



New York

The Permanent Mission of Sweden to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, with reference to its notes no. LA/COD/50/1 and LA/COD/50/2 of 31 December 2015, has the honour to transmit the following information in regards to the Questionnaire on criminal accountability of United Nations officials and experts on mission, pursuant to resolution 70/114, paragraph 23, prepared by the Codification Division of the Office of Legal Affairs of the United Nations.

Please find in Annex I excerpts of relevant national provisions. The provisions referred to below are all placed in Chapter 2 of the Swedish Penal Code.

#### **Question 1**

Swedish courts can establish jurisdiction over crimes committed by Swedish nationals while serving as United Nations officials and experts on mission based on territoriality (Sections 1 and 4), nationality (Section 2), protective principle (eg. Section 3.3-4), universality (Section 3.6 and 7) and the flag state principle (Section 3.1).

#### **Question 2**

Swedish courts can establish jurisdiction *ratione personae* over crimes committed by Swedish nationals while serving as United Nations officials and experts on mission based on jurisdiction over nationals (Section 2). There is also specific legislation for crimes committed by military and civilian persons employed in the Swedish Armed Forces and persons serving in an international operation (Section 3.2-3). There is also specific legislation for crimes committed in the course of duty outside the Realm by a person belonging to the Swedish Police Peace Support Operations.

**Question 3**

Swedish courts can establish jurisdiction *ratione materiae* over crimes committed by Swedish nationals while serving as United Nations officials and experts on mission based on international crimes (Penal Code Chapter 2, Section 3.6), crimes accompanied by a minimum imprisonment term of four years (Chapter 2, Section 3.7) and crimes affecting the essential interests of the state, including public security (Chapter 2, Section 3.4).

**Question 4**

- (I) National law places certain prerequisites that must be met before extraterritorial jurisdiction for United Nations officials or experts on mission can be applied (Sections 5-7 c).
- (II)
- Dual criminality is normally required in order to establish extraterritorial jurisdiction unless such jurisdiction can be established based on any of the specific grounds for jurisdiction listed in Section 3 (Sections 2 and 3).
  - The *ne bis in idem*-principle can prevent prosecution for the same act if the question of responsibility for an act has been determined by a judgement which has entered into legal force pronounced in a foreign state where the act was committed, or by a foreign state which has acceded to certain international treaties, which Sweden also has acceded to (Section 5 a).
  - Prosecution for a crime committed outside Sweden may be instituted only following the authority of the Government, or in some instances the Prosecutor General (Sections 5, 7 a, 7 b para 2 and 7 c). However, the authority of the Government is not required eg. if the crime was committed by a member of the Swedish Armed Forces in an area in which a detachment of the Swedish Armed Forces was present (Section 5).

**Question 5**

Swedish nationals serving as United Nations officials and experts on mission do not enjoy immunity from criminal prosecution under Swedish criminal law. They can be prosecuted in accordance with the answers given above.

**Question 6**

Sweden does not have a military law or military court system. Any crimes committed by United Nations officials or experts on mission, whether they are military or civilian personnel, would therefore be tried under the Swedish Penal Code and Swedish civilian courts.

The Permanent Mission of Sweden to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, 5 July 2016



## Annex I

**Chapter 2 of the Swedish Penal Code – On the Applicability of Swedish Law**

*(extract, unofficial translation)*

**Section 1**

Crimes committed in this Realm shall be adjudged in accordance with Swedish law and by a Swedish court. The same applies when it is uncertain where the crime was committed but grounds exist for assuming that it was committed within the Realm.

**Section 2**

Crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court where the crime has been committed:

1. by a Swedish citizen or an alien domiciled in Sweden,
2. by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present in the Realm, or
3. by any other alien, who is present in the Realm, and the crime under Swedish Law can result in imprisonment for more than six months.

The first paragraph shall not apply if the act is not subject to criminal responsibility under the law of the place where it was committed or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine.

In cases mentioned in this Section, a sanction may not be imposed which is more severe than the severest punishment provided for the crime under the law in the place where it was committed.

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### Section 3

Even in cases other than those listed in Section 2, crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court:

1. if the crime was committed on board a Swedish vessel or aircraft or was committed in the course of duty by the officer in charge or a member of its crew,
2. if the crime was committed by a member of the Swedish Armed Forces in an area in which a detachment of the Swedish Armed Forces was present, or if it was committed by some other person in such an area and the detachment was present for a purpose other than an exercise,
3. if the crime was committed in the course of duty outside the Realm by a person employed in the Swedish Armed Forces and serving in an international military operation or who belongs to the Swedish Police Peace Support Operations,
  - 3 a. if the crime was committed in the line of duty outside the Realm and by a police officer, a customs officer or an officer of the Swedish Coast Guard, who has transnational assignments under an international agreement to which Sweden has adhered,
4. if the crime committed was a crime against the Swedish nation, a Swedish municipal authority or other assembly, or against a Swedish public institution,
5. if the crime was committed in an area not belonging to any state and was directed against a Swedish citizen, a Swedish association or private institution, or against an alien domiciled in Sweden,
6. if the crime is hijacking, maritime or aircraft sabotage, airport sabotage, counterfeiting currency, an attempt to commit such crimes, unlawful dealings with chemical weapons, unlawful dealings with mines, false or careless statement before an international court, terrorist offence in accordance with Section

