

Questionnaire on Criminal accountability of United Nations officials and experts on mission, pursuant to resolution 70/114, paragraph 23

By operative paragraph 23 of General Assembly resolution 70/114 of 14 December 2015, entitled “Criminal accountability of United Nations officials and experts on mission”, the Secretary-General was requested to prepare a compilation, based on information which should be received from all Member States, of national provisions regarding the establishment of jurisdiction over their nationals, whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature.

In order to facilitate the collation of information for this compilation, the Codification Division of the Office of Legal Affairs of the United Nations has prepared a questionnaire for consideration by Member States in submitting information in response to circular notes LA/COD/50/1 and LA/COD/50/2 dated 31 December 2015, on the same item (attached).

In order to ensure completeness in the preparation of the compilation, the Codification Division of the Office of Legal Affairs of the United Nations would appreciate receiving excerpts of relevant national provisions and short references or citations of such national provisions.

1. Please indicate the available forms of jurisdiction and list the relevant national provision(s) through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; please also specify whether specific legislation applies to United Nations officials and experts on mission: **No Specific Legislation**

- (a) Territoriality
- (b) Nationality
- (c) Passive personality
- (d) Effects doctrine
- (e) Protective principle
- (f) Universality
- (g) Other (if any)

2. To what extent do national provisions establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission (please indicate all that apply and cite relevant national provisions):

- (a) General application to all persons
- (b) Jurisdiction over nationals
- (c) Jurisdiction over stateless persons
- (d) Jurisdiction over foreign nationals (list specific exceptions)
- (e) Specific legislation for particular categories of persons
 - (i) Military United Nations officials and experts on mission
 - (ii) Police United Nations officials and experts on mission
 - (iii) Civilian United Nations officials and experts on mission
 - (iv) Public officials acting in foreign jurisdictions
 - (v) Other (if any)

3. To which extent do national provisions establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(a) General application of criminal law

(b) Application limited to international treaty obligations

(c) Application limited to crimes of a 'serious nature'

(d) Application limited to 'international crimes', including genocide, crimes against humanity and war crimes

(e) Application limited to crimes accompanied with minimum imprisonment term (eg. 3/5 years)

(f) Application limited to crimes affecting 'essential interest(s) of the State'

(g) Application limited to crimes affecting public security

(h) Application limited to specific list of crimes

(i) Other limitations to the application *ratione materiae* of domestic law (if any)

4. Which, if any, prerequisites are placed before the application of extraterritorial jurisdiction for United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(I)

(a) Agreement (SOFA/SOMA) with host State on extraterritorial jurisdiction

(b) Agreement (SOFA/SOMA) with host State with respect to United Nations officials or experts on mission

(c) Any other agreement

(d) National law

(II)

(a) Offence must be extraditable

(b) Double criminality, with/without specific limitations to its application

(c) Presence of the offender in territory of forum State, with/without specific limitations to its application

(d) Application of principles of *ne bis in idem*

(e) Permission to prosecute required by Public Prosecutor/Attorney-General/other specific government official(s)

5. What is the legal basis for the application of rules of immunity to United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions):

(a) Convention on Privileges and Immunities of the United Nations, 1946, as applicable

(b) Specific agreement with the United Nations (SOFA/SOMA/other)

(c) Specific agreement with the host State (SOFA/SOMA/other)

(d) Other general privileges and immunities applicable, including those accorded by national law

6. To what extent is military and/or civilian law applicable to crimes committed by United Nations officials or experts on mission (please indicate all applicable categories and cite relevant national provisions):

(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission

(b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission

(c) Potential application of civilian law/courts to military personnel

7. Please provide any other comments.

Citation of Relevant national provisions attached on the following page

1. (a)

CRIMINAL ACT

PART I GENERAL PROVISIONS

CHAPTER I LIMIT OF APPLICABILITY OF CRIMINAL CODE

Article 2 (Domestic Crimes)

This Act shall apply to both Korean nationals and aliens who commit crimes in the territory of the Republic of Korea.

Article 4 (Crimes by Aliens on Board Korean Vessel, etc. outside Korea)

This Act shall apply to aliens who commit crimes on board a Korean vessel or Korean aircraft outside the territory of the Republic of Korea.

1. (b)

CRIMINAL ACT

PART I GENERAL PROVISIONS

CHAPTER I LIMIT OF APPLICABILITY OF CRIMINAL CODE

Article 3 (Crimes by Koreans outside Korea)

This Act shall apply to all Korean nationals who commit crimes outside the territory of the Republic of Korea.

