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*[translated from Spanish]*

Report of the Republic of Paraguay

Criminal accountability of United Nations officials and experts on mission

1. With regard to the possible enhancement of the capacity of national authorities to investigate and prosecute crimes of a serious nature, in accordance with domestic legislation and applicable United Nations rules and regulations, the Vienna Convention on Consular Relations provides in its article 43, entitled "Immunity from Jurisdiction", that "Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions".
2. In the light of the foregoing, the courts of the receiving State will not have jurisdiction in respect of acts committed by diplomats in the exercise of their functions; however, they will have jurisdiction in respect of ordinary punishable acts performed by diplomats outside their functions. When an act is committed, the receiving State is required to request the sending State to waive the immunities and privileges enjoyed by such persons in order to investigate the matter.
3. If the receiving State, in whose territory the punishable act was committed, does not conduct investigations into the case or does not punish the perpetrator of the act, who is in this case a diplomat, the criminal law in force of the sending country might then be applied to acts committed in foreign country by its nationals, in accordance with article 8 of the Penal Code in force which stipulates, under the heading "Acts against universally protected legal rights", that "(1) Paraguayan criminal law shall also apply to acts committed in a foreign country..., including (7) punishable acts that the Republic, in accordance with an international treaty in force, is obliged to prosecute, even if they were committed in a foreign country" , specifying in section 2 of that same article 8 that "Paraguayan criminal law shall apply only when the person who committed such an act has entered the national territory".
4. Moreover, article 9, section 1, of the Penal Code provides as follows: "Paraguayan criminal law shall apply to other acts committed in a foreign country only when (1) in the place where it occurred, the act is punished as a crime; and (2) the person who committed it (a) was at the time of committing it of Paraguayan nationality or, after committing it, acquired Paraguayan nationality; or, (b) not being of Paraguayan nationality, was in the national territory and his extradition had been refused, despite its having been legally admissible, owing to the nature of the act. The foregoing provision shall also apply when no punitive authority exists in the place where the act occurred".

5. It follows that these provisions should be used to determine the competence of States to apply criminal law in cases where punishable acts are committed by officials or experts on mission.

6. With regard to mutual assistance in investigations by States and, where appropriate, the prosecution of United Nations officials and experts on mission, the terms of the 1963 Vienna Convention on Consular Relations should be taken as a reference.

7. Accordingly, as a first step in any possible prosecution, the receiving State or the State in whose territory the punishable act was committed should request the sending State to waive the privileges and immunities of its diplomats in order to initiate a criminal investigation. As a second step, and with a view to cooperation between States for the purpose of investigations, due account should be taken either of conventions and/or agreements concluded between the two States concerned or of multilateral agreements providing for the relevant mutual assistance in obtaining the statements or information that States may require.

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