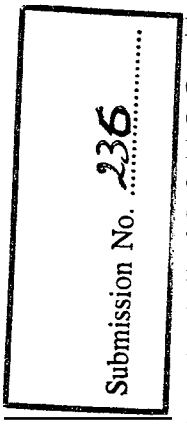
23rd August 01
Committee Secretary,
Joint Standing Committee on treaties,
Department of House of Representatives,
Parliament House,
CANBERRA.ACT.2600.

Dear Sir,



Please accept this submission opposing the ratification of the International Criminal Court statute.

On the surface most people would agree that there should be support for an International Criminal Court to try war criminals such as those who were involved in atrocities in ~~the former Y~~ugoslavia or East Timor, however after taking a close look at the content of the ICC statute has led to growing concern that the ICC will become just another UN agency pushing its political and cultural agenda on countries like Australia.
The court will have so-called "complimentary" jurisdiction with national judicial systems over "the most serious crimes of concern to the international community as a whole" including genocide, crimes against humanity and war rimes.
Chapter 111 of the constitution provides that the High Court is the final court of appeal in Australia. Under the statute the ICC would have the power to determine cases, including those relating to crimes committed by Australians in Australia, which it judges Australian courts are unable or unwilling to prosecute.
While Article 1 of the statute sounds reassuring that the Court is designed to be complimentary to national jurisdiction, in fact the so-called complimentary principle will operate not to shield domestic law from intrusion but ensure that the domestic law conforms to the international law. Article 17 (1a) states: The ICC will take justification, any time a Nation is "unwilling or unable to act". Furthermore, the manual bluntly states: "should there be a conflict between I.C.C. legislation and existing state (National) legislation, the international law established under the I.C.C., and decisions of the I.C.C. take precedence". In fact, the section in the manual on complimentary ends with the advice:"it should be prudent for States to incorporate all acts defined as crimes into their own National Law"!
While it is believed by some that the I.C.C. will concern only the most serious crimes, however the language used in the I.C.C. Statute and manual are sweeping. For example, genocide does not include just killing members of a group, but also "causing serious bodily or mental harm to members of a group". Just what does this mean? Will we have to wait until the I.C.C. determines it and then modify our laws to accommodate it? Or under article 7, "crimes against humanity" includes the likes of murder, extermination, forcible transfer of population, sexual slavery, torture and persecution". All of these sound terrible and in fact properly defined certainly are but again the sting is in the detail. For example, " persecution" is defined as: "the intentional and severe deprivation of a fundamental right"! But what are "fundamental rights" and who will define them.

There are examples to show that the Statute will have an effect on Australian Sovereignty and will impact on the Australian Constitution. Under article 49 of the Constitution, Parliamentary Privilege and Immunity are guaranteed to members of Parliament. And under article 80, there is a guarantee of trial by jury. Yet under the I.C.C. Statute, as explained in the manual, no one charged with a crime by the I.C.C., can claim official immunity. No one charged and appearing before the I.C.C. will have trial by jury. And the I.C.C. will be the final abiter as to whether a certain crime has been committed. Hence at least three articles of our Constitution will have to be changed – and not by referendum, but by external imposition.
With undefined so-called "fundamental rights", and the definition as above under "crimes against humanity", how can anyone, have any confidence to suggest that there is no possibility of the I.C.C. being used for the purpose of social engineering? Last year, a U.N. committee decreed that Australia had not done enough in the way of providing social justice benefits to the poor. The Australian Government ignored the decree – quite rightly it was a domestic issue. However it is one thing to ignore a U.N. committee –it would be a different matter to ignore an I.C.C. "decision", if it declared this to be a "fundamental right".
It is my contention that the I.C.C. statute can be used for political aims or ends.
Australia is fortunate in having, by in large, an impartial judiciary. However even here we have seen on occasion judgments at the highest level, which can only be viewed as political, i.e.: the judgments didn't simply affirm or dismiss a piece of legislation, but rather amended or created a Law. However under the I.C.C Statute, there is little guarantee of impartiality, when one reads such mandates as the selection of judges, that have "legal expertise 0n specific issues, including but not limited to, violence against women and children" It sounds great, but what does one mean? Only one conclusion can be reached.
The people of Australia are fed up with Australian Governments placing our sovereignty at risk by pandying to the U.N.
It is interesting to note that the USA has refused to ratify the statute. I would implore the Australian Government to do the same.
Robert Atkins. 30 Dougherty Street, Horsham.