

*ITALIAN HIGH COMMISSIONER
for the prevention and the fight against corruption*

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Introduction.

Thank you Madame Chairman.

Your Excellencies, Distinguished Delegates, Ladies and Gentlemen,

As the speakers before me, I must first of all thank the IAACA, the Chinese Government and all levels Chinese Institutions for the warm hospitality and for organizing such an important meeting, expressing my deep gratitude for the great opportunity offered to each of us to share knowledge, cooperation and experience in the fight against corruption.

Let me also express my sorrow and concern for the tragedy of the earthquake occurred in China, and my

solidarity for the many victims.

I feel a great honor and responsibility in giving a speech in such an important context, from which each of us is expecting a step ahead in the fight against corruption and in the acknowledge of the tools aimed to this goal.

Due to the short time allowed, I will not go through all of my speech, leaving printed copies of it for those who are interested and will have the patience to read it. It will also be available on the High Commissioner website www.anticorruzione.it.

I will propose you a short abstract and an overview of my speech, in which I try to underline the important role to be tributed to the prevention of corruption, also offering a witness of a specific Italian experience in pursuing it through a dedicated investigative power, which is aimed at discovering the risk and the causes of corruption – and not at the

disclosing of single cases of corruption – and to file recommendations to remove the discovered causes and risks of corruption.

...a concrete proposal.

But before doing it, I would like first to address you a specific proposal, hoping to find your approval and agreement.

As Mr. Dimitri Vlassis mentioned yesterday in his speech, we are going towards the third Conference of the States Parties of UNCAC, which will be held in Qatar.

As IAACA is specifically concerned with the Authorities against corruption established in the different Countries, I want to take the opportunity of this meeting among the anti-corruption Authorities to invite the Countries to take part in the elaboration of a resolution to be presented to the third Conference of the States Parties of UNCAC.

This resolution should deal with the issue of anti-corruption Authorities, according to the provisions of articles 6 and 36 of UNCAC.

This is especially important, as until now, in none of the resolutions of the Conferences the topic of the anti-corruption Authorities has been treated.

In many Countries the anti-corruption Authorities must deal with several problems, ranging from lack of resources – either financial or human – to lack of independence or autonomy, so that it appears to be of the utmost importance to get the Conference of States Parties to provide concrete guidance on implementing the UNCAC, especially the provision concerning the anti-corruption Authorities.

Although the resolution – due to the procedural rules – must be proposed by States Parties, so that IAACA cannot be the author of the proposal, it would be a great success for IAACA to be a supporter of this initiative and to be able to use the occasion offered by this Seminar to generate thinking about its possible terms.

The Italian High Commissioner offers its contribution to this initiative, through its specialized staff.

Needless to say, it would be of great importance to reach a draft of resolution agreed and proposed from States from each Continent, that while taking into account the differences in the respective legal systems, can converge to a general consensus on the contents of the resolution.

From some of the speeches we have been listening to, it is possible to argue that the topic of the anti corruption Agencies is a very sensitive one, and many Countries have to deal with the issues of their autonomy, independence, effectiveness of their activities, so that it is realistic to believe that a joint effort can bring to a concrete result, and in this hope I rely.

Much done, much more to do. The reason and the role of prevention.

In the field of the fight against corruption, much has been done till now.

If we have a have a look backwards, throughout the last years important steps have been taken against the wide-spread phenomena of corruption.

The public awareness of the severe problems related to corruption has been reached, and the consciousness of the need of a strong reaction through a holistic approach and an international cooperation in the anticorruption policy has been achieved.

Also, significant progresses have been made at international level with the establishment of important sets of rules and general frameworks, such as the United Nations and the OECD Conventions, and many States have ratified and implemented the above mentioned Conventions.

The fight against corruption has become and remain high on the political agendas of the Countries, which are more and more alert – sometimes in very critical environments - on the necessity of taking effective actions against corruption and engaging important reform projects with a view to strengthening anti-corruption measures and enhancing good governance, transparency and accountability.

