



**PERMANENT MISSION OF NORWAY
TO THE UNITED NATIONS**

The Permanent Mission of Norway to the United Nations presents its compliments to the Office of Legal Affairs, and, with reference to circular notes LA/COD/50/1 and LA/COD/50/2, has the honour to submit herewith the completed questionnaire on 'Criminal accountability of United Nations officials and experts on mission, pursuant to resolution 70/114, paragraph 23'.

The Permanent Mission of Norway to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs the assurances of its highest consideration. *MES*

New York, 23 June 2016



Codification Division
Office of Legal Affairs
United Nations
New York

Questionnaire on Criminal accountability of United Nations officials and experts on mission, pursuant to resolution 70/114, paragraph 23

By operative paragraph 23 of General Assembly resolution 70/114 of 14 December 2015, entitled “Criminal accountability of United Nations officials and experts on mission”, the Secretary-General was requested to prepare a compilation, based on information which should be received from all Member States, of national provisions regarding the establishment of jurisdiction over their nationals, whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature.

In order to facilitate the collation of information for this compilation, the Codification Division of the Office of Legal Affairs of the United Nations has prepared a questionnaire for consideration by Member States in submitting information in response to circular notes LA/COD/50/1 and LA/COD/50/2 dated 31 December 2015, on the same item (attached).

In order to ensure completeness in the preparation of the compilation, the Codification Division of the Office of Legal Affairs of the United Nations would appreciate receiving excerpts of relevant national provisions and short references or citations of such national provisions.

1. Please indicate the available forms of jurisdiction and list the relevant national provision(s) through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; please also specify whether specific legislation applies to United Nations officials and experts on mission:

Excerpts of relevant provisions in the Norwegian General Civil Penal Code of 20 May 2005 No. 28 (the Penal Code) are included at the end of this document.

(a) Territoriality

According to the Norwegian Penal Code section 4, the Norwegian criminal legislation applies to acts committed in Norway or otherwise within Norwegian territorial jurisdiction.

(b) Nationality

According to the Norwegian Penal Code section 5 first paragraph, the Norwegian criminal legislation applies to acts committed abroad by a Norwegian national or a person resident in Norway when the acts

- 1) are also punishable under the law of the country in which they are committed;
- 2) are regarded as a war crime, genocide or crime against humanity;
- 3) are a breach of the international law of war;
- 4) are regarded as a child marriage or a forced marriage;
- 5) are regarded as genital mutilation;
- 6) are directed against the Norwegian State or a Norwegian State authority;
- 7) were committed outside the area of sovereignty of any State and are punishable by imprisonment;
- 8) are regarded as depriving a minor of the care of parents or other authorised persons;
- 9) are punishable pursuant to the Penal Code sections 257, 291-296, 299-306 or 309-316;
- 10) are regarded as terrorist acts or terrorist activities pursuant to the Penal Code Chapter 18; or
- 11) are regarded as incitement to carry out a criminal act pursuant to the Penal Code section 183 or as hate speech pursuant to the Penal Code section 185.

Confer also the second paragraph of section 5 in the Penal Code, included at the end.

(c) Passive personality

According to the Norwegian Penal Code section 5 fifth paragraph, the Norwegian criminal legislation also applies to acts committed abroad by foreigners if the maximum penalty for the act is imprisonment for a term of six years or more and the act is directed against a person who is a Norwegian national or is resident in Norway.

(d) Effects doctrine

According to the Norwegian Penal Code section 7, when the punishability of an act is contingent on or affected by an actual or intended effect, the act is also deemed to have been committed where the effect has occurred or was intended to be caused.

(e) Protective principle

According to the Norwegian Penal Code section 5 first paragraph item 6, the Norwegian criminal legislation applies to acts committed abroad by a Norwegian national or a person resident in Norway when the acts are directed against the Norwegian State or a Norwegian state authority.

According to the Norwegian Penal Code section 5 third paragraph, the Norwegian criminal legislation also applies to acts committed abroad against the Norwegian State or a Norwegian State authority by a foreigner who is not a resident in Norway, when the person is staying in Norway, and the maximum penalty for the act is imprisonment for a term exceeding one year.

