



**PERMANENT MISSION
OF THE REPUBLIC OF BELARUS
TO THE UNITED NATIONS**

№ 02-24/485

The Permanent Mission of the Republic of Belarus to the United Nations presents its compliments to the Secretary-General of the United Nations and in accordance with the United Nations General Assembly resolution 73/196 of 20 December 2018 and the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission has the honour to submit the commentaries of the Republic of Belarus to the said report (in Russian).

As per the United Nations General Assembly resolution 73/205 of 20 December 2018, significant violations against missions and representatives of foreign states or international intergovernmental organisations were not registered in Belarus in 2017-2018. The Ministry of Internal Affairs of the Republic of Belarus on a permanent basis implements the necessary set of measures to ensure the security of diplomatic missions, equivalent to them representations of international organisations and consular institutions of foreign states, including their employees in the territory of the country.

The Permanent Mission of the Republic of Belarus 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.

Annex: as stated.



New York, May 31, 2019

Secretary-General of the United Nations
New York

Translated from Russian

Criminal accountability of United Nations officials and experts on mission

With regard to General Assembly resolution 73/196 of 20 December 2018 and the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission, we wish to inform you that the criminal legislation of the Republic of Belarus contains no specific provisions regarding criminal liability for acts committed directly by its nationals as officials or experts on mission for the United Nations. Such persons may, however, be held criminally liable even in the absence of such provisions if their acts are deemed to be crimes under the criminal law of Belarus.

The acts referred to in the report are regarded as crimes under current legislation in Belarus.

National jurisdiction over Belarusian nationals who commit an offence outside Belarus is enshrined in the Criminal Code (art. 6).¹

Under the Code (art.6, para. 1¹), any national of Belarus or stateless person permanently resident in the country who commits a criminal offence outside the borders of Belarus is liable under the Code if the acts committed are deemed to be crimes by the State in the territory of which they were committed and if that person has not been prosecuted in that State, except where otherwise provided for in paragraph 1 of the article. In case of conviction, that person may be sentenced in accordance with the penalties set forth in the Code. Sentences may not, however, exceed the maximum penalty provided for under the law of the State in the territory of which the offence was committed.

Under the Code (art.6, para. 1¹), any national of Belarus or stateless person permanently resident in the country who commits a criminal offence outside the borders of Belarus within the meaning of chapter 32 (Crimes against the State²) and articles 373–375³ of the Code is liable to prosecution if that person has not been prosecuted in a foreign State.

¹ See resolution 73/196 (para. 10) and the report of the Group of Legal Experts (paras. 45 and 59).

² Treason; conspiracy or other acts committed in order to seize power; espionage; subversive activities; acts of terrorism against a government or public figure; sabotage; exhortation to carry out acts to breach the national security of Belarus; establishing an extremist group; financing the activities of an extremist group; membership of an armed group or participation in an armed conflict or hostilities in the territory of a foreign State or involvement in the recruitment or training of others for such activities.

³ Disclosure of State secrets, whether deliberate or through negligence; deliberate disclosure of official secrets.

The Code applies to a number of acts irrespective of the criminal law of the place where the act was committed.⁴ In such cases, persons who have not been convicted in a foreign State are liable to prosecution under the Code in Belarus.

The issues of liability for criminal offences committed by persons on mission for the United Nations and the establishment of jurisdiction over such offences are also regulated by instruments concluded between Belarus and the United Nations. For instance, under article 7 quinquies of the Memorandum of Understanding between the United Nations and the Government of Belarus contributing resources to the United Nations Interim Force in Lebanon (UNIFIL), of 9 August 2011, military members and any civilian members subject to national law of the national contingent provided by the Government are subject to the Government's exclusive jurisdiction in respect of any crimes or offences that might be committed by them while they are assigned to the military component of UNIFIL. The Government assures the United Nations that it shall exercise such jurisdiction with respect to such crimes or offences.

Given the current legislation and the fact that Belarus may exercise jurisdiction under certain international treaties, we believe that the measures in place with regard to article 10 of resolution 73/196 are satisfactory.

