

UK CICC Position¹ on Support for the CICC Aggression Team Draft Paper.

The following sets out the position of the UK CICC, on the current draft position paper recently circulated by the Team Leader of the CICC Aggression Team, on the topic of the adoption of an amendment to the Rome Statute, at the forthcoming Kampala Review Conference, with respect to incorporating a definition and elements of the Crime of Aggression, and conditions for the Court's exercise of jurisdiction with respect thereto..

- The UK CICC very firmly supports the call in the conclusion of the draft paper to “*urge the utmost efforts by the Review Conference to achieve adoption*” of a provision on the crime of aggression which “*truly advances peace, freedom and justice, in accordance with the purposes and principles of international criminal law.*”
- In particular, the UK CICC acknowledges the tremendous advances that have been made since Rome in 1998, towards a genuine, workable and judicious definition of the crime, as can now be found set out in proposed Article 8(*bis*), in the Annex to the Final Report of the Special Working Group on the Crime of Aggression, as adopted by the resumed second session of the Seventh Assembly in New York early last year.
- We consider that this draft provision has now reached such an advanced stage of formulation, that it should now be very capable of such final refinement as needed in order to achieve its adoption at the Conference by consensus. In particular, whilst we appreciate that the accepted ‘*negotiating position*’ at such conferences is that “*nothing is agreed, until everything is agreed*” ; equally we do not consider that, in the final outcome, consensus (or sufficient agreement short thereof) on the adoption of a provision on definition, should be made conditional upon adoption with respect to any other aspects.
- Equally, we also firmly believe that essentially the same position prevails with respect to the adoption of an amendment incorporating the Elements of the Crime, as they were set out in draft in the Annex to the Report on the inter-sessional meeting, held at the Princeton Club in New York 8-10 June last year (2009).
- Further, we note that adoption of these two aspects (definition and elements) will by themselves then enable, those States Party who have not already done so, to move to an early enactment of implementing legislation, within their respective national criminal laws, in order to incorporate these provisions. This would clearly advance and enhance both the principles of complementarity and universality, and we would certainly look forward to an early amendment to the ICC Act 2001, the relevant incorporating legislation here in the UK, reiterating such provisions within our own domestic criminal code

¹ Please note that this paper is not supported by Amnesty International (UK), whose position is neither to support nor discourage adoption of an amendment on the crime of aggression, independently of the substance of the amendments; or by 'Redress'.

- Regarding agreement on conditions for the exercise of jurisdiction, we note with particular interest the view expressed by a clearly overwhelming majority of States Party, as at the recent resumed session of the eighth Assembly, favouring either of the two combinations (# 3 or 4) set out in the Chart annexed to the non-paper presented by the Chair of the Special Working Group on the Crime of Aggression². The common feature of these combinations was the use of conditions, for the exercise of jurisdiction, which did not depend upon any exclusive pre-determination or authorisation by the UN Security Council. We firmly concur with this position as forming an essential ingredient for respecting and securing both the independence and integrity of the position of the Court within the international arena.
- Accordingly, whilst we would again prevail upon the Review Conference to employ utmost efforts to also reach a sufficient consensus regarding the conditions for the exercise of jurisdiction, so as to enable the adoption of an amendment on this aspect ; we would not support the adoption of such an amendment, unless it also fully respected the independence and integrity of the institution of the Court, and in particular does not tie the exercise of jurisdiction by it, to any exclusive pre-determination by any external body. Most especially one that exercises an essentially political function, such as the Security Council, which we would regard as a wholly unacceptable and flagrant breach of the principle of the separation of the exercise of political and judicial functions, which should be applied and respected as much on the international plane as in the national arena. To this end we would support only a compromise solution based on Alternative 2 for Paragraph 4 of the draft proposed article 15(*bis*), as set out in the Annex to the Final Report of the Special Working Group on the Crime of Aggression.

Given that we find these propositions and perspectives to be entirely consonant with, the more broadly expressed position, as set out in the draft Aggression Team Paper, we are delighted to express our firm support for the immediate adoption of that Paper in advance of the Kampala Conference and its transmission to the Conference Delegates.

Finally, we also take the view that in the event there are members of the wider Coalition, who find themselves unable to support this Team Paper, appropriate language acknowledging their dissenting positions, could be accommodated within the text, which, as we see it, clearly expresses the well established broad consensus among those of us who have contributed to the work of this Team over many years. Any language which opposed, or even equivocated on, the adoption of amending provisions in the statute to incorporate the crime of aggression, as per the fulfilment of the implicit commitment articulated in Art 5(2) of the Statute, would be wholly objectionable and utterly inconsistent with both the work of, and the spirit enjoyed by, the Aggression Team to-date.

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² H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini (Jordan)