

Translated from Spanish

Republic of Chile

Ministry of Foreign Affairs

Permanent Mission to the United Nations

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The Permanent Mission of Chile to the United Nations presents its compliments to the Secretary-General, and has the honour to refer to his Note LA/COD/50 requesting information from Governments concerning General Assembly resolution 65/20, entitled “Criminal accountability of United Nations officials and experts on mission”, in particular its paragraphs 3, 4, 5 and 15.

In that regard, the Mission wishes to transmit the following information from the Government of Chile:

Under its current legislation, Chile does not have specific competence to prosecute crimes committed by Chileans serving as United Nations officials or experts on mission. Its legal framework therefore needs to be adapted to the provisions of the above-mentioned resolution.

Any legal amendment related to this issue should apply only to cases in which the offence committed abroad is also considered an offence in Chile, in line with the principle of dual criminality. Otherwise, it could be argued that punitive legislation from another country would be applicable to a particular case, which would be unconstitutional under our domestic law.

Since such an amendment would affect the powers of the Courts of Justice, it would be considered Organic Constitutional Law and would thus require a special quorum and a ruling by the Supreme Court before it could be approved, in line with articles 66 and 77 of the Political Constitution of the Republic.

It should also be noted that article 6 of the Chilean Organic Code on Courts provides an exhaustive list of offences that are exempt from the principle of territorial jurisdiction. The Code is applicable to all Chileans and would therefore include nationals who are serving as United Nations officials or experts on mission.

Pursuant to that Code, offences committed outside the national territory that are subject to Chilean jurisdiction include: bribery of foreign public officials, when it is committed by a Chilean or a person whose habitual place of residence is in Chile; offences within the scope of treaties signed with other powers; and production of child pornography and promotion of child prostitution, when such acts threaten or harm the sexual integrity or freedom of a Chilean or are committed by a Chilean or a person whose place of habitual residence is in Chile.

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United Nations

Furthermore, pursuant to article 3, No. 2, of the Military Code of Justice, the country's Military Tribunals have jurisdiction over both Chileans and foreigners to prosecute all military matters that occur outside the national territory, when such crimes are committed by members of the military in exercise of their functions or in the course of their service.

With regard to judicial cooperation and mutual assistance in criminal matters, Chile is able to provide assistance concerning investigations, criminal proceedings or extradition procedures related to crimes committed by United Nations officials or experts on mission, in particular assistance in obtaining evidence, in accordance with applicable multilateral and bilateral treaties on mutual legal assistance. In the absence of such treaties, assistance can be provided under the general principles of international law on mutual legal assistance.

In terms of extradition, in the absence of a treaty linking Chile to a particular country, an extradition can be requested based on the general principles of international law on extradition. It should be noted that Chile permits the extradition of its nationals.

The Permanent Mission of Chile to the United Nations takes this opportunity to convey to the Secretary-General the renewed assurances of its highest consideration.
