
Translated from French

Swiss Confederation

Federal Department of Foreign Affairs

Directorate of Public International Law

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Criminal accountability of United Nations officials and experts on mission

Position taken by Switzerland pursuant to paragraphs 3, 4, 5 and 15 of General

Assembly resolution 65/20 of 6 December 2010

A. Jurisdiction

In paragraph 3 of its resolution 65/20, the General Assembly "strongly urges States to consider establishing to the extent that they have not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations

officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State".

Pursuant to General Assembly resolution 62/63 of 6 December 2007, Switzerland conveyed to the Secretary-General information on the steps it had taken to implement the resolution.

The submission by Switzerland stated that

"Swiss legislation already contains the necessary legal provisions to meet this requirement fully. Reference is made in particular to articles 3 to 7 of the Swiss Criminal Code (Systematic Collection of Federal Law, 311.0; the full text is available on the following site:

http://www.admin.ch/ch/f/rs/c311_0.html). These articles provide that

prosecutions are not limited to persons who commit crimes and offences in Switzerland. Also covered by Swiss criminal law are crimes committed by

Swiss nationals abroad when those crimes are punishable in the territory in which they have been committed or when the place where the act was committed does not fall under any criminal jurisdiction (Criminal Code, art. 7, para. 1)".

It concluded that

"In the light of the provisions of the Swiss Criminal Code and Military Criminal Code, Switzerland considers that its judicial authorities are fully competent to prosecute its nationals 'while serving as United Nations officials or experts on mission'".

It goes without saying that in order for Switzerland to prosecute its nationals serving as United Nations officials or experts on mission, the United Nations would first have to lift the immunity they enjoy under international treaties.

This information remains valid. The purpose of the present submission by Switzerland is merely to inform the Secretary-General of legislative amendments which been adopted since then.

As part of the measures taken to implement the Rome Statute of the International Criminal Court in Switzerland, the Federal Council proposed legislative amendments to the Swiss Criminal Code and Military Criminal Code. The proposed amendments were adopted by Parliament and entered into force on 1 January 2011.

The principal amendments are as follows:

- The incorporation of crimes against humanity into Swiss law (Criminal Code, art. 264 (a)).
- The precise definition of war crimes: war crimes are now defined in detail whereas they were previously punishable under a general reference to crimes against humanity (Criminal Code, art. 264 (b)-(j)). Furthermore, with respect to war crimes, the condition requiring the existence of a "close link" to

Switzerland has been removed so that anyone suspected of war crimes who is in Swiss territory and cannot be extradited to another jurisdiction may now be prosecuted in Switzerland (Criminal Code, art. 264 (m)).

- Adaptation of the definition of genocide (Criminal Code, art. 264): the notions of "social" and "political" groups have been added to the notions of "national", "racial", "religious" and "ethnic" groups.

- Members of the Swiss executive and judicial branches no longer enjoy functional immunity for genocide, crimes against humanity and war crimes (Criminal Code, art. 264 (n) in connection with art. 7, para. 2 (B), of the Code of Criminal Procedure).

These legislative amendments also redefine the distribution of responsibilities between civilian and military authorities. In peacetime, the Office of the Public Prosecutor of the Confederation conducts prosecutions for genocide, crimes against humanity and war crimes, except in cases where the perpetrator or victim of the crime

is a member of the Swiss military. In wartime, all cases of such crimes come under military jurisdiction.
