



General Assembly

Distr.: General
31 July 2014

Original: English

Sixty-ninth session

Item 76 of the provisional agenda*

Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraphs 16 and 17 of General Assembly resolution [68/105](#). Section II contains information received from Governments on the extent to which jurisdiction, in particular over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, is established under their national laws. Section III provides information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Sections IV and V relate to information on the activities within the Secretariat.

* [A/69/150](#).



I. Introduction

1. In its resolution [68/105](#), the General Assembly requested the Secretary-General to report on the implementation of the resolution, in particular with respect to its paragraphs 3, 5 and 9, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat.
2. By a note verbale dated 14 January 2014, the Secretary-General drew the attention of all States to that resolution and requested them to submit relevant information.
3. The present report provides information on efforts undertaken in that regard. Sections II and III concern activities and information received relating to the criminal accountability of United Nations officials and experts on mission, as required under paragraphs 3 to 5, 9 and 15 of resolution [68/105](#). Sections IV and V of the report relate to activities undertaken within the Secretariat in the implementation of paragraphs 6, 7 and 9 to 14 of the resolution, focusing in particular on information regarding the bringing of credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters relating thereto.
4. The present report should be read together with previous reports of the Secretary-General under this item ([A/63/260](#) and Add.1, [A/64/183](#) and Add.1, [A/65/185](#), [A/66/174](#) and Add.1, [A/67/213](#) and [A/68/173](#)). Attention is also drawn to the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse ([A/68/756](#)) (see in particular paras. 18 and 44 to 49).

II. Establishment of jurisdiction over crimes of a serious nature

Colombia

5. Colombia stated that the basis for characterizing offences as serious crimes under international law should be criminalization under the Rome Statute of the International Criminal Court. Under national legislation, there is no specific category of “ crimes of a serious nature” . However, all forms of conduct characterized as serious crimes under international law, including genocide, crimes against humanity and war crimes, are criminalized under the Penal Code.
6. Under articles 4 and 95 of the Constitution, all persons in Colombian territory must abide by the laws of the Republic, while all persons within the territorial boundaries set forth in article 101 of the Constitution are subject to the laws prescribed by the Colombian legislature. While the territoriality principle remains the primary jurisdictional basis within the national criminal system of Colombia, as confirmed by article 14 of the Penal Code,¹ article 29 of the Code of Penal Procedure provides for the extraterritorial application of national criminal law to Colombian nationals who commit crimes abroad (in particular, the serious crimes listed in the Rome Statute), while serving as United Nations officials or experts on

¹ Article 14 of the Penal Code provides that Colombian penal law shall apply to all persons who infringe that law in the national territory, subject to the exceptions specified in the international treaties and conventions ratified by Colombia.

mission. It specifically provides that the criminal courts are responsible for prosecuting and judging crimes committed in the national territory, in addition to those committed abroad as determined by the international treaties signed and ratified by Colombia and national legislation. Such extraterritorial applications of jurisdiction, set out in article 16 of the Penal Code, include the extraterritoriality of penal law in order to defend the State and the extraterritorial application of Colombian criminal law to nationals other than public officials, if the national is present in Colombia after having committed a crime on foreign soil, where the penalty under Colombian penal law is a term of imprisonment of at least two years and such person has not been tried abroad. In particular, under paragraphs 2 and 3, the application of Colombian law can be extended to the extraterritorial conduct of its public officials in instances in which any person who is in the service of the Colombian State who enjoys immunity under international law commits a crime abroad, or where any person who is in the service of the Colombian State who does not enjoy immunity under international law commits a crime abroad, where such person has not stood trial abroad. The Military Penal Code also extends its scope to crimes committed by members of the armed forces on active duty outside Colombia in respect of those crimes committed by members of the armed forces on active duty inside or outside the country, when those crimes are the direct result of the military or police duties assigned to them by the Constitution, laws and regulations.

