

Translated from Spanish

Permanent Mission of El Salvador to the United Nations

Criminal accountability of United Nations officials and experts on mission

Republic of El Salvador

Report pursuant to General Assembly resolution 74/181

The Republic of El Salvador submits the present report pursuant to resolution 74/181, adopted by the General Assembly on 18 December 2019, in which the Assembly urged States to take all measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators are brought to justice, in accordance with international law and international human rights standards.

In that connection, with a view to implementing the resolution, a number of specific requests were made of States, as set out below.

I. Consider establishing jurisdiction over crimes, particularly those of a serious nature, as known in States' existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, and afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of such crimes

As indicated at previous sessions, El Salvador has taken the necessary legislative measures to ensure the prosecution of crimes that may have been committed by its nationals while serving as United Nations officials or experts on mission. In particular, the national legal framework governs, inter alia, cases in which Salvadoran criminal law is applicable, the subsidiary rules relating to the exercise of jurisdiction by El Salvador and cooperation in international investigations.

In accordance with the active personality principle, established in article 9 of the Criminal Code, Salvadoran criminal law applies in respect of: "1. crimes committed abroad by an individual in the service of the State, when the individual has not been prosecuted in the place where the crime was committed, owing to the privileges attached to his or her position; 2. crimes committed by a Salvadoran national abroad or in a place not subject to the particular jurisdiction of a State; and 3. crimes committed abroad by Salvadoran nationals, when extradition is requested and denied on account of their nationality, or crimes committed by foreign nationals that infringe the legal rights

of Salvadorans”.

In addition, our laws establish the principle of universality, in accordance with which, under article 10 of the Criminal Code, Salvadoran criminal law applies to crimes committed by any person in a place not subject to Salvadoran jurisdiction. In that regard, there is no provision establishing an exhaustive list of crimes in respect of which the principle of universality applies; there is merely a requirement that the act in question has affected rights that are internationally protected by specific agreements or norms of international law or that it involves a serious violation of universally recognized human rights.

With regard to the exercise of Salvadoran jurisdiction, under article 47, paragraph 2, of the Code of Criminal Procedure, the jurisdiction of Salvadoran courts and judges in respect of criminal matters extends to “trying crimes committed outside the territory of the Republic in accordance with the Criminal Code. The judge or court with jurisdiction to try a crime or misdemeanour may also rule on all incidental issues that arise during the proceedings, even if they are not criminal matters. The exception is issues relating to the determination of the family status of individuals and of property rights in cases of usurpation.”

In addition, article 58, second and third paragraphs, of the Code of Criminal Procedure provides for subsidiary rules relating to jurisdiction on a territorial basis, as follows: “[if the place in which the act was committed is unknown or uncertain] ... in the event of extraterritoriality of criminal law, the judge in 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 commercial or private vessels or aircraft navigating in territorial waters or in the national airspace, the judge in the place of arrival of the vessel or aircraft shall have jurisdiction. If the place of arrival of the vessel or aircraft is not in the national territory, the judge in the capital of the Republic who was on duty at the time the act was committed shall have jurisdiction.”

With regard to cooperation for the purpose of conducting international investigations, article 78 of the above-mentioned Code of Criminal Procedure provides that “if criminal conduct takes place wholly or in part outside national territory or is attributed to persons related to international organizations, the Office of the Attorney 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 Attorney General of the Republic. Where crimes of an international nature are involved, the Office of the Attorney General of the Republic may be part of

the international and inter-agency commission designated to cooperate in the investigation.”

Furthermore, with regard to extradition and jurisdiction over crimes committed abroad, article 28, second and third paragraphs, of the Constitution of the Republic provides that “extradition shall be governed by international treaties and, in the case of Salvadorans, shall be carried out only if the relevant treaty expressly provides for it and has been approved by the legislative branch of the signatory States. In any case, the principle of reciprocity must be upheld and Salvadorans must be granted all the procedural and criminal law safeguards set forth in the Constitution. Extradition shall be carried out if the offence has been committed within the territorial jurisdiction of the requesting State, except in the case of crimes of international significance, and may in no case be imposed for political crimes, even if ordinary crimes result therefrom.”

