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The Permanent Mission of Austria to the United Nations presents its compliments to the Secretary-General of the United Nations, and in reference to the request from 8 January 2019 (LA/COD/50/1) for written submissions on "*Criminal accountability of United Nations officials and experts on mission*" (General Assembly resolution 73/196 of 20 December 2018) has the honour to convey the enclosed written comments by Austria.

The Permanent Mission of Austria to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

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General Assembly resolution 73/196 of 20 December 2018

“Criminal accountability of United Nations officials and experts on mission”

Updated Austrian Statement

In relation to the request of 8 January 2019 for information on the implementation of GA resolution 73/196, Austria submits an updated Austrian statement that includes updates regarding paras. 9 and 11c, taking into account the latest amendments of the Austrian Penal Code, Federal Law Gazette I No. 70/2018, in force since 1 November 2018.

Ad para. 9:

The Austrian Penal Code provides ample legal basis for the jurisdiction of Austrian Courts regarding crimes committed by Austrian nationals while serving as United Nations officials or experts on mission, where the conduct as defined in the Austrian Penal Code constitutes a crime under the laws of the host State. It also recognizes the possibility of extraterritorial jurisdiction regardless of locally applicable law as defined in Section 64 of the Austrian Penal Code.

As a rule, Austrian nationals serving in such function are still to be considered as Austrian civil servants according to the Federal Constitutional Act on Cooperation and Solidarity in connection with deployment of units and persons to destinations abroad (Federal Law Gazette I No. 38/1997, Section 4 para. 3).

According to Section 64 para. 1 sub-para. 2 of the Austrian Penal Code, crimes committed by Austrian civil servants in foreign countries are punishable under Austrian law, irrespective of whether or not they are punishable under the law of the State where they were committed. This jurisdiction of the Austrian Courts is not restricted to specific crimes only, but encompasses all crimes punishable under Austrian law.

This section also provides that Austrian courts have jurisdiction, regardless of locally applicable law,

- concerning certain crimes (e.g. extortive abduction, slave trade, trafficking in human beings, rape, sexual coercion or torture) committed outside Austria, if the perpetrator is an Austrian national or other Austrian interests are affected;

Austrian courts are also competent if the alleged perpetrator is present on Austrian territory and cannot be extradited;

- concerning other crimes committed outside Austria if Austria is under an obligation to prosecute under international treaties (sub-para. 6);
- concerning crimes committed abroad by an Austrian national against another Austrian national (if both have their domicile in Austria, sub-para. 7);
- concerning criminal acts of terrorism, financing of terrorism, providing training for terrorism, travelling for the purpose of terrorism and provocation to commit as well as approval of criminal acts of terrorism committed *inter alia* by an Austrian national abroad or by a foreigner who has (or had at the time of the criminal act or the opening of the criminal proceedings) his domicile or habitual residence in Austria or who is present on Austrian territory and cannot be extradited (sub-para. 9).

Moreover, Section 64 para. 1 sub-para. 4c of the Austrian Penal Code provides for full complementary jurisdiction of Austrian courts over international crimes under the Rome Statute of the International Criminal Court, in particular genocide (Section 321), crimes against humanity (Section 321a), war crimes (Sections 321b to 321f) and the crime of aggression (Section 321k). Accordingly, Austrian Courts can exercise jurisdiction over these crimes committed in foreign countries in all cases, regardless of locally applicable law, where the perpetrator or the victim is an Austrian national, other Austrian national interests are infringed by the act, or the perpetrator is a foreigner who has his habitual residence in Austria or is present in Austria and cannot be extradited.

According to Section 65 of the Austrian Penal Code, Austrian courts have jurisdiction concerning other crimes committed outside Austria if they are punishable under locally applicable law and if the perpetrator is an Austrian national (irrespective of his status as Austrian civil servant) or the perpetrator is caught on Austrian territory and cannot be extradited for a reason other than the nature or character of his act.

Ad para. 11 (a)

Austria is in a position to afford assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission, including assistance in obtaining evidence, on the basis of applicable multilateral and bilateral extradition and MLA-treaties. In the absence of such treaties, the above-mentioned assistance can be granted on the basis of the Austrian Extradition and MLA Act (ARHG) of 4 December 1979.

Ad para. 11 (b)

Information and material obtained from the United Nations for purposes of criminal proceedings initiated in Austria for the prosecution of crimes of a serious nature committed by UN officials and experts on mission can be used in accordance with the provisions of the Austrian Criminal Procedure Code.

Section 162 of that Code provides for the possibility of an anonymous testimony of a witness if there are grounds to believe that the person concerned would otherwise be exposed to a serious danger for his or her life, health, well-being or freedom. Furthermore, there is the possibility of hearing a witness by way of a videoconference (Section 153 para. 4 of the Criminal Procedure Code, Article 10 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU).

Ad para. 11 (c)

Austrian law does not differentiate between victims of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and crimes committed by others.

Consequently, the comprehensive victim protection provisions in Section 65 et seq. of the Austrian Criminal Procedure Code apply without qualification. According to Section 66 para. 2 of the Code of Criminal Procedure victims of violent acts, dangerous threats

or sexual offences or victims whose personal dependence could have been exploited by such a criminal offence as well as the spouse, life companion, relatives in a direct line, brother or sister or other dependents of a person whose death could have been caused by a criminal offence, or other relatives who were witnesses of the criminal offence as well as victims of terrorist offences (Section 278c of the Austrian Criminal Code) are entitled to psycho-social or legal assistance in order to preserve the victim's rights in the criminal proceedings. Psycho-social assistance covers the victim's preparation for the proceeding and the emotional burden caused thereby. Psycho-social and legal assistance are provided free of charge. The Ministry of Constitutional Affairs, Reforms, Deregulation and Justice is authorised to assign victims support organisations to provide psycho-social and legal assistance and also funds these organisations.

The question whether witnesses may be included in the Austrian witness protection programme is addressed in Section 22 para. 1 sub-para. 5 of the Security Police Act, whereby the provision concerning witnesses contained in Section 151 et seq. of the Austrian Criminal Procedure Code would have to be taken into account. A central objective of the Austrian unit for witness protection in the Federal Ministry of the Interior is to provide a protected witness – due to the high degree of endangerment involved – with comprehensive protection. Such protection is granted without prejudice as to whether the crime in question has been alleged to have been committed by United Nations officials and experts on mission or others.

Ad para. 11 (d)

Austria will provide technical assistance to other states in response to any request in this matter.