To date, the law enforcement agencies of Belarus have received no petitions (files) or requests from other States to initiate criminal proceedings against officials or experts suspected of committing crimes while on mission for the United Nations.

In the event of receipt of such information, files or requests to initiate criminal proceedings against Belarusian nationals who have been on mission for the United Nations, nationals of other States or stateless persons, the competent judicial authorities of Belarus are legally vested with the necessary powers to carry out criminal prosecutions with the full force of the law.

The right of victims, witnesses and other persons to protection, including legal procedures to ensure the safety of participants in criminal proceedings and other persons, is provided for under the law in Belarus.

⁴ Genocide (art. 127), crimes against the security of humankind (art. 128), the production, stockpiling or distribution of prohibited instruments of war (art. 129), ecocide (art. 131), the use of weapons of mass destruction (art. 134), the violation of the laws and customs of war (art. 135), criminal violations of the provisions of international humanitarian law in times of armed conflict (art. 136), inaction or issuance of a criminal order in times of armed conflict (art. 137), human trafficking (art. 181), other crimes committed outside Belarus that are subject to prosecution under an international treaty that is binding on Belarus.

With regard to the impact of dual criminality on the provision of international legal assistance and extradition, as referred to in paragraph 23 of the report of the Group of Legal Experts, under article 484 of the Code of Criminal Procedure, the absence of dual criminality explicitly constitutes grounds for refusing to provide legal assistance or grant extradition.

Assistance in connection with investigations, the trial of criminal cases and extradition procedures is provided in accordance with the international treaties on legal assistance in criminal matters to which Belarus is a party, and international extradition treaties.

With regard to paragraph 41 of the report and articles 12 and 13 of annex III thereto, we wish to inform you that, under article 1 of the Code of Criminal Procedure, in the absence of an international treaty governing the transfer of convicted persons to serve their sentences, the principle of reciprocity applies.

No disputes have arisen between the Office of the Procurator-General of Belarus and the competent authorities of other States regarding the transfer of convicted persons.

Under the law,⁵ the procedures for holding persons in custody are informed by the principles of legality, humaneness, the equality of all before the law and respect for human dignity, in accordance with the Constitution, universally recognized principles and norms of international law and international treaties. Detention should not be accompanied by cruel or inhumane treatment that could be detrimental to the physical or mental health of the detainee.

Foreign nationals and stateless persons held in custody have the same obligations and enjoy the same rights as Belarusian nationals, unless otherwise provided for by the Constitution, the above-mentioned law or international treaties to which Belarus is a party.

Discrimination against persons held in custody on the basis of sex, race, ethnicity, language, origin, wealth, social position, place of residence, religion, beliefs, membership of public associations or for other reasons is prohibited.

We view the initiative of the Group of Legal Experts regarding the elaboration of a universal international treaty favourably and welcome the proposed draft convention on the criminal accountability of United Nations officials and experts on mission contained in annex III to the report.

⁵

Act No. 215-3 of 16 June 2003.

Such a treaty would be likely to contribute to the resolution of problems highlighted by the Group in paragraphs 19 and 23 and elsewhere in the report.

In the light of paragraph 62 of the report, we suggest that it would be useful to include the following in such a treaty:

- Detailed descriptions of what constitutes the criminal acts concerned
- A requirement for States parties to take the organizational and legal measures necessary to enshrine the description of those acts in their national law and criminalize those acts
- Provisions on preventing impunity and statutes of limitations for such criminal acts

It would also be useful to regulate:

- The immunity of United Nations officials and experts on mission and the procedures for waiving it⁶
- Procedures for determining jurisdiction over the criminal acts concerned (including the possibility of establishing joint tribunals, or international tribunals in cases where the capacity of the judicial system of the State in the territory of which the criminal acts were committed is inadequate)
- Aspects of the administration of justice, the provision of legal assistance in the criminal cases concerned, procedures for extradition and the transfer of convicted persons to serve their sentences, and so on.

The entry into force of the treaty would enable the States parties to harmonize their approach to the relevant legal issues.

⁶

Report of the Group of Legal Experts (paras. 20–22) and article 2 of the draft convention.