

The Presbytery of Benalla

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Mr Grant Harrison,
Secretary, Joint Parliamentary Standing Committee on Treaties,
Parliament House Canberra.

Dear Mr Harrison

Submission No. 229

Submission on The International Criminal Court

The Presbytery of Benalla, of the Presbyterian Church of Victoria, representing the parishes of Yea, Seymour, Nagambie, Shepparton, Tatura, Kyabram, Stanhope, Numurkah, Cobram, Wodonga, Tallangatta, Yarrawonga, Wangaratta, Bright, Benalla and Mansfield, expresses its grave concern at proposals that Australia should ratify the Statute for the creation of an International Criminal Court, based at the Hague.

It is our view that such a proposal is of such a magnitude as to warrant no action being taken without reference to the Australian people. To date, there has been no informed public debate on the proposal and we take the view that Australia is absolutely competent in dealing with crime, under existing Australian laws.

In brief we express our concern by making only the following points.

1. The stated views of the Federal Attorney-General and Minister for Foreign Affairs, as per their submission are neither reassuring, nor we believe acceptable from elected representatives of the Australian people.

2. For example, *the view that the ICC Statute is only complementary to Australian justice conflicts with Article 17(1a) of the Statute which declares, "The International Criminal Court will take jurisdiction any time a nation is unwilling or unable to act."* This is a direct threat to any nation which values the principle of national sovereignty over its own affairs.

3. *The view that the ICC Statute only relates to the most serious crimes of international concern is also not tenable given the terms of Articles 6, and 7, and especially 6 (b) and 7(h). The vague language employed here would prove to be fertile ground for the imaginations or lack thereof, of international lawyers. For example, "mental harm" in Article 6 (b) opens the door to all manner of claims, which are by the nature of the claim, are beyond evidentiary proof of an empirical nature. Thus, legitimate acad-*

emic and community debate concerning illegal migrants or international refugees who are being held in detention, to which members of such groups take exception, could be the grounds for claiming that mental harm has been experienced. Aborigines might seek to bring action against Australia on that basis. The case of *Nulyarimma v. Thompson* illustrates the point. The High Court threw this out. Under ICC rules, a different outcome might result.

4. *The view that Australia's sovereignty would not be jeopardised by the ICC is not credible.* The ICC Statute requires signatories to alter their Constitutions according to ICC requirements. And once ratified it would expose every Australian to all sorts of possible actions before the court. It would mean that members of parliament, elected by Australians to represent them would be vulnerable to the tentacles of the court. Would this not jeopardise parliamentary privilege in debate? This would be an intolerable situation to place our elected representatives in!

5. Furthermore, *the absence of public debate on an issue of the gravest moment for all Australians represents a radical lapse in fiduciary responsibility on the part of those who are elected to manage the affairs of this nation.* In our view it is a betrayal of Australia's best interests, especially when such arrangements are not necessary, are injurious to our freedoms and sovereignty and are done without the consent of the people of Australia.

6. We believe that *ratification of the treaty would be contrary to Sec 71 of the Australian Constitution* which vests the judicial power of the Commonwealth, not in some external body, but "in a Federal Supreme Court ... and in such other federal courts as the Parliament creates" obviously, all being courts under the control of the Commonwealth. Section 73 also gives no comfort to proponents of ratification, for judicial power of the Commonwealth is to reside within the Commonwealth, and not in some international body.

7. If it is argued that Section 51 (xxix), the clause relating to external affairs, enables the Government to ratify this Treaty, such an argument is void. Section 51 specifically limits the powers of the Commonwealth Government to making laws "for the peace, order, and good government of the Commonwealth." To subject Australia's judicial affairs to a foreign court, subject to the United Nations would be offensive to every Australian who believes that it must not surrender its rights to defend its own citizens and govern its own affairs.

Notwithstanding the support for ratification by various Australian bodies, the Presbytery of Benalla of the Presbyterian Church of Victoria, urges the Treaty Committee to recommend that the establishment of an International Criminal Court be not approved by Australia.

Rev Dr Dallas Clarnette,
Clerk of Presbytery
17/08/01