

Translated from Spanish

REPORT OF EL SALVADOR PURSUANT TO GENERAL ASSEMBLY
RESOLUTION 66/93

CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND
EXPERTS ON MISSION

The State of El Salvador presents this report pursuant to General Assembly resolution 66/93 which inter alia strongly urges all States to consider establishing, to the extent that they have not yet done so, jurisdiction over crimes, particularly those of a serious nature, as recognized in their existing domestic criminal laws, committed by their 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.

In that connection, as indicated at previous sessions, El Salvador does not have any problem with implementation regarding the aspects contained in the said resolution since, at the internal level, its comprehensive criminal regulations relating to both substance and procedure allow the competent authorities to use the State's *ius puniendi* in proportion to the crime committed and in accordance with the exigencies of due process.

In particular, as regards Salvadoran armed forces personnel on United Nations missions, should they commit any criminal action while on mission they can be tried and judged in El Salvador inasmuch as the State has adopted relevant measures in criminal legislation (articles 8, 9, 10 and 11 of the Criminal Code) which enable it to deal with a variety of matters in accordance with the principles of territoriality, personality or universality, depending on the nature of the crime committed and where it was committed.

Principle of territoriality

Article 8. Salvadoran criminal law shall apply to punishable acts committed wholly or in part in the territory of the Republic, or in places subject to its jurisdiction.

Principle of personality or nationality

Article 9. Salvadoran criminal law shall also apply:

- (1) To offences that were committed abroad by an individual in the service of the State, when the individual has not been indicted in the place the offence was committed, owing to the privileges attached to his or her position;*
- (2) To offences that were committed by a Salvadoran abroad or in a place not subject to the particular jurisdiction of a State; and*
- (3) To offences committed abroad by Salvadorans, when extradition is requested and denied on account of their nationality, or by foreigners, [when such offences] infringed upon the legal rights of Salvadorans”.*

Principle of universality

Article 10 — Salvadoran criminal law shall also apply to offences committed by anyone in a place not subject to Salvadoran jurisdiction, provided that they affect

rights that are internationally protected by specific agreements or norms of international law or seriously violate universally recognized human rights.

Likewise, domestic law regulates cooperation in international investigations and reciprocal judicial assistance for any criminal conduct, as stated in the following provisions of the Code of Criminal Procedure currently in force.

Cooperation in international investigations

Article 78. If the criminal conduct takes place wholly or in part outside national territory or is attributed to persons related to international organizations, the Office of the Prosecutor-General of the Republic may set up joint investigation teams together with foreign or international institutions. In any event, joint investigation agreements shall be authorized and overseen by the Prosecutor-General of the Republic.

Where crimes of an international nature are involved, the Attorney-General of the Republic may be part of the international and inter-agency commission designated to cooperate in the investigation.

Other cases of apprehension

Article 327. In addition to the cases established in this Code, the police shall proceed to arrest an individual, even without a court order, in the following cases:

- (1) If the individual has escaped from a penal institution or any other detention centre.*
- (2) If the individual is in possession of objects from which it can be inferred that he/she has committed a punishable offence or has marks or signs that would suggest he/she has participated in a criminal act.*
- (3) When the person is the subject of a red notice from international police institutions.*

In the cases referred in paragraphs (1) and (2) above, the police must immediately hand over the person arrested to the judicial authority or to the Prosecution. In the case referred to in paragraph (3) the police shall follow the rules for international juridical cooperation. The Counsel for the Defence of Human Rights shall be informed of the arrest/detention.

The above-mentioned provisions reflect the progress that El Salvador has made with regard to the adoption of measures to ensure that there is no impunity for serious crimes — whether they be committed by officials and experts on mission or by any other person — which is also related to the implementation of State obligations regarding universal respect for and observance of human rights in accordance with the provisions of the various international instruments that El Salvador has ratified, inter alia the American Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture.

Finally, El Salvador reaffirms its commitment to building a domestic and international legal system that will guarantee accountability of United Nations personnel and experts on mission for criminal acts committed; this can only be achieved with the cooperation of the international community and the strengthening of the rule of law.