



PERMANENT MISSION OF FINLAND
TO THE UNITED NATIONS
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VERBAL NOTE

The Permanent Mission of Finland to the United Nations presents its compliments to the Secretary-General of the United Nations and with reference to LA/COD/50/2 of 31 December 2015, has the honor to submit the following information concerning criminal accountability of United Nations officials and experts on mission, pursuant to United Nations General Assembly Resolution 70/114 of 14 December 2015.

Finland would like to inform the Secretary-General that no crimes of serious nature committed by Finnish nationals while serving as United Nations officials or experts on mission have been brought to the attention of the Finnish authorities. Nor are the Finnish authorities aware of any allegations, investigations or proceedings against Finnish nationals suspected of having committed such crimes while serving as United Nations officials and experts on mission. Should such allegations have been made, all appropriate measures would be taken to investigate and prosecute those crimes in accordance with the Finnish law.

Finland would further like to submit that military observers are subject to the disciplinary power of both the commander of the Finnish Army and the commander of operations, as defined in Chapter 6 of the document of the Finnish Defence Forces on military superiors entitled to exercise disciplinary power (document no. HL687 / 2 June 2015). According to the Chapter, the branch commander is the immediate disciplinary superior of the commander of a crisis management unit, of the commander of a separate unit and of a colonel or captain or a person with a higher military or service rank belonging to crisis management staff. The branch commander is also the higher disciplinary superior of any other person belonging to crisis management staff or participating in crisis management training. However, the commander of operations of the Finnish Army is the immediate disciplinary superior of any person other than the above-mentioned military observers and individual persons belonging to crisis management staff.

The training of military observers in the Pori Brigade includes lessons on legal and gender issues. The legal training of military observers also deals with the criminal accountability of military observers, both nationally and internationally and in relation to host country issues. The training discusses, among other things, the offences referred to in Chapter 11 (war crimes and crimes against humanity) and Chapter 45 (military offences) of the Criminal Code, and intervention in such offences.

In response to the Questionnaire on Criminal accountability of United Nations officials and experts on mission pursuant to resolution 70/114, paragraph 23 Finland is pleased to submit the following information:

Jurisdictional bases (question 1)

Chapter 1 of the Criminal Code of Finland (39/1889) defines the scope of application of the Finnish criminal law. Within that Chapter, section 1 on an offence committed in Finland deals with the principle of territoriality. Section 1 is supplemented by section 2 on an offence connected with a Finnish vessel. Chapter 1, section 6, concerning an offence committed by a Finn, regulates nationality as a jurisdictional basis under criminal law.

Section 6 is supplemented by section 4 on an offence in public office and a military offence. Section 5, concerning an offence directed at a Finnish citizen, a Finnish corporation, foundation or other legal entity, or a foreigner permanently resident in Finland, deals with the passive personality principle. The provision of section 3 concerning an offence directed at Finland deals with the protective principle. Section 7 on an international offence deals with the universality principle. More detailed provisions on the application of section 7 are laid down in the Decree on the Application of Chapter 1, section 7 of the Criminal Code (627/1996). Finnish legislation does not contain any separate provisions on the effects doctrine.

Chapter 1, section 11(1) of the Criminal Code on the requirement of dual criminality stipulates that if the offence has been committed in the territory of a foreign State, the application of Finnish law may be based on section 5 (passive personality principle), section 6 (active personality principle) and section 8 (other offence committed outside Finland, *aut dedere, aut judicare*) only if the offence is punishable also under the law of the place of commission and a sentence could have been passed for it also by a court of that foreign State. In this event, no sanction that is more severe than what is provided by the law of the place of commission shall be imposed in Finland. Chapter 1, section 11(2) stipulates that even if the offence is not punishable under the law of the place of commission, Finnish law applies to it if it has been committed by a Finnish citizen or a person referred to in section 6(3)(1), and the offence is one of those referred to in Section 11(2), which include for instance most sexual offences.

Chapter 1, section 12 of the Criminal Code regulates cases where a prosecution order by the Prosecutor-General is required for prosecuting in Finland an offence committed abroad.

Jurisdiction *ratione personae* (question 2)

Under Finnish criminal law, jurisdiction over offences committed abroad may be based on the protective principle (Chapter 1, section 3 of the Criminal Code), on an offence in public office and a military offence according to Chapter 1, section 4 of the Criminal Code, on the passive personality principle (Chapter 1, section 5 of the Criminal Code), on the active personality principle (Chapter 1, section 6 of the Criminal Code), on Chapter 1, section 7 of the Criminal Code on an international offence, and on Chapter 1, section 8 of the Criminal Code on other offence committed outside Finland.

Chapter 1, section 6 of the Criminal Code contains provisions on the active personality principle. Section 6 is supplemented by Chapter 1, section 4 on an offence in public office and a military offence.

Chapter 1 of the Criminal Code does not contain any express provisions on offences committed by stateless persons as a jurisdictional basis. Therefore, an offence committed by a stateless person may fall under the scope of application of the Code if it fulfils some precondition for the jurisdictional basis under Chapter 1 of the Code.

