

Proactive Release

Date: 4 August 2020

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs:

***International Crimes and International Criminal Court Amendment Bill:
Supplementary Order Paper to Incorporate Starvation Amendment***

(CAB-20-MIN-0320 refers)

(LEG-20-MIN-0095 refers)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- 9(2)(a): to protect individuals' privacy.

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Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

International Crimes and International Criminal Court Amendment Bill: Supplementary Order Paper

Portfolio **Foreign Affairs**

On 30 June 2020, the Cabinet Legislation Committee, having been authorised by Cabinet to have Power to Act [CAB-20-MIN-0318]:

1 **noted** that the:

- 1.1 International Crimes and International Criminal Court Amendment Bill (the Bill) was introduced on 21 November 2019, and referred to the Foreign Affairs, Defence and Trade Committee (the Committee) on 3 December 2019;
- 1.2 Committee reported on 28 May 2020, recommending that the Bill be passed without amendment;

2 **noted** that in February 2020, the Cabinet Business Committee:

- 2.1 noted that in December 2019, the Assembly of States Parties to the Rome Statute of the International Criminal Court adopted the Starvation Amendment;
- 2.2 agreed to ratify the Starvation Amendment, subject to satisfactory completion of the parliamentary treaty examination process and the enactment of necessary implementing legislation;
- 2.3 noted that the Starvation Amendment is within scope of the Bill, which incorporates previously-agreed war crimes amendments;
- 2.4 agreed, subject to completion of the parliamentary treaty examination process, that changes needed to implement the Starvation Amendment be adopted by the Committee and included in the Bill;

[CBC-20-MIN-0007]

3 **noted** that the Committee:

- 3.1 completed its parliamentary treaty examination of the Starvation Amendment, supporting the Amendment, and encouraging the government to introduce legislation that would incorporate the Starvation Amendment into law;
- 3.2 voted against the incorporation of the Starvation Amendment into the Bill;

- 4 **noted** that:
- 4.1 the Starvation Amendment falls within the legislative scope of the Bill;
- 4.2 including the Amendment in the Bill would allow for its timely ratification;
- 5 **approved** the release of the Supplementary Order Paper to the International Crimes and International Criminal Court Amendment Bill [PCO 18741-1/2.0] which incorporates the Starvation Amendment into the Bill.

Gerrard Carter
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Tracey Martin
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

The final version of the Supplementary Order paper is publicly available online at:
<http://www.legislation.govt.nz/sop/government/2020/0535/latest/LMS368570.html>

House of Representatives

Supplementary Order Paper

Tuesday, 30 June 2020

International Crimes and International Criminal Court Amendment Bill

Proposed amendments

Rt Hon Winston Peters, in Committee, to move the following amendments:

Clause 4

In *clause 4(2)*, definition of **Statute** after *paragraph (a)(iv)* (page 2, after line 20), insert:

- (v) C.N.399.2019.TREATIES-XVIII.10, dated 30 August 2019; and

Schedule

In the *Schedule*, Article 8(2)(e)(xviii) (page 17, line 21), replace “.” with “;”.

In the *Schedule*, Article 8(2)(e) (page 17, after line 21), insert:

- (xix) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies.

Explanatory note

This Supplementary Order Paper amends the International Crimes and International Criminal Court Amendment Bill, which in turn amends the International Crimes and International Criminal Court Act 2000 (the **principal Act**).

At its 18th session in December 2019, the Assembly of States Parties to the Rome Statute amended the Rome Statute to make it a war crime to intentionally use starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies, in the context of a non-

international armed conflict (the **Starvation Amendment**). The amendments in this Supplementary Order Paper incorporate the crime of starvation in a non-international armed conflict into New Zealand law. The intentional starvation of civilians as a method of warfare is already a war crime under the Rome Statute in international armed conflicts. The Government approved the ratification of the Starvation Amendment in March 2020, and officials recommended the incorporation of the Starvation Amendment in the Bill while the Bill was before the Foreign Affairs, Defence and Trade Committee. However, the Foreign Affairs, Defence and Trade Committee recommended the Bill be passed without amendment when it reported the Bill back to the House on 28 May 2020.

The amendments in this Supplementary Order Paper incorporate the Starvation Amendment into the principal Act by—

- amending the definition of Statute (which means the Rome Statute) in *clause 4(2)* of the Bill, to insert, in *paragraph (a) new subparagraph (v)*, which refers to the UN Depositary Notification that contains the text of the new starvation war crime; and
- amending the *Schedule* of the Bill that replaces the full text of the Rome Statute, to insert, in *Article 8(2)(e)*, *new subparagraph (xix)* as contained in the depositary notification referred to above.



Cabinet

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Report of the Cabinet Legislation Committee: Period Ended 3 July 2020

On 6 July 2020, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 3 July 2020:

LEG-20-MIN-0095 **International Crimes and International Criminal Court Amendment Bill: Supplementary Order Paper** CONFIRMED
Portfolio: Foreign Affairs

OUT OF SCOPE

Michael Webster
Secretary of the Cabinet

International Crimes and International Criminal Court Amendment Bill: Supplementary Order Paper to incorporate Starvation Amendment

Proposal

- 1 This paper seeks approval to introduce a Supplementary Order Paper at the committee stage of the International Crimes and International Criminal Court Amendment Bill, in order to incorporate the recent Starvation Amendment to the Rome Statute of the International Criminal Court into the Bill.

