
Criminal accountability of United Nations officials and experts on mission: request for information

The General Assembly requested the Secretary-General, pursuant to resolution 64/110, to seek information from Member States on the agenda item entitled "Criminal accountability of United Nations officials and experts on mission" so that he could submit a report to the General Assembly at its sixty-fifth session.

In this regard, information is provided below on the national legislation concerning: (1) the scope of special and individual application of criminal law; (2) the procedures for passive and active extradition; (3) the mechanisms for assistance in criminal matters; and (4) the protection provided to victims and witnesses.

(a) Scope of special and individual application of criminal law

The Peruvian Criminal Code¹ provides, in article 1, that Peruvian criminal law applies to anyone who commits a punishable act in the territory of the Republic, with the exceptions provided for in international law. It also applies to punishable acts committed on: (1) publicly-owned national ships or aircraft, wherever they may be located; and (2) privately-owned national ships or aircraft which are on the high seas or in airspace over which no State exercises sovereignty.

Furthermore, article 2 of the Criminal Code provides that Peruvian criminal law applies to any offence committed abroad when (1) the perpetrator is a public official or civil servant in the performance of his duties; (2) it threatens public security or public order, provided that the effects occur in the territory of the Republic; (3) it is detrimental to the State and to national defence, the State authorities and the constitutional order, or the financial system; (4) it is perpetrated against a Peruvian national or by a Peruvian national and the offence is subject to extradition under Peruvian law, provided that it is also punishable in the State in which it was committed and the perpetrator enters the territory of the Republic; and (5) Peru is obliged to suppress it under international treaties.

Lastly, article 10 of the Criminal Code provides that criminal law applies on a basis of equality. The prerogatives accorded to certain persons on the basis of their function or position have to be expressly provided for in laws or treaties.

(b) Procedures for passive and active extradition

¹ Legislative decree No. 635, published in the *El Peruano* Official Gazette on 8 April 1991.

The extradition procedure is established in section II ("Extradition") of book seven ("International judicial cooperation") of the Code of Criminal Procedure² and in Supreme Decree No. 016-2006-JUS ("Provisions relating to judicial and governmental procedure in respect of extradition and the transfer of convicted persons")³.

The national norm is that extradition is passive when a person who is under investigation or has been accused or convicted as the perpetrator or a participant in an offence committed in a foreign country, and who is present in the national territory, whether as a resident, a tourist or in transit, may be extradited in order to be investigated or tried or in order to serve a penalty in person. The granting of extradition is conditional upon the existence of guarantees of fulfilment of the requirements for due process by the requesting State.

Active extradition occurs when the executive branch, at the behest of the criminal division of the Supreme Court, requests the extradition of a person who is under investigation or has been accused or convicted from the State in which that person is present, provided that such extradition is permitted by the treaties or law of the requested State, in application of the principle of reciprocity.

(c) Mechanisms for assistance in criminal matters

Book seven of the Peruvian Code of Criminal Procedure ("International judicial cooperation") provides that the relations of the Peruvian authorities with foreign authorities and with the International Criminal Court in the area of international judicial cooperation are governed by the treaties concluded by Peru and, in the absence of such treaties, by the application of the principle of reciprocity within a framework of respect for human rights.

In the event that a treaty exists on the subject, its provisions govern the processing of international judicial cooperation. The provisions of domestic law, especially the provisions of the Code of Criminal Procedure, serve to interpret the provisions of such treaty and are applied to all matters that are not expressly provided for in the text of the treaty.

In accordance with the same legal norm (article 512), the Office of the Attorney-General (the Government Procurator's Office) is the central authority in the area of international judicial cooperation.

Peru is a signatory to the Inter-American Convention on Mutual Assistance in Criminal Matters (signed in 1994 and ratified in 1995) and is a party to 13 bilateral treaties on the subject

² Legislative decree No. 957, published in the *El Peruano* Official Gazette on 29 July 2004.

³ Published in the *El Peruano* Official Gazette on 26 July 2006.

signed with Colombia, El Salvador, Bolivia, Paraguay, Guatemala, Argentina, Brazil, Ecuador, Mexico, Canada, Switzerland, Italy and Spain.

(d) Protection accorded to victims and witnesses

The Peruvian Code of Criminal Procedure establishes in article 95, paragraph (c) (1), and in article 170(4), the provisions relating to the protection of the integrity of victims and witnesses.

Within this framework, the Government Procurator's Office established a national programme for assistance to victims and witnesses (approved by resolution of the Office of the Attorney-General No. 53-2008-MP-FN, of 15 January 2008) for the purpose of formulating and implementing measures of assistance for victims and witnesses involved in all types of investigations and criminal proceedings, and to prevent their testimony being interrupted by factors beyond their control during the conduct of the proceedings and safeguard their physical, mental and social well-being. The central unit for assistance to victims and witnesses of the Government Procurator's Office is the authority responsible for ensuring inter-agency coordination for the implementation of the programme of protection for collaborators, witnesses, experts and victims.

In the administrative sphere, under law No. 29542 of 22 June 2010, a law was promulgated for the protection of whistleblowers in the administrative sphere and for effective collaboration in the criminal sphere, with the objective of protecting and assisting public officials and civil servants, or any citizen, who makes a well-founded denunciation of arbitrary or illegal acts occurring in any public entity which may be investigated or penalized at the administrative level.

(e) Elements to be taken into account by the Sixth Committee

Taking into account the progress that has been made on the topic in the Sixth Committee by the Working Group established on the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, and without prejudice to the decision, which will be considered in due course, on the advisability of drawing up a convention, Peru believes that the following points should be taken up:

- To work on the definition of competence *ratione personae*, identifying for that purpose what category of individuals is included in the terms "official" and "experts on mission" (see the report in document A/63/260, para. 64)⁴

⁴ It should be noted that the mandate of the Group of Legal Experts covers "*personal de las Naciones Unidas*" (United Nations personnel) (A/60/980, para. 7 --- Spanish version), while the English version refers to "officials of the United Nations".

- To define competence *ratione materiae*, identifying the category of offences concerned;
- To establish the criteria to be used for the attribution of jurisdiction and the preferential criteria which would make it possible to solve disputes in the case of overlapping jurisdictions;
- To identify how cooperation has developed among States, and between States and the United Nations, and to what extent procedures can be established so that cooperation can become more effective.
