Translated from Spanish

Permanent Mission of Peru to the United Nations

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The Permanent Mission of Peru to the United Nations presents its compliments to the United Nations Secretariat, Office of Legal Affairs, Codification Division, and has the honour to refer to the questionnaire circulated in accordance with paragraph 23 of resolution 70/114, entitled “Criminal accountability of United Nations officials and experts on mission”.

It has the honour to enclose herewith the observations of the Government of Peru on the questionnaire.

The Permanent Mission of Peru to the United Nations takes this opportunity to convey to the United Nations Secretariat, Office of Legal Affairs, Codification Division, the renewed assurances of its highest consideration.

New York, 29 July 2016

United Nations Secretariat

Office of Legal Affairs

Codification Division

New York

Republic of Peru

Observations of the Government of the Republic of Peru in response to the questionnaire circulated under the agenda item "Criminal accountability of United Nations officials and experts on mission", in accordance with resolution 70/114, paragraph 23

1. Forms of jurisdiction

The questionnaire contains a request for information regarding the available forms of jurisdiction over United Nations officials and experts on mission, based on territoriality, nationality, passive personality, the effects doctrine, the protective principle, universality and other principles.

(i) Territoriality

Article 1 of the Criminal Code, adopted through Legislative Decree No. 635, reflects the principle of territoriality in stating that "Peruvian criminal legislation shall apply to anyone who commits a punishable offence within the territory of the Republic, subject to the exceptions laid down in international law". Article 54 of the Constitution states that the territory of the Republic includes "the soil, the subsoil, the maritime dominion and the superjacent airspace".

Note: Article 1 of the Criminal Code adds that Peruvian criminal legislation "shall also apply to punishable offences committed in:

1. Peruvian public vessels or aircraft, wherever they may be; and

2. Peruvian private vessels or aircraft on the high seas or in airspace over which no State exercises sovereignty."

(ii) Nationality and passive personality

Article 2, paragraph 4, of the Criminal Code reflects the principle of nationality in stating that Peruvian criminal law applies to any offence committed abroad, if "the offence is perpetrated against or by a Peruvian citizen and is classified as extraditable 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 in some way". That paragraph also reflects the principle of active and passive personality in stating that the legislation applies to offences perpetrated by or against Peruvians.

(iii) Effects doctrine

The effects doctrine is reflected in our legal system through article 2, paragraph 2, of the Criminal Code, which states that Peruvian criminal law applies to any offence committed abroad that "constitutes an offence of money-laundering, provided that its effects are felt within the territory of the Republic".

(iv) Protective principle

Article 2, paragraph 3, of the Criminal Code states that Peruvian criminal law is applicable to any offence committed abroad, if "it constitutes an offence against the State and national defence, the State authorities and the constitutional or monetary order". That paragraph also envisages a situation in which "the offence constitutes a threat to public peace or security".

(v) Universality

The principle of universality is reflected in article 2, paragraph 5, of the Criminal Code, which states that Peruvian law is applicable to any offence committed abroad if "Peru is under an obligation to punish the offence pursuant to an international treaty". That is a comprehensive way of establishing the principle of universality, since article 2 must be read in light of the treaties to which Peru is a State party and that envisage that situation.

(vi) Other

The Criminal Code also states that "Peruvian criminal legislation shall apply to any offence committed abroad, if the perpetrator is a public official or servant acting in the course of his duties".

2. Extent of jurisdiction *ratione personae* over crimes committed extraterritorially

The questionnaire requests information regarding the general application of jurisdiction *ratione personae*; jurisdiction over nationals; and specific legislation for such

particular categories of persons as military United Nations officials and experts on mission, police United Nations officials and experts on mission, civilian United Nations officials and experts on mission and public officials acting in foreign jurisdictions.

(i) Jurisdiction *ratione personae*

The principle of jurisdiction *ratione personae* is reflected in article 2 of the Criminal Code (see above). The following exceptions to that article, which affect jurisdiction *ratione personae*, are laid down in article 4 of the Code:

> The provisions contained in article 2, paragraphs 2, 3, 4 and 5, shall not apply:
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> 1. If criminal proceedings have been discontinued pursuant to any legislation;
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> 2. In the case of political offences or related crimes; and
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> 3. If the accused has been acquitted in a foreign country or if the convicted offender has served his sentence or that sentence has lapsed or been suspended.

(ii) Specific legislation for particular categories of persons

No criminal provision in Peruvian legislation establishes a distinction between offences committed by military, police or civilian United Nations officials and experts on mission and offences committed by others. Article 10 of the Criminal Code, however, states the following:

> Criminal law is applicable on an equal basis. The prerogatives granted to certain persons because of their function or post must be expressly set out in international laws or treaties.

Those exceptions, therefore, shall not apply if "the perpetrator is a public official or servant acting in the course of his duties" (Criminal Code, article 2, paragraph 1).

3. Extent of jurisdiction *ratione personae* over crimes committed extraterritorially

In this section of the questionnaire, information regarding the following is requested:

(i) General application of criminal law

(ii) Application limited to international treaty obligations

(iii) Application limited to crimes of a "serious nature"

(iv) Application limited to "international crimes", including genocide, crimes against humanity and war crimes

(v) Application limited to crimes affecting "essential interest(s) of the State"

(vi) Application limited to crimes affecting public security

(vii) Application limited to a specific list of crimes

(viii) Other limitations to the application *ratione materiae* of domestic law

(i) General application

The general application of criminal law is governed by the chapeau of article 2 of the Criminal Code (see above), which states that "Peruvian criminal legislation shall apply to any offence committed abroad". Only "political offences or related crimes" are excluded from the material scope of that provision, except in the situation envisaged in article 2, paragraph 1, of the Code.

