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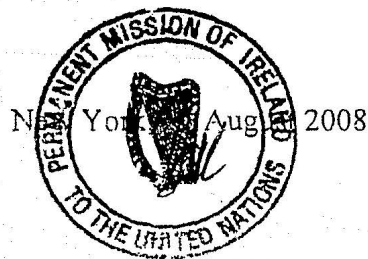
PERMANENT MISSION OF  
IRELAND TO THE UNITED NATIONS  
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The Permanent Mission of Ireland to the United Nations presents its compliments to the Secretary-General to the United Nations and has the honour to refer to General Assembly Resolution 62/63 of 6 December 2007, entitled "Criminal Accountability of United Nations officials and experts on mission"; and further has the honour to refer to the request of the Secretary-General dated 31 December 2007 for information on implementation of the resolution, in particular paragraphs 3 and 4.

The Permanent Mission of Ireland to the United Nations has the honour to transmit the attached information on

- a. The extent of jurisdiction over crimes of a serious nature committed by Irish nationals while serving as United Nations officials or experts on mission; and
- b. Cooperation with UN Member States and the UN in the exchange of information and facilitating the conduct of investigations and, as appropriate, prosecution of UN officials and experts on mission who are alleged to have committed crimes of a serious nature.

The Permanent Mission of Ireland avails itself of this opportunity to renew to the Secretary-General to the United Nations the assurances of its highest consideration.



H.E. Mr. Ban Ki-moon  
Secretary-General  
United Nations  
New York

**Request of the Secretary-General dated 31 December 2007 for information on implementation of General Assembly Resolution 62/63 of 6 December 2007, entitled "Criminal Accountability of United Nations officials and experts on mission", in particular paragraphs 3 and 4**

**Response of Ireland**

1. The following information is supplied by Ireland pursuant to the request of the Secretary-General dated 31 December 2007 for information on implementation of General Assembly Resolution 62/63 of 6 December 2007, entitled "Criminal Accountability of United Nations officials and experts on mission", and in particular the implementation of paragraphs 3 and 4.
2. This response provides information on
  - (a) The extent of jurisdiction over crimes of a serious nature committed by Irish nationals while serving as United Nations officials or experts on mission; and
  - (b) Cooperation with UN Member States and the UN in the exchange of information and facilitating the conduct of investigations and, as appropriate, prosecution of UN officials and experts on mission who are alleged to have committed crimes of a serious nature.
3. All constitutional and legislative provisions referred to are set out in full in the Appendix.

**A. Extent of jurisdiction over crimes of a serious nature committed by Irish nationals while serving as United Nations officials or experts on mission**

4. Bunreacht na hEireann (The Constitution of Ireland) provides at Article 29.8 that the State may exercise extra-territorial jurisdiction in accordance with generally recognised principles of international law.
5. However, criminal jurisdiction in Ireland is predominantly territorial. It extends over the land, islands and waters of the State (as well as ships and aircraft in certain circumstances). In general, Irish courts will also have jurisdiction in cases where a person abroad initiates an offence, part of the essential elements of which take place within Ireland.
6. The extent to which Irish law currently provides for the exercise of extraterritorial jurisdiction over a number of serious crimes is detailed below.

***Murder and manslaughter***

7. Pursuant to section 9 of the Offences Against the Person Act 1861, as amended by the Criminal Law Act 1997, the Irish courts have jurisdiction over murders and manslaughters committed outside the State, provided the accused is an Irish citizen.

8. Under section 10 of the 1861 Act (as amended by the 1997 Act) jurisdiction is also conferred where the victim is attacked in Ireland but dies abroad or alternatively, is attacked abroad and dies in Ireland.

***Assault or other non-fatal offences***

9. There is currently no provision in Irish law allowing for the exercise of jurisdiction over assault or other such non-fatal offences (or attempted offences) committed outside the State.

***Torture***

10. Pursuant to sections 2 and 3 of the Criminal Justice (United Nations Convention against Torture) Act 2000, an act of torture by a public official or by any other person at the instigation of, or with the consent or acquiescence of a public official, is an offence wheresoever committed and regardless of the nationality of the persons concerned.

11. It is also an offence under Irish law for any person, regardless of nationality or status, to attempt or conspire to commit the offence of torture, or to do an act with the intent to obstruct or impede the arrest or prosecution of another person in relation to the offence of torture.

