



*Permanent Mission of Portugal
to the United Nations*

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The Permanent Mission of Portugal to the United Nations presents its compliments to the Office of Legal Affairs and has the honour to enclose herewith Portugal's comments concerning the implementation of the General Assembly Resolution 63/119, of 11 December 2008 entitled "Criminal Accountability of United Nations Officials and Experts on Mission".

The permanent Mission of Portugal to the United Nations avails itself of this opportunity to renew to the Office of legal Affairs the assurances of its highest consideration.

New York, 8 July 2009





MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS
DEPARTAMENTO DE ASSUNTOS JURÍDICOS

**Portugal's comments concerning the implementation of the General Assembly
Resolution 63/119, of 11 December 2008 entitled
"Criminal Accountability of United Nations Officials and Experts on Mission"**

The Secretary-General of the United Nations asked Member States for information concerning the implementation of the General Assembly Resolution 63/119, of 11 December 2008, entitled "Criminal Accountability of United Nations Officials and Experts on Mission", namely paragraphs 3, 4 and 5 thereof.

As a general principle, the Portuguese criminal legislation is applicable to all facts committed in the Portuguese territory. The Portuguese criminal legislation is also applicable to facts committed outside the Portuguese territory:

- i. When amounting to crimes such as "crimes against the national independence and integrity" or "crimes against the fulfilment of the State based on the rule of law";
- ii. By Portuguese citizens against other Portuguese citizens that reside in Portugal;
- iii. By Portuguese citizens or by foreigners against Portuguese citizens, if the offender is to be found in Portugal and if the facts are punishable in the territory where they took place unless if the punitive power is not carried out in that place, and the extradition cannot be performed or if it is decided not to surrender the offender as result of an European arrest warrant or of other international agreement binding Portugal;
- iv. By foreigners, irrespective of the nationality of the victim, if the offender is to be found in Portugal and the extradition cannot be performed or if it is decided to not surrender in result of a European arrest warrant or of other international agreement binding Portugal.

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The Portuguese criminal legislation is also applicable to facts committed outside the Portuguese territory when it so results from an international convention.

The commitment of a crime gives rise to a judicial inquiry, which comprises the procedures necessary to investigate the occurrence of a crime, its agents and their responsibility, as well as to find evidence in order to decide on the charges. Following the judicial inquiry, the public prosecutor may indict the suspected offender if there are sufficient evidences that a crime was committed.

Portugal is a Party to the Convention on the Privileges and Immunities of the United Nations, adopted at New York, on 13 February 1946, which grants immunity from criminal jurisdiction to United Nations officials and experts on mission. In addition, article 322 of the Portuguese Criminal Code recognizes the special status of individuals granted with international protection. However, it should be underlined that the immunity is granted to officials and experts within the strictly necessary for the independent exercise of their functions.

When a United Nations official or an expert on mission commits a crime falling under the jurisdictional competence of the Portuguese criminal law, the competent judge may ask to the Secretary-General of the United Nations, through the Ministry of Foreign Affairs, to waive the immunity of the said official or expert on mission.

Regarding international judicial co-operation, including extradition and mutual legal assistance, its regime is regulated by the Law on International Judicial Co-operation in Criminal Matters. This Law applies to the following forms of international judicial co-operation in criminal matters: extradition; transfer of proceedings in criminal matters; enforcement of criminal judgements; transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty; supervision of conditionally sentenced or conditionally released persons; mutual legal assistance in criminal matters.



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In conclusion, Portugal may criminally prosecute a United Nations official or an expert on mission, whose immunity has been waived, for facts committed in or outside the Portuguese territory, within the conditions stated above. Furthermore, this competence is articulated with the international judicial co-operation, in order to give effect to the *aut dedere aut judicare* principle.

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