



PERMANENT MISSION OF ITALY TO THE UNITED NATIONS

N. 3573

The Permanent Mission of Italy to the United Nations presents its compliments to the Secretariat of the United Nations and has the honor to refer to its Note Verbale LA/COD/50 which, making reference to General Assembly Resolution 64/110 of 16 December 2009, entitled "Criminal accountability of United Nations officials and experts on mission", requested Member States to provide information on the implementation of the above mentioned Resolution, in particular paragraphs 3, 4, 5 and 14 thereof.

In this regard, please find in attachment the pertinent information provided by Italy.

The Permanent Mission of Italy to the United Nations avails itself of this opportunity to renew its highest consideration to the Secretariat of the United Nations.

New York, JUL 30 2010



To the Secretariat of the United Nations
Office of Legal Affairs
Codification Division
New York

Re: LA/COD/50. Information provided by Italy as requested in General Assembly Resolution 64/110 of 16 December 2009.

At the outset, it must be emphasized that no specific national legislation for crimes committed by UN officials or experts on mission has been introduced after the adoption of UN GA resolution 64/110 of 16 December 2009. However, more detailed legislation is in preparation. In February 2010, the Government approved a draft Statute (disegno di legge delega) enabling it to prepare detailed legislation on a Code of crimes for military missions abroad. The Parliament is currently examining this draft Statute.

A special law N.197 was passed on 29 December 2009, which amended the decree-law N. 152 of 4 November 2009 containing urgent measures for an extension of cooperative interventions for the development and support of peace and stabilization processes, as well as of the extension of international missions of the Armed Forces and the Police (published in the Official Gazette N. 303 of 31 December 2009) which includes provisions that may be relevant for the purpose of establishing criminal responsibility of Italian nationals involved in UN missions. Article 4, paragraph 1, of the decree with reference to criminal matters in international missions of the Armed Forces and the Police (including United Nations missions) refers to laws pursuant to Article 5 of the decree-law N. 209 of December 2008, amended by law N. 12 of 24 February 2009, which, in turn, establishes that:

1. The Code of Military Criminal Law in Peace and Article 9, paragraphs 3, 4 - letters a), b), c), d), 5 and 6 of decree-law N. 421 of 1 December 2001, amended by law N.6 of 31 January 2002, is applied to military personnel participating in international missions.
2. Crimes committed by a foreigner on national territory or the high seas where international intervention and missions are deployed pursuant to this decree, against the State of Italy or Italian citizens participating in the same intervention or missions, are punishable by order of the Minister of Justice and upon consultation with the Minister of Defence for crimes committed against members of the Armed Forces.
3. Crimes - contained in paragraph 2 and those referred to the jurisdiction of the national judicial authority - committed on the territory and during the time in which the said international intervention and missions are in place pursuant to the decree, by an Italian citizen engaged in above intervention and missions, are referred to the Court of Rome.
4. Crimes covered by Articles 1135 and 1136 of the Navigation Code and related crimes pursuant to Article 12 of the Code of Criminal Procedure,

including crimes against the State of Italy or Italian citizens engaged in a mission as per Article 3, paragraph 14, committed in the high seas or in foreign territorial waters verified at the time of said mission, are punishable according to Article 7 of the criminal code and are referred to the Court of Rome.

5. For arrests in the act of a crime or investigative detentions of a person who, by coercive measures, is placed in pre-trial detention in prison for crimes pursuant to paragraph 4. If and when operational needs do not allow for the detainee to be available to the judicial authority in a timely fashion, then Article 9, paragraph 5 and 6 of the decree-law N. 421 of 1 December 2001, amended by law N.6 of 31 January 2002 is applied. The person arrested or detained may otherwise be restrained in specific holding cells within a military carrier.

6. Following the seizure, the judicial authority may order custody for the outfitter, or owner of the ship or aircraft captured through acts of piracy. With regard to investigations and the acquisition of evidence, law N.197 of 29 December 2009 establishes that:

1-bis. Any investigation, descriptive or photographic findings, or other technical operation ordered by the public prosecutor on military carriers, which are used for missions abroad and have been seized, must be considered urgent. Thus these investigative activities must be completed within ten days from the seizure. This deadline may be extended to a further ten days by obtaining a prior order of the prosecutor.

1-ter. If the public prosecutor, pursuant to Article 359 of the Code of Criminal Procedure, were to hire a specialist to assist in the investigations as per paragraph 1-bis, the specialist is given a term of fifteen days to complete all of the activities requiring the use of the seized military carrier. At the end of said operations, the prosecutor will order the carrier's release. The deadline may be extended to a further fifteen days by obtaining a prior order of the prosecutor.

1-quarter. With the completion of unrepeatable technical investigations pursuant to Article 360, paragraph 4, of the Code of Criminal Procedure, a hearing provided by Article 401 and following of the Code of Criminal Procedure is given a priority examination as per Article 132-bis of the supplemental, coordination or transitional rules of the above Code, pursuant to Legislative Decree N.271 of 28 July 1989.

1-quinquies. The measures and provisions for the seizure of carriers as per paragraph 1-bis are electronically posted.

1-sexies. A member of the military is not punishable, if, during an international mission and in compliance with the guidelines and terms of

hire, i.e., orders legitimately given, he/she uses or orders the use of arms, of force or other means of physical coercion, for the purposes of military operations.

1-septies. When, with one of the facts provided by paragraph 1-sexies restrictions established by law, by said guidelines, terms of hire, or orders legitimately given, i.e., necessary for the purpose of the military operations, are negligently exceeded, then the laws on misdemeanors, felonies or manslaughter are applied if indeed the fact is contained in said laws.

In terms of procedures, Article 10 of the Code of Criminal Procedure relating to the jurisdiction of Italian judges when examining crimes committed abroad establishes that:

1. If the crime was committed entirely in a foreign country, the jurisdiction is subsequently determined by the place of residence, domicile, arrest or handover of the accused. In case there is more than one accused, the judge with the greater jurisdiction to cover the majority of the accused will start proceedings.
2. If the jurisdiction cannot be determined according to paragraph 1, it will be assigned to the judge of the public prosecution office that first entered the crime in the Register as per Article 335.

Article 696 of the Code of Criminal Procedure also comes into play where it provides that extraditions, international requests, the effects of foreign criminal rulings, the execution abroad of Italian criminal sentences and other relations with foreign authorities regarding the administration of justice in criminal matters, are regulated by the norms provided by the European Convention on Mutual Assistance in Criminal Matters signed in Strasbourg on 20 April 1959 and other provisions provided by the international conventions the State adheres to and those of general international law.

Apart from these specific provisions, the ordinary rules on crimes committed by Italian nationals abroad, and by foreigners abroad, as well as the conditions for the exercise of jurisdiction do apply to UN officials as well as experts on mission on condition that the relevant immunities do not bar prosecution.

Finally, based on the principle of universal jurisdiction, and according to the Italian legal system, punishment of international crimes is applied only when the alleged culprit is found on Italian territory. The fundamental law in this regard is stated in Article 7 of the Italian Criminal Code, which

establishes that a national or foreigner is punishable by Italian law if he/she commits one of the following crimes abroad:

1. criminal offence against the State of Italy;
2. criminal offence of counterfeiting the seal of State and of using such counterfeited seal;
3. criminal offence of counterfeiting money with legal tender status, official stamps, or public papers;
4. criminal offences committed by public officials serving State offices, for abuse of office or violations to their public duties;

any other criminal offence for which special legal provisions or international conventions establish the applicability of the Italian Criminal Code. This clause refers to international conventional law in the field of universal criminal justice. Through this law it is thus possible to apply pertinent international conventions.