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The Secretary,
Joint Standing Committee on Treaties
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Submission on the Statute for an International Criminal Court

1. In respect of the ratification of United Nations covenants and treaties generally, I submit that the Australian Constitution gives the legislative authority of the Commonwealth to the Federal Parliament only and to purport to make Australian citizens subject to laws not passed by that Parliament is illegal, unconstitutional and anti-democratic. Furthermore, I submit that the proposed Statute is inconsistent with Chapter 3 of the Australian Constitution, dealing with judicial power and Courts. Australia's Parliamentarians cannot continue to act in a manner that violates the provisions of the Constitution, and expect citizens to regard "laws" resulting from that process as binding. While, it is true, Parliamentarians have the power to act in that manner, they do not have legal or constitutional authority to do so and they cannot expect compliance.

2. In respect of the Statute for an International Court, I submit;

- i) The principles embedded in the ICC Statute are inconsistent with Australia's legal tradition, which derives from Britain's Common Law and Christian tradition, as opposed to the civil Napoleonic Code which dominates the thinking of the United Nations bureaucracy. Thus, for example, under this Statute, citizens would be regarded as guilty with the obligation to prove their innocence. This contrasts with the due process followed in Australian law and is utterly inconsistent with Australia's status as an independent nation state and in violation of the Australian Constitution, from which Members of Parliament draw their authority.
- ii) The ICC Statute cedes significant areas of authority and sovereignty to a court over which Australia's citizens and governments have no control. This is utterly inconsistent with Australia's status as an independent nation state and in violation of the Australian Constitution, from which Members of Parliament draw their authority. Experience has shown that UN instrumentalities become power bases for ambitious international bureaucrats who have little accountability to member states. There is a real danger that the ICC would become a tool for radical social engineering.
- iii) The Statute has grossly exceeded the initial draft of the International Law Commission and deals with issues difficult to define clearly, making it dangerously ambiguous.
- iv) The Statute is in violation of the Vienna Convention on Treaties, assuming to bind parties who are not signatories to the treaty. Accepted international practice is that a treaty cannot create obligations for states that are not parties the treaty.
- v) The Statute is anti-democratic in nature, becoming effective with its ratification by only sixty states, or about one third of those states entitled to vote in the UN General Assembly.

- vi) The Statute poses a threat to the rights of citizens of Australia to govern and order their affairs and to respect, order or alter their own religious and cultural traditions. This is utterly inconsistent with Australia's status as an independent nation state and in violation of the Australian Constitution, from which Members of Parliament draw their authority.
- vii) The Statute requires existing legislation of states to be amended to conform to ICC laws and makes the claim that international law under ICC legislation takes precedence over the laws of states. This is utterly inconsistent with Australia's status as an independent nation state and in violation of the Australian Constitution, from which Members of Parliament draw their authority.
- viii) The Statute is inadequate, and dangerously ambiguous, in its description of some of the crimes over which it intends to claim jurisdiction. "Crimes against humanity", for example the "severe deprivation" of a group's "fundamental rights". These terms allow activist judges *carte blanche* and the introduction of such laws into Australian society is utterly inconsistent with Australia's status as an independent nation state and in violation of the Australian Constitution, from which Members of Parliament draw their authority.
- ix) The Statute appears to be in conflict with the UN Charter, Article 2, which states "...nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter..."
- x) If the Australian Parliament allows this Statute to be ratified, it will give the United Nations inherent power to intervene in Australia's domestic social policy. National sovereignty, rather than being inimical to human rights, is absolutely fundamental to the preservation of those rights. To cast aside Australia's legal structure and tradition of justice, modelled on the British system, would be utterly irresponsible and dangerous. And I repeat – Members of the Parliament have no authority to do so.

Davydd Williams