

# Section 12: Offenses against United Nations and Associated Personnel

## Article 163: Endangering United Nations and Associated Personnel

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### *Article 163.1: Definition of Offense*

1. A person commits the criminal offense of endangering United Nations and associated personnel when he or she:
  - (a) unlawfully kills any United Nations or associated personnel;
  - (b) kidnaps any United Nations or associated personnel;
  - (c) commits an attack on the person or liberty of any United Nations or associated personnel;
  - (d) engages in a violent attack upon the official premises, private accommodations, or means of transport of any United Nations or associated personnel, where such an attack is likely to endanger his or her person or liberty; or
  - (e) makes a serious threat to commit the offenses set out in subparagraphs (a) to (d).
2. For the purposes of Article 163:
  - (a) *United Nations personnel* means:
    - (i) persons engaged or deployed by the secretary-general of the United Nations as members of the military, police, or civilian components of a United Nations operation; or

- (ii) other officials and experts on missions of the United Nations, its specialized agencies, or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted.
- (b) *Associated personnel* means:
- (i) persons assigned by a government or an international organization with the agreement of the competent organ of the United Nations;
  - (ii) persons engaged by the secretary-general of the United Nations, a specialized agency of the United Nations, or the International Atomic Energy Agency; or
  - (iii) persons deployed by a humanitarian, nongovernmental organization or agency, under an agreement with the secretary-general of the United Nations, a specialized agency of the United Nations, or the International Atomic Energy Agency, to carry out activities in support of the fulfillment of the mandate of the United Nations operation.
- (c) *United Nations operation* means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:
- (i) where the operation is for the purpose of maintaining or restoring international peace and security; or
  - (ii) where the Security Council or the General Assembly has declared, for the purpose of the Convention on the Safety of United Nations and Associated Personnel of December 9, 1994, that there exists an exceptional risk to the safety of the personnel participating in the operation.

## Commentary

**Paragraph 1:** The criminal offense of endangering United Nations and associated personnel is taken from the Convention on the Safety of United Nations and Associated Personnel (1994). The drafting of this convention was prompted by “the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel” (preamble, paragraph 1) in United Nations operations. This problem is evident in many past and current peace operations. In fact, such attacks have increased greatly in recent years. The convention covers both military and civilian United Nations and associated personnel. As existing measures of protection for these personnel were deemed inadequate (preamble, paragraph 6), Article 9 of the convention requires all states parties to the convention to introduce the acts set out

in Article (9)(1) (reproduced above in Article 163.1[1]) into domestic criminal legislation.

Articles 9(1)(d) and 9(1)(e) of the convention further provide that attempts to commit the prescribed offenses, participating in them, or organizing or ordering such acts should also be penalized. All these grounds of criminal responsibility are covered in the General Part of the MCC under Section 10, “Criminal Attempt” (Article 27), and Section 11, “Participation in a Criminal Offense” (Articles 28–33).

Article 10(1) of the convention requires that territorial jurisdiction and extraterritorial jurisdiction based on nationality be established over the offenses, which are covered in Article 163 of the MCC. This requirement is covered by Article 4 (“Territorial Jurisdiction”) and Article 5 (“Extraterritorial Jurisdiction”) of the MCC. The convention also provides other discretionary grounds of jurisdiction, namely, jurisdiction over stateless persons based on their habitual residence, Article 10(2)(a); jurisdiction based on the nationality of the victim, Article 10(2)(b); and jurisdiction based on “an attempt to compel that State to do or to abstain from doing any act,” Article 10(2)(c). Jurisdiction under the MCC is established on the first two discretionary grounds. Reference should be made to Article 5 and its accompanying commentary.

The Convention on the Safety of United Nations and Associated Personnel (1994) also has provisions on prevention of crimes against United Nations and associated personnel (Article 11), communication of information to the United Nations (Article 12), the duty to prosecute alleged offenders (Article 14), extradition (Articles 13 and 15), mutual legal assistance (Article 16), and notification of outcome of proceedings (Article 18), which should be referred to by a state implementing its obligations under the convention.

**Paragraph 1(a):** In the original text of the convention, the term *murder* is used. In Paragraph 1(a), this term has been replaced by *unlawful kills*, consistent with the terminology used in the MCC. Reference should be made to Article 89 on unlawful killing.

**Paragraph 1(b):** Reference should be made to Article 106 for the definition of kidnapping.

**Paragraph 2(a):** The definition of United Nations personnel is taken from Article 1(a) of the Convention on the Safety of United Nations and Associated Personnel (1994).

**Paragraph 2(b):** The definition of associated personnel is taken from Article 1(b) of the Convention on the Safety of United Nations and Associated Personnel (1994).

**Paragraph 2(c):** The definition of United Nations operation is taken from Article 1(c) of the Convention on the Safety of United Nations and Associated Personnel (1994).

## *Article 163.2: Penalty*

1. The applicable penalty range for the criminal offense of endangering United Nations and associated personnel is five to twenty years' imprisonment.
2. When the criminal offense of endangering United Nations and associated personnel involves the unlawful killing of any United Nations or associated personnel, the applicable penalty range is ten to thirty years' imprisonment.

### **Commentary**

**Paragraph 2:** Article 163.1(1)(a) states that killing United Nations or associated personnel may form part of the element of the criminal offense of endangering United Nations and associated personnel. Killing is liable to a higher penalty range under the MCC than the other acts mentioned in it. Thus it was decided to create a separate penalty range when the offense involves the killing of a person.