

**UN General Assembly Resolution 71/134 of 13 December 2016, entitled
"Criminal Accountability of United Nations officials and experts on mission"**

New Zealand response

May 2017

Resolution 71/134 entitled "Criminal Accountability of United Nations officials and experts on mission" requests Governments to submit information and observations on their implementation of operative paragraphs 9, 11, 12, 14, 17, and 19 as well as any practical problems in the implementation of the resolution.

As such and where possible, this report provides the Secretary-General with an update of New Zealand's position and observations in relation to operative paragraphs 9, 11, 12, 17, and 19 and also responds to operative paragraph 26 of Resolution 71/134.

Operative Paragraph 9

Operative paragraph 9 requires States to consider establishing jurisdiction over serious crimes committed by their nationals while serving as United Nations officials where they have not yet done so.

New Zealand already extends jurisdiction, as provided for under existing legislation attached in Annex I, over its nationals who commit specific 'serious crimes' while serving as United Nations officials. New Zealand is considering whether it is necessary to establish extraterritorial jurisdiction over the commission of additional serious crimes, but would note the practical and jurisdictional difficulties of establishing extraterritorial jurisdiction over New Zealand nationals serving the United Nations abroad in their individual or personal capacity.

Operative Paragraphs 11a and 11b

Operative paragraphs 11a and 11b encourage States to cooperate and assist each other and to use United Nations information and material in order to facilitate criminal investigations and prosecutions for alleged crimes committed by United Nations officials and experts on mission.

New Zealand cooperates with other States in exchanging information and facilitating criminal investigations and prosecutions under the framework provided by the Mutual Assistance in Criminal Matters Act 1992. The Act does not cover mutual assistance between New Zealand and international organisations such as the United Nations but it does not limit the ability of New Zealand authorities to assist and facilitate requests from the United Nations to the extent that assistance can be given under general New Zealand law. As a result, the New Zealand Government has in the past provided information to assist UN investigations, and will continue to do so as appropriate.

Operative Paragraph 11 (c)

Operative paragraph 11(c) encourages states to provide effective protection for victims and witnesses who provide information in relation to crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access to victims' assistance programmes without prejudice to the rights of the alleged offender.

The Victims' Rights Act 2002 ensures that if a victim has suffered harm as a result of an offence they are treated with courtesy and they have their dignity and privacy respected. It provides that victims should have access to welfare, health, counselling, medical or legal services. It ensures that victims have the right to be heard on matters related to the offender and the offence, kept informed of any investigation and notified of the offender's progress through the criminal justice system.

The Evidence Act 2006 also provides for privacy protection of witnesses before a trial if the offence is serious in nature and if the safety of the witness or any other person is endangered, or if there is likely to be serious damage to the witnesses' property, and if withholding the witnesses' identity until the trial would not be contrary to justice.

Operative Paragraph 11 (d)

Operative paragraph 11 (d) encourages States to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials or experts on mission.

To date New Zealand has not been requested to assist a host state in investigating a crime of a serious nature alleged to have been committed by United Nations officials or experts on mission. New Zealand does however provide some general capacity building support through the New Zealand Aid Programme police support programme which includes enhancing investigation techniques. New Zealand provides police support throughout the Pacific and has provided police capacity building support to a number of post-conflict and fragile contexts including Afghanistan, Papua New Guinea, the Solomon Islands and Timor Leste.

Operative Paragraph 12

Operative paragraph 12 requests that States ensure that personnel who serve at the UN or work as experts on mission are vetted by the States contributing the personnel and meet high standards in conduct and behaviour.

New Zealand is able to influence the personnel deployed to work as UN officials or experts on mission where the New Zealand government has authorised the deployment of personnel through peacekeeping, police or other operations. These personnel are usually deployed by the New Zealand Police or the New Zealand Defence Force, both of

which have robust internal vetting processes and strict codes of conduct to which all personnel are required to abide. Where a New Zealander is working for the United Nations in his or her own capacity, there is more limited ability for New Zealand to influence the individual's conduct or behaviour.

