

RESEARCH ARTICLE	<b>The Public Official Between Anti-Corruption Law and International Law: What Meaning?</b>	
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<b>Doi Serial</b>	https://doi.org/10.56334/sei/8.8.53	
<b>Keywords</b>	Official - Organization - Public - International.	
<b>Abstract</b>		
<p>This study aims to shed light on the concepts of the public official and the international civil servant. It addresses the definition of each term and the conditions that must apply to both. The study concludes that a public official is anyone who holds a functional position within a governmental body inside their own country, while an international civil servant is someone who works for an international organization outside the scope of their state in exchange for an agreed-upon salary.</p>		
<b>Citation</b>		
<p>Kiari A., Abbar O. (2025). The Public Official Between Anti-Corruption Law and International Law: What Meaning?. <i>Science, Education and Innovations in the Context of Modern Problems</i>, 8(8), 584-594; doi:10.56352/sei/8.8.53.</p>		
<p><b>Issue:</b> <a href="https://imcra-az.org/archive/375-science-education-and-innovations-in-the-context-of-modern-problems-issue-8-vol-8-2025.html">https://imcra-az.org/archive/375-science-education-and-innovations-in-the-context-of-modern-problems-issue-8-vol-8-2025.html</a></p>		
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Received: 14.01.2025	Accepted: 11.05.2025	Published: 02.07.2025 (available online)

## Introduction

Public service is considered a general service performed by a public official for individuals, the state, or one of its branches or public interests, within a specific legal framework that defines the relationship between the official and those receiving the service, as well as their mutual rights and obligations. Some define public service as the collective body of natural and legal persons who constitute the state's administrative apparatus responsible for managing public institutions.

Public service is historically older than international service, as it operates within the boundaries of the nation-state, which predates the emergence of international organizations. International organizations, within which international civil servants work, are relatively recent compared to the nation-state.

International service is considered an integral part of public service within the boundaries of the nation-state. Public service is the foundation and relatively older, with most principles governing international service being derived from public service. It is one of the legal tools through which the state can implement its public policies and manage its institutions in an organized manner. The public official serves as a benchmark for assessing the development and effectiveness of public service.

This research paper aims to clarify the concept and nature of the public official, as well as that of the international civil servant. While some view the public official and the international civil servant as part of the same system—arguing that the latter is merely a public official operating on the international level—closer examination reveals a set of distinctions between the two, particularly in terms of conceptual definition.

The study is divided into two main sections:

### **Section One: The Concept of the Public Official**

### **Section Two: The Concept of the International Civil Servant**

#### **Section one: the concept of the public official**

The concept of the public official preceded that of public service in its emergence. Definitions of the public official vary considerably due to differing views regarding the nature of the position and the conditions a person must meet to be designated as such. The French jurist Valin defined a public official as:

"Any person who serves a national authority and regularly contributes to the management of a public service operated under direct administration, occupying a permanent position listed within the administrative framework."<sup>1</sup>

Similarly, jurist Hauriou defined a public official as: "Any person who holds a position within the permanent staff of a public service administered by the state or its public authorities, and who is appointed by the public authority."<sup>2</sup>

Another definition considers a public official to be any person who receives a salary from the state budget.<sup>3</sup>

In France, legislation does not precisely define the term *fonctionnaire public*; rather, it outlines provisions concerning public officials through the civil service law.<sup>4</sup>

The Civil Service Statute enacted under Decree 244/95 on February 4, 1959—replacing the Law of October 19, 1946, and Law No. 634 of July 13, 1983, on the rights and duties of civil servants reiterated the same concept.

From this, it is evident that French legislation applies its rules to those who meet the following criteria:

Holding a permanent position;

Serving within a public administrative service.

As such, it excludes from civil service provisions members of Parliament, judges, military personnel, and workers in public institutions of an industrial or commercial nature.

