



JOINT STANDING COMMITTEE ON TREATIES
INTERNATIONAL CRIMINAL COURT

Treaties Committee recommends Australia support International Criminal Court

Subject to recommended Parliamentary safeguards, Australia should ratify the international treaty establishing a permanent International Criminal Court (ICC), according to a report released today by Parliament's Treaties Committee.

Following an eighteen-month investigation, the Committee says that it is in Australia's national interest to be one of the inaugural members of the Court.

The Report says the Government should introduce into the Federal Parliament domestic implementing legislation supporting the Court's establishment as soon as possible.

The Court will be established on 1 July 2002 (the required minimum of 60 nations having already ratified the treaty). The Court will be a permanent judicial body able to prosecute, and hopefully deter, the most serious crimes of international concern, including genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC Statute will not operate retrospectively.

Treaties Committee Chair Ms Julie Bishop MP, said: "After a long and comprehensive inquiry the Committee is confident that there is more to be gained from establishing a permanent international criminal court, than continuing to rely on the sporadic willingness of the international community to establish ad hoc tribunals to bring the perpetrators of atrocities to justice.

"We consider that it is in Australia's national interest to be a member at the first meeting of the States Parties in September 2002 and therefore recommended that the Government take action to ratify the Statute and to introduce implementing legislation into the Parliament as soon as possible."

Ms Bishop said, "the Committee acknowledged concerns raised during the inquiry, and has recommended a number of changes to the Government's draft implementing legislation as a result" (these are explained below, at 'Amendments Recommended').

The five major areas of concern relating to the Statute and the proposed implementing legislation were:

- the potential impact of ratification of the ICC Statute on Australia's sovereignty;
- whether ratification would be unconstitutional;
- the 'vagueness' with which the Statute defines the crimes within its jurisdiction and their definition in the proposed implementing legislation;
- the role of the Prosecutor and the accountability of the Court; and
- the potential impact of ratification on the ability of the Australian Defence Force to participate in peacekeeping and other operations.

Ms Bishop said, "the Committee accepts that the ICC is a hybrid of legal traditions that will operate with control and accountability mechanisms that, in some respects, differ from those in the Australian judicial system".

The Committee has recommended that there be an annual report to Parliament about the operations of the ICC, followed by a reference to the Treaties Committee and a public inquiry.

"Given these further checks and balances, we expect that the terms of the treaty and the companion legislation will ensure that Australia's legal system retains primacy of jurisdiction in the prosecution of war crimes involving Australia and Australians," Ms Bishop said.

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The '**complementarity principle**' expressed in the Statute, as yet untested in international law, will allow for Australia to have the primary duty to investigate alleged crimes and to prosecute, if the evidence supports charges, for the three crimes covered by the Statute – genocide, war crimes and crimes against humanity.

The ICC can only 'step in' if Australia is unwilling or unable to do so, or does so in a manner inconsistent with an intention to bring the person to justice, or to shield the person from criminal responsibility.

AMENDMENTS RECOMMENDED

To re-enforce and strengthen our reliance on the complementarity principle, the Committee has recommended that the Government amend both of the proposed implementing bills to emphasise the primacy of Australia's legal system.

To further express Australia's intention to apply its laws to its own citizens the Committee has recommended that upon ratification the Government lodge a declaration which will specifically state Australia's understanding of the complementarity principle.

This declaration will state that it is Australia's right to exercise its jurisdictional primacy with respect to crimes within the jurisdiction of the ICC. It will further suggest that Australia interprets the crimes listed in Articles 6 to 8 of the Statute of the International Criminal Court strictly as defined in the International Criminal Court (Consequential Amendments) Bill.

To support this action the Committee has recommended that an annual reporting mechanism be set in place which will require the Government to report on the operations of the Court during that year and to refer the report to the Joint Standing Committee on Treaties for public review. The committee has recommended that this process would be assisted by the appointment of a panel of eminent persons to provide expert advice to the Committee's review.

In all, the Committee has made 11 recommendations covering a broad spectrum of issues. The recommendations address major concerns highlighted in submissions to the inquiry, and aim to strengthen Australia's ability to work effectively with the International Criminal Court. The recommendations are attached.

The Committee received more than 250 submissions, plus a number of form letters. The Committee held public hearings in the ACT, New South Wales, Victoria and Western Australia.

**For media comment, please contact
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**For further information, please contact
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**or visit the Committee's web site at
<http://www.aph.gov.au/house/committee/jsct/index.htm>**