***Rape and acts of sexual violence***

12. There is currently no provision in Irish law allowing for the exercise of jurisdiction over rape or acts of sexual violence (or attempted offences) committed outside the State, other than in relation to offences against children as discussed below.

***Sexual offences involving children; and attempts or complicity in same***

13. The Sexual Offences (Jurisdiction) Act 1996 permits prosecutions to be brought in Ireland against Irish citizens or persons ordinarily resident in the State who commit sexual acts involving children outside of the State, provided the act is an offence in the place where the act was committed and is an offence under Irish law.

14. The Sexual Offences (Jurisdiction) Act 1996 also covers attempts to commit and complicity in committing sexual acts involving children outside of the State by Irish citizens or persons ordinarily resident in the State.

***Human Trafficking***

15. Pursuant to section 7 of the Criminal Law (Human Trafficking) Act 2008, the Irish Courts have jurisdiction to prosecute Irish citizens or persons ordinarily resident in Ireland for human trafficking offences committed abroad. Offences include trafficking a child for the purposes of exploitation, sexual exploitation, and soliciting or importuning for the purposes of prostitution of a trafficked person. In this context the Act defines human trafficking as including procuring, recruiting or transporting a person (including a child) to another person.

***Disciplinary Regulations applicable to members of the Garda Síochána (police)***

16. The Garda Síochána Acts 2005-2007 do not establish additional criminal jurisdiction in relation to serious crimes committed by members of An Garda Síochána while on international service abroad.

17. However, pursuant to section 51(4) of the Garda Síochána Act 2005, the Garda Síochána Disciplinary Regulations continue to apply to members while on international service. Members would, accordingly, remain subject to the internal Garda Síochána Disciplinary Regulations (as opposed to criminal investigation or prosecution) in the event of allegations of commission of serious crimes while on international service.

***Members of the Defence Forces***

18. Members of national military contingents are subject to the exclusive jurisdiction of the sending state and do not fall within the scope of this request or response.

19. The position in relation to military observers is provided for in the Defence Acts 1954-2007, as follows. In accordance with section 3 of that Act, Defence Forces personnel are at all times subject to military law, whether within or outside the State.

20. Section 169 of the Defence Acts establishes jurisdiction to try persons subject to military law for the various offences which are specified in that section. In addition, it includes provision for prosecution of persons subject to military law in respect of any offence which when committed in the State is punishable by the ordinary criminal law, "whether the offence is committed in the State or elsewhere". In practice, any investigation into such an alleged offence would be conducted by Defence Forces Military Police in accordance with Irish law.

***Note: Offences against UN and associated personnel***

21. The position under Irish law is different in relation to offences by persons (which could include UN officials and experts on mission) which are committed *against* UN and associated personnel.

22. In accordance with the obligation set out in article 10(4) of the Convention on the Safety of United Nations and Associated Personnel 1994, section 2 of the Criminal Justice (Safety of United Nations Workers) Act, 2000 establishes jurisdiction where any person does a relevant act to or in relation to a UN worker. The relevant offences include murder, manslaughter, rape, sexual assault, assault, threats to kill or cause serious harm, false imprisonment and so on.

***Conclusion in relation to extra-territorial criminal jurisdiction***

23. Irish law currently provides for extra-territorial criminal jurisdiction only in relation to a limited number of crimes and persons.

24. No jurisdiction gap appears to exist in relation to Defence Forces personnel, who remain subject to Irish military law at all times and in whose respect Irish law provides for extra-territorial criminal jurisdiction.

25. Similarly, in circumstances where a serious offence is committed by a UN official or expert on mission *against* UN and associated personnel, such serious criminal offences would in general be captured by Irish law.

26. However, a number of gaps exist in relation to serious offences committed by a UN official or expert on mission against non-UN personnel, e.g. against civilians, nationals or residents of the host State, and so on.

27. Other than in the case of murder, manslaughter, human trafficking and certain sexual offences involving children, Ireland would not be in a position to prosecute an Irish national alleged to have committed such a serious crime in a host State.

28. Accordingly, if the host State was unable to prosecute the alleged offender, there would be a jurisdictional gap in relation to offences including assault, rape and acts of sexual violence and other serious crimes. Further legislation would be required in order to expand the material and personal scope of Irish extra-territorial criminal jurisdiction.

