



# International Criminal Court Act 2001

## 2001 CHAPTER 17

### PART 5

#### OFFENCES UNDER DOMESTIC LAW

##### *Supplementary provisions*

#### **65 Responsibility of commanders and other superiors**

- (1) This section applies in relation to—
  - (a) offences under this Part, and
  - (b) offences ancillary to such offences.
- (2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where—
  - (a) he either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and
  - (b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (3) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where—
  - (a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences,
  - (b) the offences concerned activities that were within his effective responsibility and control, and

- (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (4) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.
- (5) In interpreting and applying the provisions of this section (which corresponds to article 28) the court shall take into account any relevant judgment or decision of the ICC.

Account may also be taken of any other relevant international jurisprudence.

- (6) Nothing in this section shall be read as restricting or excluding—
  - (a) any liability of the commander or superior apart from this section, or
  - (b) the liability of persons other than the commander or superior.

## 66 Mental element

- (1) References in this Part to a person committing—
  - (a) genocide,
  - (b) a crime against humanity,
  - (c) a war crime, or
  - (d) any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC),shall be construed in accordance with this section.
- (2) Unless otherwise provided by—
  - (a) the articles mentioned in the definition in section 50(1) of the crimes specified in subsection (1)(a) to (c) above, or any relevant Elements of Crimes (see section 50(2)),
  - (b) section 54(1) or 61(1) or article 70.1 (offences in relation to the ICC), or
  - (c) section 65 (responsibility of commanders and other superiors),a person is regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.
- (3) For this purpose—
  - (a) a person has intent—
    - (i) in relation to conduct, where he means to engage in the conduct, and
    - (ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events; and
  - (b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.
- (4) In interpreting and applying the provisions of this section (which corresponds to article 30) the court shall take into account any relevant judgment or decision of the ICC.

Account may also be taken of any other relevant international jurisprudence.

## **67 Meaning of “UK national”, “UK resident” and “person subject to UK service jurisdiction”**

- (1) In this Part a “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas Citizen,
  - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (2) In this Part a “United Kingdom resident” means a person who is resident in the United Kingdom.
- (3) In this Part a “person subject to UK service jurisdiction” means—
  - (a) a person subject to military law, air force law or the Naval Discipline Act 1957 (c. 53);
  - (b) any such person as is mentioned in section 208A or 209(1) or (2) of the Army Act 1955 (c. 18) or the Air Force Act 1955 (c. 19) (application of Act to passengers in HM ships and aircraft and to certain civilians); or
  - (c) any such person as is mentioned in section 117 or 118 of the Naval Discipline Act 1957 (application of Act to passengers in HM ships and to certain civilians).

## **68 Proceedings against persons becoming resident within the jurisdiction**

- (1) This section applies in relation to a person who commits acts outside the United Kingdom at a time when he is not a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction and who subsequently becomes resident in the United Kingdom.
- (2) Proceedings may be brought against such a person in England and Wales or Northern Ireland for a substantive offence under this Part if—
  - (a) he is resident in the United Kingdom at the time the proceedings are brought, and
  - (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in that part of the United Kingdom.
- (3) Proceedings may be brought against such a person in England and Wales or Northern Ireland for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in that part of the United Kingdom) if—
  - (a) he is resident in the United Kingdom at the time the proceedings are brought, and
  - (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in that part of the United Kingdom.
- (4) In this section a “substantive offence” means an offence other than an ancillary offence.
- (5) Nothing in this section shall be read as restricting the operation of any other provision of this Part.

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*Status: This is the original version (as it was originally enacted).*

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**69 References to acts to include omissions, etc**

In this Part “act”, except where the context otherwise requires, includes an omission, and references to conduct have a corresponding meaning.