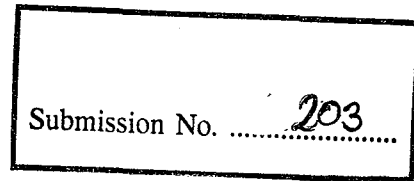


Isaacs (Victoria) Federal Electorate Group
National Civic Council

The Secretary
Gerard J Flood
14 Phillip St, Mentone 3194
Tel 03 9583 2038



A Submission to
The Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT

Re : Inquiry into the 1998 Statute for the Treaty for an International Criminal Court

We submit that Australia's Ratification of the Treaty for the ICC would be contrary to Australia's interests, on six main principles :

1. Unacceptable *De Jure* Reduction of the Sovereign Powers of Australia.
2. Customary Popular Support for Many Legal Principles of Australian Justice Militates Strongly Against Popular Support for the Inferior Legal Principles of the ICC.
3. There are no apparent safeguards which would prevent the jurisdiction of the ICC being expanded over time without the acceptance of Australia so as to exceed the proposed ambit.
4. The Unacceptable Dangers for the Administration of Justice under the ICC.
5. The Difficulty of the Willingness to Prosecute Politically or Militarily Strong Offenders, and the Danger that Normal Behavior be Interpreted as Criminal.
6. The Clear Intentions to Pervert the Purpose of the ICC, eg. in order to Pursue Partisan Social Policies and eg. to Opportunistically Boost Australia's International Prestige.

If Australia's previous support for and vigorous involvement in the development of the ICC is based principally on Australia's wish to be an actively good "international citizen",

And If it is thought probable that Australians would not be highly likely than other nationals to be charged with crimes against humanity etc of recent years,

And If it is thought more probable that these sorts of crimes would more likely occur in notorious trouble spots,

And If it is more likely than not that these sorts of crimes would more often occur outside Australia,

then the onus is on the Australian supporters of the ICC to demonstrate :

1. What are the clear, ascertainable and concrete benefits accruing to Australia and Australian citizens?
2. How do these benefits outweigh all the dangers and costs, both foreseeable and unpredictable?

PRINCIPLE

Unacceptable *De Jure* Reduction of the Sovereign Powers of Australia, and the Resulting Unacceptable Reduction of the Australian Citizen's Rights.

STATEMENT: Australia's ratification of the treaty would diminish the rights, responsibilities and authority of the Australian citizenry to conduct Australia's affairs, both in effect and de jure.

Despite the disclaimers that the ICC only operate in the failure of a nation's ability or willingness to act, this means that if Australia's system of government, including its courts, conducted its laws contrary to ICC law in the opinion of the officers of the ICC, then the Australian Government would be legally under the jurisdiction of an external authority.

In the final analysis, The ICC would be given a "de jure" authority over Australian law, an authority which currently belongs to Australian citizens as the final source of authority for the governing of the sovereign nation state of Australia.

EVIDENCE

While the "Manual for the Ratification and Implementation of the Rome Statute says", p 2, that the ICC is not intended to encroach on an individual state's jurisdiction over crimes, at the same time it says, p 12, that if there is a conflict between the ICC legislation and the individual state legislation, the ICC takes precedence.

To clarify and emphasize this claim, please see p 10 of that Manual where it says that modifications must be made to individual states' criminal codes and human rights laws where this is necessary for ICC law to act in "complementarity" with national law.

It is clear from the foregoing that there is the clear intention and the authority expressed in the official documents for ICC to override national laws. As a court of "last resort", as claimed, it would be the ICC to decide when its powers are applicable, regardless of the rights of Australia to control its criminal law as its citizens see fit.

PRINCIPLE

Customary Community Support for Many Critical Features of Australian Justice Principles Militates Strongly Against Popular Australian Support for the Inferior Principles of the ICC.

STATEMENT

The unacceptable Reversal of Many Critical Features of Australian Justice System is involved.
Some features of Australian criminal justice are commonly and rightly thought to be :

Natural Law

Procedural Fairness

Innocence until proven guilty

Justice not only done, but also seen to be done.

Trial by jury

Effective appeals to higher judicial review.

Established rules for admissibility of evidence

Established standards of proof, eg "beyond reasonable doubt".

Separate authorities and officers for each of the functions of investigation, prosecution, defence and judicial.

ARGUMENT

Many proposed features of the ICC would be opposed by very many Australians for implementation within Australia, (and also, no doubt, for implementation anywhere in the world if Australians were called upon to express their views on other nations' affairs).

In contrast to Australian Justice Principles, Unacceptable Proposed Features include :

Standards for the admissibility of evidence to include hearsay and secret sources

Judicial review by (other members of) the same court, rather than a higher court

Judges and prosecutors organised under one authority,

-increases the opportunity for unfairness and corruption to start,

-makes it very difficult for justice to be seen to be done.

PRINCIPLE

There are no apparent safeguards which would prevent the jurisdiction of the ICC being expanded over time to exceed the ambit currently claimed After the introduction of the ICC's authority, its ambit could be enlarged to cover areas currently neither mentioned, nor intended nor acceptable to Australian citizens as democratically represented.

STATEMENT

It would be a bad thing for Australia to accept ICC jurisdiction as proposed in its official form, if the ICC jurisdiction was later enlarged to cover areas of law which Australian citizens would not accept,

by rejecting the principle of external (ie international) jurisdiction in the new area,

or by rejecting the specific content of a new law, or interpretation of law.

