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# BILLS DIGEST

Digest No. 1703

## International Non-Aggression and Lawful Use of Force Bill 2009 (Member's Bill - Kennedy Graham)

<b>Date of Introduction:</b>	30 July 2009
<b>Member:</b>	Kennedy Graham
<b>Select Committee:</b>	As at 04 August, 1st Reading not held.
<b>Published: 04 August 2009</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of the Bill is to introduce into the criminal law a new crime, the "crime of aggression", which might be committed by a "New Zealand leader" and which would be justiciable<sup>1</sup> in the New Zealand courts.

The overriding purpose of this reform is to:

<sup>1</sup> "justiciable" means "capable of being settled by a Court of law, subject to resolution by judicial method", Peter Spiller, Butterworths New Zealand Law Dictionary, Sixth edition, Lexis-Nexis NZ Limited, 2005.

- " ... ensure that the use of armed force by New Zealand is always in conformity with international law and in particular the UN Charter; and
- " ... protect New Zealand leaders from external pressure to commit the New Zealand Defence Force to any illegal action overseas"<sup>2</sup>.

## Background

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In a media release, Kennedy Graham said that this legislation " ... prohibits our country unlawfully engaging in armed force against other countries", and that the Bill is aimed at " ... strengthening the rule of international law, through national action as provided for in the UN Charter" and that this is " ... the most effective way of promoting global and national security for all nations and their peoples"<sup>3</sup>.

## Main Provisions

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### Leader's aggression offence

The Bill provides that it is unlawful for a "New Zealand leader" to plan, prepare, initiate or execute "an act of aggression" which, if it is committed (whether in or outside New Zealand), by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. This offence carries a maximum penalty of 10 years' imprisonment (*Clauses 5 and 8*).

### What is a "New Zealand leader"?

The Bill defines the term "New Zealand leader" as " ... a New Zealand citizen or a permanent resident of New Zealand, who is in a position in New Zealand or elsewhere, effectively to exercise control over, or to direct, political or military action by the State of New Zealand" (*Clause 3, definition of "New Zealand leader"*).

### What is an "act of aggression"?

The Bill defines the term "act of aggression" as " ... the use of armed force by the State of New Zealand against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the purposes of the Charter of the United Nations. The Bill sets out the acts which, in accordance with United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression (*Clause 6*).

### Exemption for self defence or acts authorised by the UN

The Bill provides that there is no crime of aggression in respect of " ... the inherent right [under the Charter of the United Nations] of individual or collective self-defence of any Member of the United Nations or the use of armed force authorised by the United Nations Security Council (*Clause 7*).

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<sup>2</sup> International Non-Aggression and Lawful Use of Force Bill, 2009 No 62-1, Explanatory note, General policy statement, p. 1.

<sup>3</sup>Media release, Kennedy Graham, International Non-Aggression and Lawful Use of Force Bill.

## Legal advice to New Zealand leader

The Bill provides that a New Zealand leader must, before deciding to commit the armed forces of New Zealand to action involving the use of force, obtain written advice from the Attorney-General to determine whether such action is consistent with the obligations of New Zealand under the Charter of the United Nations. Such written advice must be presented to the House of Representatives " ... for consideration at least 7 days before" such a decision is made (*Clause 9*).

## Special prosecutor

The Bill provides that the Governor-General must appoint a "Special Prosecutor" on the advice of the Attorney-General. The Special Prosecutor holds office for 5 years from the date of appointment " ... at the pleasure of the Governor-General" and cannot be re-appointed. New Zealand citizens or residents " ... may bring to the attention of the Special Prosecutor any information regarding an alleged crime of aggression or any other action regarding the possible contravention of this Act by a New Zealand leader". The Special Prosecutor may commence an investigation to assess evidence of an act of aggression by a New Zealand leader. The Special Prosecutor " ... has the powers and duties of a prosecutor under Part 5 of the Rome Statute of the International Criminal Court (as incorporated in the Schedule to the International Crimes and International Criminal Court Act 2000) that are necessary. If in the future, aggression becomes included as a justiciable offence under the Rome Statute and in the law of New Zealand, the Special Prosecutor must first consider undertaking prosecution of any person under this Bill " ... before deciding whether to refer the situation to the International Criminal Court, according to the relevant provisions of the International Crimes and International Criminal Court Act 2000". If a Special Prosecutor commences an investigation, he or she must be paid, without further appropriation, remuneration at a rate and of a kind determined by the Remuneration Authority under the Remuneration Authority Act 1977 and the costs of the investigation. The Bill also provides that the Special Prosecutor may be removed or suspended from office by the Governor-General, upon an address by the House of Representatives, for disability affecting performance, or for misconduct (*Clause 10*).

## Immunities

The Bill provides that nothing in the Bill may be interpreted " ... as limiting in any way the existing immunities enjoyed by any member of the New Zealand Defence Force regarding the execution of their military duties" (*Clause 11*).

## Remuneration Act 1977

The office of the "Special Prosecutor for the Crime of Aggression" is added to the list of offices for which salaries are set by the Remuneration Authority (*Clause 12 amending Schedule 4 of the Remuneration Act 1977 by adding the office of "Special Prosecutor for the Crime of Aggression"*).

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