



International Crimes and International Criminal Court Amendment Bill

190—1

Report of the Foreign Affairs, Defence and
Trade Committee

May 2020

Contents

Recommendation.....	2
About the bill as introduced.....	2
Crime of starvation in non-international armed conflicts	3
Crime of aggression.....	3
Potential crime of ecocide	3
Appendix.....	5

Simon O'Connor
Chairperson

International Crimes and International Criminal Court Amendment Bill

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the International Crimes and International Criminal Court Amendment Bill and recommends that it be passed without amendment.

About the bill as introduced

The Rome Statute established the International Criminal Court. The Court has jurisdiction over individuals who commit genocide, war crimes, crimes against humanity, and the crime of aggression. In New Zealand, the Rome Statute is implemented through the International Crimes and International Criminal Court Act 2000. The Act establishes New Zealand's jurisdiction over certain offences that correspond to the offences set out in the Rome Statute.¹

This bill would amend the Act to incorporate a set of amendments made to the Rome Statute. These amendments relate to war crimes. The bill follows our International Treaty Examination of the War Crimes Amendments to the Rome Statute of the International Criminal Court in June 2019.²

The war crimes amendments expand the list of war crimes that are subject to the Court's jurisdiction and enable it to hold individuals criminally responsible for them. In June 2010, the Assembly of States Parties to the Rome Statute adopted amendments that would make it a war crime to use the following in non-international armed conflicts:

- poison or poisoned weapons
- asphyxiating poisonous or other gases and analogous liquids, materials, or devices
- expanding bullets.

In December 2017, the Assembly added further provisions, which made it a war crime to use the following in international or non-international armed conflicts:

- weapons that use microbial agents, biological agents, or toxins
- weapons that injure by fragments that are undetectable by X-rays
- blinding laser weapons.

The bill would enable proceedings to be brought in New Zealand for these offences under section 8 of the Act.

¹ The Act also enables New Zealand to cooperate with the Court.

² Our report is available on the [New Zealand Parliament website](#).

Crime of starvation in non-international armed conflicts

In December 2019, the Assembly of States Parties amended the Rome Statute. The Starvation Amendment made it a war crime to intentionally starve civilians as a method of warfare by depriving them of things that are essential for their survival. The amendment would apply in non-international armed conflicts.

On 8 May 2020, we presented our report to the House on our International Treaty Examination of the Amendment to the Rome Statute (the Starvation Amendment). We recommended that the House take note of our report and note that the Government intends the treaty to be implemented through an amendment to legislation.³

We were advised that the Starvation Amendment was of the same nature as the other war crimes that are already contained within the bill. Therefore, members of the committee from the New Zealand Labour Party and the Green Party of Aotearoa New Zealand supported officials' recommendation that the crime of starvation in a non-international armed conflict be incorporated into this bill. However, Opposition members of the committee consider that separate processes should be maintained for this bill and a bill to implement the Starvation Amendment, as is the usual process for international treaties.

Crime of aggression

In 2010, the Assembly adopted amendments relating to the crime of aggression, which entered into force in July 2018. The Rome Statute defines the crime of aggression as the:

planning, preparation, initiation or execution, by a person in a position effectively to exercise control 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.

Several submitters queried why the aggression amendments are not included in the bill. They noted that New Zealand has indicated support for including the crime of aggression in the Rome Statute on multiple occasions.

We received advice that Cabinet has not yet approved the ratification of these amendments, which are more complicated than the war crimes amendments. The amendments involve complex policy decisions about how the crime would be implemented in New Zealand legislation. Additionally, the aggression amendments have not had a national interest analysis presented to the House nor been referred to us for examination.

Potential crime of ecocide

One submitter suggested that the bill be extended to include ecocide (the destruction of the natural environment) as an international crime. Alternatively, they proposed that a review be conducted about what other crimes should be included as international crimes in New Zealand. The Rome Statute does not contain an international crime related to ecocide. Also, ecocide is not currently recognised as an international crime under treaty or customary

³ Under Standing Order 400(4), if the Government intends for the treaty to be implemented through a bill, the committee must draw this to the House's attention.

international law. However, we note that the concept of ecocide is not a foreign concept and has validity, having been included in the drafts of the Rome Statute until 1996.

Appendix

Committee procedure

The International Crimes and International Criminal Court Amendment Bill was referred to the committee on 5 December 2019. The closing date for submissions was 7 February 2020. We received and considered nine submissions from interested groups and individuals. We heard oral evidence from one submitter via video link.

We received advice from the Ministry of Foreign Affairs and Trade.

Committee members

Simon O'Connor (Chairperson)
Hon Gerry Brownlee
Paulo Garcia
Golriz Ghahraman
Hon Todd McClay
Priyanca Radhakrishnan
Hon Aupito William Sio
Louisa Wall

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.