Strategies and projects against corruption have considerably gained in sophistication, specialization and comprehensiveness.

Therefore it is not enough, and there is still a long way to go through.

Many major legal gaps and loopholes continue to exist and the capacity of anti-corruption strategies and institutions often remain insufficient in many Countries.

It is surprisingly for instance – in reading the evaluation reports filled by the GRECO – to find out the number and the nature of lacks discovered within the inspected Countries, showing the inadequacy of laws and general institutional assets in the perspective of anti-corruption policy.

Just to quote a case, it is surprising that although it is well known that judges must be independent and own professional skill, there are still Countries where judges are chosen by the executive power, without any exam-based, transparent and impartial recruitment system to select the best candidates and to check their professional skill.

With full evidence, no effective criminalization – included criminalization of corruption - can be reached without the independence of judges, which can only arise from an impartial recruitment system and an independent and free from any undue influences status of the judges.

If, to date, not all Countries have established the necessary framework and measures to ensure integrity, impartiality and good governance, with a specific view to the anti-corruption issues, they must be urged to engage all efforts to ensure an effective strategy against corruption through global reform projects, accordingly to the UNCAC provisions.

In this perspective, let me remind to myself that the UNODC Convention is inspired to the pillars of democracy and good governance, which can be reached through the principles of integrity, accountability, transparency, proper management of public affairs and public property, fairness, responsibility and equality before the law.

Accordingly to the Convention statements, the achievement of these principles is essential to pursue an effective action in the prevention of corruption, which is one of the fundamental principles of the Convention itself and one of the main instruments to reach any satisfying result in the fight against corruption.

To be realistic corruption will never disappear.

Maybe corruption was born with the human being, and since ancient times corruption has often ruled the world (let us think at the period of the Roman Empire decadence).

If corruption has its roots in the human nature - which makes corruption difficult to be eradicated - we also must be aware that corruption is a hidden crime, based on a concealed or hidden agreement, which gives advantage to both the protagonists of the crime: to the one who takes money and to the one who, thanks to the given money, obtains a benefit. None of them, normally, has any interest in denouncing the crime.

Also, must be pointed out that getting the evidence of corruption crimes is extremely difficult, being usually based on witness, with all related risks and uncertainty.

Consequentially, only a minor number of corruption cases is discovered, while the most part remains undisclosed and even unknown in its real extent.

Corruption practices are the most difficult to detect since they represent mutual relations or mutual agreement behind a closed door between people who have the same interests.

The difficulty in getting evidence of corruption crimes calls for the necessity of limiting the possibilities for corruption which only can be reached through preventive measures.

A good, effective, severe preventive strategy is the only chance in the fight against corruption, as criminalization is not enough.

In the past the major efforts in the fight against corruption has been devoted to the enforcement of criminal laws and prosecution of offenders.

A system only based on criminal prosecution bodies is important to detect cases of corruption, but, however, this is not even close enough for removing the fundamental causes and conditions for the development of corruption. The exclusive use of repressive measures against corruption only leads to the removal of some consequences.

Due to this it is extremely important to pay the utter attention to preventive measures, considered that, although important and essential, prosecution of corruption and its deterrent and dissuasive effects did not give great success in the fight against corruption, as turned out to be inadequate to remove the causes and the risk of corruption.

Only through an effective strategy of preventing corruption aiming at removing its causes, background and risk the fight against corruption can reach significant results.

To reach the goal of the prevention of corruption it is necessary to ensure accountability, integrity, transparency, democracy, rule of law, good governance, proper management of public affairs and public property, fairness, responsibility and equality before the law.

Once that the above mentioned principles have been reached and turned into practice, we can reasonably affirm that a big step towards the prevention of corruption has been made, and the level of corruption will decrease.

Corruption appears all over the world, is not a result of particular systems and has become one of the most important contemporary problems which needs to be treated with

all necessary attention in every State, not only in States where democracy has just taken place and market economy has just begun to develop, where corruption is more widespread.