Under article 182, paragraph 3, of the Constitution, it is the responsibility of the Supreme Court of Justice “to try the cases of detainees and cases not assigned to other authorities; to order the sending of letters or commissions rogatory issued for the conduct of proceedings outside the State and order compliance with those coming from other countries, without prejudice to the provisions of treaties; and to grant extradition”.

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, in particular when they are committed by officials and experts on mission, or by any other person. These provisions are also related to the implementation of its 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, including the American Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.

II. Report on the implementation at the national level of paragraphs 12, 13, 18 and 20 of resolution 74/181, including periodic updates on the handling of credible allegations and practical problems in implementation

At the national level, steps have been taken to provide predeployment training and check the criminal records of officials and experts who are to be deployed on mission. In particular, the Peace Operations Training Centre of the Armed Forces of El Salvador is responsible for training personnel in human rights, international humanitarian law and United Nations guidelines for conduct, including the Manual on Policies and Procedures concerning the Reimbursement and Control of

Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions; the Ten Rules: Code of Personal Conduct for Blue Helmets, which include the prohibition of acts of sexual or physical abuse; the provisions of the relevant memorandums of understanding for each mission; and the provisions of General Assembly resolutions concerning the criminal accountability of officials and experts on mission.

In November 2019, the Peace Operations Training Centre concluded its predeployment training for United Nations troops, which had 50 participants who now form the contingent for the United Nations Multidimensional Integrated Stabilization Mission in Mali and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. The participants were trained in human rights, gender and health, with account taken of the fact that, during their mission in Africa, they have direct contact with the civilian population and must therefore undergo the most rigorous training in order to deal with any emergency and provide the population with the necessary care and protection, in compliance with the codes of conduct and with respect for the human rights and dignity of the local population, in particular the most vulnerable.

Nonetheless, despite the immunities enjoyed by any personnel of peace missions, they are not authorized to infringe the law of the host country. It is therefore the responsibility of El Salvador to include in memorandums of understanding clear and specific provisions covering the standards of conduct in force; the investigation process; organizational, managerial and command accountability; and individual disciplinary, financial and criminal accountability.

In that connection, in a sign of the effective preparation undergone by our officials and experts on mission, to date there are no records of serious crimes committed by such personnel. Nonetheless, if a criminal act occurs, the country has an obligation to cooperate with the host State in the investigation of the punishable act or to address it appropriately in accordance with national criminal laws.

In addition, if such a crime is committed in El Salvador by personnel deployed in the country, there are legal tools for ensuring due process. Furthermore, in order to provide appropriate protection and care for the victims and witnesses of serious crimes, El Salvador has, *inter alia*, a special law for the protection of victims and witnesses and a comprehensive special law on a violence-free life for women.

III. The legal aspects of the report of the Group of Legal Experts, in particular the question of future action

As stated on previous occasions, the standardization of criminal proceedings is a complicated undertaking, particularly given that each State is entitled to exercise its own sovereignty; therefore, the draft convention proposed by the Group of Legal Experts could be an option for establishing a standard for the determination of each State party's jurisdiction.

It is important to emphasize reciprocity, in particular with regard to the cooperation that a convention of that nature should entail; however, the ratification of such a convention would make it necessary to adapt the national legal framework or to establish new laws elaborating on the content of the convention.

In addition, we consider that Salvadoran law already makes sufficient provision for the cases referred to in the present analysis, although a convention on the requirement of criminal accountability for United Nations officials and experts on mission could be useful to fill gaps in our law, and in particular for those States that do not have laws aimed at resolving such situations.

Lastly, the Republic of El Salvador considers that United Nations officials and experts on mission make an important contribution to the effective fulfilment of the purposes and principles established in the Charter of the United Nations. It is therefore vital that all States take appropriate steps to ensure that crimes committed by such personnel do not go unpunished and that the perpetrators are brought to justice, in full compliance with international human rights standards and, in particular, due process, without prejudice to the privileges and immunities of such individuals.
