

HIGH LEVEL DEBATE OF THE UN GENERAL ASSEMBLY

To mark the 15th Anniversary of the Adoption of the UNCAC

Emerging Trends and Promoting the Effective Implementation of the Convention

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Statement by Italy

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Thank you Mister President.

Mister President, Secretary General, Executive Director, distinguished Delegates,

When the UNCAC was signed in Mérida, the anticorruption record of Italy was in many respects unsatisfactory. Prosecutions on corruption charges were rare; even rarer were the convictions, namely due to the statute of limitations applicable to these charges, which often blocked the trial until the offence became time barred. A private party who bribed a public official enjoyed a defence, if he or she was able to show to have been induced to the illicit payment by the public official. Trading in influence was not criminalised, nor was the bribery in the private sector. Mechanisms for preventing corruption both in the public and the private sector were virtually non-existent.

Thanks to the UNCAC obligations, as well as those stemming from other multilateral instruments, the situation in my country is profoundly changed, as it has been acknowledged during the first and second review cycles.

With regards to *repression* of corruption, many shortcomings have been solved by numerous legislative reforms. The scope of the old defence for the private party in a corruption agreement has been strongly limited; trading in influence and bribery in the private sector have been both criminalised; the limitation periods regarding corruption have been significantly extended. On the enforcement side, several investigations and prosecutions on corruption charges have been carried out in recent years against natural and legal

persons, the latter being liable for corruption offences committed in their behalf under the law on corporate criminal liability.

The most significant achievements, though, have taken place in the field of the *prevention* of corruption. A 2012 Law established a National Anti-Corruption Authority, fully independent and entrusted with monitoring of public integrity, increasing transparency and accountability of the public administrations, promoting risk assessment. A new Code of Public Contracts provides for a rigorous framework for public procurement and entrusts the Anti-Corruption Authority with enhanced powers to supervise these procedures. New laws have also been enacted on transparency, so as to allow citizens' access to all records, data and documents of the public administration; and on whistleblowing, strengthening the protection of persons reporting corrupt behaviours. Moreover, great importance in recent years has been given to anticorruption compliance models in private and public entities: corporations are encouraged to adopt an effective compliance model by the prospect of being rewarded through the exemption from criminal liability if their executives or officers are convicted for corruption, provided they can prove to have implemented such a model before the offence was committed.

Also the efforts made by Italy with regards to *asset recovery* have been remarkable. On the one hand, law enforcement tools to recover the relevant proceeds of corruption have been enhanced at the outcome of a criminal trial, including the powers of ordering the extended confiscation of any property when the offender cannot prove their lawful origin. On the other hand, the possibility of a non-conviction based confiscation, in line with Art. 54 of the Convention, has been extended to tackle illicit and unexplained wealth. A recent law has also introduced more transparent norms for the judicial administration of the recovered assets and for their re-use and disposal for socially valuable goals, in line with our vision which stresses the role of the private sector and the civil society in fighting corruption and preserving the rule of law, through the multi-stakeholder approach.

These accomplishments pair with a robust engagement of Italy in the multilateral fora: for example, we strive to provide rationale for a new paradigm of corruption measurement taking into account more reliable indicators and criteria based on experience. In the same vein, at the last

Conference of States Parties, Italy tabled a Resolution on corruption and sport, adopted by consensus.

However, many are the challenges still before us.

Special attention should be paid to those crimes that are closely related to the offences mentioned in the UNCAC. The links between corruption, organised crime and money laundering deserve to be better assessed, with a view to shaping a holistic strategy combining the goals of the Palermo Convention and those set by the UNCAC.

Before closing, allow me, Mister President, to underline – in my capacity both as a representative of Italy and a Constitutional judge – what I think is a critical point for any advancement of anticorruption policies. An effective prevention and repression of corruption, as well as a working policy of asset recovery, shall always abide by human rights. Our laudable zeal in sanctioning corruption and poor ethics standards, should not lead us to adopt rules and practices of dubious compatibility with human rights and fundamental fair trial guarantees. Such rules could be held illegitimate for this reason by national or international courts; and this could negatively affect judicial cooperation. Legal tools such as non-conviction based confiscation - which the Italian experience shows to be a highly effective instrument in the fight against corruption and organised crime - should be thoroughly considered by the international community, with a view to reaching agreements on common standards of protection of human rights in the implementation of those measures.

Promoting the rule of law and human rights is not only an imperative of justice; it is also a pre-condition for the effectiveness of the fight against corruption, to which all the State Parties to the UNCAC, and Italy for sure, are strongly committed.

Thank you, Mister President and all of you, for your attention.