

**The Second IAACA Seminar
Preliminary Programme
Wednesday 14th –Friday 23rd May, 2008
Chongqing China**

Distinguished Delegates,

I wish to express my warmest thanks all hosting authorities to have once again to organise this interesting event and in particular to the Prosecutor General of Supreme People's Procuratorate of P.R. of China, and to the Dr Ye Feng Director-General of International Judicial Cooperation Department of the Supreme People's Procuratorate of P. R. China.

I will give a short contribution in relation to my country, which is still under pressure of this negative phenomenon.

In the report of 2007 by Transparency International, the least corrupted countries are Denmark, Finland, New Zealand, whereas the most corrupted countries in Europe are Italy (47th position) and Greece (56th position).

In broad terms, political corruption is the behaviour by government officials, who misuse their governmental power for illegitimate private gain.

One could say that corruption is the behaviour of governmental officials who receive, for themselves or others, money, gift, or others privileges in a way not consistent with his duties and in discharge of a public or legal duty.

However, the term "corruption" relates to different crimes. In fact, every forms of government are susceptible to political corruption and discipline different forms of corruption. What

constitutes illegal corruption differs depending on the country or jurisdiction.

In the Common law systems corruption includes the following:

- bribery: a crime implying a sum or gift given that alters the behaviour of the person in ways not consistent with the duties of that person;
- extortion: a criminal offence, which occurs when a person obtains money, property or services from another through coercion or intimidation or threatens someone with physical or reputational harm unless they are paid money or property;
- cronyism: partiality to long-standing friends, especially by appointing them to position of authority regardless of their qualification. Hence, cronyism is contrary in practice and principle to meritocracy. Cronyism exists when the appointer and the beneficiary are in social contact;
- Nepotism: is the showing of favouritism toward relatives, based upon that relationship, rather than on an objective evaluation of ability or suitability. For instance, offering employment to a relative, despite the fact there are others who are better qualified and willing to perform the job, would be considered nepotism;
- patronage: is the corrupt use of state resources to advance the interest of groups, families, ethnicities or races in exchange for electoral support;
- graft: while bribery includes an intent to influence or be influenced by another for personal gain, which is often difficult to prove, graft only requires that the official gains something of value, not part of his official pay, when doing his work;

- embezzlement: is the fraudulent appropriation by a person to his or her own property or money entrusted to that person's care but owned by someone else.

Under Italian law, the term corruption refers to different crimes, that accumulate certain elements, particularly:

- crime by government official
- agreement with a private person
- giving or receiving money or any others advantage.

Therefore corruption is a general term that describes the following crimes in Italy:

- Corruption during an official act (section 318 of the Italian penal code)
- Corruption during an act contrary to official duties (section 319 of Italian penal code)
- Corruption during judicial acts (section 139 of the Italian penal code)
- Corruption of a person in charge of a public service (section 320 of Italian penal code)

Despite individuals feature of each of these crime, they have a common nature, particularly:

- The legal interest which is protected is the interest of Public Administration to neutrality, propriety and probity of government officials.

- The corrupted official and the person whom corrupt commit the same crime, they are partners in crime.

The Italian legislator has distinguished improper corruption from proper corruption; the distinguishing criterion is being the non-compliance to the office duties. The corruption is proper if it concerns the duties of office.

In the report it is said that corruption is so common that it is expected when ordinary business or citizens interact with government officials.

The end-point of political corruption is “Kleptocracy”, literally the “rule by thieves”. It is normally the most prevalent in countries without suffrage, with a high level of poverty and income inequality, with weak legal and political institutions and poorly defined property rights.

Corruption is a dangerous phenomenon, that is necessary to abolish to ensure the correct management of public affairs and international economic development.

Considering that the responsibility of the fight against corruption, concerning international business operations is incumbent on every country; considering as well the recommendation by the OCSE (23 May 1997, C(97) 123/FINAL), which, even more, has appealed for an effective remedy to discourage, prevent and to fight against international corruption by

foreign government officials; different countries have stipulated the OECD Convention (Organization for Economic Co-operation and Development) in the fight against the corruption of foreign public officials in international business transactions, signed in

Paris on 12/17/97, Italy passed Law n. 300 on 9/29/2000 and Legislation Decree n. 231 on 6/8/2001.

Art 3 of the Convention provides for:

“The corruption by foreign government official must be liable to punishment which is effective, proportioned, dissuasive. The range of sanctions applicable must be comparable with the legislation of the corruption by government officials of the interested party and must, in the case of physical people, include punishment depriving of freedom, ensuring efficient judicial assistance efficacious and possibilities of extradition”.

Corruption has always existed. Even in the Greek and Latin history it is possible to find episodes, where controversies of political character become resolved through illicit exchange of money.

But in order to have a healthy society, one must successfully control this phenomenon, making sure that it remains marginal.

If corruption becomes a mass phenomenon, practical current relationships between decisive politicians and economic operators fall apart, the problem becomes pathological and the entire society will move backwards whereby civil rights and the equality between the citizens are concerned.

It is difficult to express a completed judgement about the recent history of Italy, but in the 1980s the problem of corruption seemed to have reached pathological levels.

The fact that, in the beginning of the following decade, the magistracy, supported from great part of the public opinion, had substantially annulled one political class taking part in dynamics

of corruption, gives the perception of the much lower level to of corruption in our society.

A historical reading of the last twenty years of Italian politics , indeed thinking about the period called “Tangentopoli”, attributable to a political strategy to eliminate- criminal partners of the magistracy, including the adversaries of the opposite alignment, says enough.

Through the analysis of corruption it is possible to evaluate the democracy of a country, its economical and social freedoms, and the equality of its citizens.

The fight against corruption is indeed a great struggle, a simple remedy is not enough, through the application of sanctions, but it is necessary to get to the root of the problem and operate primarily for prevention, through operations of social sensitisation, to ensure that Democracy can replace the current “Kleptocracy” that we live in.

We are sure that any efforts like this interesting conference will give a fruitful contribution to stamp out corruption from modern democracies.

Thank you for your attention

Paolo Iorio

Avocats sans Frontières I

Rome 25th April 2008