(f) Universality

According to the Norwegian Penal Code section 5 third paragraph, the Norwegian criminal legislation applies to acts committed abroad by foreigners when the person is staying in Norway, and the maximum penalty for the act is imprisonment for more than one year, and the acts

- 1) are also punishable under the law of the country in which they are committed;
- 2) are regarded as a war crime, genocide or crime against humanity;
- 3) are a breach of the international law of war;
- 4) are directed against the Norwegian State or a Norwegian State authority;
- 5) were committed outside the area of sovereignty of any State and are punishable by imprisonment;
- 6) are regarded as depriving a minor of the care of parents or other authorised persons;
- 7) are regarded as terrorist acts or terrorist activities pursuant to the Penal Code Chapter 18; or
- 8) are regarded as incitement to carry out a criminal act pursuant to the Penal Code section 183 or as hate speech pursuant to the Penal Code section 185.

(g) Other (if any)

According to the Norwegian Penal Code section 6, the Norwegian criminal legislation also applies to acts that Norway has a right or an obligation to prosecute under agreement with foreign States or under international law generally.

2. To what extent do national provisions establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission (please indicate all that apply and cite relevant national provisions):

(a) General application to all persons

See under 1 above or confer the excerpts of the relevant provisions in the Norwegian Penal Code below.

(b) Jurisdiction over nationals

See under 1 (b) above or confer the excerpts of the relevant provisions in the Norwegian Penal Code below.

(c) Jurisdiction over stateless persons

The general rules concerning jurisdiction also apply to stateless persons. See under 1 above or confer the excerpts of the relevant provisions in the Norwegian Penal Code below.

(d) Jurisdiction over foreign nationals (list specific exceptions)

See under 1 above or confer the excerpts of the relevant provisions in the Norwegian Penal Code below.

(e) Specific legislation for particular categories of persons

(i) Military United Nations officials and experts on mission

(ii) Police United Nations officials and experts on mission

(iii) Civilian United Nations officials and experts on mission

(iv) Public officials acting in foreign jurisdictions

(v) Other (if any)

There is no such specific legislation *ratione personae*.

3. To which extent do national provisions establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(a) General application of criminal law

Yes. (See under 1 above or confer the excerpts of the Norwegian Penal Code section 5 below.)

(b) Application limited to international treaty obligations

No. (See under 1 above or confer the excerpts of the Norwegian Penal Code below.)

(c) Application limited to crimes of a 'serious nature'

No. (See under 1 above or confer the excerpts of the Norwegian Penal Code below.)

(d) Application limited to 'international crimes', including genocide, crimes against humanity and war crimes

No. (See under 1 above or confer the excerpts of the Norwegian Penal Code below.)

(e) Application limited to crimes accompanied with minimum imprisonment term (eg. 3/5 years)

No. (See under 1 above or confer the excerpts of the Norwegian Penal Code below.)

(f) Application limited to crimes affecting 'essential interest(s) of the State'

No. (See under 1 above or confer the excerpts of the Norwegian Penal Code below.)

(g) Application limited to crimes affecting public security

No. (See under 1 above or confer the excerpts of the Norwegian Penal Code below.)

(h) Application limited to specific list of crimes

Application is in general not limited to a specific list of crimes. Application is limited to a specific list of crimes only if the crime is not punishable under the law of the country in which it was committed. (See under 1 above or confer the Norwegian Penal Code section 5 first and third paragraph below.)

(i) Other limitations to the application *ratione materiae* of domestic law (if any)

According to the Norwegian Penal Code section 2, the Norwegian criminal legislation applies subject to the limitations that follow from agreements with foreign States or from international law generally.

4. Which, if any, prerequisites are placed before the application of extraterritorial jurisdiction for United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(I)

(a) Agreement (SOFA/SOMA) with host State on extraterritorial jurisdiction

There are no such agreements.

(b) Agreement (SOFA/SOMA) with host State with respect to United Nations officials or experts on mission

There are no such agreements.

(c) Any other agreement

There are no such agreements.

(d) National law

(II)

(a) Offence must be extraditable

No.

(b) Double criminality, with/without specific limitations to its application

Double criminality is in general a prerequisite for jurisdiction over acts committed abroad. However, for certain serious crimes it is not a prerequisite. Confer the Norwegian Penal Code section 5 first paragraph item 2 to 11 below.

(c) Presence of the offender in territory of forum State, with/without specific limitations to its application

Presence of the offender in the territory is a prerequisite for exercising universal jurisdiction (confer the Penal Code section 5 third paragraph). Presence of the offender in the territory is not a prerequisite for exercising jurisdiction based on territoriality (confer the Penal Code section 4), nationality or residence in Norway (confer the Penal Code section 5 first paragraph) or passive personality (confer the Penal Code section 5 fifth paragraph).

