

Youth Concerned
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Submission No.151.....

27th of February 2001

**The Secretary
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600**

Submission by Youth Concerned
Inquiry into the 1998 Statute for an International Criminal Court:

Dear Committee Members,

At first glance, the idea of an International Criminal Court (hereafter 'ICC') appears harmless. However, a combination of ambiguous language and the distinct possibility of international law overriding States laws, combine to form a judicial body that is problematic, to say the least.

Youth Concerned is an organisation founded by young people concerned with the direction of public policy making in Australia – as the inheritors of current public policy decisions it is our generation that will be left to deal with the repercussions of decisions made by government.

With this in mind, Youth Concerned urges the Committee to take due care in their analysis of the 1998 Statute for an International Criminal Court ('the Statute'), and all its possible ramifications. We further urge you to recommend that the Government refuse ratification of this treaty and others like it that threaten our nation's sovereignty.

Youth Concerned support the Statute to a *limited degree* in that it deals with the appalling crimes of genocide, war crimes and crimes against humanity.

However, we see three major areas of concern in within the ICC Statute, which cannot be overlooked. These are:

- a) ambiguous language;
- b) the threat to national sovereignty; and
- c) the questionable independence of an 'independent prosecutor'.

a) Ambiguous language

The language contained within the Statute is vague, leaving it wide open to interpretation. For the sake of brevity, we will provide two examples.

Article 6(b) of the Statute declares that genocide includes not only killing members of a "national, ethnical, racial or religious group", but also "causing serious...mental harm to members of the group". What exactly is "serious mental harm"? The definition of "mental harm" can be wide-reaching.

Further, in Article 7 the term "crimes against humanity" is used. These include: murder, extermination, enslavement, forcible transfer of population, torture, sexual slavery, persecution and "other inhuman acts". Again, we must ask, what does such a phrase

actually mean? Who determines the extent of these ‘other inhumane acts’? The Statute does not elaborate, but leaves it to ICC judges – the ‘independent prosecutors’ to decide what is ‘criminal’.

b) Threat to national sovereignty: ‘universal jurisdiction’

World Youth Alliance believes that the ICC poses a threat to Australia’s nationhood. Indeed, the powers allowed by the Statute would pose a threat to the sovereignty of *all* countries – *including, incredibly, those who have not ratified the treaty!*

The ICC claims jurisdiction in countries that haven’t ratified the Statute (Art 12[2]). This means that a person can be tried if the country in which the crime was committed is a ratified state. Jurisdiction also applies if the state of which the defendant resides is a non-signatory.

This concept of ‘universal’ or ‘inherent’ jurisdiction is an affront to the notion of national sovereignty. Asserting that the ICC can ‘inherently’ claim powers over non-signatories is tantamount to claiming authority over *democratically elected governments*. What is equally startling is that the Statute will come into force after a mere 60 nations have signed. Whether the interests of these nations are in line with the interests of ours is certainly debatable.

c) The ‘independent prosecutor’

We further question the notion of an ‘independent prosecutor’. Article 15(1) grants the prosecutor the power to investigate and prosecute entirely of his own volition. However, although the judge is not answerable to governments, he can certainly be swayed by outside interests.

This is evident in Article 44, which allows the prosecutor to accept any offer of “gratis personnel offered by States Parties, intergovernmental organizations or nongovernmental organizations”. In effect, this allows for ‘organs of the court’, or a prosecutor’s office, to be staffed by members of well-funded NGO’s with specific ideologies to pursue.

Conclusion

In this submission Youth Concerned has attempted to outline the key problems we believe exist with ratification of the ICC Statute, however our submissions is in no way exhaustive. As the generation that will have to deal with the significant public policy decisions made by the current political leadership in Australia we would encourage the Committee to be extremely cautious in dealing with issues that threaten Australia’s national sovereignty.

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