No country is exempt from corruption and corruption knows no national boundaries. The fight against corruption has become a common concern whose response is the UNCAC.

UNCAC stands on 4 pillars: prevention of corruption, criminalization of corruption, international cooperation and asset recovery. These pillars are innovative and challenging, and taken together they represent a strong anti-corruption system that will allow both effective domestic action and an integrated international effort.

Accordingly to the Convention, preventive measures should focus on anti-corruption policies and anti-corruption institutions, aimed at assuring transparency, integrity and accountability.

In order to carry out these policies anti-corruption agencies must be independent and have the material resources and specialized staff to carry out their functions.

The importance of these provisions relies on their being the first binding global statement that requires governments to have effective institutions and coherent policies that deal with corruption, so that States Parties will have to ensure strong and functioning institutions and effective laws, rather than an ineffective or weak approach.

The preventive measures, as highlighted by the Convention, include specific guidelines for both staffing the civil service and candidates for public office, with a focus on preventing opportunities for corruption. Specifically, civil servants should be selected accordingly to merit, equity and aptitude, should be regularly trained so that they understand their obligations in maintaining the integrity of the institutions they serve.

Candidates for public office should be carefully selected, emphasizing the openness of the democratic process and the transparency of campaign funding.

Public servants should be obligated to comply with a written code of conduct and to file asset declarations.

There are clear standards for integrity in the public procurement process and the management of public budgeting. The emphasis in all these areas is on ability of the public to get information that is understandable and complete not only in procurement and public finances, but throughout the public administration of the State.

Many of these standards are extended to the judiciary with the provision that there must be maintenance of the independence of the judiciary.

Additionally, many of the standards are extended to the private sector, especially in the areas of accounting and auditing.

Most impressively for an international legal instrument, there is a clear requirement to include civil society, NGOs, organizations, with the aim to involve everyone in the fight against corruption, ensuring access to information and in decision making processes, undertaking public information campaigns against corruption.

The preventive measures chapter is the most complete vision of how to avert corruption and build integrity into institutions, reflecting the best international standards and, if fully implemented, is the best insurance policy against corruption.

To let the Convention not be just one more dusty piece of paper, it is up to governments first of all, and to international organizations as well as individuals, to breathe life into it, implementing it.

States are so urged not only to ratify it, but also to ensure that each Country fulfils the mandates of the Convention.

An effective preventive policy – which is the only serious chance in the fight against corruption - must be addressed to the establishment or improvement of institutions' integrity, increasing the awareness of the institution's weak points, vulnerability and exposure to corruption, with the purpose of preventing possibilities for corruption.

Prevention must examine the ability of a system to resist to violations that lead to corruption, and prevent its weakness with systematic and coordinated efforts to increase the protection from corruption and decrease the weakness of institutions, setting out defense mechanisms integrated in the structures, in the rules and in the procedures of organizations, seeking for the risky areas and developing anti corruption measures to protect the area from corruption.

The objective of every efficient strategy against corruption is the creation and the establishment of an environment of preventing corruption as well as the modeling of a national integrity system focused on the vulnerable and risk exposed areas and activities, choosing the appropriate combination of preventive measures based on specific needs.

In this perspective, the anti-corruption strategies must be part of long-term governance reforms with a strategic, comprehensive and integrated approach in modeling national legislation, replacing formerly inadequate laws accordingly to the UNCAC, which addresses the full scope of institutional and legal settings that need to be set in place to effectively

combat corruption, ranging from prevention and criminalization to international cooperation and asset recovery.

These comprehensive and integrated reform programs are called to deal with the growing complexity of corruption and related crimes -developing with the evolving environment - and must be aimed at reducing the institutional weakness and legislative gaps in the key areas, which create opportunities for corruption to grow, by defining the criteria, procedures and institutional framework by law, which is an essential precondition for transparency, impartiality and integrity, and, at the end, good governance.

Apart from the academic and theoretical approach, which allows to deeply understand the issue we are called to face, at this point we own all information we need about corruption and the instruments to fight it and we all know what we are called to do.