Operative Paragraphs 17 and 19

Operative paragraphs 17 and 19 request States to provide information and updates in relation to ongoing allegations, investigations and prosecutions where a serious crime may have been committed by a national working as a United Nations official or expert on mission.

New Zealand is not aware of any current allegations, investigations or prosecutions being undertaken in relation to a New Zealand national committing a serious crime while working as a United Nations official or expert on mission and has nothing further to add in relation to these paragraphs.

Operative Paragraph 26

Operative paragraph 26 requests the Secretary-General to prepare a compilation of national provisions regarding the establishment of jurisdiction over Member States' 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.

New Zealand has legislation enabling New Zealand courts to exercise jurisdiction in some circumstances for crimes committed by New Zealand nationals while serving overseas as UN officials or experts on mission (which may include military observers and civilian police).

The Armed Forces Discipline Act 1971 provides jurisdiction over all acts carried out by members of the New Zealand Defence Force done or omitted whether in New Zealand or elsewhere, and applies equally to members of the New Zealand Defence Force who are members of a UN force.

The Policing Act 2008 provides for jurisdiction over members of the New Zealand Police forming part of a UN force. Section 91 of the Act provides that:

91 Interpretation and application

(1) In this section and sections 92 to 95, unless the context otherwise requires,—
...**employee** means a Police employee who is an employee for the purposes of United Nations activity. (2) For the purposes of this section, a Police employee is deemed to be an employee for the purposes of a United Nations activity from the time he or she leaves New Zealand to undertake duties with the United Nations until he or she returns to New Zealand or earlier ceases to be an employee.

Section 92 of the Act provides that:

92 Trial in New Zealand for crimes committed outside New Zealand

(1) An employee who commits a crime outside New Zealand is liable to be proceeded against and punished as if it had occurred in New Zealand and the courts of New Zealand have jurisdiction accordingly.

In addition, sections 86 – 90 of the Policing Act 2008 applies the same New Zealand criminal jurisdiction to crimes committed overseas to any person who is not a member of the armed forces and not already covered by the Policing Act 2008, and is serving as part of an "overseas operation" outside New Zealand. An "overseas operation" is defined under the Act as "a person or group of people that...is authorised by the Government of New Zealand to participate in duties overseas involving peacekeeping, the maintenance or restoration of law and order or functioning government institutions, or any other activity in respect of which the Government of New Zealand wishes to provide assistance (whether or not in conjunction with personnel from one or more other countries)."

New Zealand has no legislation that specifically provides for criminal jurisdiction to be taken over New Zealand nationals serving as UN officials or experts on mission in their personal capacity without the authorisation of the Government of New Zealand. These individuals are, however, still subject to New Zealand law to the extent that it provides for extra-territorial jurisdiction for certain offences.

An updated table of New Zealand legislation listing offences that have some aspect of extraterritoriality is provided in Annex I of this letter. In many cases extraterritorial jurisdiction has been taken in order to implement particular international obligations. Examples include terrorism offences, genocide, piracy, torture, crimes against humanity, grave breaches of the Geneva Conventions or First Protocol, and other war crimes. Other serious crimes for which New Zealand has extra-territorial jurisdiction include certain sexual offences and sexual exploitation of children, human trafficking, and bribery and corruption. The legislation listed in Annex I can be obtained at www.legislation.govt.nz.

This means that New Zealand courts have jurisdiction over some, but not all, serious crimes committed by New Zealand nationals outside New Zealand while serving as UN officials or experts on mission in their own capacity.

In summary, New Zealand has broad jurisdiction over nationals who commit offences while serving overseas serving as UN officials or experts on mission in peacekeeping, police or operations with the authorisation of the Government of New Zealand. However, where a person is working for the United Nations in his or her own capacity coverage is more limited to specific serious crimes.

