

**Information on the implementation of General Assembly resolution 74/181, entitled
“Criminal accountability of United Nations officials and experts on mission”**

The principle of diplomatic immunity is an exception to the territorial principle of the application of criminal law for certain foreign citizens who have committed a crime in Turkmenistan. This rule is established in article 7 (5) of the Criminal Code of Turkmenistan, which reads: “The question of the criminal accountability of diplomatic representatives of foreign States and other persons enjoying immunity, in the event that such persons commit crimes in Turkmenistan, shall be resolved in accordance with international law and the international agreements to which Turkmenistan is a party”.

The principle of diplomatic immunity enshrined in article 7 (5) of the Criminal Code de facto allows for competition between the norm established in article 7 (1) of the Criminal Code (which provides for the accountability of all persons who have committed a crime in Turkmenistan under Turkmen criminal law) and the norm established in article 31 of the 1961 Vienna Convention on Diplomatic Relations, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and other international legal norms.

Immunity and personal inviolability are granted with a view to enabling the normal exercise of the functions entrusted to diplomatic and consular missions, official delegations of States and international organizations. These norms establish that persons enjoying diplomatic and other immunities cannot be prosecuted under the law of the place to which they are accredited for a crime committed there. As a rule, such persons are declared “persona non grata” and are obliged to leave the State. The rules of international law, however, provide that the accrediting State may waive diplomatic and other immunities. In such a case, the perpetrator is held criminally accountable under the law of the place where the crime was committed.

Diplomatic immunity is granted to certain persons with a view to creating the most favourable conditions for the performance of the functions of diplomatic representation in the host State, and it is the duty of such persons “to respect the laws and regulations of the receiving State” under article 41 (1) of the 1961 Vienna Convention on Diplomatic Relations. Consequently, the law of the host country is binding on them.

Turkmenistan advocates that United Nations officials and experts involved in crimes detrimental to the authority of the United Nations should not go unpunished. Although United Nations officials and experts have the personal inviolability of a diplomat (according to article

31 of the Vienna Convention on Diplomatic Relations of 18 April 1961) and may not be subject to any form of arrest or detention, when these persons are guilty of committing a crime – even more so one grave in nature – there should be no obstacle to their prosecution and they should be held criminally accountable. If the principle of equality of citizens before the law is respected then, should they be guilty of committing a crime – even more so, one grave in nature – they must be held accountable for their actions. The State of their nationality should take the lead in bringing the perpetrators to justice, while guaranteeing them the right to a fair trial.

The criminal accountability of diplomatic representatives of foreign States and other citizens not subject to criminal jurisdiction under the laws in force or the international agreements to which Turkmenistan is a party is an issue resolved by diplomatic means, if these persons commit crimes in the territory of Turkmenistan, and immediate notification is provided to the Ministry of Foreign Affairs of Turkmenistan, which then informs the competent authorities of the State of which the diplomat is a national. These individuals are declared *persona non grata*, withdrawn by their State and expelled from Turkmenistan.

The criminal law of Turkmenistan contains provisions enabling persons to be prosecuted for crimes committed outside of Turkmenistan (article 8 of the Criminal Code).

If Turkmen citizens with diplomatic immunity commit a criminal offence in the territory of the State where they were accredited, Turkmenistan removes their diplomatic immunity and they may be criminally prosecuted in the territory of Turkmenistan.

The exchange of information, facilitating the conduct of investigations and the prosecutions of United Nations officials and experts on mission are some of the issues addressed in paragraph 11 of the resolution. Information-sharing is governed by the provisions of the Code of Criminal Procedure of Turkmenistan.

Paragraph 11 of the resolution focuses on strengthening the capacities of national authorities to investigate and prosecute crimes.

The National Human Rights Action Plan of Turkmenistan for the period 2016–2020 sets out the tasks of modernizing the legal system, including the judiciary, law enforcement agencies and the legal profession.

In accordance with the Action Plan, the Supreme Court of Turkmenistan is implementing a project on “the rule of law and the administration of justice” in conjunction with the Representative Office of the United Nations Development Programme in Turkmenistan. It provides for the test introduction of information technologies and electronic services in Turkmen courts. It should be noted that the State programme for the development of the judicial system of Turkmenistan for the period 2017–2021 was adopted by a presidential decision of 18 March 2017, and a plan of action was approved for its implementation.

Regarding paragraph 12 of the resolution, effective protection for victims, witnesses and others is governed by the State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings Act, which establishes a system of measures aimed at ensuring protection by the State for victims, witnesses and other participants in criminal proceedings, including the security and social protection of such persons, and also defines the grounds and procedures for the implementation of such measures.

