



Conference of the States Parties to the United Nations Convention against Corruption

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**Consideration of bribery of officials
of public international organizations**

The question of bribery of officials of public international organizations

Note by the Secretariat**

I. Introduction

1. In its resolution 58/4 of 31 October 2003, the General Assembly adopted the United Nations Convention against Corruption (resolution 58/4, annex). In accordance with article 68, paragraph 1, of the Convention, the Convention entered into force on 14 December 2005.

2. In its resolution 58/4, the General Assembly requested the Conference of the States Parties to the United Nations Convention against Corruption to address the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, by, inter alia, making recommendations regarding appropriate action in that regard.

II. Background

3. The criminalization of bribery involving a foreign public official was addressed throughout the negotiation of the draft text of the article that became article 16 of the adopted Convention. The initial proposed article (see article 19 bis, contained in A/AC.261/3 (Part II)) included four options of the text and was

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** Submission of this document was delayed because of the need to reflect the latest developments and take into account informal consultations.



intended to reflect a consolidation of the proposals submitted by Governments at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Buenos Aires from 4 to 7 December 2001.

4. From the first reading of the draft text at the first session of the Ad Hoc Committee, held in Vienna from 21 January to 1 February 2002, several delegations drew attention to the fact that the formulation of the article could potentially create difficulties in relation to jurisdictional matters and could conflict with existing international legal instruments governing privileges and immunities. Some delegations expressed concern that three of the four proposed options, as drafted, might be understood or interpreted as permitting extraterritorial jurisdiction. In contrast, a number of delegations stated that the issue of privileges and immunities should not pose insurmountable problems, because they were subject to waivers under appropriate circumstances.

5. At the third session of the Ad Hoc Committee, held in Vienna from 30 September to 11 October 2002, the text of that article was revised on the basis of amendments proposed by several delegations (see A/AC.261/L.135 and A/AC.261/L.137). The comments made during the review of the revised text were summarized by the Vice-Chairman and incorporated into document A/AC.261/3/Rev.2. Again, some delegations expressed concerns that the revised article 19 bis could potentially expand jurisdiction beyond that based on the principle of territoriality. Some delegations expressed the view that the article might not be necessary, because the conduct it was intended to cover could be punished under the proposed article 19 of the draft Convention, on bribery of national public officials.

6. At the fifth session of the Ad Hoc Committee, held in Vienna from 10 to 21 March 2003, one delegation argued in favour of a non-mandatory formulation. A newly revised version of paragraph 1 of article 19 bis, which addressed the active bribery of foreign public officials or officials of a public international organization, was submitted. At the same session, the Ad Hoc Committee provisionally approved article 19 bis.

7. At its seventh session, held in Vienna from 29 September to 1 October 2003, the Ad Hoc Committee considered and finalized the provision, which was renumbered and eventually became article 16 of the text of the adopted Convention, and approved a series of explanatory notes for inclusion in the *travaux préparatoires* of the negotiations of the United Nations Convention against Corruption. It was agreed that the *travaux préparatoires* would indicate that the article was not intended to affect any immunities that foreign public officials or officials of public international organizations might enjoy in accordance with international law. The States parties noted the relevance of immunities in that context and encouraged public international organizations to waive such immunities in appropriate cases. In addition, the negotiating delegations considered it quite important that any State party that had not established that offence should, insofar as its laws permitted, provide assistance and cooperation with respect to the investigation and prosecution of that offence by a State party that had established it in accordance with the Convention and avoid, if at all possible, allowing technical obstacles such as lack of dual criminality to prevent the exchange of information needed to bring corrupt officials to justice. Furthermore, the *travaux préparatoires* would indicate that paragraph 1 required that States parties criminalize active

bribery of foreign public officials and paragraph 2 required that States parties only consider criminalizing solicitation or acceptance of bribes by foreign officials in such circumstances. That was not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, the difference in degree of obligation between the two paragraphs was due to the fact that the core conduct addressed by paragraph 2 had already been covered by article 19, which required that States parties criminalize the solicitation and acceptance of bribes by their own officials.

III. The proposed way forward

8. After consulting on the issue with the Office of Legal Affairs, the Secretariat proposed that discussion of the item be deferred to the second session of the Conference of the States Parties in order to allow for better preparation of the issues in question and substantive documentation.

9. In that context, the Conference of the States Parties may wish to consider requesting the Secretariat to use the intersessional period to hold, jointly with the Office of Legal Affairs, an open-ended working group, in which all interested organizations could participate, to discuss this matter and prepare substantive documentation with particular emphasis on the questions of privileges and immunities, jurisdiction and the role of international organizations.