Also, thanks to IAACA meetings we have a good comparative point of view of each State's strategy to fight corruption, and a good platform for sharing experiences and best practices.

The most sensitive, urgent and important issue is – nowadays – to give effectiveness to the anti-corruption principles and efforts.

Such effectiveness requires the strong will of each Country to fully implement UNCAC and all anti-corruption instruments and knowledge through the setting of appropriate internal legislations and the correct functioning of the institutions.

If corruption will never be eradicated and if criminalization is not enough, although it must be effective and severe, the only hope we can reasonably foster in the effectiveness of the fight against corruption relies in its prevention, which means to remove the possibilities of corruption and of its causes.

We all know what prevention of corruption means, we know which are the pillars of prevention, as clearly stated in the UNCAC, we know the main fields in which prevention must be forwarded, and which tools must be set up for prevention.

So it is just the time to put these principles into practice, without delay.

The Italian High Commissioner investigative power: the prevention goal.

In the consciousness that, to further advance effectively in the fight against corruption, international cooperation remains a crucial factor and valuable knowledge can be gained through exchange of experience with other Countries, I would like to share with you the

Italian experience in the field of the prevention of corruption, which is, as pointed out, the best change to systematically and effectively fight corruption.

The Italian High Commissioner against Corruption is provided with a specific administrative investigation power, to be related to article 5 of the UNCAC – and not to article 36 - as its main goal is the prevention of phenomena of corruption or of bad administrative practices which can give rise to corruption, rather than the disclosure of single cases of corruption and their prosecution.

The administrative investigation we are talking about is deeply different from investigations carried out by Police Forces or Judiciary System.

In fact, the High Commissioner can promote – without any need of complaint - independent administrative investigation in the direction of all public administrations in order to check the existence, the reasons, the background and the risk of corruption phenomena.

The considerable importance and effectiveness of this category of investigation is related to its taking into consideration the whole management, mechanism and functioning of specific sectors of the public administration under examination, which allows to assess the existence, the reasons and the grounds of a corruption phenomena, or even potential corruption, and not – or not only - single cases of corruption.

What must be pointed out is that the examination of the management, functioning, mechanisms and practices set up by public administrations, gives evidence of the potential corruption related risks and of elements which give rise to corruption or illegal behavior, so allowing to bring up the specific causes of corruption, and also allowing to set up an effective and specific system of measures and solutions able to prevent the phenomena through the possibility to address recommendations about specific changes to be adopted in the administrative management, functioning and mechanisms under examination, to which corruption, or risk of corruption, are found out as related.

In fact, this kind of wide and global investigation is concerned to analyze and to take into examination all practices, documents, management and mechanisms regarding one or more specific and identified key areas of potential risk in a public administration, checking their respect and conformity to the law, the functioning and effectiveness of internal audit systems, and analyzing the adequacy of laws and of public practices and management,

whose lacks have created corruption phenomena or can create a potential risk of corruption or other illicit.

The reason to create and to provide a specific Authority (the Italian Anti-Corruption High Commissioner) with this power of wide investigation derives from the consideration that repression of corruption – as carried out by Police and Jurisdictional Systems - is not enough to achieve an effective and final result in the fight against corruption.

In other words, the awareness and consciousness that repressive policy cannot by itself bring to a satisfying result in the contrast of corruption has suggested the establishment of a global preventive system able to analyze, indoors of public administrations, the existence, the causes and the risk of corruption, through direct inspective powers, able to offer a global overview of the issues related to corruption and its background.

The accent on this kind of approach to corruption and the relevance of the direct investigative powers we are talking about, are related to the consideration that even when an effective repression system does exist and does work, once that evidence of corruption has been reached, the repression of single cases, apart from the deterrence effect, cannot prevent the occurring of other new cases.

In fact, in the perspective of corruption criminal repression, the efforts are only directed to the research of the evidence of the crime, as to proceed to its prosecuting.

To reach any relevant results in the fight against corruption, only the understanding of its causes and the removal of them appears to be the winning card to play.

