

*Translated from Spanish*

## **Criminal accountability of United Nations officials and experts on mission**

### **Report of the Republic of El Salvador pursuant to General Assembly resolution 73/196**

The Republic of El Salvador is submitting the present report pursuant to General Assembly resolution 73/196, adopted on 20 December 2018, in which the Assembly strongly urges States to take all appropriate measures to ensure that crimes committed by United Nations officials and experts on mission did not go unpunished, and that the perpetrators of such crimes are brought to justice, in accordance with international law and international human rights standards.

To ensure compliance with the resolution, the Assembly therefore made a number of specific requests to States, as set out below:

#### **I. With regard to the possibility of establishing jurisdiction over crimes, particularly those of a serious nature, as known in their existing criminal laws, committed by their nationals while serving as United Nations officials or experts on mission.**

Salvadoran law contains provisions through which judicial proceedings may be brought in respect of acts committed by such officials; these provisions govern, *inter alia*, cases covered by Salvadoran criminal law, subsidiary rules regarding the exercise of territorial jurisdiction, cooperation in international investigations, etc.

A case in point is the active personality principle, by which nationals of El Salvador are subject to the criminal law of the State, as reflected in article 9 of the Criminal Code, which states that: “Salvadoran criminal law shall also apply to: (i) crimes committed abroad by a person in the service of the State, when he or she has not been prosecuted in the place where the crime was committed, owing to the privileges inherent in his or her functions; (ii) crimes committed by Salvadorans abroad or in a place not subject to the specific jurisdiction of a State; and (iii) crimes committed abroad by Salvadorans when extradition requested owing to their nationality is denied, or by foreign nationals against the legal property of Salvadorans”.

Our legislation also reflects the principle of universality, with article 10 of the Criminal Code stipulating that: “Salvadoran criminal law shall also apply to crimes committed by any person in a place not subject to Salvadoran jurisdiction, provided that they affect property protected internationally by specific covenants or rules of international law, or involve a serious violation of universally recognized human rights”.

Subsidiary rules concerning territorial jurisdiction are set out in article 58, paragraphs 2 and 3, of the Code of Criminal Procedure, which stipulate that: “If the place where the act was committed is unknown or in doubt [...]. In case of extraterritoriality of criminal law, the

judge of the capital of the Republic who was on duty at the time the act was committed shall have jurisdiction. In the case of crimes committed on board vessels sailing in jurisdictional waters or commercial or private aircraft flying over the national airspace, the judge of the place of arrival of the ship or aircraft shall have jurisdiction. When the vessel or aircraft does not arrive in the national territory, the judge of the capital of the Republic who was on duty at the time the act was committed shall have jurisdiction”.

With regard to extradition and jurisdiction over offences committed abroad, article 28, paragraph 28, of the Constitution of the Republic, stipulates that: “Extradition shall be regulated in accordance with international treaties and, when the case involves Salvadorans, it shall proceed only if the relevant treaty expressly so provides and it has been approved by the legislative organ of the signatory countries. In any event, its stipulations must incorporate the principle of reciprocity and provide Salvadorans with all the criminal and procedural guarantees established by this Constitution. Extradition shall proceed when the offence is committed within the territorial jurisdiction of the requesting country, except in the case of offences of international character, and may not apply in any case to political offences, even if common offences result from such political offences”.

Article 182, paragraph 3, establishes that the Supreme Court has the power to “[...] hear prize cases and cases that are not reserved to another authority; to order the issuance of requests or letters rogatory for the purpose of performing due diligence outside the State; to order the granting of such requests or letters rogatory originating from other countries, without prejudice to the provisions of treaties; and to grant extradition requests.

On the other hand, the exercise of criminal jurisdiction by the courts and judges of the Republic may be extended in accordance with article 47, paragraph 2, of the Code of Criminal Procedure:

“(2) Hearing of cases involving crimes committed outside the territory of the Republic in accordance with the Criminal Code.

The judge or court with jurisdiction to hear a case involving an offence or misconduct may also resolve all incidental matters arising in the course of the proceedings, even if they do not belong to the criminal order. Exceptions are matters relating to the determination of the family status of persons and the right of ownership in the event of usurpation”.

With regard to cooperation in the conduct of international investigations, article 78 of the Code provides that:

“If the criminal conduct occurs, in whole or in part, outside the national territory or is imputed to persons linked to international organizations, the Office of the Attorney General of the Republic may set up joint investigation teams with foreign or international institutions. In any event, joint investigation agreements must be authorized and supervised by the Attorney General of the Republic.

In the case of crimes of an international character, the Office of the Attorney General of the Republic may form part of an international and inter-institutional commission to collaborate in the investigation”.

## **II. On the report on compliance with paragraphs 10, 12 and 20 of resolution 73/196 at the national level, including periodic updates on the measures adopted to handle credible complaints or practical challenges for their implementation**

The Ministry of Defence of El Salvador reports that it has not recorded any case in which personnel participating in an official mission have committed a serious crime during the performance of the mission. Nonetheless, in the event of commission of a criminal act, it has an obligation to cooperate with the host State to investigate the punishable act or to provide the corresponding treatment in accordance with criminal law.

In the event that the crime is committed in El Salvador by personnel on mission in the country, there are legal tools for protecting procedural guarantees; likewise, in order to provide due protection and care to victims and witnesses of serious crimes, there is a special comprehensive law for a life free of violence for women, and a special law for the protection of victims and witnesses, among others, as required by paragraph 12 of the aforementioned resolution.

Also, prior to sending its own personnel on peace missions, the peace operations training centre of the armed forces (CEOPAZ) provides soldiers with instruction and training in human rights, international humanitarian law and ethical guidelines established by the United Nations (Manual on Policies and Procedures concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions, the zero tolerance policy with respect to the commission of crimes in peace missions, the provisions of the corresponding memorandums of understanding for each mission, among others).

## **III. Comments on the legal aspects of the report of the Group of Legal Experts (A/60/980), in particular further observations on that report and future action to be taken.**

Considering the complexity of standardizing criminal proceedings, in particular, in respect of the exercise of State sovereignty, the draft convention proposed by the Group of Legal Experts could be an option for establishing a standard for the determination of each party’s jurisdiction. To that end, it is important to mention the issue of reciprocity, especially with regard to the idea of cooperation that must be incorporated into such a convention; however, its ratification would create the need for the establishment of the proper national legal framework or the enactment of new laws to advance its content.

In conclusion, although the Salvadoran legal order already has provisions to ensure that crimes committed by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice, the Republic of El Salvador believes that the draft convention on the criminal accountability of United Nations

officials and experts on mission could be a useful complement in cases where there are legal loopholes, and especially in States that do not have legal provisions to address such circumstances.