**B. Cooperation with UN Member States and the UN in the exchange of information and facilitating the conduct of investigations and prosecutions of UN officials and experts on mission who are alleged to have committed crimes of a serious nature**

29. Ireland has not received any requests for cooperation of information in connection with investigation or prosecution of Irish nationals or other persons in relation to alleged commission of a serious crime while serving as a UN official or expert on mission.

## APPENDIX

- I. Article 29.8, Bunreacht na hEireann (Constitution of Ireland)
- II. Section 9 and s.10, Offences Against the Person Act 1861, as amended by the Criminal Law Act 1997
- III. Criminal Justice (United Nations Convention against Torture) Act 2000
- IV. Section 2, Sexual Offences (Jurisdiction) Act 1996
- V. Criminal Law (Human Trafficking) Act 2008
- VI. Section 51(4) of the Garda Síochána Act 2005
- VII. Sections 3 and 169 Defence Acts 1954-2007, as amended
- VIII. Section 2, Criminal Justice (Safety of United Nations Workers) Act, 2000

## **I. Article 29.8 Bunreacht na hEireann (Constitution of Ireland)**

The State may exercise extra-territorial jurisdiction in accordance with the generally recognised principles of international law.

## **II. Offences Against the Person Act 1861**

### **Section 9, as amended by the Criminal Law Act 1997**

Where any murder or manslaughter shall be committed on land outside the area of application of the laws of the State, and whether the person killed were a citizen of Ireland or not, every offence committed by any citizen of Ireland, in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in any country or place in the area of application of the laws of the State in which such a person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that country or place; provided that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland, in the same manner as such person might have been tried before the passing of this Act.

### **Section 10, as amended by the Criminal Law Act 1997**

Where any person, being criminally stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such, stroke, poisoning, or hurt in England or Ireland, or, being criminally stricken, poisoned, or otherwise hurt at any place in England or Ireland, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the county or place in England or Ireland in which such death, stroke, poisoning, or hurt shall happen, in the same manner in all respects as if such offence had been wholly committed in that county or place.



### **III. Criminal Justice (United Nations Convention against Torture) Act 2000**

#### **Section 2**

(1) A public official, whatever his or her nationality, who carries out an act of torture on a person, whether within or outside the State, shall be guilty of the offence of torture.

(2) A person, whatever his or her nationality, other than a public official, who carries out an act of torture on another person, whether within or outside the State, at the instigation of, or with the consent or acquiescence of, a public official shall be guilty of the offence of torture.

(3) A person guilty of the offence of torture shall be liable on conviction on indictment to imprisonment for life.

#### **Section 3**

(1) A person, whatever his or her nationality, whether within or outside the State, who—

(a) attempts to commit or conspires to commit the offence of torture, or

(b) does an act with the intent to obstruct or impede the arrest or prosecution of another person, including a person who is a public official, in relation to the offence of torture,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

## IV. Sexual Offences (Jurisdiction) Act 1996

### Section 2

(1) Where a person, being a citizen of the State or being ordinarily resident in the State, does an act, in a place other than the State ("the place"), against or involving a child which—

(a) constitutes an offence under the law of the place, and

(b) if done within the State, would constitute an offence under, or referred to in, an enactment specified in the *Schedule* to this Act, he or she shall be guilty of the second-mentioned offence.

(2) Where a person, being a citizen of the State or being ordinarily resident in the State, attempts to commit an offence which is an offence by virtue of *subsection (1)* of this section ("the principal offence"), he or she shall be guilty of an offence and shall be liable on conviction on indictment to a penalty not greater than the penalty to which he or she would have been liable if he or she had been convicted of the principal offence.

(3) Where a person aids, abets, counsels or procures, in the State, the commission of an offence, which is an offence by virtue of *subsection (1)* of this section, he or she shall be guilty of that offence.

(4) Where a person, being a citizen of the State or being ordinarily resident in the State, aids, abets, counsels or procures, outside the State, the commission of an offence, which is an offence by virtue of *subsection (1)* of this section, he or she shall be guilty of that offence.

(5) Where a person conspires with, or incites, inside the State, another person to commit an offence, which is an offence by virtue of *subsection (1)* of this section ("the principal offence"), he or she shall be guilty of an offence and shall be liable on conviction on indictment to a penalty not exceeding the penalty to which he or she would be liable if he or she were convicted of the principal offence.