ARGUMENT

It is already established that Non Government Organisations are trying to use the mechanisms of the proposed ICC to create new law which is both :

1. Outside the areas of “the most serious crimes of international concern” (which the ICC claims to be restricted to), and
2. Concerned not with criminal behavior, but with establishing new social policies by the legal punishment of parties impeding those social policies.

We refer here to the fact that at the Rome ICC Treaty Conference, an NGO, “The Women’s Caucus for Gender Justice”, tried to establish a right to abortion services by introducing into the Statute a new crime of “forced pregnancy” if national laws restricted rights to abortion.

It is also already established that international agencies, especially within the United Nations umbrella, have increasingly promoted the political claims of social groups (groups based on ethnicity, or gender, or age, or socio-economic position), under the banner of “human rights”.

There is no reason why these groups and their supporters in the international agencies will not explore every opportunity to use the authority of the ICC to enforce their claims.

PRINCIPLE

The Unacceptable Dangers for the Administration of Justice under the ICC.

STATEMENT

The Administration of Justice under the ICC environment of Australian Justice would most likely be at a standard inferior to, or alien to, that standard acceptable to Australians, and these Weaknesses of the ICC would give Incitement. to Disaffected Australians.

ARGUMENT

Even if the body of law under the ICC were benign or unexceptional, the Administration of Justice by the ICC is objectionable to Australia as follows :

The administration of Justice, speaking broadly, here includes :

- The ethical and legal training of judges, prosecutors, defence lawyers
- The supervision and protection of juries and the jury system
- The selection of judges, including the authority flowing from the citizens under the Australian Constitution to elected representatives, and their responsibility to the nation.

The existence of ICC external legal authority, or the external supply of legal functions would include costs :

Loss of the Australian citizen's right to control the moral quality of the administration of Justice and the Law.

(Bearing in mind that the justice system is not a machine, but that it is performed by individuals, each with his or her own abilities, training, moral formation, attitudes, ethics, judgement etc , then it is appropriate that Australian citizens should reserve for themselves the control of the Administration of Justice in Australia.)

Loss respect for, or serious dissent from, the rule of law consequent upon a real or apparent failure of the ICC to meet a satisfactory standard.

The provision of perceived grievances for the propaganda advantage of disaffected groups consequent upon a real or apparent failure of the ICC.

PRINCIPLE

The Difficulty of the Willingness to Prosecute Politically or Militarily Strong Offenders, and the Danger that Normal Behavior be Interpreted as Criminal.

STATEMENT

The broad and vague identification of charges is such that there is no reliable guide to what actions or behaviors are intended to be forbidden. Consequently, processes would be decided on political factors, not legal ones.

ARGUMENT

Would "crimes against humanity" be apparent in the genocidal murder in Rwanda and the Balkans, but be difficult to detect in the continuing torture, oppression, and cultural and ethnic eradication of the Tibetan people by the responsible ministers of the People's Republic of China?

On the other hand, the subjective interpretation of "criminal infliction of serious injury ... to mental or physical health, by means of an inhuman act" could include many actions taken by organisations with responsibilities for the supervision of dependent individuals' welfare.

PRINCIPLE

The Clear Intentions to Pervert the Purpose of the ICC, eg. in order to Pursue Partisan Social Policies and eg. to Opportunistically Boost Australia's International Prestige

STATEMENT

The Perverting of the Purpose of the ICC raises the question whether the ICC will be used for its ostensible purpose, ie to better replace the ad hoc international and war crimes tribunals, or whether it will be used for sectional interests in "human rights" campaigns, and also used for increasing the power and prestige of Australia or its politically opportunist elites.

ARGUMENT

While the official purpose of the ICC is claimed to be to deal with “the most serious crimes of international concern” in a more effective way than under the existing arrangements, the purpose of many supporters of the ICC is otherwise :

1. UN agencies and NGOs are promoting the sectional interests of social groups against the wider community, under the banner of “human rights”, as referred to above.

At the Rome conference, an NGO, the “Womens Caucus for Gender Justice” exemplified the danger that the ICC can be misused for social policy manipulation. Only by extreme exertion by opposed forces was the WCGJ proposal to make national laws against abortion to be illegal under the ICC.

2. Legal, diplomatic and government elites pressing for increased international prestige for Australia’s influence in international affairs, and for commenting on other nations’ affairs.

For evidence, we refer to the submission of Mr Phillip Scales AM to this Committee :
(ratification) “sends a message ... thereby puts (Australia) in a position where it can ... Comment on deficiencies of other countries, where appropriate, in observing appropriate human rights standards”

These aims have little to do with seeking justice for “the most serious crimes of international concern”, but more to do with political opportunism.

Mr Scales advances not one iota of support for his opinion that the proposed arrangements, more than current arrangements, will actually result in improved outcomes either for the ostensible purposes for addressing the “most serious crimes of international concern” or for Australian citizens, or for the Australian Nation.

Conclusion

The benefits are based on a leap of faith that other nations’ legal representatives, as the ICC, would better protect Australia’s and Australians’ rights than they currently are protected.

The costs and dangers of external jurisdiction insinuating itself into Australian domestic law are foreseeable and real for Australia and Australians.

There has been no case made showing what actual and concrete effects would flow to Australia and Australians in general, and how these effects would be beneficial in a practical way, and how the benefits would outweigh the costs of surrendering the principle of *de jure* sovereignty, plus its consequential and associated problems.

There is no popular support for the proposed Change of Law.