In terms of legal doctrine and jurisprudence, Professor Hauriou defined public officials as: "All those appointed by a public authority under the designation of officials, employees, workers, or assistant workers, occupying a position within the permanent staff of a public service managed by the state or other public authorities."<sup>5</sup>

Duez and Debeyre defined a public official as: "Any person who contributes to the management of a public service directly operated by the state and who is permanently assigned to a position within a structured administrative framework."

The French Council of State ruled that a public official is: "Any person entrusted with a permanent position in the establishment, serving a public institution," and stipulated that the public institution must be administrative in nature.

In contrast, for industrial and commercial services, the Council distinguished between administrative roles and lower-tier positions (subalternes), recognizing only the former as public officials, while subjecting the latter to private law. The justification was that roles in accounting and administration are more directly connected to public service.

The Egyptian legislator followed the French model, providing no explicit definition of the public official and leaving the matter to doctrine and case law see Article 1 of the Egyptian Civil Service Law.<sup>6</sup>

The British legislator adopted a broader definition, including all civil agents who dedicate their professional lives to serving the Crown, with the exception of those in political or judicial positions. In fact, there is no formal legal definition of the public official in the UK.<sup>7</sup>

In the United States, public officials may fall under either private law or public law, depending on the context, which complicates the formulation of a precise definition of a public official. The U.S. also follows a merit-based system overseen by human resources management offices.<sup>8</sup>

The Algerian legislator, influenced by French law, followed a similar path and did not provide a comprehensive definition of the public official. Instead, it identified the categories of persons to whom legal provisions apply. Ordinance No. 66-133 defines a public official in Article 1 as follows: "Employees are considered to be those appointed to permanent positions and confirmed in a hierarchical grade within the central administrations of the state, external services affiliated with those administrations, local authorities, as well as public institutions and agencies, in accordance with procedures defined by decree."<sup>9</sup>

It is clearly stated in the legal text that, for an individual to qualify as a public official, the following conditions must be met:

- A formal appointment decision must be issued.
- The appointment must concern a permanent position; thus, an individual occupying a temporary post or assigned to a temporary mission is not considered a public official.
- The decision must include the confirmation (tenure) of the appointed individual within one of the administrative hierarchical grades mere appointment alone is not sufficient.

The criteria for defining a public official are as follows:

**a. The Appointment Element:**

A public official must be appointed through an administrative decision, i.e., a unilateral administrative act. Therefore, a public agent employed under a labor contract is not considered a public official.<sup>10</sup>

**b. Occupying a Permanent Position:**

The administrative agent must hold the position permanently, which implies the existence of a vacant budgeted position, as stipulated in Article 09 of Ordinance No. 06-03.<sup>11</sup>

c. **Tenure (Confirmation):**

Tenure is granted after a minimum of one year of probation, and the individual does not acquire the title or legal status of a public official until officially confirmed. See Article 83 of Ordinance No. 06-03.<sup>12</sup>

d. **Service in a Public Institution:**

The individual must hold a position in one of the institutions or administrations governed by the General Statute of the Civil Service.<sup>13</sup>

The definition of a public official in anti-corruption legislation holds significant importance, as the concept diverges from its counterpart in administrative law and differs even further across other legal domains. The Algerian legislator adopted the concept of the public official from the United Nations Convention against Corruption, which Algeria ratified on April 18, 2004.

The term “public official” (*fonctionnaire public*) used in the law on corruption is an unusual translation of the term “agent public” found in the convention. In fact, the Algerian legislator adopted the translated version of the convention however; the translation was inaccurate, as the correct equivalent in this context should have been “public agent”, not “public official.”

#### **Definition of a Public Official According to Anti-Corruption Law:**

Article 02 of the Anti-Corruption Law<sup>14</sup>, derived from Article 02 of the United Nations Convention against Corruption, provides a definition of the term public official, dividing it into four categories:

1. Anyone holding an executive, administrative, or judicial position.
2. Anyone exercising a representative mandate.
3. Anyone occupying a function or agency role within certain institutions.
4. Anyone considered by law as having the status of a public official.

