

Translated from Spanish

Ministry of Justice, Spain

Note concerning General Assembly resolution 70/114 on the criminal accountability of United Nations officials and experts on mission

With regard to the request for States to provide information and comments referred to in paragraphs 7, 8, 9, 12, 15 and 16 of the resolution, and in particular information on the establishment of jurisdiction over crimes committed by their nationals while serving as United Nations officials or experts on mission, or on measures adopted to handle credible allegations brought to their attention, we should like to convey the following information:

1. The recommendation made by the General Assembly in paragraph 7 of the resolution has been incorporated into the Spanish legal order, because under Spanish legislation, Spanish courts shall exercise jurisdiction over crimes committed by Spanish nationals in a foreign country.

In the recommendation, the Assembly “*strongly urges* all States to consider establishing, to the extent that they have not yet done so, 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, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State, and, further, urges States and appropriate international organizations to provide technical and other appropriate assistance in developing such legal measures to States requesting such support”.

Pursuant to article 23.2 of the Organic Law on the Judiciary, “Spanish courts shall also have jurisdiction over crimes committed outside the national territory, provided the perpetrators are Spanish nationals or foreign nationals who acquired Spanish nationality after committing the act, and provided the following requirements are met:

(a) That the act is punishable in the place where it was committed, except where said requirement is not necessary under an international treaty or the regulations of an international organization to which Spain is a party, without prejudice to the stipulations below;

(b) That the aggrieved party or the public prosecutor has brought action in a Spanish court;

(c) That the perpetrator has not been exonerated, pardoned or punished in a foreign country or, in the latter case, has not completed his or her sentence. If said sentence has only been completed in part, that would be taken into account to reduce the corresponding sentence proportionately”.

Pursuant to article 23.4 of the Organic Law of the Judiciary, Spanish courts shall also be competent to hear cases concerning acts committed by Spanish nationals (or foreign nationals) outside the national territory, when such acts may constitute crimes of a more serious nature, such as genocide, torture, enforced disappearance, illegal trafficking of drugs, narcotics or psychotropic substances, trafficking of minors in return for freedom or sexual favours, and corruption between individuals or in international business transactions. However, in all these cases, the jurisdiction of Spanish courts would be subject to the fulfilment of specific requirements, based on the crime committed.

It is clear, therefore, that Spanish nationals serving as United Nations officials or experts on mission who commit a crime outside Spanish territory shall be subject to the jurisdiction of Spanish courts, unless the act also constitutes a crime in the State where it was committed, and in particular that the crime is not required to be of a particularly serious nature.

With regard to the possible adoption of measures for the handling of credible allegations concerning nationals serving as United Nations officials or experts, no such reports have been recorded to date.

Madrid, 12 April 2016