such charades.

I again thank you for the opportunity to participate in this discussion. I will look forward to seeing whether urgent action is taken to strengthen the UNCAC monitoring process and, therefore, contribute to making the promise of the UNCAC a reality rather than a dangerous illusion.