



# General Assembly

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## Ad Hoc Committee for the Negotiation of a Convention against Corruption

Sixth session

Vienna, 21 July-8 August 2003

Agenda item 3

### Consideration of the draft United Nations Convention against Corruption

## Proposals and contributions

### Report submitted by the Chairman\*

#### Article 2: Definitions [Use of terms]

##### *Subparagraph (a)*

1. Three options are proposed for subparagraph (a), together with notes for the *travaux préparatoires*, as follows:

##### *Option 1*

“(a) ‘Public official’ shall mean:

“(i) Any person holding a legislative, executive,<sup>1</sup> administrative or judicial office<sup>2, 3</sup> of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;

“(ii) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

“(iii) Any other person defined as a ‘public official’ in the domestic law of a State Party.

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\* The Vice-Chairman responsible for chapter I of the draft convention has been holding consultations on article 2, subparagraphs (a)-(c), and wishes to present a report on those consultations to the Ad Hoc Committee.



However, for the purpose of chapter II, ‘Preventive measures’, ‘Public official’ shall mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

- “1. The word ‘executive’ is understood to encompass the military branch, where appropriate.
- “2. ‘Office’ is understood to encompass offices at all levels and subdivisions of government from national to local. In States where municipal and local self-governing bodies exist and are not deemed to form an integral part of the State, ‘office’ may be understood by the States concerned to encompass these levels also.
- “3. It is understood that it is for individual States Parties to determine in their domestic law how each of these categories is applied.”

*Option 2*

“(a) ‘Public official’ shall mean:

“(i) Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;

“(ii) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service; and

“(iii) Any other person defined as a ‘public official’.

Each State Party shall determine to whom each of the above categories is applicable, in accordance with its domestic law.”

*Option 3*

“‘Public official’ shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.”

*Subparagraph (b)*

2. It is proposed to delete subparagraph (b).

*Subparagraph (c)*

3. Two options are proposed for subparagraph (c), together with notes for the *travaux préparatoires*, as follows:

*Option 1*

“(b) ‘Foreign public official’ shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country,<sup>1</sup>

whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise.

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“1. ‘Foreign country’ includes all levels and subdivisions of government, from national to local.”

*Option 2*

“(c) ‘Foreign public official’ shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country,<sup>1</sup> whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority, and any person exercising a public function for a foreign country, including for a public agency or public enterprise.

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“1. ‘Foreign country’ includes all levels and subdivisions of government, from national to local.”

**Explanation**

*Subparagraph 2 (a): “Public official”*

4. A great majority of those consulted saw option 1 as a basis for agreement. Of those:

(a) Many would like to dispense with the sentence starting “However, for the purpose of chapter II ...”;

(b) One delegation would like to insert the words “or other” after the word “judicial” in subparagraph (a) (i);

(c) One delegation would like to replace the word “seniority” with the words “position in the hierarchy” in subparagraph (a) (i);

(d) One delegation would like to have the terms “public function”, “public enterprise” and “public service” in subparagraph (a) (ii) defined;

(e) One delegation would like to delete the words “or provides a public service” in subparagraph (a) (ii);

(f) One delegation would like to replace the words “may be understood by the States concerned” with the words “is understood” in note 2 for the *travaux préparatoires*.

5. A small minority of those consulted favoured option 3, but would be prepared to offer option 2 as a compromise.

*Subparagraph 2 (b): “Public function”*

6. All consulted, apart from one delegation noted above, favoured the omission of any definition of the term “public function”.

*Subparagraph 2 (c): "Foreign public official"*

7. Most delegations appeared to be flexible, but the preference of the majority would be for option 2. One delegation that favoured option 2 would like to insert the words "or joint venture" after the words "public enterprise".

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