A global policy for prevention is needed, able to found out the existence of phenomena of corruption, and not single cases only, and mainly to analyze the causes of corruption, as to remove them and, consequentially, the risk of coming up corruption.

The main instrument that fully responds to the goal of discovering the risk of corruption and its causes is the specific investigative powers provided to the High Commissioner, which allows to examine directly and from indoors public administration the global asset and management in specific areas of potential risk (such as public procurements, public employees and public officials, public finances) as identified by U.N.C.A.C.

In the former considerations relies the difference between the administrative powers provided to the High Commissioner and the investigative powers provided to Police Forces and to Public Prosecutors and traditional Judiciary System.

Concerning the powers of the Police Forces and Public Prosecutors, although they include more pervasive instruments – such as telephone or room interceptions – in order to gather evidence against persons involved in corruption crimes, the results they can reach is only devoted to the repression of corruption, and will not produce any useful or copious information about its causes and background, as to perform a global policy against corruption by finding the remedies and removing the causes that give rise to potential corruption, as pointed out in final recommendations to be forwarded to the administrations under examination.

In fact, the final purpose of the investigative powers of the High Commissioner is, after finding out the corruption phenomena or potential corruption, to point out the causes and suggest the remedies and strategies to be adopted to prevent corruption, as draft into recommendations to be forwarded to the administrations involved in the investigations and those who have control over them, or into proposals of legislative measures or legislation review.

More in detail, having regards to the procedure, when promoting an investigation, the first step is to point out one or more key areas of a public administration considered worth to be taken into consideration as potential areas in which corruption can grow (such as public procurement, management of public finances, hiring, retention, promotion and retirement of public employees and public officials, financial situations of public officials).

A task force of officials belonging to Police Forces is mandate to investigate, with administrative powers, within the key areas of the selected public administration.

They will examine all practices, documents, systems, procedures, management of the administration with a total and global approach. They have free access to all information, documents and data bases, they may request any information, they can make official interview with members of public administration and private individuals involved in the administrative procedure under investigation.

The results are collected in a final report, forwarded to the High Commissioner, who gives mandate to its expert judges to analyze the report and to draft the final evaluation on the results.

The final evaluation will point out all the critical results of the investigation, will describe the phenomena of corruption or potential corruption as testified by the investigation, will analyze the causes and factors of them, will analyze the risk of

corruption, will point out the critical results and illegality in public managements and procedures, will identify and analyze the violations of the laws or procedures and the causes and background of this violations which can determine corruption or its risk, will elaborate a global analysis on the phenomena, will indicate the remedies and strategies to remove the causes of corruption or potential corruption, will submit recommendations to the public administrations involved by the results of investigation, will draft recommendations for legislative or normative changes when necessary.

Any criminal behavior will be reported to Public Prosecutor Service for its prosecuting, while damage to the public finance will be reported to the Public Accounts Audit Courts.

The High Commissioner will survey on the measures that will be adopted by the public administrations, checking their conformity and adequacy to the recommendations, and their effectiveness to remove the causes and to prevent the risk of corruption, making new recommendations if necessary. Public administrations must notify the High Commissioner of actions taken to correct the situation brought to light.

As a successful example of the use of this kind of investigative powers, can be mentioned the results of the investigation promoted towards the Public Sanitary Local Administration of a town in South Italy.

The most significant results in the investigation can be summarized as follows.

Within the public procurements many relevant violations of the law have been found out, all clearly related with a potential risk of corruption or with committed crimes of corruption.

All procurements for maintenance, repairing and rebuilding parts of the edifices and surgery rooms have been illegally given through direct offer, without any public mandatory procedure based on transparency and competition rules and without any essential mandatory public information.

To keep the procurement under a certain economic value - which makes compulsory the widespread information of the procedure (to allow even foreign contractors to take part) and the respect of strict rules of decision-making - the works referring to the same building, having same characteristics and referring to the same time period, were divided into many works (which is forbidden by law), instead of being related to a single procurement procedure. The purchasing manager - when not offering the procurement straight off to only

one contractor - invited few private contractors to make their economic offers, then choosing the most convenient offer to stipulate the contract.

