



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs
Directorate of International Law

1 June 2021

Criminal accountability of United Nations officials and experts on mission

Position of Switzerland concerning paragraphs 10, 12, 13, 15, 18, 20 and 30 of General Assembly resolution 75/132 of 15 December 2020

In paragraph 10 of its resolution 75/132, 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 concerning General Assembly resolutions 66/93, 62/63, 65/20, 70/114, 71/134, 72/112, 73/196 and 75/181, 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

Criminal accountability of United Nations officials and experts on mission

where they were committed, or when no criminal law jurisdiction applies at the place of commission (see Swiss Criminal Code, arts. 6 (1) and 7 (1), Classified Compilation 311.0, https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en). 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. Switzerland is pleased to note that, during the period under review, some States provided information for the first time on the way in which they exercise jurisdiction over their nationals serving as United Nations officials or experts on mission. We strongly encourage all Member States to follow their example and to provide information on this subject.

With regard to paragraph 15 of General Assembly resolution 75/132, 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-seventh session in the framework of a working group of the Sixth Committee”*. Switzerland recalls that the Group of Legal Experts 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.”* Switzerland is actively contributing to the debate among Member States on how to fill the existing gaps that lead to too many situations of impunity. Debates and studies on this subject facilitated by Switzerland have shown that experts in the field support the recommendation made in the report of the Group of Legal Experts. The meetings of the working group during this session were held in exceptional circumstances on account of the pandemic. We hope that the discussions will move forward during the seventy-seventh session. 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”*. It is essential that Member States deepen their reflection on the measures that 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. This would ensure the effectiveness and legitimacy of the activities of the United Nations and its Member States. There is an urgent need for progress on this issue.

In connection with paragraphs 18 and 20 of resolution 75/132, 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. It is essential that all Member States examine and respond to the referrals and follow-up reports of the Secretary-General. That being said, various cases have been brought to the attention of Switzerland not in its capacity as State of nationality, but because the alleged offences are said to have been committed in its territory. Every year since 2017, Switzerland has reported to the

Criminal accountability of United Nations officials and experts on mission

Secretary-General on the measures taken with regard to the cases brought to its attention on that basis. All of these cases have been handled. There are no pending cases. 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 Law¹ demonstrated the usefulness of extending the scope of the resolution to the State in which the alleged crimes were committed.

Switzerland welcomes paragraph 21 of General Assembly resolution 75/132, 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 if they have not yet done so.

Lastly, Switzerland welcomes the report of the Secretary-General of 23 July 2020 (A/75/282) 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 32 of his report, and undertakes to implement it.

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