(d) Application of principles of ne bis in idem

Reference is made to the Norwegian Penal Code section 8 concerning power to prosecute offences that have been adjudicated abroad, included below.

(e) Permission to prosecute required by Public Prosecutor/Attorney-General/other specific government official(s)

Confer the Norwegian Criminal Procedure Act of 22 May 1981 No. 25 Chapter 7 Prosecution sections 64 to 67, available in English here: <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19810522-025-eng.pdf>.

5. What is the legal basis for the application of rules of immunity to United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(a) Convention on Privileges and Immunities of the United Nations, 1946, as applicable

Norway is a party to the Convention on Privileges and Immunities of the United Nations.

According to the Norwegian Act of 19 June 1947 No 5 relating to the immunity and privileges of international organizations section 1, the officials of an international organization or other persons that act on behalf of an international organization, may be granted immunity and privileges in conformity with international treaties that Norway adheres to, notwithstanding Norwegian law.

(b) Specific agreement with the United Nations (SOFA/SOMA/other)

- Agreement 14 March 2001 between the Government of Norway and the United Nations Development Programme relating to the Establishment of the UNDP Thematic Facility on Governance -The Oslo Center
- Supplementary Agreement 23 December 2003 between Norway and the United Nations Development Programme (UNDP)

(c) Specific agreement with the host State (SOFA/SOMA/other)

There are no such agreements.

(d) Other general privileges and immunities applicable, including those accorded by national law

There are no other general privileges and immunities applicable.

6. To what extent is military and/or civilian law applicable to crimes committed by United Nations officials or experts on mission (please indicate all applicable categories and cite relevant national provisions):

(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission

Civilian law will apply.

According to the Norwegian Criminal Procedure Act of 22 May 1981 No. 25, Part X Legal procedure in military criminal cases, section 463 fourth paragraph, the King (the Government) may decide that the provisions relating to military legal proceedings in wartime shall wholly or partly be applicable in the event of Norwegian participation in international peace-keeping operations. The King may at the same time decide that wartime provisions in the Military Penal Code and in the Disciplinary Authority Act shall wholly or partly be applicable to acts committed by a person who is taking part in operations referred to in the previous sentence.

(b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission

No. (According to the Norwegian Criminal Procedure Act of 22 May 1981 section 466, military criminal cases shall be tried by the ordinary courts, in peacetime and in wartime.)

(c) Potential application of civilian law/courts to military personnel

Civilian law/courts will apply.

Excerpts of relevant provisions in the Norwegian General Civil Penal Code of 20 May 2005 No. 28 (the Penal Code), part I General provisions, Chapter 1 The scope and extent of the criminal legislation:

PART I. GENERAL PROVISIONS

Chapter 1. The scope and extent of the criminal legislation

Section 1. *The scope and extent of the general provisions*

The provisions of Part I apply to all criminal offences unless it is otherwise provided by or pursuant to statute or follows from interpretation.

Section 2. *Limitations under international law*

The criminal legislation applies subject to the limitations that follow from agreements with foreign States or from international law generally.

Section 4. *Applicability of the criminal legislation to acts committed in Norway and in areas under Norwegian jurisdiction, etc.*

The criminal legislation applies to acts committed in Norway, including on Svalbard, Jan Mayen and in the Norwegian dependencies, cf. Act of 27 February 1930 No. 3.

The criminal legislation also applies to acts committed

- (a) on installations on the Norwegian continental shelf³ for exploration for or exploitation or storage of undersea natural resources and on pipelines and other fixed transport facilities connected to such installations even when they lie outside the Norwegian continental shelf,
- (b) in the area of jurisdiction established in pursuance of the Act of 17 December 1976 No. 91 relating to the Economic Zone of Norway, such acts as impair interests that are protected under Norwegian jurisdiction, and
- (c) on a Norwegian vessel, including an aircraft, and a drilling platform or similar movable installation. If the vessel or the installation is on or over the territory of another state, the criminal legislation applies only to an act committed by a person on board the vessel or installation.