El Salvador

7. El Salvador reiterated the information contained in previous reports of the Secretary-General (see [A/65/185](#), para. 17, and [A/67/213](#), para. 4), confirming in particular that the principles of territoriality, nationality and universality were provided for under the Salvadorian Penal Code, thereby allowing the prosecution of crimes committed by individuals within Salvadorian territory, or outside of it when certain requirements were met. Moreover, the Salvadorian armed forces took steps to sign a memorandum of understanding with the host country before a mission began operations in order to ensure that any official or expert committing an act constituting a crime would be extradited for prosecution in El Salvador. At the time of reporting, no cases of Salvadorian nationals committing crimes while on mission had been reported.

Finland

8. During the reporting period, no allegations, investigations or proceedings against Finnish nationals had been brought to the attention of Finland, nor had crimes of a serious nature been committed by its nationals in the service of the United Nations as officials or experts on missions. Should such allegations be made, however, all appropriate measures would be taken to investigate and prosecute those crimes in accordance with applicable national law.

III. Cooperation between States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions

Colombia

9. Colombia stated that international cooperation in criminal legal matters was governed primarily by international agreements and conventions signed by Colombia. Accordingly, only in the absence of an international instrument does Colombian law apply, pursuant to article 499 of Act No. 600 of 2000 (former Code of Penal Procedure). Article 485 of Act No. 906 of 2004 (Code of Penal Procedure currently in force) establishes the possibility of seeking assistance from foreign authorities or international organizations in initiating investigations of crimes committed abroad; article 486 provides for the transfer of witnesses and experts and to obtain evidence from foreign territories when necessary; and article 487 encourages the exploration of adequate ways and means of responding to requests by host States for support and assistance.

10. Colombia emphasized that its legal system contained the laws and statutes necessary to facilitate and ensure the collection and submission of evidence and to guarantee the incorporation, in any trial in Colombia, of information and evidence obtained by the United Nations. In particular, the Attorney General may enter into agreements with his or her counterparts in other countries for the purpose of strengthening judicial cooperation and sharing technology, experiences or training or any other activities with similar aims.

11. Concerning the protection of victims, Colombia noted that article 133 of Act No. 906 of 2004 obligated the Office of the Attorney General to implement such measures as are necessary to attend to the needs of victims and guarantee their personal security, in addition to that of their family members, and to protect them against any publicity that may constitute an undue attack on their private lives or dignity. Any measures to care for and protect victims shall not impinge on the rights of accused persons or on the right to a fair and impartial trial, nor shall they be incompatible with those rights.

IV. Bringing credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters relating thereto

12. In paragraphs 9 to 14, 16 and 17 of its resolution [68/105](#), the General Assembly urged Member States to provide information to the Secretary-General, requested the Secretary-General to provide certain information to the Assembly and requested the United Nations to take certain measures concerning the issue of criminal accountability of officials and experts on mission.

Referrals in relation to officials or experts on mission

13. The request in paragraph 9 of resolution [68/105](#) is similar to that made by the Assembly in paragraph 9 of its resolutions [67/88](#) (see [A/68/173](#)), [66/93](#) (see [A/67/213](#)), [65/20](#) (see [A/66/174](#)), [64/110](#) (see [A/65/185](#)), [63/119](#) (see [A/64/183](#)) and [62/63](#) (see [A/63/260](#)).

14. The information provided herein relates to the period from 1 July 2013 to 30 June 2014. During that period, and with reference to the request in paragraph 17 of the resolution, the Office of Legal Affairs referred to States of nationality, through the permanent missions concerned, the cases of 15 United Nations officials for investigation and possible prosecution. Of those cases, five concerned allegations of theft, five concerned allegations of misuse of information and communication technology resources and/or data, and each of the rest concerned allegations of undue private gain, outside activity, abuse of position and conflict of interest; procurement fraud; forgery and procurement fraud; abuse of position and conflict of interest; and entitlement fraud, respectively.