(ii) International treaty obligations

See article 2, paragraph 5, of the Criminal Code.

(iii) Crimes of a serious nature

The Criminal Code does not distinguish between crimes of a serious nature committed by United Nations officials or experts and crimes of a serious nature committed by others. See the above-mentioned articles 2 and 4 of the Criminal Code.

(iv) International crimes

With regard to international crimes, see Part XVI-A, “Crimes against humanity”, of the Criminal Code, in which the crimes of genocide (article 319), enforced disappearance (article 320) and torture (articles 321 and 322) are defined. The text of those articles is as follows:

(a) Article 319. Any person who commits any of the following acts with intent to destroy, in whole or in part, a national, ethnic, social or religious group, shall be punished with a custodial sentence of no less than 20 years:

1. Killing members of the group;

2. Causing serious bodily or mental harm to members of the group;

3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

4. Imposing measures intended to prevent births within the group;

5. Forcibly transferring children of the group to another group.

(b) Article 320. An official or public servant who deprives a person of his freedom by ordering or performing actions that result in his disappearance, duly proven, shall be punished with a custodial sentence of no less than 15 years and forfeiture in accordance with article 36, paragraphs (1) and (2).

(c) Article 321. A public official or servant, or any person who, with the consent or acquiescence of a public official or servant, inflicts severe physical or mental pain or suffering on another person, or subjects him to conditions or methods that obliterate his personality or diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish, with the aim of obtaining information or a confession from him or a third person, or punishing him for any act that he has committed or is suspected of committing, or intimidating or coercing him, shall be punished with a custodial sentence of no less than 5 and no more than 10 years. If the torture causes the death of or serious injury to the victim and the perpetrator could have foreseen such a result, the custodial sentence shall be,

respectively, no less than 8 and no more than 20 years, or no less than 6 and no more than 12 years.

(d) Article 322. Any doctor or health-care worker who cooperates in the commission of the offence set out in the preceding article shall be sentenced to the same punishment as the perpetrators.

It should also be noted that, under article 55 of the Constitution, treaties that have been concluded by the Peruvian State and are in force are part of national law. The international instruments to which Peru is a State party include the following:

- The Rome Statute of the International Criminal Court
- The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
- The Geneva Conventions of 1949 and Protocols I and II additional thereto
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The International Convention on the Suppression and Punishment of the Crime of Apartheid
- The United Nations Convention against Corruption
- The United Nations Convention against Transnational Organized Crime
- The International Convention for the Protection of All Persons from Enforced Disappearance
- The International Convention for the Suppression of the Financing of Terrorism
- The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

(v) Crimes affecting “essential interest(s) of the State”

Such crimes are covered under the above-mentioned article 2, paragraph 3, of the Criminal Code.

(vi) Crimes affecting public security

See article 2, paragraph 2, of the Criminal Code.

(vii) Specific list of crimes

Our legislation comprises no specific list of crimes and no other limitation on the application *ratione materiae* of national legislation.

4. Prerequisites for the application of extraterritorial jurisdiction to United Nations officials or experts on mission

Peru signed the Memorandum of Understanding between the United Nations and the Government of the Republic of Peru concerning contributions to the United Nations Standby Arrangements System on 11 November 2003. The Memorandum of Understanding was approved through Legislative Decision No. 28342 and entered into force on the same date.

The Amendment to the Annex to the Memorandum of Understanding was signed on 23 July 2015 and approved by Supreme Decree No. 044-2015-RE, and entered into force on that date.

Prerequisites

Most of the other prerequisites are specified in the situation envisaged in relation to the principle of nationality, in its active and passive aspects, in the following terms:

> Peruvian criminal law shall apply to any offence committed abroad, if ... the offence is perpetrated against or by a Peruvian citizen and is classified as extraditable 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 in some way.

For the application of either aspect, the offence must be extraditable and punishable in Peru and the State in which it was committed, and the offender must be present in Peruvian

territory. The specific provisions of the treaties to which Peru is a State party must also be taken into consideration.

The application of the principle of *ne bis in idem* is regulated in a general way in article 4 of the Criminal Code in the situations envisaged in article 2, paragraphs 2, 3, 4 and 5, "if the accused has been acquitted in a foreign country or if the convicted offender has served his sentence or that sentence has lapsed or been suspended". Article 4 also states that "if the perpetrator has not served his sentence in full, he may be brought to trial for a second time in the Peruvian courts, but the part of the sentence served shall be taken into account".

5. Legal basis for the application of rules of immunity

The questionnaire asks whether the following constitute part of the legal basis for immunity:

(i) The Convention on the Privileges and Immunities of the United Nations of 1946

(ii) Specific status-of-forces, status-of-mission or other agreements with the United Nations

(iii) Specific status-of-forces, status-of-mission or other agreements with the host State

(iv) Other privileges and immunities applicable, including those accorded by national law

Peru is a State party to the 1946 Convention on the Privileges and Immunities of the United Nations, which was adopted through Decree-Law No. 14542 and entered into force for the Peruvian State on 24 July 1963. Peru has also concluded various headquarters agreements for the establishment of offices of international organizations and bodies in its territory and for the holding of international events; those agreements contain provisions relating to the privileges and immunities of its officials and representatives, and of other actors.

6. Other comments

The full text of the Criminal Code can be downloaded using the following link: http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codpenal.htm&vid=Ciclope:CLPdemo

The text of the Military and Police Criminal Code can be downloaded using the following link: http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-1042.htm&vid=Ciclope:CLPdemo

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