Annex I

New Zealand legislation	Offence with extra-territorial application
Adoption Act 1955	S27C Extraterritorial jurisdiction in respect of an offence under section 27A (inducement to consent to an adoption).
Aviation Crimes Act 1972	s3 Hijacking s4 Crimes in connection with hijacking s5 Other crimes relating to aircraft s5A Crimes relating to international airports s11 Taking firearms, explosives, etc, on to aircraft
Armed Forces Discipline Act 1971	s4 Provides for extra-territoriality
Chemical Weapons (Prohibition) Act 1996	s6 Chemical weapons s8 Riot control agents s9 Schedule 1 toxic chemicals s10 Imports and exports of toxic chemicals and precursors
Crimes Act 1961	s7A any offence against this Act committed in the course of carrying out a terrorist act s 8 Jurisdiction in respect of crimes on ships or aircraft beyond New Zealand s8A Jurisdiction in respect of certain persons with diplomatic or consular immunity s73 Treason s77 Inciting to mutiny s78 Espionage s78A Wrongful communication, retention, or copying of official information s92 Piracy s93 Piratical acts s94 Punishment of piratical acts s95 Attempts to commit piracy s96 Conspiring to commit piracy s97 Accessory after the fact to piracy s98 Dealing in slaves s98AA Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour s98A Participation in organised criminal

	<p>group</p> <p>s98C Smuggling migrants</p> <p>s98D Trafficking in people by means of coercion or deception</p> <p>s100 Judicial corruption</p> <p>s101 Bribery of judicial officer, etc</p> <p>s102 Corruption or bribery of Minister of the Crown</p> <p>s103 Corruption and bribery of Member of Parliament</p> <p>s104 Corruption and bribery of law enforcement officer</p> <p>s105 Corruption and bribery of official</p> <p>s105C Bribery of foreign public official</p> <p>s105D Bribery outside New Zealand of foreign public official</p> <p>s105E Corruption of foreign public officials</p> <p>s116 Conspiring to defeat justice</p> <p>s117 Corrupting juries and witnesses</p> <p>s131B Meeting young person under 16 following sexual grooming, etc</p> <p>s144A Sexual conduct with children and young people outside New Zealand</p> <p>s144AB Party or accessory liability for sexual acts with children or young people outside New Zealand done by or involving, foreigner principal parties</p> <p>s245 Money laundering</p> <p>s298A Causing disease or sickness in animals</p> <p>s298B Contaminating foods, crops, water, or other products</p>
Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980	<p>s3 Crimes against persons</p> <p>s4 Crimes against premises or vehicles</p> <p>s5 Threats against persons</p> <p>s6 Threats against premises or vehicles</p> <p>s8 hostage-taking</p>
Crimes of Torture Act 1989	<p>s3 Acts of torture</p> <p>s14 Application of certain provisions of Crimes Act 1961</p>
Electoral Act 1993	s3F Application of rules on electoral expenses outside New Zealand
Films, Videos and Publications Classification Act 1993	S145A Extraterritorial jurisdiction for certain offences relating to child

	pornography
Geneva Conventions Act 1958	s3 Punishment for grave breaches of Conventions or First Protocol
International Crimes and International Criminal Court Act 2000	s9 Genocide s10 Crimes against humanity s11 War crimes
Maritime Crimes Act 1999	s8 Extra-territorial jurisdiction in respect of crimes relating to ships s9 Extra-territorial jurisdiction in respect of crimes related to fixed platforms
Mercenary Activities (Prohibition) Act 2004	s7 Recruiting person to be mercenary s8 Using mercenary s9 Financing mercenary s10 Training prospective mercenary s11 Training mercenary s12 Mercenary taking part in hostilities or concerted act of violence
Misuse of Drugs Act 1975	s12C Commission of offences outside New Zealand
New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987	s5 Prohibition on acquisition of nuclear explosive devices
Nuclear-Test-Ban Act 1999 (not yet in force)	s6 Prohibitions and offences also apply to certain cases outside New Zealand
Policing Act 2008	s86 – 90 Extraterritorial Jurisdiction over Police and civilian employees overseas s91 – 95 – Extraterritorial Jurisdiction for New Zealand police serving in a UN force.
Terrorism Suppression Act 2002	s7-13, 13B-13E s14 Offences also apply in certain cases outside NZ 15 Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships
United Nations Convention on the Law of the Sea Act 1996	s9 Application of criminal and civil law