(6) Where a person, being a citizen of the State or being ordinarily resident in the State, conspires with, or incites, outside the State, another person to commit an offence, which is an offence by virtue of *subsection (1)* of this section ("the principal offence"), he or she shall be guilty of an offence and shall be liable on conviction on indictment to a penalty not exceeding the penalty to which he or she would be liable if he or she were convicted of the principal offence.

(7) For the purposes of proceedings for an offence to which this section relates, a person shall be deemed to be ordinarily resident in the State if he or she has had his or her principal residence within the State for the period of 12 months immediately preceding the alleged commission of the said offence.

## V. Criminal Justice (Human Trafficking) Act 2008

### Section 1 (extracts)

In this Act—

“exploitation” means—

- (a) labour exploitation,
- (b) sexual exploitation, or
- (c) exploitation consisting of the removal of one or more of the organs of a person;

“labour exploitation” means, in relation to a person (including a child)—

- (a) subjecting the person to forced labour,
- (b) forcing him or her to render services to another, or
- (c) enslavement of the person or subjecting him or her to servitude or a similar condition or state;

“sexual exploitation” means, in relation to a person—

- (a) the production of pornography depicting the person either alone or with others,
- (b) causing the person to engage in sexual activity for the purpose of the production of pornography,
- (c) the prostitution of the person,
- (d) the commission of an offence specified in the Schedule to the Act of 2001 against the person; causing another person to commit such an offence against the person; or causing the person to commit such an offence against another person, or
- (e) otherwise causing the person to engage or participate in any sexual, indecent or obscene act;

“trafficks” means, in relation to a person (including a child)—

- (a) procures, recruits, transports or harbours the person, or
    - (i) transfers the person to,
    - (ii) places the person in the custody, care or charge, or under the control, of, or
    - (iii) otherwise delivers the person to, another person,
  - (b) causes a person to enter or leave the State or to travel within the State,
  - (c) takes custody of a person or takes a person—
    - (i) into one’s care or charge, or
    - (ii) under one’s control,
- or
- (d) provides the person with accommodation or employment.

### Section 7

(1) Where a person who is an Irish citizen or ordinarily resident in the State does an act in a place other than the State that, if done in the State, would constitute an offence under *section 2* or *4*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(2) Where a person does an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute an offence under *section 2 or 4*, or *section 3 (other than subsections (2A) and (2B))* of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(3) Where a person conspires with, or incites, in the State, another person to do an act in a place other than the State that, if done in the State, would constitute an offence under *section 2 or 4*, or *section 3 (other than subsections (2A) and (2B))* of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(4) Where a person who is an Irish citizen or ordinarily resident in the State conspires with, or incites, in a place other than the State, another person to do an act in a place other than the State that, if done in the State, would constitute an offence under *section 2 or 4*, or *section 3 (other than subsections (2A) and (2B))* of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(5) Where a person conspires with, or incites, in the State or in a place other than the State, another person to do an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute an offence under *section 2 or 4*, or *section 3 (other than subsections (2A) and (2B))* of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(6) Where a person conspires with, or incites, in a place other than the State, a person who is an Irish citizen or ordinarily resident in the State to do an act in a place other than the State that, if done in the State, would constitute an offence under *section 2 or 4*, or *section 3 (other than subsections (2A) and (2B))* of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(7) Where a person attempts to commit an offence under *subsection (1), (2), (3), (4), (5) or (6)*, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(8) For the purposes of this section a person shall be deemed to be ordinarily resident in the State if—

(a) he or she has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence,

(b) it is a company registered under the Companies Acts, or

(c) in the case of any other body corporate, it is established under the law of the State.

## VI. Garda Síochána Act 2005

### Section 51

(1) Subject to *subsection (3)*, the Garda Commissioner shall assign eligible members of the Garda Síochána in such numbers and of such rank as the Government may determine for service outside the State—

- (a) to carry out duties of a police character with an international organisation, or
- (b) to advise others on, or to monitor their performance of, such duties.

(2) Subject to *subsection (3)*, the Garda Commissioner may assign eligible members of the Garda Síochána for service outside the State—

- (a) to carry out liaison duties with Europol or, subject to the agreement of the Government, with a law enforcement agency of a state other than the State, or
- (b) on secondment to an international organisation with the consent of the Minister.