Chapter 1 of the Criminal Code does not contain any specific provisions on offences committed by foreign nationals as a jurisdictional basis. Thus, the general jurisdictional bases under Chapter 1 apply to such offences. Under the provision in Chapter 1, section 5 of the Code concerning an offence directed at a Finn, a foreigner permanently resident in Finland is comparable to a Finnish citizen. Chapter 1, section 6(3) of the Code on the active personality principle provides that the following are deemed equivalent to a Finnish citizen: (1) a person who was permanently resident in Finland at the time of the offence or is permanently resident in Finland at the beginning of the court proceedings, and (2) a person who was apprehended in Finland and who at the beginning of the court proceedings is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries.

Chapter 1, section 4 of the Criminal Code contains provisions on an offence in public office and a military offence. According to section 4(1), Finnish law applies to an offence referred to in Chapter 40 of the Code that has been committed outside of Finland by a person referred to in Chapter 40, section 11, paragraphs 1, 2, 3 and 5. According to section 4(2), Finnish law also applies to an offence referred to in Chapter 45 that has been committed outside of Finland by a person subject to the provisions of that Chapter.

The Decree on the Application of Chapter 1, section 7 of the Criminal Code lists, on the basis of inter-national treaties, different offences considered as international offences. The treaties may contain special conditions concerning the perpetrator. According to Chapter 1, section 15 of the Criminal Code, international treaties binding on Finland and generally recognised rules of international law may restrict the scope of application of the criminal law of Finland.

Jurisdiction *ratione materiae* (question 3)

As described above, the general jurisdictional bases under Chapter 1 of the Criminal Code determine the scope of jurisdiction. In respect of international offences referred to in Chapter 1, section 7 of the Code, the scope of application of the Code is based on international obligations. International treaties binding on Finland and generally recognised rules of international law may restrict the scope of application of the Code when compared with the scope otherwise founded on the provisions of Chapter 1 (Chapter 1, section 15). For some jurisdictional bases to apply, the offence must be punishable with imprisonment for more than six months (Chapter 1, section 15: passive personality principle; Chapter 1, section 6(1): active personality principle for offences committed in territory not belonging to any State; Chapter 1, section 8). Chapter 1, section 3 contains provisions on offences directed at Finland as a jurisdictional basis.

In some provisions, the regulation of jurisdiction is based on categories of offences. This is the case firstly in Chapter 1, section 3 of the Criminal Code, stipulating that an offence is deemed to have been directed at Finland if it is an offence of treason or high treason. According to Chapter 1, section 4(2) on an offence in public office and a military offence, Finnish law also applies to an offence referred to in Chapter 45 (military offences) that has been committed outside of Finland by a person subject to the provisions of that Chapter. In Chapter 1, section 7 of the Criminal Code on international offences and in the decree on the application of the section, the jurisdictional basis relates to specific types of offence. Chapter 1, section 11(2) of the Code lists the exceptions from the requirement of dual criminality by category of offence. Chapter 1, section 13(2) regulates the effect of a foreign judgment by reference to Chapter 1, sections 3, 4 and 7, whose wordings mention categories of offences.

Preconditions for extraterritorial jurisdiction (question 4 II)

Chapter 1 of the Criminal Code does not make jurisdiction conditional upon the extraditability of the perpetrator, but one of the preconditions for the jurisdictional basis laid down in Chapter 1, section 8 is that the extradition of the perpetrator has been requested but the request has not been granted. In such situations involving extradition requests, the perpetrator resides in the State receiving and deciding on the request for extradition, i.e. in Finland. Extradition is regulated by related special legislation. According to Chapter 1, section 6(3)(2) of the Criminal Code, a person who was apprehended in Finland and who at the beginning of the court proceedings is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries is deemed equivalent to a Finnish citizen.

The requirement of dual criminality is laid down in Chapter 1, section 11 of the Criminal Code. The *ne bis in idem* principle is laid down in Chapter 1, section 13 on the effect of a foreign judgment. Chapter 1, section 12 of the Code regulates cases where a prosecution order by the Prosecutor-General is required for investigating the case.

Legal basis for the application of rules of immunity to UN officials or experts on mission (question 5)

Depending on the situation, options (a), (b) and (c) could form the legal basis for the application of rules of immunity to United Nations officials or experts on mission.

Applicability of the provisions on military personnel (question 6)

Chapter 45 of the Criminal Code contains provisions on military offences. Chapter 45, section 27(1)(1) stipulates that for the purposes of the Chapter, soldier is defined, inter alia, as the regular personnel of the armed forces and the temporary personnel of the armed forces, the latter when appointed to military duties. According to section 27(2) the provisions on soldiers also apply, as separately provided by law, to military personnel of the frontier guard service and to students attending the basic frontier guard course, as well as to personnel undergoing crisis management training, engaged in crisis management exercises or performing crisis management service referred to in the Military Crisis Management Act (211/2006). Chapter 1, section 4 of the Criminal Code contains a provision on jurisdiction over offences in public office and a military offence.

Section 28 of the Military Crisis Management Act regulates, inter alia, the applicability of the provisions of Chapter 45 of the Criminal Code to personnel performing crisis management service, and section 29 of the Act stipulates on the court with jurisdiction.

The Permanent Mission of Finland to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurance of its highest consideration.

17 June 2016



H.E. Ban Ki-moon
Secretary-General of the United Nations
UNITED NATIONS, N.Y. 10017