



Information by Portugal concerning the topic
“Criminal accountability of United Nations officials and experts on
mission”
UNGA Resolution A/RES/74/181

The Secretary-General has requested Members States to provide information and concerning the implementation of the General Assembly Resolution A/RES/74/181, of 18 December 2019, entitled “Criminal Accountability of United Nations Officials and Experts on Mission”, namely paragraphs 10, 12, 13, 15, 18, and 20 thereof.

As a general principle, the Portuguese criminal legislation is applicable to all facts committed in the Portuguese territory¹.

The Portuguese criminal legislation is also applicable to facts perpetrated outside the Portuguese territory when committed²:

- i. By Portuguese citizens against other Portuguese citizens that reside in Portugal;
- ii. By Portuguese citizens or by foreigners against Portuguese citizens, if the offender is to be found in Portugal and if the facts are punishable in the territory where they took place unless if the punitive power is not carried out in that place, and the extradition cannot be performed or if it is decided not to surrender the offender as result of an European arrest warrant or of other international agreement binding Portugal;
- iii. By foreigners, irrespective of the nationality of the victim, if the offender is to be found in Portugal and the extradition cannot be performed or if it is decided to not surrender in result of a European arrest warrant or of other international agreement binding Portugal;

¹ Article 4 of the Criminal Code.

² Article 5 (1) of the Criminal Code.



iv. By any person, regarding the crimes of “computer and communications fraud”³, the categories of crimes of “counterfeiting of money, credit certificate and sealed value” and of “faking of dies, weights and equivalent objects”⁴, the category of “crimes against national independency and integrity”⁵, the category of “crimes against the course of the Rule of law” and “electoral crimes”⁶, the crime of terrorism⁷, as well as certain crimes committed by terrorist organisations⁸.

The crimes listed in § iv) above relate to crimes for which the Portuguese law establishes absolute universal jurisdiction, that is to say, when the judicial authorities may pursue any individual, regardless of their nationality, place of residence or location. However, it must be noted that the Portuguese law establishes for a substantial number of crimes a conditional universal jurisdiction, that is, when the agent is found in Portugal and cannot be extradited or when it was decided not to extradite or to hand over said agent. Examples of this last category include genocide, crimes against humanity, war crimes, incitement to war, recruitment of mercenaries and the crime of aggression⁹.

The commission of a crime gives rise to a judicial inquiry, which comprises the procedures necessary to investigate the occurrence of a crime, its agents and their responsibility, as well as to find evidence in order to decide on the charges. Following the judicial inquiry, the public prosecutor may indict the suspect offender if there are sufficient evidence that a crime was committed.

Portugal is Party to the Convention on the Privileges and Immunities of the United Nations, adopted at New York on 13 February 1946, which grants immunity from

³ Article 221 of the Criminal Code.

⁴ Articles 262 to 271 of the Criminal Code.

⁵ Articles 308 to 321 of the Criminal Code.

⁶ Articles 325 to 345 of the Criminal Code.

⁷ Article 2 of the Law 52/2003 of 22 August 2003.

⁸ Article 4 of the Law 52/2003 of 22 August 2003.

⁹ Law 31/2004 of 22 July 2004.



jurisdiction to United Nations officials and experts on mission. In addition, article 22 of the Portuguese Criminal Code recognizes the special status of individuals enjoying international protection. However, it should be underlined that the immunity is granted to officials and experts within the strictly necessary for the independent exercise of their functions.

When an United Nations official and expert on mission commits a crime falling under the jurisdictional competence of Portuguese Criminal Law, the competent judge may ask to the Secretary-General of the United Nations, through the Ministry of Foreign Affairs, to waive the immunity of the said official or expert on mission.

Regarding international judicial co-operation, including extradition and mutual legal assistance, its regime is regulated by the Law on International Judicial Co-operation in Criminal Matters¹⁰. This Law applies to the following forms of international judicial co-operation in criminal matters: extradition; transfer of proceedings in criminal matters; enforcement of criminal judgements; transfer of persons sentenced to any punishment or measure involving deprivation of liberty; supervision of conditionally sentenced or conditionally released persons; mutual legal assistance in criminal matters.

Furthermore, and in addition to reactive judicial measures, Portugal deems preventive measures to be of the highest importance. Specific examples of the latter are the pre-deployment training of Portuguese armed forces and security forces personnel, including on international humanitarian law, human rights law, good-conduct and discipline.

¹⁰ Law No. 144/99, of 31 August.



In conclusion, Portugal may criminally prosecute a United Nations official and expert on mission, whose immunity has been waived, for facts committed in or outside the Portuguese territory within the conditions stated above. Furthermore, this competence is articulated with the international judicial co-operation, in order to give effect to the *aut dedere aut judicare* principle.

As to the invitation, referred to in paragraph 15 of the Resolution A/RES/74/181, of 18 December 2019, to submit comments on the report of the Group of Legal Experts, Portugal generally subscribes the conclusions and recommendations of the report. With regards to the question of future action on this topic, Portugal welcomes the recommendation by the Group of Legal Experts that an international convention on the criminal accountability of United Nations officials and experts on mission is adopted. Portugal supports the negotiation of such an international convention provided that it is part of a general and consisted framework designed to ensure that there are no accountability gaps in what concerns the crimes committed by UN officials and experts on mission.

Finally, Portugal will keep the Secretariat informed of any crimes (or allegations of crimes) involving Portuguese nationals acting as United Nations officials or experts on mission that are brought to the attention of the Portuguese authorities.

In addition to fighting impunity and to protecting the rights of victims of criminal conduct, it is also the very image and the public trust in the United Nations and its Member States that is at stake. Therefore, Portugal reiterates its willingness and commitment to cooperate in an effective and transparent manner with other States and with the United Nations in the prevention and, as appropriate, the prosecution of United Nations officials or experts on mission who have committed crimes, particular those of a more serious nature.