For all the procurement procedures have been always invited the same contractors, and each of them obtained some contracts as best offering in a like turn-over system. Despite the identical object of the procurements, the same contractor made deeply different economic offers for each procedure (in the form of percentage discount), so that it has been possible to argue the existence of a global plan allowing to sign contracts with few identified contractors, whose economical offers where directed to allow a turn-over in the contracts. An agreement between the public employee and the contractors has been argued.

The investigation also testified that some of the contractors and some of the employees responsible for procurement are involved in organized crime.

No control about the link with criminal organizations had been settled by the administration.

No effective internal control on procurements had been adopted by the administration.

After the recommendations of the High Commissioner to the administration, a strict control has been set up and all procurements are now managed by a central office, so that the Sanitary Divisions cannot any more promote public procurements, and the respect of the rules of law appears to have more chances. Some of the reasons that allowed or made easier the violation of law have been removed.

Consequentially, the risk of corruption related to the specific practice found out after investigation has been removed.

Several proposal of normative changes in the internal procedures have been forwarded to the administration.

Other critic results concerning public procurements have come out from the investigation.

Contracts related to public procurements had been illegally renewed at their due date instead of promoting public procurements procedures.

Some of the procurement managers had been previously prosecuted for crimes against public administration without being disciplinary judged, as prescribed by law, and without being changed in their position.

The most relevant results of the investigation about the public employees are as follows.

The recruitment of human resources with low professional qualification was done by the administration under examination by asking to a work provider agency. The persons to recruit were freely chosen by the agency (even under pressure by public officials), with no obligation to respect any order of classification.

No control had been adopted by the administration on the characteristics of the employee to recruit.

It has been found out that in case of necessity of human resources recruitment, public officials agreed with the work agency the persons to indicate for the work contract, and the chosen persons often inscribed themselves to the agency only a short time before recruitment.

Many qualified persons (doctors) have been recruited for specific programs without any control and examination about their professional skill or qualification.

Many public officials and employees have been found out to be under prosecution or already condemned for serious crimes against public administration or even for belonging to criminal organizations without the adoption of any disciplinary provisions by the administration under investigation (in violation of law which obliges administrations to take preventive or repressive disciplinary provisions in case of prosecution or condemnations).

Many advisors have been nominated by the administration and highly paid without checking their professional qualification and work outcome.

Within a project for the prevention of cancer financed by regional government, has been found out that the administration spent all money without providing any service to the people, did not buy the diagnostic machineries indicated in the project, bought in some cases other machineries, did not have some of the machineries indicated on the bills. The component of the project committee have been paid although they did not realize, not even partially, the project.

The global view descending from the results of the investigation highlighted the total lack of legality, transparency and efficiency in the management of the procedures and economic resources related to the administration under investigation, the repeated and wide spread violation of the laws, the total lack or non effectiveness of internal controls and internal audit system.

The final evaluations have been forwarded to the administration under investigation, to the Regional Government, to the Ministry of Health who have competence on public health service system with powers of control, of activity program, and normative powers.

All criminal behavior have been reported to Public Prosecutor Service for its prosecuting, while the damage to the public finance has been reported to the Public Accounts Audit Courts.

The chief management has been removed and replaced.

The results of this investigation gives evidence of the effectiveness of this investigative methodology against corruption, which mainly relies on its principal purpose, consisting - not in repression of single cases of corruption only, but – in the prevention of corruption through the disclosure, in key areas of administration, of the phenomena or risk of corruption, with specific attention to its causes, roots and background as related to administrative practices, management, mechanism, internal control and survey.

The effectiveness of this preventive tool also relies on the power to address binding recommendations to the public administrations under investigation, enhancing in specific areas transparency, integrity, accountability and good governance, crucial in successfully preventing and combating corruption in the public sector.

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- Expert Judge -

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