Section 5. *Applicability of the criminal legislation to acts committed abroad*

(1) Outside the scope and extent pursuant to Section 4, the criminal legislation applies to acts committed

- (a) by a Norwegian national,
- (b) by a person resident in Norway, or
- (c) on behalf of an enterprise registered in Norway,

when the acts:

1. are also punishable under the law of the country in which they are committed,
2. are regarded as a war crime, genocide or a crime against humanity,
3. are regarded as a breach of the international law of war,
4. are regarded as a child marriage or a forced marriage,
5. are regarded as genital mutilation,
6. are directed against the Norwegian State or a Norwegian State authority, or
7. were committed outside the area of sovereignty of any State and are punishable by imprisonment.
8. are regarded as depriving a minor of the care of parents or other authorised persons,
9. are punishable pursuant to the Penal Code sections 257, 291-296, 299-306 or 309-316,
10. are regarded as terrorist acts or terrorist activities pursuant to the Penal Code chapter 18, or
11. are regarded as incitement to carry out a criminal act pursuant to the Penal Code section 183 or as hate speech pursuant to the Penal Code section 185.

(2) The first paragraph applies correspondingly to acts committed

- (a) by a person who since committing the act has become a Norwegian national or has been granted residence in Norway,
- (b) by a person who is or who since the act has become a national of or is resident in another Nordic country, and who is staying in Norway, or
- (c) on behalf of a foreign enterprise which, since the act was committed, has transferred all its operations to an enterprise registered in Norway.

(3) The first paragraph, items 1, 2, 3, 6, 7, 8, 10 and 11, applies correspondingly to acts committed by persons other than those who fall within the scope of the first and second paragraphs, when the person is staying in Norway and the maximum penalty for the act is imprisonment for a term exceeding one year.

(4) In the case of acts mentioned in the first paragraph, item 2, the second and third paragraphs apply only if the act is regarded as genocide, a crime against humanity or a war crime under international law.

(5) The criminal legislation also applies to acts committed abroad by persons other than those who fall within the scope of the first to fourth paragraphs, if the maximum penalty for the act is imprisonment for a term of six years or more and is directed against a person who is a Norwegian national or is resident in Norway.

(6) In a prosecution under this section, the penalty may not exceed the highest statutory penalty for a corresponding act in the country in which it was committed.

(7) A prosecution under this section will only be instituted when required in the public interest.

Section 6. *Special grounds for prosecution under international law*

Outside the scope and extent of sections 4 and 5, the criminal legislation also applies to acts that Norway has a right or an obligation to prosecute under agreements with foreign States or under international law generally.

Section 5, seventh paragraph, applies correspondingly.

Section 7. *Acts deemed to have been committed in several places*

When the punishability of an act is contingent on or affected by an actual or intended effect, the act is also deemed to have been committed where the effect has occurred or was intended to be caused.

Section 8. *Power to prosecute offences that have been adjudicated abroad*

When a final and unappealable judgment has been passed abroad which falls within the scope of

- (a) the Act of 25 March 1977 No. 22 relating to the transfer of a prosecution from or to another European country,
- (b) the Act of 20 July 1991 No. 67 relating to the transfer of convicted persons, or
- (c) an international agreement within the Schengen area of co-operation,

no criminal proceedings may be instituted or sentence passed in Norway for the same criminal offence if

1. the offender was acquitted or found guilty but no sanction has been imposed, or
2. the sanction imposed has been fully executed or is in the process of execution or has ceased to apply according to the rules of the adjudicating country.

Unless the prosecution in the adjudicating country was instituted on the application of the Norwegian authorities, cases mentioned in the first paragraph (a) and (b) may be prosecuted in Norway when

- (a) the act was committed in an area mentioned in section 4, cf. section 7,
- (b) the offender at the time of committing the act was resident in Norway or was a Norwegian national, and the prosecution is required in the public interest,
- (c) the act was directed against a person holding a Norwegian public office, or against a public institution or something else of a public character in Norway, or the offender himself held a Norwegian public office, or
- (d) Norway has a right or obligation to prosecute under international law.

Unless the prosecution in the adjudicating country was instituted on the application of the Norwegian authorities, cases mentioned in the first paragraph (c) may be prosecuted in Norway when

- (a) the act was wholly or partly committed in Norway. If the act was only partly committed in Norway, the exception does not, however, apply if the act was partly committed on the territory of the party to the convention where the judgment was pronounced,
- (b) the act is punishable in Norway as a war crime, genocide, an offence against the autonomy and security of the State, an offence against the national constitution and the political system, or as hijacking, an act of sabotage against infrastructure, an aggravated drug offence, unlawful dealings with plutonium and uranium, or aggravated arson or any other particularly dangerous act of destruction, or
- (c) the act was committed by a Norwegian official and was a breach of his official duties.