

COMMENTS FROM THE GOVERNMENT OF MEXICO
Criminal accountability of United Nations officials and
experts on mission

1. On whether Mexico is considering establishing jurisdiction over crimes of a serious nature, as known in its existing domestic criminal laws, committed by its nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State.

The Federal Penal Code does not expressly or specifically include the scenario envisaged in the matter under discussion, that is to say, crimes of a serious nature committed by Mexican nationals while serving as United Nations officials or experts on mission. Nonetheless, Mexico could exercise its jurisdiction to prosecute serious crimes committed by its citizens abroad. This jurisdiction would be exercised under the concept of active nationality, as contained in article 4 of the Federal Penal Code, which establishes that:

Article 4. Crimes committed on foreign territory by a Mexican against Mexicans or foreign nationals, or by a foreign national against Mexicans shall be punishable in Mexico, in accordance with federal laws, provided the following conditions are also met:

I – The accused is located in Mexico;

II – The defendant has not been definitively convicted in the country in which the crime was committed, and

III – The offence of which the person is accused is characterized as a crime in the country in which it was committed and in Mexico [...]"

It is important to note that, as can be seen from the aforementioned list, among the conditions that must be met in order for Mexico to prosecute a crime committed by a national abroad is the condition that the person accused of the crime is located within the national territory. The *non bis in idem* and double criminality principles, as laid down in international criminal law, must also be respected.

2. In accordance with Mexican domestic law, whether there are the ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in its territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations.

The evidence chapter of the Federal Code of Criminal Procedure does not expressly provide for the possibility of using information and material obtained from the United Nations for purposes of criminal proceedings initiated in the territory of Mexico for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission.

However, article 206 of the Federal Code of Criminal Procedure establishes that "[...] everything offered as such, as long as it can assist the judge or court with its ruling, and is not contrary to the law[...]" can be admitted as evidence.

Chapter II of the same legislation (articles 15 to 26) establishes the form requirements for the admission of evidence. In turn, article 27 *bis* specifies that any proceedings that lack the essential formalities as stated in that chapter shall be invalid.

3. In accordance with its domestic law, it would be possible to provide effective protection for witnesses to, and others who provide information in relation to, crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access by victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process.

Article 34 of the Federal Organized Crime Act provides for witness protection by establishing that: "[...] Article 34 - The Office of the Attorney-General of the Republic shall provide adequate support and protection for judges, experts, witnesses, victims and other persons when, as a result of their involvement in criminal proceedings relating to crimes covered by this Act, it is necessary [...]"

While the aforementioned Act is only applicable when dealing with organized crime, it could be used to protect witnesses to, and others who provide information in relation to, crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access by victims to victim assistance programmes, in cases where the serious crime is committed within the scope of application of the Act, i.e. organized crime.

4. In accordance with Mexican domestic law, there are ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to

conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission.

Mexico can respond to requests by host States for support and assistance provided that such requests are made within the framework of an extradition treaty or a bilateral or multilateral treaty on legal assistance that is applicable to the situation in question.

At the present time, Mexico has signed 33 extradition treaties and 27 treaties on legal assistance.

On the other hand, articles 5, 6, 7 and 15 of the International Extradition Act establish that Mexico can hand over individuals against whom criminal proceedings have been launched in a third country to that country when such individuals are suspected of being responsible for a crime or are sought in order to serve a sentence handed down by the legal authorities in that country, provided that the offence with which the suspected offender is charged is punishable by a custodial sentence with an average term of at least one year in the case of wilful offences, and by a custodial sentence in the case of culpable offences considered serious in the eyes of the law.

In the same way, article 10 of the same Act establishes as a condition of extradition that the requesting State should grant reciprocity, where applicable.