#### **First Category: Individuals Holding Executive, Administrative, or Judicial Positions**

a. **Executive Positions:**

The highest representative of executive authority is the President of the Republic, followed by the Prime Minister, and ministers. Accordingly, all such individuals are considered public officials under the anti-corruption law.

b. **Administrative Positions:**

Primarily, this refers to public officials as defined by Article 04 of the General Civil Service Law (Law 15/07/2006), which broadly defines a public official as: "Anyone holding a permanent position and ranked within the administrative hierarchy."

This includes the following conditions:

- Holding a **permanent position**, excluding retirees and temporary workers.
- Being **appointed by a legal or regulatory act**, such as:

- By **decree** (e.g., judges, governors/walis);
- By **wilaya-level decision** (for those serving in provincial administration);
- By **municipal decision** (for those in municipal posts).
- Being **tenured within the administrative hierarchy** (i.e., officially registered in the administrative system).

These individuals must be assigned to one of the following:

- **Public institutions**, such as:
  - The Council of the Nation, National People's Assembly, Constitutional Council, Court of Auditors, National Economic and Social Council, and all high councils.
- **Central administrations**, such as:
  - Presidency of the Republic, Prime Minister's Office, ministries, general directorates (e.g., General Directorate of National Security, Customs), and other central government entities.
- **Decentralized administrations**, including:
  - Provincial directorates of education, religious affairs, courts and tribunals, etc. Anyone appointed to such institutions is considered a public official.

Or:

- Anyone contributing to the service of a wilaya (province) or municipality.
- Anyone working in public administrative institutions, such as the Higher School of Magistracy.
- Anyone employed by public institutions of a scientific, cultural, or professional nature, such as universities, higher education institutes, and vocational training centers.<sup>15</sup>
- Anyone serving in scientific and technological public institutions, such as the Renewable Energy Development Center or the Astronomy Research Center.<sup>16</sup>

The article concludes by noting that employees of any public institution subject to the General Civil Service Law may fall under the definition of public officials.

### Second Degree:

This category expands the definition beyond what is provided in the **Civil Service Law**, as it includes not only those appointed on a permanent basis, but also those who hold **administrative positions on a temporary basis**. This means that **contractual** and **temporary employees** in the aforementioned public institutions are also included.<sup>17</sup>

#### c. **Judicial Positions:**

This refers to anyone who renders judicial decisions, i.e., judges in the strict sense of the term. Therefore, judges of the Court of Auditors and members of the Constitutional Council are excluded. Included are judges and public prosecutors, both in the ordinary judiciary and the administrative judiciary, as well as sworn officers and social assistants.<sup>18</sup>

### Second Category: Individuals with a Representative Mandate

This includes those holding legislative positions, such as:

- Elected members of the National People's Assembly;
- Elected and appointed members of the Council of the Nation;
- Elected members of local councils.

### **Third Category: Individuals Holding a Function or Mandate in a Public Service or Public Institution with Mixed Capital**

In this case, the public official must belong to a legal entity other than the state or local authorities, and must hold a position of responsibility.

#### **First: Concerned Institutions and Entities**

These are institutions not previously mentioned in the definition of a public official under administrative law.

##### **❖ Public Authority (Entity):**

A public authority refers to a public institution with a specific structure, established by the state for a particular purpose—namely, the provision of a public service. Such entities may take several forms, including:

- Public establishments of an industrial and commercial nature;
- The National Television Corporation;
- Independent administrative authorities, such as the Competition Council.

##### **❖ Public Institution:**

This term refers to economic public institutions. Prior to 1988, they were known as socialist enterprises, but their legal status changed under Law 12/01 of 1988, which redefined them as economic public institutions. Later, Law of 25/09/1995 introduced holding companies (the law concerning state-owned commercial capital), which was eventually repealed by Ordinance 01-04 on the organization, management, and privatization of public economic institutions.

