

Translated from Spanish

Permanent Mission of El Salvador to the United Nations

“Criminal accountability of United Nations officials and experts on mission”

Report of the Republic of El Salvador submitted pursuant to General Assembly resolution 76/106

The present report is submitted pursuant to General Assembly resolution 76/106, entitled "Criminal accountability of United Nations officials and experts on mission", 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, including due process.

In order to comply with the aforementioned resolution, the information below is provided in relation to the specific matters that States have been asked to address.

I. Concerning the establishment of jurisdiction over crimes, particularly those of a serious nature, as known in their existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, and mutual assistance in connection with criminal investigations or criminal or extradition proceedings in respect of such crimes.

As reiterated in previous reports, El Salvador has taken all necessary legislative measures to ensure the investigation and 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 covers aspects of vital importance such as, inter alia, the investigation stage, principles of jurisdiction, and cooperation and international investigations.

With regard to the exercise of the jurisdiction of El Salvador, article 9 of the Criminal Code refers to the active personality principle, on the basis of which 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”. (Underlining added)

In addition, our laws enshrine the principle of universality, in accordance with which, under article 10 of the Criminal Code, Salvadoran criminal law may apply 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 applies; it is merely stipulated that the act in question must have affected rights that are internationally protected by specific agreements or norms of international law or must seriously undermine universally recognized human rights.

Universality thus constitutes a principle of international law that plays a role in combating impunity and ensuring access to justice, truth and full reparation for victims.

With regard to cooperation for the purpose of conducting international investigations, article 78 of the 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.”

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 all cases, 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.”

In accordance with article 182, paragraph 3, of the Constitution, it is the responsibility of the Supreme Court of Justice 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 prevent impunity for serious crimes, in particular when they are committed by officials and experts on mission, or by any other person, all of which is also related to the country's implementation of its human rights obligations under the various international instruments that it has ratified, including the American Convention on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others.

These provisions do not prevent members of missions accused of misconduct or crimes committed in connection with the exercise of their duties in the territory of the country in which they are stationed from being prosecuted by the host State, once the necessary procedures have been carried out. In such cases, article 27, second paragraph, of the Constitution of the Republic of El Salvador, prohibiting life sentences, degrading punishment and all forms of torture, must be taken into consideration.

II. Concerning the report on implementation at the national level of paragraphs 12, 13, 18 and 20 of General Assembly resolution 75/132, including periodic updates on the handling of credible allegations and practical problems in its implementation.

El Salvador has made significant efforts to ensure the application of stringent criteria in the selection of the officials and experts it sends on mission, with a view to taking steps to prevent the perpetration of criminal conduct in third States. In particular, thorough criminal record checks are carried out and personnel are given predeployment training.

The Peace Operations Training Centre of the Armed Forces of El Salvador is responsible for training on 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 policy of zero tolerance towards crimes in peacekeeping missions and the provisions of the relevant memorandums of understanding for each mission – and on compliance with the General Assembly resolutions on the criminal accountability of United Nations officials and experts on mission.

As indicated above, El Salvador puts officials and experts selected to go on mission through a rigorous preparation and screening process. Furthermore, as a country that safeguards constitutional processes, it has a framework of laws, decrees and regulations for the prosecution of offences which, inter alia, enable investigative purposes to be fulfilled, in both criminal and administrative cases (Police Discipline Act and Code of Conduct). In that respect, national institutions work jointly with the Office of the Attorney General of the Republic, for which they require the report or complaint, together with the evidence or proof that will be presented under the legal system of the host country where the act occurred or the country of origin of the alleged offender, in cases where the legal conditions so permit. In addition, all action must be taken in full respect for the fundamental rights of the alleged perpetrators, including due process, legal security and the presumption of innocence.

With regard to the request for information about investigations or prosecutions of crimes committed by United Nations officials or experts, according to the records of the General Directorate of the National Civilian Police, administrative proceedings have been initiated in respect of one of its members in connection with the possible commission of a disciplinary offence while serving as a United Nations official or expert on mission.

To date, there are no other records of serious crimes committed by personnel on mission. 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.

III. Paragraph 15 of the aforementioned resolution, concerning the legal aspects of the report of the Group of Legal Experts, in particular the question of future action

With regard to future action, El Salvador considers that personnel serving in peacekeeping missions should receive ongoing training, both before and during the missions, with regard to the types of misconduct that, if carried out in the host State, might constitute a crime; in addition, they should be aware of the essential aspects of the crimes existing in host countries that cooperate with the said missions.

Second, El Salvador reiterates its position that the standardization of criminal proceedings is a very complicated undertaking, particularly given that each State is entitled to exercise its own sovereignty; the draft convention proposed by the Group of Legal Experts could be one way to

establish a standard for determining the jurisdiction of each State party.

As indicated previously, Salvadoran law already makes sufficient provision for the cases referred to in the present analysis. The efforts to elaborate a convention on the requirement of criminal accountability for United Nations officials and experts on mission could be useful to fill any gaps in the law of El Salvador and, in particular that of those States that do not have legal provisions for resolving such situations.

Third, in order to achieve the potential objectives and full effect of the proposed convention, El Salvador considers it necessary to emphasize the principle of reciprocity, especially with regard to the cooperation that a convention of this nature would require.

In short, 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 measures to ensure that crimes 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 persons.
