Crimes of aggression: a question of national integrity **New Zealand International Review** **Kennedy Graham 1 November 2009**

Kennedy Graham, MP for the Green Party in New Zealand, argues the case for criminalization of aggression in international and domestic law after the House last year tuned down legislation that would have made aggression a crime in New Zealand law.

(…) The explanatory note in the 2009 member's Bill identified the primary purpose of the proposed legislation as ensuring that New Zealand always use armed force in a manner consistent with international law and in particular the UN Charter. To that end, the Bill would make it a crime in New Zealand domestic law for any New Zealand leader in commit the New Zealand Defence Force to any act of aggression. The penalty, upon indictment and conviction, would be imprisonment (maximum ten years).

An act of aggression was defined in the Bill as any action which, by its character, gravity and scale, would constitute a manifest violation of the UN Charter. Seven specific actions were identified as meeting that threshold: invasion, bombardment, blockade, attacking another's armed forces, violating a military agreement governing the stationing of one's forces in another country, allowing one's territory to be used by an aggressor nation, and sending one's nationals to act as mercenaries. (…)

From the debate in the first reading, it was clear that the principal concern of the government was that the Bill would render New Zealand hostage to the Security Council. New Zealand would be unable to co-operate with Western nations when military action is an imperative but the council is prevented from authorising it. (…) This is indeed a serious matter as articulated by the government. For if it is a valid argument, it portends difficulty for the international community in reconciling the criminalization of aggression with the other tenets of contemporary international law. It essentially addresses the notion of the 'responsibility to protect'. Does this doctrine genuinely allow such circumvention of Security Council authorisation? (…)

It is thus abundantly clear that the doctrine of 'responsibility to protect', as it is set out in the principal UN documentation, can only be exercised under UN Security Council authorisation. As such, it remains compatible with the principle of non-aggression as it is set out in the UN Charter. It cannot therefore be credibly claimed that the criminalisation of aggression in the domestic law of New Zealand would be incompatible with the true doctrine of the 'responsibility to protect'. (…)

The Non-Aggression Bill introduced in the New Zealand Parliament in 2009 would have made aggression illegal in domestic law. It would be a criminal offence for any New Zealand leader to commit our armed forces to action in violation of the UN Charter. The Bill would require a legal opinion from the Attorney-General to be tabled in Parliament in advance of any executive decision to deploy. The Bill anticipates the possible criminalisation of aggression within the InternationalCriminal Court at a conference of the parties next year. The government's opposition to the Bill rested mainly on the need for what it saw as the political freedom of action in the emerging 'responsibility to protect' doctrine. This article explores the validity of that argument.

Full article
here
.