1. (c)

CRIMINAL ACT

PART I GENERAL PROVISIONS

CHAPTER I LIMIT OF APPLICABILITY OF CRIMINAL CODE

Article 6 (Foreign Crimes against Republic of Korea and Korean National outside Korea)

This Act shall apply to aliens who commit crimes, other than those specified in the preceding Article, against the Republic of Korea or her nationals outside the territory of the Republic of Korea: Provided, That this shall not apply in case where such acts under Act in effect at the time of the act do not constitute a crime, or the prosecution thereof or the execution of the punishment therefor is remitted.

1. (e)

CRIMINAL ACT

PART I GENERAL PROVISIONS

CHAPTER I LIMIT OF APPLICABILITY OF CRIMINAL CODE

Article 5 (Crimes by Aliens outside Korea)

This Act shall apply to aliens who commit any of the following crimes outside the territory of the Republic of Korea:

1. Crimes concerning insurrection;
2. Crimes concerning foreign aggression;
3. Crimes concerning the national flag;
4. Crimes concerning currency;
5. Crimes concerning securities, postage and revenue stamps;
6. Crimes specified in Articles 225 through 230 among crimes concerning documents; and
7. Crimes specified in Article 238 among crimes concerning seals.

Article 6 (Foreign Crimes against Republic of Korea and Korean National outside Korea)

This Act shall apply to aliens who commit crimes, other than those specified in the preceding Article, against the Republic of Korea or her nationals outside the territory of the Republic of Korea: Provided, That this shall not apply in case where such acts under Act in effect at the time of the act do not constitute a crime, or the prosecution thereof or the execution of the punishment therefor is remitted.

1. (g)

CONSTITUTION OF THE REPUBLIC OF KOREA

Article 6(1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.

(2) The status of aliens shall be guaranteed as prescribed by international law and treaties.

AVIATION SAFETY AND SECURITY ACT

CHAPTER I GENERAL PROVISIONS

Article 3 (Observance of International Conventions)(1) For the security of civil aviation, except for matters prescribed by this Act, the following international conventions shall be observed: 1. The Convention on Offenses and Certain Other Acts Committed on Board Aircraft;

2. The Convention for the Suppression of Unlawful Seizure of Aircraft;

3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

4. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

5. The Convention on the Marking of Plastic Explosives for the Purpose of Detection.

(2) Any other international convention related to the aviation security, in addition to the international conventions under paragraph (1), shall also be observed.

2. (a)

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CHAPTER I LIMIT OF APPLICABILITY OF CRIMINAL CODE

Article 3 (Crimes by Koreans outside Korea)

This Act shall apply to all Korean nationals who commit crimes outside the territory of the Republic of Korea.

3. (a)

CRIMINAL ACT

PART I GENERAL PROVISIONS

CHAPTER I LIMIT OF APPLICABILITY OF CRIMINAL CODE

Article 3 (Crimes by Koreans outside Korea)

This Act shall apply to all Korean nationals who commit crimes outside the territory of the Republic of Korea.

4. (II) (b)

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Article 6 (Foreign Crimes against Republic of Korea and Korean National outside Korea)

This Act shall apply to aliens who commit crimes, other than those specified in the preceding Article, against the Republic of Korea or her nationals outside the territory of the Republic of Korea: Provided, That this shall not apply in case where such acts under Act in effect at the time of the act do not constitute a crime, or the prosecution thereof or the execution of the punishment therefor is remitted.

5. (a)

Convention on the Privileges and Immunities of the United Nations

SECTION 18. Officials of the United Nations shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

6. (a), (b)

MILITARY CRIMINAL ACT

PART I GENERAL PROVISIONS

Article 1 (Persons subject to Application of this Act) (1) This Act shall apply to military persons of the Republic of Korea who perpetrate a crime specified in this Act.

(2) The term "military persons" in paragraph (1) means officers, warrant officers, noncommissioned officers, and enlisted soldiers, who are in active service: Provided, That enlisted soldiers in secondment service shall be excluded herefrom.

(5) If a person specified in any provision of paragraphs (1) through (3) perpetrate a crime under this Act while he/she is in military service, is enrolled in a school, or stays in a military base for military service, this Act shall apply to such person even after he/she is discharged from active service, released from call-up, expelled from the school, or released from the military base.

Article 1-2 (Territorial Scope of Application)

This Act shall also apply to cases where a person specified in Article 1 perpetrates a crime under this Act (limited to crimes specified in the subparagraphs of Article 1 (4) where a person subject to the application of the aforesaid paragraph is involved) outside of the territory of the Republic of Korea.

Article 4 (Applicability of other Acts)

Concerning crimes perpetrated by persons subject to the application of this Act under Article 1, other Acts and subordinate statutes shall govern if this Act contains no specific provision.