



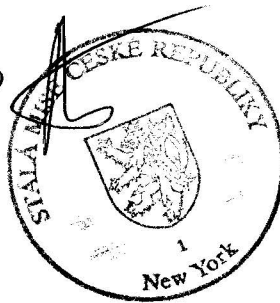
PERMANENT MISSION OF THE CZECH REPUBLIC  
TO THE UNITED NATIONS

No. 1661/2009

The Permanent Mission to the Czech Republic to the United Nations presents to the Secretary-General of the United Nations and, with reference to the Secretary-General's note No. LA/COD/50 of 31 December 2008 concerning the request to provide with information on the implementation of the United Nations General Assembly resolution 63/119 of 11 December 2008 entitled "Criminal Accountability of United Nations officials and experts on mission", in particular its operative paragraphs 3, 4 and 5, in the Czech Republic, has the honour to submit the information regarding paragraph 5 in the Annex to this note, as the information on the implementation of paragraphs 3 and 4 was already provided in 2008.

The Permanent Mission of the Czech Republic 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.

New York, 17 June 2009



His Excellency  
Mr. Ban K i - M o o n  
Secretary-General  
United Nations  
New York

Copy to the attention of:

Codification Division  
Office of Legal Affairs  
United Nations  
New York

## **Implementation of Operative Paragraph 5 of the General Assembly Resolution 63/119 of 11 December 2008 by the Czech Republic**

The Czech Republic submits to the Secretary-General of the United Nations, on the basis of his request dated 31 December 2008 (reference LA/COD/50), the following information on the implementation of the General Assembly Resolution 63/119 of 11 December 2008, entitled "Criminal Accountability of United Nations Officials and Experts on Mission." As the Czech Republic has already provided to the Secretary-General information on the implementation of operative paragraphs 3 and 4 of this Resolution in 2008, it will focus on the newly added operative paragraph 5.

### **Ad 5 (a):**

As there is no framework UN convention, that would cover the issue of cooperation in criminal matters or extradition related to the UN officials or experts on mission, such cooperation can be provided by the Czech Republic only on the basis of the principle of reciprocity. As such, legal assistance must always have a concrete legal basis and be in accordance with the domestic law. Furthermore, the Czech Republic is a State party to numerous multilateral and bilateral treaties on international legal assistance in criminal matters.

The international cooperation is covered within the Czech law by Chapter XXV of the Criminal Procedure Code, as amended (Act No. 141/1961 Coll.). In order to establish an international cooperation in criminal matters in cases, where there is no treaty basis for such cooperation, the condition *sine qua non* is, pursuant to Section 376 of the Criminal Procedure Code, respect for the principle of reciprocity. The requesting State needs to provide, therefore, a guarantee that it will grant a similar request by the Czech Republic in the future. On behalf of the Czech Republic, such guarantee can be issued by the Ministry of Justice (in the criminal procedure) or by the Supreme Public Prosecutor's Office (in the pre-trial procedure). Without the treaty basis, the direct communication between the judicial organs is not possible.

### **Ad 5 (b):**

The Police of the Czech Republic and the Czech prosecutors may ask the UN organs for information and materials, however, they cannot provide information on the progress in criminal investigation. With regard to the admissibility of evidence, which is covered by Section 447 of the Criminal Procedure Code, the following can be summarized:

- while evaluating the admissibility of evidence carried out abroad, the European Convention for the Protection of Human Rights and Fundamental Freedoms needs to be taken in account, in particular its Article 6 providing for the right to fair trial;
- the evidence obtained through the actions of foreign organs has not a higher evidentiary value than it would have, had it been obtained through the actions of domestic organs.

The pre-condition for the use of such evidence is a decision of the Supreme Public Prosecutor's Office or a public prosecutor's office of a lower level (as stipulated in Section 447 para. 1 and 2 of the Criminal Procedure Code). At the same time, the Secretary-General would have to waive the immunity of a suspect and inform on this the Czech authorities, otherwise the matter could be neither effectively investigated, nor referred to a court for trial (as set out in Section 10, Section 11 para. 1 (c) and Section 159a para. 2 of the Criminal

Procedure Code). In case of doubts, whether or to what extent is a person immune from the jurisdiction of the Czech authorities, the Supreme Court of the Czech Republic is competent to decide.

**Ad 5 (c):**

The protection of witnesses is guaranteed by the Czech law (according to Section 55 of the Criminal Procedure Code and according to the Act No. 137/2001 Coll., on Special Protection of Witnesses and Other Persons in Relation to the Criminal Procedure and on the Amendment to the Act No. 99/1963 Coll. on Civil Procedure Code, as amended).

**Ad 5 (d):**

The decisions on these issues are taken by the competent Ministries, in particular by the Ministry of Justice (for justice and prisons), Ministry of Interior (for investigation and police cooperation), Ministry of Foreign Affairs (for development aid) or by the Government (for more complex projects). The capacity-building projects can be considered upon the receipt of a request for assistance from abroad. Nevertheless, such projects are limited by the budgetary restraints of these Ministries.