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The Permanent Mission of the Republic of Turkey to the United Nations presents its compliments to the Office of Legal Affairs of the Secretariat of the United Nations, and, with reference to the Latter's Note no: LA/COD/50/1 dated 13 December 2017, in relation to General Assembly resolution 72/112 of 7 December 2017, entitled "Criminal accountability of United Nations officials and experts on mission" has the honour to submit the following for its inclusion in the report to be issued by the Secretary-General:

OP.10: Jurisdiction over crimes:

As a general rule, Turkish laws apply for offences committed in Turkey. However, there are several exceptions. In Paragraph 10 of the Turkish Penal Code (TPC) it is provided that "A new trial can be filed in Turkey for a person who commits an offence in a foreign country while performing an official duty in the name of Turkey even if he is convicted in a foreign country due to the same offence" and according to Paragraph 11 "If a Turkish citizen, excluding the offences listed in Article 13, commits an offence in a foreign country which requires punishment of at least one year of imprisonment according to the Turkish laws, and if the offender is in Turkey, then he is punished according to the Turkish laws provided that he is not convicted in the said foreign country for the same offence and there is possibility to proceed to a trial in Turkey." In Paragraph 10 of the TPC, it is further stated that Turkish laws apply in the event that some other offences such as torture, production and trade of narcotics or psychotropic substances and prostitution are committed by the Turkish citizens or foreigners in a foreign country.

Within the framework of the said legislation, an investigation shall also be conducted in Turkey, irrespective of the nature of the crime with regards to the offences committed by a Turkish citizen in a foreign country while performing an official duty in the name of Turkey. For other Turkish nationals, an investigation shall be conducted for the offences they committed in a foreign country depending on the severity of the offence. Accordingly, Turkey exercises jurisdiction over crimes, particularly those of a serious nature, committed by Turkish nationals abroad and while serving as UN officials or experts on mission.

**Office of Legal Affairs
Secretariat of the United Nations
New York**

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OP. 12 (a): Assistance in connection with criminal investigations or criminal or extradition proceedings

Law No. 6706 on "International Legal Cooperation in Criminal Matters", which entered into force on 5 May 2016, aims at facilitating, in domestic law, the implementation of provisions of international agreements in criminal matters in the field of legal cooperation which Turkey is a party to and at bringing together related provisions present in different pieces of legislation.

Moreover, in the fields of legal cooperation in criminal matters and extradition, Turkey is party to a great number of international agreements and bilateral conventions with many countries and in particular the European Convention on Extradition (ETS 24) and its additional Protocols Appendix-1 (ETS 86), Appendix-2 (ETS 98), Appendix-3 (ETS 209) and Appendix-4 (ETS 212) and the European Convention on Mutual Assistance in Criminal Matters (ETS 30), its additional Protocols Appendix-1 (ETS 99) and Appendix-2 (ETS 182). In addition, there are also bilateral conventions signed by Turkey but yet to enter into force.

With regard to the countries having neither bilateral nor multilateral convention on legal cooperation with Turkey, legal cooperation may be carried out in criminal matters, including extradition, in accordance with the principle of "reciprocity" provided in Article 3 of Law No. 6706 mentioned above. In this regard, discretion belongs to the Ministry of Justice which has been determined as the "Central Authority" pursuant to both multilateral and bilateral agreements to which Turkey is party to and the above-mentioned Law.

OP. 12 (b): Ways and means of facilitating the possible use of information and material obtained from the United Nations:

There is no obstacle for accepting as evidence the information and material duly obtained from the UN for purposes of criminal proceedings initiated in the country of nationality for the investigation or prosecution of UN officials and experts on mission for their criminal accountability.

On the other hand, and in the framework of the understanding that the matter of criminal accountability of UN officials and experts on mission focuses especially on crimes such as sexual exploitation and abuse, collecting samples from the bodies of suspects and other persons for an investigation or prosecution has been regulated in Articles 75 and 76 of the Turkish Code of Criminal Procedures (CCP) No. 5271, separately for suspects and other persons. According to the second paragraph of Article 75 of the aforementioned Code, the upper limit of the sanction of the crime claimed to be conducted must not be less than two years, in order to collect samples from the relevant person, such as blood, etc. The lower limit, set out in TCC, of the criminal sanction for sexual violence, is considerably above this limit. Therefore, in case of a request for legal assistance relevant to the aforementioned crime from Turkey, in terms of Turkey's legislation, the request can be fulfilled if other conditions required by the law are met.