Turkmenistan supports efforts aimed at improving the justice system in the United Nations and appreciates resolution 74/181. Our country views the ongoing reform in this area as an important contribution by the Organization to strengthening the rule of law.

We would also like to share the following information, which contains some details about the legislative norms of Turkmenistan in this area.

The Constitution of Turkmenistan guarantees the equality of human and civil rights and freedoms, as well as the equality of individuals and citizens before the law and the courts, regardless of nationality, race, colour of skin, sex, origin, property or official status, place of residence, language, attitude to religion, political beliefs or other circumstances.

The law of Turkmenistan provides for equal responsibility for all natural persons with legal capacity. Under article 8 (1) of the Criminal Code, Turkmen citizens and stateless persons permanently residing in Turkmenistan who have committed a crime under Turkmen criminal law outside the country are held accountable under Turkmen criminal law if accountability for the act committed is provided for by the criminal law of the State in whose territory it was committed and if the persons concerned have not been convicted in a foreign State.

Article 9 (1) of the Criminal Code also stipulates that Turkmen citizens who have committed an offence in the territory of a foreign State shall not be extradited to that State. Consequently, when a citizen takes part in an international activity outside the territory of Turkmenistan and commits a criminal offence in the course of that activity, the law of Turkmenistan applies, unless the provisions of an international treaty to which Turkmenistan is a party provide otherwise.

The Criminal Code also establishes universal jurisdiction under international treaties for certain crimes, such as crimes against humanity and war crimes, trafficking in human beings, money laundering, terrorist activity and several others, regardless of the citizenship and place of residence of the perpetrator or the territory in which the crime has been committed. Accordingly, this means that the jurisdiction of Turkmenistan extends to persons serving as United Nations officials or experts on mission for crimes committed abroad.

The Code of Criminal Procedure also contains the following provisions with regard to crimes committed by Turkmen citizens outside of Turkmenistan:

- The Procurator-General of Turkmenistan considers applications for referral for further investigation from the relevant body of a foreign State concerning the criminal case against a Turkmen citizen who has committed an offence in the territory of a foreign State and has returned to Turkmenistan. If an offence is committed in a foreign State by a Turkmen citizen who has returned to Turkmenistan prior to the initiation of criminal proceedings, the criminal proceedings may be initiated against that individual under the Code of Criminal Procedure by the pretrial investigation authorities on the basis of the materials and documents on the offence submitted to the Procurator-General by the relevant foreign State institution. The body conducting the criminal proceedings must notify the Procurator-General of Turkmenistan of the final decision taken on the case and send him a copy of that decision (article 549);

- In the circumstances and manner established by the law and the international treaties to which Turkmenistan is a party, the Office of the Procurator-General of Turkmenistan files a request with the competent authority of the foreign State for the extradition to Turkmenistan of a person who is a Turkmen citizen, or of a person who is not a citizen of the requested State and who has committed an offence, if the person in question has been indicted or convicted (article 550);

- A Turkmen citizen sentenced to deprivation of liberty by the court of a foreign State, his or her legal representative or close relative and the competent authority of the foreign State may, with the consent of the indictee, apply to the Procurator-General of Turkmenistan to serve the sentence in Turkmenistan (article 561).

Turkmenistan is a party to many multilateral conventions and bilateral agreements concerning assistance in criminal matters. In addition, issues relating to international cooperation are covered by the following Acts:

- The Procuratorial Service of Turkmenistan Act. Under article 4 of the Act, the Office of the Procurator-General cooperates, within the limits of its competence, with the relevant bodies of foreign States and international organizations and participates in resolving issues arising from international agreements concluded by Turkmenistan;

- The Internal Affairs Agencies Act. In accordance with the Act, the Ministry of Internal Affairs, with the agreement of the President of Turkmenistan, has the right to establish contacts and cooperate with the internal affairs bodies and law enforcement agencies of other States and international organizations, in accordance with the generally recognized norms of international law and the international agreements to which Turkmenistan is a party, in order to perform the tasks assigned to the internal affairs agencies. It should also be noted that the internal affairs agencies, in accordance with the tasks assigned to them and within the limits of their competence, cooperate with INTERPOL and the law enforcement agencies of INTERPOL

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member States, as well as with relevant ministries and agencies of other States, on the basis of the generally recognized norms of international law, the international agreements concluded by Turkmenistan and the binding decisions and recommendations adopted by the General Assembly of INTERPOL.
