

*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 of Switzerland regarding paragraphs 9, 10, 11, 12, 14, 17, 18 and 19 of General Assembly resolution 71/134 of 13 December 2016

In paragraph 9 of its resolution 71/134, the General Assembly "[s]trongly urges all States to consider establishing, to the extent that they have not yet done so, jurisdiction over crimes, particularly those of a serious nature, as known in their existing national 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 [...]".

As outlined in its positions regarding General Assembly resolutions 66/93, 62/63, 65/20 and 70/114, Switzerland considers its judicial authorities to be fully competent to prosecute its nationals serving as United Nations officials or experts on mission. Under certain conditions, Swiss criminal law covers crimes committed by Swiss nationals abroad, including when such crimes are also punishable in the State where they were committed, or if the place where the act is committed is not subject to any criminal jurisdiction (see article 6, paragraph 1, and article 7, paragraph 1, of the Swiss Criminal Code [CP; Recueil systématique 311.0, [http://www.admin.ch/ch/f/rs/c311\\_0.html](http://www.admin.ch/ch/f/rs/c311_0.html)]).

Switzerland provided detailed information concerning these points in its response to the questionnaire on the criminal accountability of United Nations officials and experts on mission, prepared pursuant to paragraph 23 of resolution 70/114.

Switzerland welcomes the fact that the General Assembly, in paragraph 11 of its resolution 71/134, encourages all States and United Nations organizations to, inter alia, afford each other assistance in connection with criminal investigations or criminal or extradition proceedings. Switzerland has a federal law on mutual assistance in criminal matters that governs all these aspects (Recueil systématique 351.1, <https://www.admin.ch/opc/fr/classified-compilation/19810037/index.html>) and has ratified several international agreements addressing these issues. Paragraph 11 of resolution 71/134 also encourages States "to provide effective protection for victims of, witnesses to and others who provide information in relation to crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission [...]". Switzerland notes that its Code of Criminal Procedure (CPP; Recueil systématique 312.0, <https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/archiv/strafprozessrecht/strafprozessord-f.pdf>) establishes means for the effective protection of victims and witnesses (for example, article 117 and article 149 of the Code of Criminal Procedure).

With respect to paragraph 14 of resolution 71/134, which addresses the question of measures to be taken, Switzerland is of the view that there is a need to seriously consider the recommendation made in 2006 by the Group of Legal Experts on the question of the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980), according to which an international convention should be developed to facilitate the prosecution of perpetrators of such offences. In order to inform the discussions around that recommendation, Switzerland has conferred on the Swiss Institute of Comparative Law a mandate to conduct a study on the laws of a representative panel of States and determine possible gaps in the legal basis for prosecuting the perpetrators of the offences concerned. Switzerland will be pleased to present the results of that study at the next session of the General Assembly.

Furthermore, Switzerland welcomes the fact that resolution 71/134 stresses the need to improve

reporting methods and to follow up on credible allegations of offences brought to the attention of States. It encourages the United Nations to communicate regularly information on cases involving officials or experts on mission and to inquire about follow-up activities undertaken by States, as called for in paragraphs 17, 18 and 19 of resolution 71/134.

Finally, Switzerland welcomes the fact that paragraph 26 of resolution 71/134 requests a compilation of national provisions, based on information that States have transmitted to the United Nations since 2007, regarding the establishment of jurisdiction to prosecute crimes committed by their nationals serving as United Nations officials or experts on mission. The aforementioned study of the Swiss Institute of Comparative Law could provide further information on this point.

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