OP. 12 (c): Provision of effective protection for victims and witnesses:

Article 58 of the CCP and the Law on Witness Protection No 5726 are the primary sources on witness protection and include regulations on the protection of witnesses who provide information relevant to the investigation and prosecution of a crime. With respect to Article 58 of the CCP and Article 3 of the Law on Witness Protection, the crime to be testified should be serious to some extent, in order for the witness to benefit from protection measures.

Within this framework, according to CCP, the crime must be an organized crime for these witnesses to benefit from the provisions on protection. According to the Law on Witness Protection, in principle, the offence must be punishable by at least ten years of imprisonment, and for the organized crimes, the offence must be punishable by at least two years of imprisonment.

Within the scope of an activity of a terrorist organization, lower limit is not sought, according to the aforementioned Law. Moreover, by Article 13 of the Law on Witness Protection, a Witness Protection Board was established in the Ministry of Interior in order to conduct witness protection activities. Also, through Article 2 of the Law on Witness Protection, victims of a crime who are also heard as witnesses, as well as their relatives stated in this Law have also been included. On the other hand, detailed provisions have been set out in the “Draft Law on Victims Rights” about the fundamental rights granted to and support services provided for victims of crimes, which is still being prepared by the Ministry of Justice, and efforts for the swift finalization of the said draft are ongoing.

OP. 12 (d): Ways and means of responding adequately to requests by host States for support and assistance to enhance their capacity to conduct effective investigations:

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182), regulating a number of new judicial assistance procedures such as hearing relevant persons via video- and tele-conferences, written communication directly made between judicial authorities and joint investigation teams, came into force in Turkey on 1 November 2016, and the active use of the said procedures became possible in connection with requests for the provision of evidence, to be made by UN Member States which are parties to the said Convention. With respect to UN Member States which are not parties to the said Convention, requests can be addressed to Turkey within the framework of, if available, bilateral agreement provisions; if not available, they will be addressed in accordance with the “principle of reciprocity”.

OP. 15: Report of the Group of Legal Experts and further action:

Under the current circumstances, it is believed that giving priority to the jurisdiction of the host country can be a practical solution in terms of swift and efficient collection of first-hand evidence of the crime, facilitating the protection of the evidence and preventing delay and minimizing the possible judicial cooperation among the countries, as it stated in the said report. In that regard, as mentioned above, in the law of criminal procedure, jurisdiction is mainly established based on the “principle of territoriality” and according to Article 8 of the TCC, Turkish laws apply for the offences committed in Turkey.

OP.18: Secretary-General to notify States of credible allegations:

According to Paragraph 3 of Article 158 of the Turkish Code of Criminal Procedure (CCP), a report or a complaint regarding crimes committed abroad but requiring follow-up in the country may be submitted via diplomatic missions as well, and if UN officials and experts on mission engage in a conduct that may amount to a crime specific to a concrete case for which they may be held accountable, relevant diplomatic missions will be notified and this notification will be submitted to the authorized Chief Public Prosecutor’s Office without delay.

Indeed, it is established in Article 160 of the CCP that as soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, he or she shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not, and where

the public prosecutor is informed or notified that a crime has been committed by UN officials and experts on mission, he or she is obliged to deal with the matter and start proceedings in accordance with the Articles 8, 10, 11 and 13 of the TCC set forth elaborately above.

OP. 20: States to provide updates:

In accordance with Article 157 of CCP, procedural interactions during the investigation phase shall be kept confidential. Therefore, on the condition that confidentiality of the investigation and principles of protection of personal data are not violated, Turkey believes that it is an important and positive step for the Secretary-General to bring allegations to the attention of States, and for the States to provide updates on their handling of the allegations, since this will ensure help reduce impunity for the crimes and enable regular follow-up.

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

New York, 1 June 2018

