



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

---

# International Crimes and International Criminal Court Amendment Bill

---

*05/02/2020*

## Submission on the International Crimes and International Criminal Court Amendment Bill

### 1. Summary

- 1.1. The International Crimes and International Criminal Court Amendment Bill (**the Bill**) amends the International Crimes and International Criminal Court Act 2000 (**the Act**), in order to incorporate amendments made to the Rome Statute.
- 1.2. New Zealand voted in favour of those amendments and the Bill makes the necessary changes to domestic law to enable those amendments to be ratified.
- 1.3. The Law Society supports the progress of the Bill, and its only submission relates to the Bill's exclusion of the amendments to the Rome Statute concerning the crime of aggression. The Law Society suggests that the Foreign Affairs, Defence and Trade select committee (**the committee**) may wish to clarify with officials the reasons for the exclusion of these amendments from the Bill.
- 1.4. The Law Society does not seek to present oral submissions but is happy to assist the committee with any queries.

### 2. The Weapons Amendments

- 2.1. The Act implements New Zealand's obligations under the Rome Statute of the International Criminal Court (**the Court**). Since the Rome Statute was adopted it has been amended on a number of occasions to add further crimes to the jurisdiction of the Court. Three amendments are particularly relevant to the Bill.
- 2.2. First, amendments adopted in 2010 criminalise the use of certain weapons in non-international armed conflict, namely:<sup>1</sup>
  - (a) Poison or poisonous weapons;
  - (b) Asphyxiating, poisonous, or other gases, and analogous liquids, materials, or devices;
  - (c) Expanding bullets
- 2.3. Second, amendments adopted in 2017 criminalise the use of further weapons in both international and non-international armed conflict:
  - (a) Biological weapons;
  - (b) Weapons or munitions designed to injure with fragments that escape detection by x-rays;
  - (c) Laser weapons specifically designed to cause blindness.
- 2.4. The Bill implements these amendments (**the Weapons Amendments**). This enables the government to ratify the amendments, following which they will come into force for New Zealand.
- 2.5. The Law Society supports the implementation of the Weapons Amendments. These will preserve the principle of complementarity, and ensure that New Zealand is in line with international developments and retains the right to prosecute crimes committed by New Zealanders or on New Zealand territory.

---

<sup>1</sup> These were already illegal for use in international armed conflicts.

### **3. The crime of aggression**

- 3.1. A third set of amendments was adopted in 2010 to bring the crime of aggression within the jurisdiction of the Court (**the Aggression Amendments**). A crime of aggression includes the planning or use of armed force against the sovereignty, territorial independence or political independence of another state.<sup>2</sup>
- 3.2. Although the Bill incorporates the amended Statute into the Act (by replacing the existing version in the Schedule), clause 5 provides that the new aggression provisions (Articles 8 *bis*, 15 *bis*, 15 *ter* and 25 (3 *bis*)) ‘do not apply to, and do not have the force of law in, New Zealand.’
- 3.3. Parliament appears to have originally intended to legislate for the crime of aggression once it was finalised at international law.<sup>3</sup> In 2009, a Private Member’s Bill that would have introduced a crime of aggression did not pass its first reading.<sup>4</sup> That was before the Aggression Amendments were made to the Statute.
- 3.4. In 2013, MFAT issued a briefing on the 2010 amendments. The committee’s 2013 report recommended that the New Zealand government prioritise ratification.<sup>5</sup>
- 3.5. In 2017, New Zealand supported the adoption of Resolution ICC-ASP/16/Res.5 activating the Court’s jurisdiction over the crime of aggression.<sup>6</sup> MFAT records that New Zealand’s adherence to these amendments is ‘in progress’<sup>7</sup> and it is unclear whether the government has a position on the issue. The Aggression Amendments have not been the subject of a National Interest Analysis or referred to the Foreign Affairs, Defence and Trade Committee for examination
- 3.6. The explanatory note records that the Bill excludes the Aggression Amendments because ‘New Zealand has not made the necessary domestic arrangements to ratify or accept the amendments to the Statute relating to the crime of aggression.’

### **4. The Law Society makes the following submissions**

- 4.1. It is unclear what ‘necessary domestic arrangements’ must be made to enable the implementation of the Aggression Amendments. For example, it is not clear whether the government anticipates that amendments to other legislation would also be required. It is possible that the necessary Cabinet approval to ratify the Aggression Amendments is still required. The select committee may wish to clarify this with officials.
- 4.2. The Law Society does not suggest that the passage of the present amendments should be held up in the meantime. If Cabinet approval is given to adopt the Aggression Amendments, it will still be necessary for a National Interest Analysis to be prepared and for the treaty to be examined by the select committee. If necessary, a separate Bill will need to be introduced to implement the Aggression Amendments.

---

<sup>2</sup> See Article 8 *bis* of the amended Statute in the Schedule to the Bill.

<sup>3</sup> See eg International Crimes and International Criminal Court Bill 2000 (34-2), explanatory note, p 3.

<sup>4</sup> International Non-Aggression and Lawful Use of Force Bill 2009; see (19 August 2009) 656 NZPD 5740.

<sup>5</sup> Report of the Foreign Affairs, Defence and Trade Committee “Briefing on the International Criminal Court and the Kampala Amendment on the Crime of Aggression (2013), p 4.

<sup>6</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ASP16/ICC-ASP-16-Res5-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res5-ENG.pdf)

<sup>7</sup> <https://www.treaties.mfat.govt.nz/search/details/p/60/800>.

- 4.3. The Bill would incorporate the amended version of the Rome Statute into the Schedule, including the Aggression Amendments, but then disapply those amendments by clause 5(3). The committee may wish to consider whether that is the most appropriate drafting technique.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Herman Visagie  
**Vice President**  
5 February 2020