(3) An eligible member may be assigned under this section only for the period specified by the member in his or her offer to be available for international service.

(4) This Act, the regulations, and the Garda Síochána Compensation Acts 1941 and 1945 continue to apply to members while on international service.

(5) Nothing in this section prevents members of the Garda Síochána stationed in the State from travelling outside the State in the course of carrying out their duties.

## VII. Defence Acts 1954-2007, as amended

### Section 3

The application of this Act to a person subject to military law shall not be affected by reason of the fact that such person is for the time being outside the State or on board a ship or aircraft.

### Section 169<sup>1</sup>

(1) Subject to the provisions of this Act, every person who, while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial.

(2) Where a person charged under this section is convicted by a court-martial of treason or murder, he shall be sentenced to imprisonment for life.

(3) Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:

- (a) if he is convicted of manslaughter, be liable to imprisonment for life or any lesser punishment awardable by a court-martial;
- (b) if he is convicted of rape, rape under section 4 (within the meaning of the Criminal Law (Rape)(Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape)(Amendment) Act 1990), be liable to imprisonment for life or any lesser punishment awardable by a court-martial;
- (c) if he is convicted of an act of genocide which would be punishable under the Genocide Act 1973 be liable—
  - (i) in case the offence consists of the killing of any person, to imprisonment for life, or
  - (ii) in any other case, to imprisonment for a term not exceeding fourteen years;
- (d) if he is convicted of an offence under the Criminal Justice (United Nations Convention against Torture) Act 2000 be liable to imprisonment for life;
- (e) if he is convicted of an offence under the Criminal Justice (Safety of United Nations Workers) Act 2000 be liable either to suffer any punishment assigned for such offence by that Act or any lesser punishment awardable by a court-martial;
- (f) if he is convicted of an offence under the Criminal Justice (Terrorist Offences) Act 2005, be liable to suffer any punishment assigned for such offence by that Act;
- (g) if he is convicted of any offence not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by law of the State or to suffer—

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<sup>1</sup> As amended by the Criminal Justice (Terrorist Offences) Act 2005

- (i) if he is subject to military law as an officer, dismissal with disgrace from the Defence Forces or any lesser punishment awardable by a court-martial, or
- (ii) if he is subject to military law as a man, imprisonment for any term not exceeding two years or any lesser punishment awardable by a court-martial.

**Section 169A**

(1) A person subject to military law who is accused of murder which is alleged to be murder to which section 3 of the Criminal Justice Act 1990, applies or of an attempt to commit such a murder and is to be tried by court-martial shall be charged with murder to which that section applies or, as the case may be, with an attempt to commit such a murder, and the following provisions of that Act, namely —

- (a) section 4, with the substitution of 'court-martial' for 'court', and
- (b) subsection (2) of section 6, with the substitution of 'charged with' for 'indicted for', shall apply and have effect in relation to the trial.

(2) The said section 4 shall apply and have effect, in relation to the trial of a person subject to military law who is accused of treason, with the substitution of 'court-martial' for 'court'.

## VIII. Criminal Justice (Safety of United Nations Workers) Act 2000

### Section 2

Where a person does outside the State an act to, or in relation to, a United Nations worker that, if done in the State, would constitute an offence specified in *Part I* of the *Second Schedule*, he or she shall be guilty of an offence and liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State.

### Second Schedule, Part I

#### *Common law offences*

1. Murder.
2. Manslaughter
3. Rape

#### *Non-fatal offences*

4. Any offence under the following provisions of the Non-Fatal Offences against the Person Act, 1997—
  - (a) section 2 (assault);
  - (b) section 3 (assault causing harm);
  - (c) section 4 (assault causing serious harm);
  - (d) section 5 (threats to kill or cause serious harm);
  - (e) section 12 (poisoning);
  - (f) section 13 (endangerment);
  - (g) section 15 (false imprisonment).

#### *Sexual offences*

5. Any offence under the following provisions of the Criminal Law (Rape)(Amendment) Act 1990 -
    - (a) section 2 (sexual assault);
    - (b) section 3 (aggravated sexual assault);
    - (c) section 4 (rape under section 4).
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#### *Explosives*

6. Any offence under section 2 (causing explosion likely to endanger life or damage property) of the Explosive Substances Act, 1883.