

Questionnaire on Criminal accountability of United Nations officials and experts on mission, pursuant to resolution 70/114, paragraph 23.

By operative paragraph 23 of General Assembly resolution 70/114 of 14 December 2015, entitled “Criminal accountability of United Nations officials and experts on mission”, the Secretary-General was requested to prepare a compilation, based on information which should be received from all Member States, of national provisions regarding the establishment of jurisdiction over their nationals, whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature.

In order to facilitate the collation of information for this compilation, the Codification Division of the Office of Legal Affairs of the United Nations has prepared a questionnaire for consideration by Member States in submitting information in response to circular notes LA/COD/50/1 and LA/COD/50/2 dated 31 December 2015, on the same item (attached).

In order to ensure completeness in the preparation of the compilation, the Codification Division of the Office of Legal Affairs of the United Nations would appreciate receiving excerpts of relevant national provisions and short references or citations of such national provisions.

1. Please indicate the available forms of jurisdiction and list the relevant national provision(s) through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; please also specify whether specific legislation applies to United Nations officials and experts on mission:

- (a) Territoriality
- (b) Nationality
- (c) Passive personality
- (d) Effects doctrine
- (e) Protective principle
- (f) Universality
- (g) Other (if any)

2. To what extent do national provisions establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission (please indicate all that apply and cite relevant national provisions):

- (a) General application to all persons
- (b) Jurisdiction over nationals
- (c) Jurisdiction over stateless persons
- (d) Jurisdiction over foreign nationals (list specific exceptions)
- (e) Specific legislation for particular categories of persons
 - (i) Military United Nations officials and experts on mission
 - (ii) Police United Nations officials and experts on mission
 - (iii) Civilian United Nations officials and experts on mission
 - (iv) Public officials acting in foreign jurisdictions
 - (v) Other (if any)

3. To which extent do national provisions establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(a) General application of criminal law

- (b) Application limited to international treaty obligations
- (c) Application limited to crimes of a 'serious nature'
- (d) Application limited to 'international crimes', including genocide, crimes against humanity and war crimes
- (e) Application limited to crimes accompanied with minimum imprisonment term (eg. 3/5 years)
- (f) Application limited to crimes affecting 'essential interest(s) of the State'
- (g) Application limited to crimes affecting public security
- (h) Application limited to specific list of crimes
- (i) Other limitations to the application *ratione materiae* of domestic law (if any)

4. Which, if any, prerequisites are placed before the application of extraterritorial jurisdiction for United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(I)

- (a) Agreement (SOFA/SOMA) with host State on extraterritorial jurisdiction
- (b) Agreement (SOFA/SOMA) with host State with respect to United Nations officials or experts on mission
- (c) Any other agreement
- (d) National law

(II)

- (a) Offence must be extraditable
- (b) Double criminality, with/without specific limitations to its application**
- (c) Presence of the offender in territory of forum State, with/without specific limitations to its application
- (d) Application of principles of ne bis in idem
- (e) Permission to prosecute required by Public Prosecutor/Attorney-General/other specific government official(s)

5. What is the legal basis for the application of rules of immunity to United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(a) Convention on Privileges and Immunities of the United Nations, 1946, as applicable

- (b) Specific agreement with the United Nations (SOFA/SOMA/other)
- (c) Specific agreement with the host State (SOFA/SOMA/other)
- (d) Other general privileges and immunities applicable, including those accorded by national law

6. To what extent is military and/or civilian law applicable to crimes committed by United Nations officials or experts on mission (please indicate all applicable categories and cite relevant national provisions):

- (a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission
- (b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission
- (c) Potential application of civilian law/courts to military personnel

7. Please provide any other comments.