
Translated from French

1 June 2018

Criminal accountability of United Nations officials and experts on mission

Position of Switzerland regarding paragraphs 10, 12, 13, 15, 18 et 20 of General Assembly resolution 72/112 of 7 December 2017

In paragraph 10 of its resolution 72/112, 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, 70/114 and 71/134, 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]).

Of course, in order for Switzerland to be able to prosecute its own nationals serving as United Nations officials or experts on mission, the United Nations must first waive their immunity.

Switzerland welcomes the fact that, in paragraph 12 of resolution 71/112, the General Assembly encourages all Member States of the United Nations to, inter alia, “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 therefore welcomes the fact that resolution 72/112 includes a new paragraph 25 requesting the Secretary-General to consider what assistance and support are available for the benefit of victims of criminal conduct perpetrated by United Nations officials and experts on mission, and to report to the Sixth Committee during the briefing at its seventy-third session.

With respect to paragraph 15 of resolution 72/112, which addresses the question of measures to be taken, Switzerland remains 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 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.

The results of that study were presented on the margins of the seventy-second session of the General Assembly. Switzerland looks forward to continuing the discussion on that basis at the seventy-third session, particularly in the Working Group of the Sixth Committee.

With regard to paragraphs 18 and 20 of General Assembly resolution 72/112, Switzerland welcomes the fact that the Secretary-General is to request that those States against whose nationals credible allegations are made should provide updates on the measures taken in that connection. At the same time, various cases have been brought to the attention of Switzerland not because it was the State of nationality, but rather because the alleged offences reportedly took place on its territory. In order to gain a fuller understanding of the follow-up to those allegations, it would therefore be useful to broaden the scope of paragraphs 18 and 20 of the resolution to include cases that have been brought to the attention of a State other than the State of nationality of the individual in question.

In 2017 and 2018, Switzerland informed the Secretary-General of measures taken with regard to three cases that had been brought to its attention on the grounds that the alleged offences had reportedly taken place on its territory. In the first case, after an in-depth search of a hard drive seized on the premises of the United Nations Office at Geneva, Swiss Federal Police found that there were no constituent elements of a crime and therefore did not file a report with the competent prosecutor. The second case involved a former staff member of the United Nations Office at Geneva, who stood accused of actions that could constitute fraud. Switzerland informed the Secretary-General that it was prepared to provide support if the Organization wished for legal action to be taken in Switzerland. However, it also highlighted that judicial proceedings would be unlikely to succeed in that case, especially as the individual in question had left the country several years before. The third case involved suspected money-laundering in connection with illicit payments received by a former official of the Organization. The case was very thoroughly

investigated by the Public Prosecutor of the Swiss Confederation. It was ultimately closed on the grounds that the individual in question had been convicted in the United States and that there was no prospect of extradition to Switzerland.

Lastly, Switzerland welcomes the fact that paragraph 29 of General Assembly resolution 71/112 requests the Secretary-General to develop recommendations to help to ensure that policies and procedures relating to the reporting, investigation, referral and follow-up of credible allegations revealing that a crime may have been committed by United Nations officials and experts on mission are coherent, systematic and coordinated throughout the United Nations system. We also appreciate the fact that the last preambular paragraph emphasizes the need to develop harmonized United Nations standards of investigation. The progress made in developing such standards in response to allegations of exploitation and sexual violence should also apply to all types of crimes committed by United Nations officials and experts on mission. We believe that a coherent and coordinated approach applicable to all of the United Nations system is critical in order to tackle alleged crimes effectively and prevent their recurrence.