Article 04 of the latter defines these institutions as: “Commercial companies in which the state or another legal person governed by public law holds a majority of the capital; they are subject to public law.”

This category includes entities formerly known as national companies, such as Sonatrach and Sonelgaz.

##### **❖ Public Institution with Mixed Capital:**

These are originally state-owned institutions in which a portion of the capital has been sold to the private sector, typically through the sale of shares. Examples include El Aurassi and Saïdal.<sup>19</sup>

##### **❖ Any Other Entity Providing a Public Service:**

This extends to private companies, provided they offer a public service. Examples include private transportation companies, private telecommunications, private schools, private hospitals, and private secondary schools.

A public service is typically defined by three main characteristics:

1. The institution must serve a public interest.

2. It must enjoy certain public authority privileges.
3. It must be subject to administrative oversight in how it performs its mission, adhering to the principles of continuity, adaptability, and equality.

### **Second: Holding a Function or Mandate**

To fall within the third category, the individual must hold a defined function or mandate, which narrows the scope of who may be considered a public official. This means that the person must be appointed to a specific position and possess responsibility and decision-making authority.

For example, in the case of a bank, this would include:

- The bank manager,
- Branch directors,
- Board members,
- Or agency representatives such as the chief accountant or treasurer—especially when their signature is required for the withdrawal of funds. In such cases, these individuals are considered public officials, as they hold responsibility and their signature carries legal weight.<sup>20</sup>

The same applies to those holding a mandate, i.e., elected representatives. This can be found in public economic institutions, where:

- All board members are mandated agents,
- The CEO is elected by board members,
- In institutions such as the Social Security Fund, the Board of Directors includes elected employee representatives.

### **Fourth Category: Those Considered as Public Officials**

This category includes members of the military and civilians within the framework of national defense, as well as public officers such as notaries, bailiffs, and translators all of whom perform their duties under delegation of authority from public bodies.

From the foregoing, it can be concluded that the concept of public official under anti-corruption law differs significantly from its definition in civil service law. Moreover, the use of the term "public official" in the anti-corruption law is arguably inappropriate; the term "public agent" would have been more accurate.

Therefore, corruption offenses are not limited to individuals defined as public officials under administrative law. In fact, even those who are not formally recognized as public officials in that context may fall under the scope of anti-corruption law. For example, Article 62 of the Anti-Corruption Law provides penalties for private-sector professionals, such as craftsmen and merchants.

## **Section Two: The Concept of the International Civil Servant**

International organizations generally rely on a large number of employees, technicians, and administrators to carry out their functions. These individuals may serve on a permanent or temporary basis, and are referred to by the term "international civil servant." The concept has been defined in various ways. One such definition states: "Every person, whether remunerated or not, and whether appointed permanently or temporarily by one of the organization's branches to

perform one of its functions or to assist in its operations. In short, it is every person through whom the organization functions."<sup>21</sup>

This is how the International Court of Justice defined the international civil servant in its advisory opinion of 1949.

Another definition describes the international civil servant as: "A group of international employees who hold permanent and ongoing positions and are subject to special legal regime that governs their relationship with the organization, including their obligations toward it and their rights vis-à-vis it."<sup>22</sup>

The concept of the international civil servant includes all individuals working for the organization, whether permanently or temporarily, and covers anyone entrusted by the organization with tasks related to its mission. This includes heads of missions, their assistants, as well as administrative, technical, and labor personnel, whether stationed at the organization's headquarters or in the field. In essence, an international civil servant is any person assigned by the organization to perform a task on its behalf.<sup>23</sup>

Some legal scholars have also defined the international civil servant as: "Any person who receives a salary from the organization's budget."<sup>24</sup>

However, this definition is considered insufficient, as it omits several essential elements typically required by legal doctrine for someone to be recognized as a public official. These elements include specific conditions, which will be outlined below.

