

Translated from Spanish

Permanent Mission of Guatemala to the United Nations

Reference No.: J/5/1001

The Permanent Mission of Guatemala to the United Nations presents its compliments to the Secretary-General of the United Nations and, in response to note verbale No. LA/COD/50 dated 31 December 2008, has the honour to transmit herewith the comments of the Government of the Republic of Guatemala pursuant to paragraphs 3, 4 and 5 of General Assembly resolution 63/119, entitled “Criminal accountability of United Nations officials and experts on mission”, adopted on 11 December 2008.

The Permanent Mission of Guatemala to the United Nations takes this opportunity to convey to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, 16 July 2009

[Stamp of the Permanent Mission of Guatemala to the United Nations]

Mr. Ban Ki-moon
Secretary-General of the United Nations
New York

CC: Sixth Committee Secretariat

Ministry of Foreign Affairs of the Republic of Guatemala

File No.: DIGRAJUTT/DAJ

(Please refer to the above reference and file numbers)

Observations related to the accountability of United Nations officials and experts on mission

Article 4 of the Penal Code establishes that: “Except as provided for in international treaties, this Code shall apply to any person who commits an offence or misdemeanour in the territory of the Republic or in places or vehicles subject to its jurisdiction”.

Article 5 of the Code also stipulates that: “This Code shall also apply in the case of: (1) An offence committed abroad by an official in the service of the Republic, if the offender has not been tried in the country where the offence was committed...; (3) An offence committed abroad by a Guatemalan, if extradition of the offender has been refused; (4) An offence committed abroad against a Guatemalan, if the offender has not been tried in the country where the offence was committed, provided a charge has been brought by or on behalf of the Government Procurator’s Office and the person accused is in Guatemala; (5) An offence which, by virtue of a treaty or convention, is punishable in Guatemala, even if the offence was not committed in Guatemalan territory; (6) An offence committed abroad against the security of the State, its constitutional order or its territorial integrity, as well as the forging of the signature of the President of the Republic and the forging of coins or banknotes which are legal tender, bonds and other securities and credit documents.”

Article 6 of the Penal Code provides that: “In the cases covered by paragraphs 1 and 6 of the above article, the accused person shall be tried under Guatemalan law, even if he has been acquitted or condemned abroad. The sentence or part of the sentence served and the time spent in custody shall be counted for the benefit of the accused.

In other cases, if a sentence is handed down, the least stringent law shall be applied. The foreign sentence shall have the effect of *res judicata*.”

On the basis of the legislation cited above, criminal law should be understood as eminently territorial. Any State has the power to prosecute a person for an unlawful act committed on its territory. However, there are exceptions to this rule, which are specifically listed in article 5 of the aforementioned Code.

In the specific case of Guatemalan citizens serving as United Nations officials and experts on missions, such persons should be tried firstly by the State where the offence was committed and, secondly, in Guatemala, where provided for by the law.

Furthermore, the State of Guatemala has taken measures to combat impunity, at both the national and international levels. One example was the establishment of the International Commission against Impunity in Guatemala (CICIG), in association with the United Nations, in 2007. Another example was the accession of Guatemala in 2008 to the relevant multilateral instruments and the bilateral extradition instruments between Guatemala and various States, which are essential in matters related to judicial cooperation and criminal assistance.

The General Assembly resolution refers to crimes of a serious nature committed by United Nations officials or experts on mission. However, Guatemala does not have an explicit classification for crimes of this nature, since penalties are applied in accordance with the gravity of the crime and not according to any classification that includes crimes of a serious nature.

In conclusion, extraterritoriality is applied by the State of Guatemala only in the exceptional cases provided for in the Penal Code. This is in keeping with the legal principle that each State may prosecute the crimes committed on its territory, whether these are committed by nationals of that State or by foreign nationals. In the specific case under consideration, the criminal accountability of United Nations officials and experts on mission is deemed to fall within the exclusive competence of the State where the offence was committed, except where otherwise provided for by the Penal Code of Guatemala.

In addition, the State of Guatemala has complied with the guidelines contained in the General Assembly resolution, as indicated by the Permanent Mission of Guatemala. Guatemala has also recently adopted relevant legislation, such as the law on strengthening criminal prosecution, the new law on arms and ammunitions, the law against sexual violence, exploitation and trafficking in persons, the law governing extradition procedures and the law against femicide.
