
Criminal accountability of United Nations officials and experts on mission

Personnel of the armed forces of Belarus take part in activities for the maintenance of international peace and security as part of the United Nations Interim Force in Lebanon.

These military personnel are deployed pursuant to the memorandum of understanding between the Government of the Republic of Belarus and the United Nations on the provision of resources for the United Nations Interim Force in Lebanon, signed in New York on 11 August 2011.

Article 7 quinquies of the memorandum of understanding states that military and civilian members of the contingent provided by the Government of the Republic of Belarus are subject to the exclusive jurisdiction of the Government in respect of any crimes or offences that might be committed by them while they are assigned to the military component of the United Nations Interim Force in Lebanon.

Belarus has entered into obligations pursuant to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Safety of United Nations and Associated Personnel of 23 October 1995,^{*} article 8 of which states that, if United Nations officials or experts are captured or detained and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations authorities.

Thus, in its practice under multilateral treaties, Belarus has undertaken to guarantee the immunities of United Nations officials and experts on official duties, and under bilateral agreements and domestic law it prosecutes persons whom it has deployed who have committed a crime.

One of the basic principles of domestic criminal law and criminal responsibility is the unavailability of punishment (art. 3, para. 1, of the Criminal Code of Belarus), which establishes the obligation to prosecute anyone who commits a crime.

Issues relating to the establishment of the jurisdiction of Belarus over persons who have committed crimes outside Belarus are governed by article 6 of the Criminal Code. The Criminal Code, which is the only criminal law applicable in the territory of Belarus, specifies what socially dangerous acts are considered crimes, establishes the conditions and grounds for criminal responsibility and establishes the punishments and other criminal penalties that may be applied to persons who have committed crimes and the coercive safety and treatment measures that may be applied to the perpetrators of socially dangerous acts.

Under article 6, paragraph 1, of the Criminal Code, nationals of Belarus and stateless persons habitually resident in Belarus who have committed offences outside Belarus are liable to prosecution under the Criminal Code if the acts committed by them are offences in the State in whose territory they were committed and if they have not been prosecuted in that State, except in

^{*} *Translator's note:* This is the date of signature of the Convention by Belarus, not the date of the Convention itself.

the cases referred to in article 6, paragraph 1-1. When such persons are convicted, the penalty is fixed within the limits established in the relevant article of the Criminal Code but may not exceed the upper limit of the penalty provided for by the law of the State in whose territory the offence was committed.

Under article 6, paragraph 3, of the Criminal Code, the Code applies to the following crimes, irrespective of the criminal law of the place where they are committed: genocide (art. 127 of the Criminal Code); crimes against the security of humankind (art. 128); the production, stockpiling or distribution of prohibited instruments of war (art. 129); ecocide (art. 131); use of a weapon of mass destruction (art. 134); violation of the laws and customs of war (art. 135); criminal violation of the rules of international humanitarian law in time of armed conflict (art. 136); inaction or issuance of a criminal order in time of armed conflict (art. 137); trafficking in persons (art. 181); and other offences committed outside Belarus that may be prosecuted on the basis of an international treaty that is binding on Belarus.

In the cases referred to in article 6, paragraph 3, of the Criminal Code, persons are liable to prosecution under the Criminal Code and criminal proceedings are brought against them in Belarus provided that they have not been convicted in a foreign State (art. 6, para. 4, of the Criminal Code).

Under article 85 of the Criminal Code, exemption from criminal responsibility or punishment on the grounds of expiry of the statute of limitations does not apply to crimes against peace, crimes against the security of humankind or war crimes. The article contains an exhaustive list of such crimes: preparation or waging of a war of aggression (art. 122 of the Criminal Code); acts of international terrorism (art. 126); genocide (art. 127); crimes against the security of humankind (art. 128); the production, stockpiling or distribution of prohibited instruments of war (art. 129); ecocide (art. 131); use of a weapon of mass destruction (art. 134); violation of the laws and customs of war (art. 135); criminal violation of the rules of international humanitarian law in time of armed conflict (art. 136); inaction or issuance of a criminal order in time of armed conflict (art. 137).

Under article 9 of the Code of Criminal Procedure of Belarus, justice in criminal cases in Belarus is administered by the courts alone. No one may be found guilty of committing a crime and given a criminal penalty other than by a court judgment and in accordance with the law.

Article 2, paragraph 2, of the Act on International Legal Assistance in Criminal Matters of 18 May 2004 establishes that international legal assistance in criminal matters is provided on the basis of international treaties to which Belarus is a party. In the absence of an appropriate international treaty to which Belarus is a party, international legal assistance is provided on the basis of the principle of reciprocity, in accordance with section XV of the Code of Criminal Procedure.

Under article 469 of the Code of Criminal Procedure, international legal assistance in criminal matters based on the principle of reciprocity is provided at the request of an authority of a foreign State indicating the essence of the assistance required and information about the criminal case, the facts and the legal characterization of the act, the text of the provisions of the criminal law

of the foreign State that establish liability for the act, information about the extent of the harm caused, and other information necessary for the fulfilment of the request. Any request from an authority of a foreign State must be provided in writing and must bear the signature of an official of that authority and the authority's official seal.

Under article 477 of the Code of Criminal Procedure, a request from an authority of a foreign State to prosecute a person may be fulfilled if the following are provided: the case file or a certified copy thereof, a certified translation thereof into one of the State languages of Belarus, items that served as weapons or means of commission of the crime or that bear traces of the crime or that were acquired by criminal means, or other items and documents that may serve as means of detecting the crime, establishing the facts of the case, identifying the perpetrators or rebutting the charge, the statements of the victims or their representatives on the conduct of the prosecution, where available, and information on compensation for the harm caused by the offence, where available.

Belarus thus complies with paragraphs 6, 7 and 8 of General Assembly resolution 70/114 of 14 December 2015. The law in force in Belarus sets out rules allowing for the prosecution of any of its nationals who commit crimes outside its territory.