### **Conditions for Recognizing an International Civil Servant**

Based on the aforementioned definitions, it becomes clear that several criteria must be met for a person to be considered an international civil servant. These conditions can be summarized as follows:<sup>25</sup>

- 1. Service to an International Organization:**

The individual must perform work on behalf of an international organization or one of its branches. A person working for a specific state or for an institution that does not qualify as an international organization is not considered an international civil servant.

- 2. Pursuit of the Organization's Interests:**

The primary objective of the individual's work must be the advancement of the international organization's goals, rather than the interests of another party.

- 3. Territorial Scope of Activity:**

The employee may carry out their duties within the territory of a specific state, provided that the purpose of such activities is to serve the interests of the organization itself.

- 4. Subordination to the Organization's Authority:**

The international civil servant must work under the supervision of the organization's bodies, receiving instructions and directives from its superiors in accordance with the provisions of its charter and internal regulations. Therefore, anyone who operates under the laws and orders of their home country is not considered an international civil servant.

- 5. Legal Framework:**

The legal status of the international civil servant must be defined by international legal rules, typically through an international agreement.

## 6. Service to the International Community:

The international civil servant must act in pursuit of the common collective interest of the international community.

International civil servants must, in the performance of their duties, remain free from any external influence. They are expected to maintain independence from their national governments and carry out their assigned tasks with complete autonomy, as this benefits the common good of all member states. Moreover, they must exhibit neutrality, meaning they are to perform their duties toward all member states of the organization without discrimination, and in full compliance with the instructions of the organization's bodies.<sup>26</sup>

It should also be noted that international civil servants are distinct from other categories, such as representatives of member states in international organizations like the United Nations. Also excluded from the category are temporary staff, such as fact-finding committees or state delegates appointed to chair a specific body within an international organization.

As for the appointment of international civil servants, the charters of international organizations generally distinguish between senior officials and other categories of staff:

- Senior officials are usually appointed directly by member states, either through a majority agreement among states, as stipulated in the organization's charter, or through various political mechanisms or pressures to support a specific candidate.<sup>27</sup>
- The second category of staff is typically appointed through open competition, accessible to nationals of all member states. Alternatively, the organization may request nominations from member states for candidates to fill specific international posts.

The founding charter of the organization may outline the procedures and requirements for appointing international staff. However, it is more common for such texts to merely state general principles. The overarching principle in the appointment of international civil servants includes a requirement for:

1. A high level of competence; and
2. Adherence to the principle of equitable geographical distribution.

The competence requirement is well-established and applies even to administrative positions within national governments. As for the principle of equitable geographical distribution, it is stipulated in most international charters. This principle means that administrative positions within the organization should be fairly distributed among all member states, to prevent one or more countries from dominating the organization's staffing and thereby affecting its neutrality and performance.<sup>28</sup>

## Conclusion

Based on the foregoing definitions and conditions related to both the public official and the international civil servant, it is observed that there is a significant degree of similarity between the two. This similarity has led to the application of administrative and functional rules, originally used at the national level, within international organizations. Consequently, the rules governing public officials are, to some extent, analogous to those regulating the work of international civil servants.

It is widely recognized that public service is exercised at the national level, operating under the legal and regulatory framework of the internal legal system, and serving the interests of the state and its citizens. International service, in contrast, has derived its fundamental principles and structure from public service. It seeks to fulfill the common interests of the international community, in accordance with the rules of international law.

The scope of work for a public official is generally defined by the application of national law in service of national public institutions. By contrast, the scope of work for an international civil servant is determined by the implementation of international agreements, within a legal framework governed by international law.

In light of this, there is a clear need to establish a legal framework specific to international service, to unify the legal rules and internal regulations that govern the relationship between the international civil servant and the international organization—regardless of the nature of the organization in which the official serves. Moreover, it is necessary to establish one or more international administrative courts, which would serve as appellate courts for administrative rulings. These courts should have branches in most countries, or be assigned to serve groups of international organizations. Such a system would ensure equal justice for international civil servants, as the procedures, rules, and decisions applied to them would be uniform.

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**FOOTNOTES**

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