2 of the Act on Criminal Responsibility for Terrorist Offences (2003:148), an attempt to commit such crime, crimes mentioned in Section 5 of the same act, an offence in accordance with the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406), inciting rebellion committed through direct and public incitement to commit genocide or if the crime was directed against the administration of justice of the International Criminal Court, or

7. if the least severe punishment prescribed for the crime in Swedish law is imprisonment for four years or more.

### **Section 3 a**

Besides the cases described in Sections 1-3, crimes shall be adjudged according to Swedish law and by a Swedish court in accordance with the provisions of the Act on International Collaboration concerning Proceedings in Criminal Matters (1976:19).

### **Section 4**

A crime is deemed to have been committed where the criminal act was perpetrated and also where the crime was completed or, in the case of an attempt, where the intended crime would have been completed.

### **Section 5**

Prosecution for a crime committed within the Realm on a foreign vessel or aircraft by an alien, who was the officer in charge or member of its crew or otherwise travelled in it, against another alien or a foreign interest shall not be instituted without the authority of the Government or a person designated by the Government.

Prosecution for a crime committed outside the Realm may be instituted only following the authorisation referred to in the first paragraph. However, prosecution may be instituted without such an order if the crime consists of a false or careless statement before an international court or if the crime was committed:

1. on a Swedish vessel or aircraft or by the officer in charge or some member of its crew in the course of duty,

2. by a member of the Swedish Armed Forces in an area in which a detachment of the Swedish Armed Forces was present,
3. in the course of duty outside the Realm by a person employed in the Swedish Armed Forces and serving in an international military operation or who belongs to the Swedish Police Peace Support Operations,
4. in the line of duty outside the Realm by a police officer, a customs officer or an officer of the Swedish Coast Guard, who has transnational assignments under an international agreement to which Sweden has adhered,
5. in Denmark, Finland, Iceland or Norway or on a vessel or aircraft in regular commerce between places situated in Sweden or one of the said states, or
6. by a Swedish, Danish, Finnish, Icelandic or Norwegian citizen against a Swedish interest.

#### **Section 5 a**

If the question of responsibility for an act has been determined by a judgement which has entered into legal force pronounced in a foreign state where the act was committed, or in a foreign state which has acceded to any of the treaties listed in paragraph four (*not included in this translation*), the accused may not be prosecuted for the same act in this Realm:

1. if he has been acquitted,
2. if he has been declared guilty of the crime without a sanction being imposed,
3. if the sanction imposed has been enforced in its entirety or enforcement is in process,
4. if the sanction imposed has lapsed under the law of the foreign state.

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**Section 6**

If a person is sentenced in the Realm for an act for which he has been subjected to a sanction outside the Realm, the sanction shall be determined with due consideration for what he has undergone outside the Realm. If he should be sentenced to a fine or imprisonment and he has been sentenced to a sanction of deprivation of liberty outside the Realm, what he has undergone therewith shall be taken fully into consideration when determining the sanction.

In cases referred to in the first, paragraph a less severe punishment than that provided for the act may be imposed or a sanction completely waived. (Law 1972:812)

**Section 7**

In addition to the provisions of this Chapter on the applicability of Swedish law and the jurisdiction of Swedish courts, limitations resulting from generally recognised fundamental principles of public international law or from special provisions in agreements with foreign powers, shall be observed.

**Section 7a**

If an alien has committed a crime in the exercise of an office or duty comprising a general position held on behalf of another state or international organisation, a prosecution for the crime may only be instituted on order of the Government. The foregoing does not apply if, by means of misleading information, disguise or other means, the perpetrator has attempted to conceal the capacity in which he acted. (Law 1985:518)

**Section 7b**

An alien who is not domiciled in Sweden but is present in the Realm within the framework of international military co-operation or international crisis management and who is covered by an agreement which is in force in relation to Sweden, may be prosecuted for a crime committed during his or her stay here only on order of the Government. (Law 1996:401).



What is stated in the first paragraph shall apply also in relation to Swedish citizens or an alien who is domiciled in Sweden who serves in the military forces of a foreign state.

**Section 7 c**

Prosecution for a crime against the adjudication of the International Criminal Court, may only be instituted with the authority of the Government.

**Section 8**

Special provisions apply to extradition for crimes.  
Conditions stipulated in connection with extradition from a foreign state to Sweden shall be complied with in the Realm.

