

**PERMANENT MISSION OF AUSTRIA TO THE UNITED NATIONS
MISSION PERMANENTE DE L'AUTRICHE AUPRES DES NATIONS UNIES**

No. 66.130/2/09

The Permanent Mission of Austria to the United Nations presents its compliments to the Secretary-General of the United Nations and with reference to the Secretary-General's request in Note LA/COD/50 of 31 December 2008 has the honour to inform the Secretary-General on the implementation of General Assembly Resolution 63/119 on "Criminal Accountability of United Nations officials and experts on mission" by Austria (see Annex).

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



To the
Secretary-General of the United Nations
Office of Legal Affairs
Codification Division
United Nations Headquarters
N e w Y o r k

Annex:

Paragraphs 3 and 4 of GA Res. 63/119

Austria has already submitted information on the implementation of GA resolution 62/63, in particular paragraphs 3 and 4 that correspond to paragraphs 3 and 4 of GA resolution 63/119. Since the day of this submission there has been no change in Austrian national legislation in these areas.

Paragraph 5 (a)

Austria is in a position to afford assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission, including assistance in obtaining evidence, on the basis of applicable multilateral and bilateral extradition and MLA-treaties. In the absence of such treaties, the above-mentioned assistance can be granted on the basis of the Austrian Extradition and MLA Act (ARHG) of 4 December 1979.

Paragraph 5 (b)

Information and material obtained from the United Nations for purposes of criminal proceedings initiated in Austria for the prosecution of crimes of a serious nature committed by UN officials and experts on mission, can be used in accordance with the provisions of the Austrian Code of Criminal Procedure.

Section 162 of that Code provides for the possibility of an anonymous testimony of a witness if there are grounds to believe that the person concerned would otherwise be exposed to a serious danger for his or her life, health, well-being or freedom. Furthermore, there is the possibility of hearing a witness by way of a video conference (Section 153 para. 4 of the Code of Criminal Procedure, Article 10 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU).

Paragraph 5 (c)

Austrian law does not differentiate between victims of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and crimes committed by others. Consequently the comprehensive victim protection provisions in Section 65 et seq. of the Austrian Code of Criminal Procedure apply without qualification.

According to Section 66 paragraph 2 of the Code of Criminal Procedure victims of violent acts, dangerous threats or sexual offences as well as the spouse, life companion, relatives in a direct line, brother or sister of a person whose death could have been caused by a criminal offence, or other relatives who were witnesses of the criminal offence are entitled to psycho-social or legal assistance in order to preserve the victim's rights in the criminal proceeding. Psycho-social assistance covers the victim's

preparation for the proceeding and the emotional burden caused thereby. Psycho-social and legal assistance are provided free of charge. The Ministry of Justice is authorised to assign victims support organisations to provide psycho-social and legal assistance and also funds these organisations.

The question whether witnesses may be included in the Austrian witness protection programme is addressed in Section 22 paragraph 1 (5) of the Security Police Act, whereby the provision concerning key witnesses contained in Section 41 (a) of the Austrian Code of Criminal Procedure would have to be taken into account. A central objective of the Austrian unit for witness protection in the Federal Ministry of the Interior is to provide a protected witness – due to the high degree of endangerment involved – with comprehensive protection. Such protection is granted without prejudice as to whether the crime in question has been alleged to have been committed by United Nations officials and experts on mission or others.

Paragraph 5 (d)

Austria could provide technical assistance to other states in response to a request in this matter.