Requests for indication of status and assistance that may be provided by the Secretariat

15. The Office of Legal Affairs requested the States to which the cases were referred during the reporting period to keep the United Nations informed of any action taken by the national authorities in relation to those cases. As at the date of preparation of the present report, no States to which the referrals were made had contacted the Office to note that the matter had been raised with the relevant officials. The Office remains ready to assist with all referrals made.

16. Details of earlier requests by the Secretariat for information from States on how they were handling cases previously referred to them are contained in the previous reports of the Secretary-General on the subject (see [A/64/183](#), para. 63; [A/65/185](#), paras. 85-86; [A/66/174](#), paras. 62-63; [A/67/213](#), paras. 36-37; and [A/68/173](#), paras. 19-20).

Possible use by States exercising jurisdiction of information from United Nations investigations

17. In paragraph 11 of its resolution [68/105](#), the General Assembly requested the United Nations, when its investigations into allegations suggested that crimes of a serious nature might have been committed by United Nations officials or experts on mission, to consider any appropriate measures that might facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations. In the same vein, in paragraph 13 of that resolution, the Assembly urged the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States.

18. In that regard, it is important to recall that the legal framework within which the referrals are made by the United Nations and the role of the Secretary-General have been outlined previously (see [A/63/260](#), sect. IV).

19. The United Nations cooperates with law enforcement and judicial authorities of relevant Member States in accordance with its rights and obligations under the Convention on the Privileges and Immunities of the United Nations of 1946, in addition to other relevant international agreements and applicable legal principles. Accordingly, the Organization will disclose documents and/or information and waive immunity on a case-by-case basis where, in the opinion of the Secretary-General, immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. Consequently, information obtained by the Organization may be provided to the relevant authorities, and documents may be shared, subject to consideration of confidentiality and privileges and immunities. Documents may be redacted where necessary. It should be noted that, given that the United Nations has no criminal investigative or prosecutorial jurisdiction, the use of any documents or information provided by the United Nations, including their admissibility in any legal proceedings, is a matter for determination by the relevant judicial authorities to which such documents or information have been provided.

Protection of United Nations officials and experts on mission from retaliation

20. In paragraph 12 of its resolution [68/105](#), the General Assembly encouraged the United Nations, should allegations against United Nations officials or experts on mission be determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission. Moreover, the Assembly, in paragraph 14 of the resolution, emphasized that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who reported allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission.

21. In this regard, United Nations officials who report misconduct by other United Nations officials or experts on mission are protected against retaliation under the staff regulations, rules and relevant administrative issuances, in particular the Secretary-General's bulletin entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations" ([ST/SGB/2005/21](#)), which was issued with the objective of protecting individuals who report misconduct or cooperate with duly authorized audits or investigations. In addition, it should be noted that staff members may appeal against any retaliatory measure through the internal justice system.

V. Other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training

22. The Department of Peacekeeping Operations and the Department of Field Support, with the assistance of conduct and discipline personnel deployed in field missions supported by the Department of Field Support, continued to conduct awareness-raising activities for personnel serving in those field missions, including by emphasizing the obligation of all United Nations personnel to observe the laws of the host State, in addition to possible consequences in terms of accountability should United Nations personnel fail to do so.

23. Furthermore, an accountability framework was developed, and will begin to be implemented in the third quarter of 2014, to measure the performance of field missions in connection with a number of indicators relating to conduct and discipline, including referrals by field missions for investigations to be conducted by law enforcement bodies of host States or recommendations to be made by field missions for referrals for criminal accountability to be made, as envisaged under the relevant General Assembly resolutions. In respect of referrals by field missions, when referring substantiated allegations of misconduct for disciplinary action, heads of mission are expected to consider whether it would be appropriate for such matters also to be referred to national authorities for prosecution and provide an analysis in that regard. As part of the accountability framework, field missions will be requested to report on a quarterly basis on their performance, including in meeting expectations relating to the two indicators identified above.
