

*Translated from French*

Swiss Confederation

1 June 2020

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

### **Position of Switzerland pursuant to paragraphs 10, 12, 13, 15, 18, 20 and 30 of General Assembly resolution 74/181 of 18 December 2019**

In paragraph 10 of its resolution 74/181, 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 it has indicated in stating its position pursuant to General Assembly resolutions 66/93, 62/63, 65/20, 70/114, 71/134, 72/112 and 73/196, Switzerland considers that its judicial authorities are 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, in particular when such crimes are also liable to prosecution in the State where they were committed, or when no criminal law jurisdiction applies at the place of commission (see art. 6, para. 1, and art. 7, para. 1, of the Swiss Criminal Code (CP; *Recueil systématique* 311.0, [http://www.admin.ch/ch/f/rs/c311\\_0.html](http://www.admin.ch/ch/f/rs/c311_0.html))). It goes without saying that, for Switzerland to be able to prosecute its nationals serving as United Nations officials or experts on mission, the United Nations must first waive the immunity that they would otherwise enjoy.

With regard to paragraph 15 of General Assembly resolution 74/181, which deals with the question of measures to be taken, Switzerland welcomes the decision of the Assembly to the effect 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, and, for that purpose, invites further comments from Member States on that report, including on the question of future action”. Switzerland recalls that the Group of Legal Experts had reached the following conclusion in its 2006 report (A/60/980): “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 the debate among Member States on how to fill the existing gaps that lead to too

many situations of impunity. The debate organized by Switzerland on the margins of the seventy-third session of the General Assembly and the comparative study<sup>1</sup> by the Swiss Institute of Comparative Law presented on the margins of the seventy-second session of the General Assembly showed that the experts in the field support the recommendation of the report of the Group of Legal Experts. Switzerland encourages all Member States to respond to the General Assembly's invitation for "further comments [...] on that report, including on the question of future action". In order to make progress at the next working group of the Sixth Committee during the seventy-fifth session of the General Assembly, it is essential that Member States deepen their reflection on the measures that can and should be taken to fill the existing gaps and to ensure the effective prosecution of United Nations officials and experts on mission who have committed criminal offences.

In connection with paragraphs 18 and 20 of resolution 74/181, Switzerland welcomes the fact that the Secretary-General requests the State of nationality of an official or expert on mission against whom credible allegations are made to report on the measures taken in that regard. Nonetheless, various cases have been brought to the attention of Switzerland not in its capacity as State of nationality, but on the basis of the alleged offences being allegedly committed on its territory. In 2017, 2018 and 2019, Switzerland reported to the Secretary-General on the measures taken with regard to cases that had been brought to its attention on the basis of the alleged offences being allegedly committed on its territory. To ensure a more comprehensive picture of the measures taken to address such allegations, Switzerland maintains that the scope of paragraphs 18 and 20 of the above-mentioned resolution should be broadened to include cases brought to the attention of a State other than the State of nationality. The debate organized by Switzerland on the margins of the seventy-third session of the General Assembly and the comparative study by the Swiss Institute of Comparative Law mentioned above demonstrated the usefulness of extending the scope of the resolution to the State of the place of commission of the alleged crimes.

Switzerland welcomes paragraph 21 of General Assembly resolution 74/181, in which the Assembly "encourages 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". Convinced of the added value of a list of points of contact for communication and cooperation between Member States and the Secretary-General, Switzerland encourages all Member States to provide such points of contact.

Switzerland welcomes the report of the Secretary-General of 11 July 2019 (A/74/142) on the updating of the policies and procedures governing this matter within the United Nations system. A coherent and coordinated approach throughout the United Nations system is essential to effectively addressing allegations of crimes and to preventing their recurrence. Switzerland has taken note of the recommendation of the Secretary-General in that regard, contained in paragraph 28 of his report, and is considering its implementation.

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

