

*International Criminal Court (Amendment) (Crime of Aggression) Bill*

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**B I L L**

TO

Amend the International Criminal Court Act 2001 in relation to the incorporation into domestic law of the crime of aggression as an offence under that Act

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Amendment of the International Criminal Court Act 2001**

(1) The International Criminal Court Act 2001 (c. 17) is amended as follows.

(2) Section 50 (*Part 5 : Offences under domestic law – Introduction*) is amended, as follows:-

(a) Delete title to section and insert in place thereof —

**“ Meaning of “genocide”, “crime against humanity”, “war crime” and “crime of aggression” “**

(b) In subsection (1) insert, at end of list, as follows :-

“ ... “crime of aggression” means a crime of aggression as defined in article 8bis “

(3) Schedule 8 (*Genocide, Crimes Against Humanity and War Crimes : Articles 6 to 9*) is amended, as follows:-

(a) Delete title of the Schedule and insert in place thereof —

“GENOCIDE, CRIMES AGAINST HUMANITY, WAR CRIMES AND CRIME OF AGGRESSION : ARTICLES 6 TO 9”

(b) Insert in the Schedule, after “ARTICLE 8” and before “ARTICLE 9” as follows :-

**“ ARTICLE 8 bis**

**Crime of aggression**

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

- a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- c) The blockade of the ports or coasts of a State by the armed forces of another State;
- d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

- g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”

(4) Section 51 (*Genocide, Crimes Against Humanity and War Crimes*) is amended, as follows:-

- (a) Delete title to section and insert in place thereof —

**“Genocide, Crimes Against Humanity, War Crimes and Crime of Aggression”**

- (b) Delete subsection (1) and insert in place thereof, as follows :-

“(1) It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity, a war crime or a crime of aggression. “

(5) Section 52 (*Conduct ancillary to genocide, etc. committed outside jurisdiction*) is amended, as follows:-

- (a) In subsection 2 paragraph (a) delete the reference in brackets and insert in place thereof, as follows :-

“(genocide, crime against humanity, war crime or crime of aggression)”

(6) Section 53 (*Trial and punishment of main offences*) ) is amended, as follows:-

- (a) In subsection 1 paragraph (a) delete the reference in brackets and insert in place thereof, as follows :-

“(genocide, crime against humanity, war crime and crime of aggression)”

(7) Section 55 (*Meaning of ancillary offence*) is amended, as follows:-

- (a) In subsection (1) insert at the beginning, as follows :-

“Subject to subsection (6) below,”

- (b) Insert after subsection (5) as follows :-

“(6) In the case of a “crime of aggression” the references in subsection (1) above shall be applicable only to persons who are in a position effectively to exercise control over or to direct the political or military action of a State. “

(8) Section 58 (*Genocide, Crimes Against Humanity and War Crimes : Northern Ireland*) is amended, as follows:-

(a) Delete title to section and insert in place thereof —

**“Genocide, Crimes Against Humanity, War Crimes and Crime of Aggression”**

(b) Delete subsection (1) and insert in place thereof, as follows :-

“(1) It is an offence against the law of Northern Ireland for a person to commit genocide, a crime against humanity, a war crime or a crime of aggression. “

(9) Section 59 (*Conduct ancillary to genocide, etc. committed outside jurisdiction : Northern Ireland*) is amended, as follows:-

(a) In subsection 2 paragraph (a) delete the reference in brackets and insert in place thereof, as follows :-

“(genocide, crime against humanity, war crime or crime of aggression)”

(10) Section 60 (*Trial and punishment of main offences: Northern Ireland*) is amended, as follows:-

(a) In subsection 1 paragraph (a) delete the reference in brackets and insert in place thereof, as follows :-

“(genocide, crime against humanity, war crime and crime of aggression)”

(11) Section 62 (*Meaning of ancillary offence : Northern Ireland*) is amended, as follows:-

(a) In subsection (1) insert at the beginning, as follows :-

“Subject to subsection (6) below,”

(b) Insert after subsection (5) as follows :-

“(6) In the case of a “crime of aggression” the references in subsection (1) above shall be applicable only to persons who are in a position effectively to exercise control over or to direct the political or military action of a State. “

(12) Section 66 (Mental Element) is amended, as follows:-

(a) In subsection (1) delete paragraphs (c) and (d) and insert in place thereof, as follows :-

“ (c) a war crime,  
 (d) a crime of aggression, or  
 (e) any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC),”

(b) In subsection (2) paragraph (a) delete the reference to paragraph (c) of subsection (1) and replace with a reference to paragraph (d) instead.

(13) In list at Section 81 (*Index of defined expressions*) insert after entry for “crime against humanity” as follows :-

“crime of aggression (in Part 5) | section 50(1)”

## **2 Short title, commencement and extent**

(1) This Act may be cited as the International Criminal Court (Amendment)(Crime of Aggression) Act .

(2) The provisions of this Act come into force on such day as the Secretary of State may by order appoint.

(3) The amendments made by this Act have the same extent as the provisions thereby amended.

## EXPLANATORY NOTE

1. Part 5 of the ICC Act 2001 incorporates the offences in the 1998 Rome Statute for the Establishment of an International Criminal Court ('the Rome Statute'), into domestic law. In June of 2010 the Assembly of States Parties to the 1998 Rome Statute of the ICC, including the United Kingdom which became a full Party to the Rome Statute in 2001, met in conference in Kampala, Uganda at the invitation of the Secretary-General of the United Nations to formally review the provisions of that Statute. A resolution was passed, by and with the consensus of all States Party there present, to incorporate into that Statute provisions on the definition of a crime of aggression, and conditions for the future exercise by the ICC of its jurisdiction, with respect to that crime. The purpose of this Act is to amend the provisions of the ICC Act 2001 so as to incorporate that crime and its definition, as is set out in section 1(3) above, for incorporation into Schedule 8 of that Act, and as now appears at article 8(bis) of the Rome Statute as amended at Kampala.

2. This is not an obligation under the ICC Statute (except in respect of offences against the administration of justice of the ICC). Rather the purpose is to ensure that domestic authorities will always be in a position to investigate and, if necessary, prosecute ICC crimes allegedly committed by UK nationals, persons resident in this country and UK service personnel. Under the principle of "complementarity", the ICC cannot commence an investigation into such allegations if they have been dealt with properly by a State Party.