

*Translated from French*

Swiss Confederation

Federal Department of Foreign Affairs (DFAE)  
Directorate of Public International Law (DDIP)

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### **Criminal accountability of United Nations officials and experts on mission**

Position paper submitted by Switzerland on paragraphs 10, 12, 13, 15, 18, 20 and 30 of General Assembly resolution 73/196 of 20 December 2018

In paragraph 10 of its resolution 73/196, the General Assembly “strongly 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 stated in its position papers on General Assembly resolutions 66/93, 62/63, 65/20, 70/114, 71/134 and 72/112, Switzerland considers its judicial authorities fully competent to prosecute its nationals serving as United Nations officials or experts on mission. Swiss criminal law covers crimes committed by Swiss nationals abroad under certain conditions, including in particular when these crimes are also punishable in the State where they were committed or when the place where the act was committed is not subject to any criminal jurisdiction (cf. articles 6 (1) and 7 (1) of the Swiss Criminal Code). [Criminal Code; Recueil systématique, 311.0, [http://www.admin.ch/ch/f/rs/c311\\_0.html](http://www.admin.ch/ch/f/rs/c311_0.html)]. Obviously, for Switzerland to be able to prosecute its nationals serving as United Nations officials or experts on mission, the United Nations must first lift their immunity.

With respect to paragraph 15 of General Assembly resolution 73/196, which addresses the question of future measures, Switzerland welcomes the decision of the General Assembly that “the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and also noting the inputs by the Secretariat, shall be continued during its seventy-fifth session in the framework of a working group of the Sixth Committee”. Switzerland recalls that this Group of Legal Experts arrived at the following conclusion in its report A/60/980 of 2006: “After analysing the advantages and disadvantages of an international convention, the Group recommends that an international convention be adopted.” In recent years, Switzerland has contributed to discussions among Member States on how to fill the existing gaps, which lead to too many situations of impunity. The side event discussion organized by Switzerland during the seventy-third session of the General Assembly and the side event presenting a comparative study<sup>1</sup> by the Swiss Institute of Comparative Law during the seventy-second session of the General Assembly showed that area experts support the recommendation made by the Group of Legal Experts in its report. Switzerland encourages all Member States to respond to the General Assembly invitation for “further comments from Member States on that report, including on the question of future action”. For the working group of the Sixth Committee to make progress when it next meets during the seventy-fifth session of the General Assembly, Member States must give further thought to what measures could and should be taken to fill

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<sup>1</sup> <https://www.isdc.ch/media/1440/e-2017-15-16-086-criminal-accountability.pdf>

existing gaps and ensure the effective prosecution of United Nations officials and experts on mission who have committed criminal offences.

In relation to paragraphs 18 and 20 of resolution 73/196, Switzerland welcomes the fact that the Secretary-General is requesting the State of nationality of the official or expert on mission against whom credible allegations have been made to report on its handling of the allegations. However, various cases have been brought to the attention of Switzerland not as the State of nationality but because the alleged offences were committed in Switzerland. In 2017 and 2018, Switzerland informed the Secretary-General of measures taken in three cases that had been brought to its attention because the alleged offences had been committed in Switzerland. To have a more complete picture of how allegations have been handled, Switzerland considers that the scope of paragraphs 18 and 20 of the resolution should be broadened to include cases brought to the attention of a State other than the State of nationality. Moreover, the side event discussion organized by Switzerland during the seventy-third session of the General Assembly and the aforementioned comparative study by the Swiss Institute of Comparative Law have demonstrated the utility of broadening the scope of the resolution to the State where the alleged crimes occurred.

Switzerland welcomes the new paragraph 21 of General Assembly resolution 73/196, which “[e]ncourages all States to provide to the Secretary-General a point of contact in order to strengthen and enable efficient communication and cooperation between the United Nations and Member States, and requests the Secretary-General to maintain and update a list of points of contact”. Switzerland specifies the Directorate of Public International Law of the Federal Department of Foreign Affairs as its point of contact (email address: [dv@eda.admin.ch](mailto:dv@eda.admin.ch); street address: Kochergasse 10, 3003 Bern, Switzerland). It is convinced of the value of a list of points of contact for communication and cooperation between Member States and the Secretary-General and encourages all Member States to specify such a point of contact.

Lastly, Switzerland has duly noted the Secretary-General’s report of 12 July 2018 (A/73/155) on the policies and procedures governing this subject in the United Nations system. It welcomes the fact that paragraph 30 of General Assembly resolution 73/196 reiterates the request to the Secretary-General “to develop recommendations to help to ensure that such policies and procedures relating to the reporting, investigation, referral and follow-up of credible allegations revealing that a crime may have been committed by a United Nations official or expert on mission are coherent, systematic and coordinated throughout the United Nations system”. A coherent, coordinated approach that applies to the entire United Nations system is essential to handle allegations of crimes effectively and prevent their repetition.

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