

Translated from Spanish

**Permanent Mission of the Argentine Republic
to the United Nations**

N.U. No. 131/08/600

New York, 25 April 2008

Sir:

I have the pleasure to refer to your note No. LA/COD/50 of 31 December 2007 concerning the criminal accountability of United Nations officials and experts on mission.

In this regard, I should like to report the following:

I. This report will refer first to paragraph 3, which concerns the possibility of establishing jurisdiction over crimes committed by United Nations officials and experts on mission. It should be noted at the outset that the following analysis is based on the assumption that in such cases the United Nations would waive the official's or expert's immunity from criminal jurisdiction, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

(a) It is necessary to take into account article 1 of the Argentine Penal Code, Law No. 11729, which provides as follows:

“This Code shall apply to:

1. Offences committed in or producing effects in the territory of Argentina or places under its jurisdiction;
2. Offences committed abroad by agents or employees of Argentine authorities in the performance of their duties”.

The Argentine Penal Code thus lays down as a fundamental rule the principle of territoriality, under which Argentine criminal law applies to offences committed in the national territory. This principle is complemented by the “effects” doctrine or protective principle whereby the State's criminal law applies to offences which, though not committed within its territory, nonetheless produce effects therein.

Paragraph 2 of article 1 establishes the rule whereby the Argentine State applies its criminal law to offences committed outside its territory by persons performing official State functions. This provision is based on the fact that, through the application of the immunities recognized under international law, such individuals are not normally subject to the jurisdiction of the host State. It should be stressed that this article would not apply to the case under consideration, as international civil servants, even if they have Argentine nationality, are not “agents or employees of” the Government.

H.E. Mr. Ban Ki-moon
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(b) With respect to offences committed by United Nations officials or experts, three different scenarios can be identified:

(i) If the offence is committed by a United Nations official or expert in Argentine territory, it is subject to Argentine criminal law.

(ii) If the offence is committed by a United Nations official or expert outside the Argentine Republic but produces effects within the national territory, it is subject to Argentine criminal law.

(iii) If the offence is committed by a United Nations official or expert outside Argentine territory and does not produce effects therein, it is not subject to Argentine criminal law.

It should be borne in mind that the Penal Code does not include the principle of active nationality as a basis for the application of criminal law. Thus, even if the official or expert who commits the offence has Argentine nationality, the Republic cannot apply its criminal law or exercise its jurisdiction if the offence does not produce effects within Argentine territory.

II. With respect to paragraph 4, it goes without saying that the Argentine judicial authorities would cooperate with the United Nations in the investigation of any offence committed by one of its officials or experts. The due process rights applicable to such proceedings would be those in force under Argentina's procedural law, in accordance with the rights and guarantees enshrined in the National Constitution and in international instruments having constitutional status, which are enumerated in article 75, paragraph 22, of the Constitution.

Accept, Sir, the assurances of my highest consideration.

(Signed) Jorge **Argüello**
Ambassador
Permanent Representative
