Corruption as a Violation of International Human Rights

Anne Peters

I. Introduction
Agenda 2030 Goal 16: to “substantially reduce corruption and bribery in all their forms”, and to return all stolen assets.

II. Doctrinal re-construction: Corruption as a human rights violation?

1. Attribution

2. Omission and obligation to protect

3. Procedural and result-independent obligations

4. Causation
- Cause in fact and scope of responsibility.
- “Proximity” and “foreseeability”.
  a) Cumulative causation
  b) Concurrent (or competing) causation
  c) Overriding causation (over time)
  d) Statistical correlation sufficient?

III. Normative Assessment: Pros and Cons of this Re-conceptualisation

1) Pros

(1) Empowerment
In contrast to the purely criminal law approach which sees corruption as a “victim-less crime”.

(2) Systemic responsibility of the State

(3) From repression to prevention

(4) Burden of proof
The absence of any steps taken or blatantly inadequate measures to investigate or tackle alleged acts of corruption might constitute a prima facie case of a human rights violation.

2) Cons: Cultural imposition?
IV. Practical recommendation of mutual mainstreaming
(1) In the work of the human rights treaty bodies,
- guidelines for all country reports
- country-specific concluding observations of the committees
- mandates of the human rights special rapporteurs
(2) Human Rights Council UPR:
- specialized anti-corruption NGOs
(3) “General Comment on Corruption and Human Rights” that would apply to all treaties.
(4) an anti-corruption mandate could be included in the international standards for the national human rights institutions.

V. Conclusion
Mutual mainstreaming.

Legal bases

Case law
- The High Court of Tanzania, Legal and Human Rights Centre and Others v. Attorney General, (Miscellaneous Civil Case No. 77 of 2005) [2006] TZHC 1 (24 April 2006).
- ECOWAS Community Court, The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission, Judgment of 30 November 2010 (ECW/CCJ/JUD/07/10).

Literature
Anne Peters, Corruption as a Violation of International Human Rights, Max Planck Institute for Comparative Public Law and International Law (MPIL) Research Paper Series 2016-18 (www.mpil.de)