Background

- 2 The International Crimes and International Criminal Court Amendment Bill is currently set down for its second reading.
- 3 The Bill incorporates previous war crimes amendments to the Rome Statute into New Zealand's implementing legislation, the International Crimes and International Criminal Court Act 2000. These amendments add several new war crimes to the Court's jurisdiction as agreed by the ICC Assembly of States Parties.
- 4 The 2000 Act establishes New Zealand's jurisdiction over specific offences corresponding to those offences set out in the Rome Statute, and provides for cooperation with the Court, for example through assistance with investigation and prosecution.
- 5 Ensuring that New Zealand's legislation includes all the war crimes included in the Rome Statute is desirable in light of the Court's principle of complementarity (which dictates that the Court will only exercise its jurisdiction where the relevant State Party is unwilling or unable to prosecute the crimes within their domestic jurisdiction) and helps ensure that the Court remains a court of last resort.
- 6 The Bill was introduced on 21 November 2019 and referred to the Foreign Affairs, Defence and Trade Committee ('the Committee') on 3 December 2019. The Committee reported on 28 May 2020, recommending that the Bill be passed without amendment.

- 7 This Bill will enable New Zealand to ratify these war crimes amendments, all of which New Zealand supported.

Starvation Amendment

- 8 After the Bill's introduction, at the 18th session of the Assembly of States Parties (ASP) to the Rome Statute in December 2019, the ASP amended the Rome Statute to make it a war crime to intentionally use starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies, in the context of a non-international armed conflict ('the Starvation Amendment'). New Zealand supported this amendment.
- 9 Cabinet (CBC-20-MIN-0007) approved the ratification of the Starvation Amendment in March 2020, subject to the satisfactory completion of the Parliamentary treaty examination process and the enactment of necessary implementing legislation.
- 10 The Committee completed its parliamentary treaty examination of the Starvation Amendment and reported on 8 May 2020. It supported the Amendment, and encouraged the Government to introduce legislation that would incorporate the Starvation Amendment into law.

Analysis

Incorporation of Amendment

- 11 During the select committee stage of the Bill, officials recommended to the Committee that the Starvation Amendment crime be incorporated into the Bill. This was because legislative changes needed to give effect to the Starvation Amendment are within the scope of the Bill, and the Starvation Amendment is of the same nature and scope as the other war crimes which are already contained within the Bill.
- 12 The Committee also received a submission from the International Committee of the Red Cross and the New Zealand Red Cross encouraging New Zealand to consider the possibility of incorporating the Starvation Amendment into the Bill.
- 13 The Committee voted against the incorporation of this Amendment into the Bill. Opposition members considered that a separate bill should be introduced

to implement the Starvation Amendment, on the basis that this is the usual process for international treaties.

- 14 The attached Supplementary Order Paper moves to incorporate the Starvation Amendment into the International Crimes and International Criminal Court Amendment Bill, through making the necessary amendments to the Bill and its Schedule, containing the text of the Rome Statute.

Financial Implications

- 15 There are no financial implications arising from the attached Supplementary Order Paper.

Legislative Implications

- 16 The Supplementary Order Paper would have the effect of amending the Bill to include the crime contained in the Starvation Amendment in the primary Act, and amending the text of the Rome Statute contained in the Bill's Schedule.
- 17 Should the Supplementary Order Paper not proceed, a separate Bill would be required in the future to implement the Starvation Amendment in the primary Act. New Zealand would not ratify the Starvation Amendment until such time as implementing legislation was enacted.

Impact Analysis

- 18 An extended national interest analysis (NIA) was prepared for the Starvation Amendment by the Ministry of Foreign Affairs and Trade, which was considered by Cabinet when it approved the ratification of the Starvation Amendment. No further impact analysis is required at this stage.

Human Rights

- 19 The Starvation Amendment contained in the attached Supplementary Order Paper presents no inconsistencies with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.

Consultation

- 20 The New Zealand Defence Force, the Ministry of Defence, New Zealand Police, and the Department of the Prime Minister and Cabinet (Policy Advisory Group) have been consulted and support this Cabinet paper.

Communications

- 21 No publicity is planned at this stage.

Proactive Release

- 22 It is proposed that the Minister release this paper, in whole, on the approval of the recommendations below.

Recommendations

The Minister of Foreign Affairs recommends that the Committee:

- 1 **note** that International Crimes and International Criminal Court Amendment Bill was introduced on 21 November 2019 and referred to the Foreign Affairs, Defence and Trade Committee on 3 December 2019;
- 2 **note** that the Foreign Affairs, Defence and Trade Committee reported on 28 May 2020, recommending that the Bill be passed without amendment;
- 3 **note** that Cabinet (CBC-20-MIN-0007) approved the ratification of the Starvation Amendment in March 2020, subject to the satisfactory completion of the Parliamentary treaty examination process and the enactment of necessary implementing legislation;
- 4 **note** the Foreign Affairs, Defence and Trade Committee completed its parliamentary treaty examination of the Starvation Amendment, supporting the Amendment, and encouraging the Government to introduce legislation that would incorporate the Starvation Amendment into law;
- 5 **note** the Foreign Affairs, Defence and Trade Committee voted against the incorporation of the Starvation Amendment into the ICICC Amendment Bill;
- 6 **note** however that the Starvation Amendment falls within the legislative scope of the ICICC Amendment Bill and that including it in the Bill would allow for its timely ratification;
- 7 **agree** to approve the introduction of a Supplementary Order Paper which seeks to incorporate the Starvation Amendment into the ICICC Amendment Bill.

Authorised for lodgement

Rt Hon Winston Peters

Minister of Foreign Affairs