

Submission to the
Joint Standing Committee on Treaties

on the Proposed

Submission No. ...159...

International Criminal Court

from



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1. Overview

Salt Shakers wishes to register deep concern about the proposed International Criminal Court. We firmly believe that Australia should not ratify the treaty that would establish the International Criminal Court.

When discussions started six years ago, the aim of this Court was to deal with **genocide** and **war crimes**. This may seem to be a noble aim - however, in recent years, human rights groups have taken control of the proposal and areas such as '**persecution**' and '**crimes against humanity**' have been added. This has totally changed the focus of the court to apply to various areas of law that are far beyond the original intention. The definition of these additional terms is extremely vague and is open to interpretation by judges on the Court who act and make decisions based on their own personal philosophies.

This Court would remove national sovereignty from Australia. Anyone who is dissatisfied with Australian law and justice could take their case to the International Criminal Court, on a variety of legal and human rights matters. The Court's decisions would override Australia's parliaments and courts. **Our National sovereignty is under threat** if we ratify the International Criminal Court, as our national sovereignty will be transferred to the International Criminal Court..

2. Reasons for Opposing the Ratification of the International Criminal Court

2.1 National Sovereignty is of Paramount Importance

It is of vital importance that Australia retains sovereignty over its laws and judicial processes. The International

Criminal Court poses a severe threat to our national sovereignty. The United Nations Charter asserts, in Article 2, paragraph 7, that respect for national sovereignty is important.¹

However, the proposed ICC allows a UN group to impose on the national sovereignty of member nations because of 'human rights' that are deemed to be worthwhile. Most such 'human rights', in the interpretation of those promoting this agenda, are political questions such as abortion and same sex marriage.

If the UN and this Court decides that the Judeo Christian ethic, on which this nation was founded, is invalid, then what would be the impact on this nation? Whose laws and values would this nation be subject to?

2.2 Laws of the International Criminal Court will be imposed on Australia

All laws covered by the International Criminal Court would be imposed on Australia. Australia would be expected to comply with such laws and change our Australian domestic laws to match the edicts of the Court. This is an intolerable situation, in which Australia would lose the right to decide on laws that are agreed to by the people of this nation.

2.3 Universal jurisdiction over Australian law

The proposed ICC has 'universal jurisdiction' to enforce laws that are not in our domestic law. The laws and decisions imposed by the International Criminal Court would override Australia's domestic laws. If a person took a case to the International Criminal Court because they were dissatisfied with Australian laws or a legal decision made in Australia and the Court then made a decision in their favour, this would override Australia's sovereignty. It would set a precedent that would make the Australian legal system impotent.

This is an even more intolerable situation regarding Australia's sovereignty.

2.4 International Criminal Court will apply to ALL Nations once it is ratified by 60 nations

Once the International Criminal Court has been ratified by 60 countries, the ICC will apply to all countries, **even if they have not ratified** the Court.

This is an imposition on the sovereignty of nations. The fact that such a small number of nations have to ratify the treaty before it is established means that very small nations (such as Trinidad and Tobago who have already ratified the treaty) which make up a very small proportion of the world's population, will be making decisions that will affect the major nations of the world.

2.5 The range of offences covered by the International Criminal Court is far too broad

The International Criminal Court was originally contemplated to cover 'war crimes' and 'genocide'. However, various human rights groups have taken control of the proposal over recent years. Areas such as 'persecution' and 'inhumane acts' have been added to the proposed jurisdiction of this Court. Since these categories are very broad and, in fact, could be interpreted to mean almost anything, Australia should not support such legislation. The inclusion of such clauses makes the International Criminal Court an extremely dangerous body, since the wording of these clauses is very vague.

2.6 The wording and meaning of the proscribed behaviours is extremely vague

The definition of 'crimes against humanity' is extremely vague. Particular activities are not defined under the proposed Court. This leaves the way open for the ICC to define the terms and include new interpretations in the future. This is an extremely dangerous approach to legislation.

2.7 The distortion of the word 'genocide'

Even in relation to the word 'genocide', the meaning of this can be distorted. The term was used in the report *Bringing Them Home*, about the supposedly 'stolen' generation of aboriginal children.

The Report stated (P 27) under Grounds for Reparation - An Act of Genocide:

“Forcible removal was an act of genocide. Genocide is not only the mass killing of people. The essence of genocide is acting with the intention to destroy the group, not the extent to which that intention has been achieved.”

The word ‘genocide’ inferred that the whole generation of aboriginal children was wiped out when in fact many children went on to lead healthy and productive lives.

The crime of genocide is not in Australian law because it is believed that our current criminal and other laws adequately address such behaviour.

The Anti-Genocide Bill introduced into the Senate by Senator Brian Greig (Democrats WA) was an attempt to bring such a law into Australia. (Second Reading Speech - 13 October 1999) However, this did not just refer to the killing of whole races of people through war or similar activities, but particularly to persecution and discrimination against homosexuals. This shows the extent to which such words can be distorted, changing the meaning and intent of what may initially appear to be admirable notions.

People take cases to United Nations forums when they feel they want to complain about the perceived lack of ‘justice’ they have received in this nation. For example, one previous case taken to the UN was the case of Nick Toonen who was unhappy about the Tasmanian law that outlawed homosexual acts.

2.8 Excessive penalties are proposed

Excessive penalties of 30 years or life imprisonment can be given by the ICC. These penalties are very large. The danger arises when such penalties are not just given for cases of genuine ‘war crimes’ and multiple murders through ‘genocide’. When penalties of 30 years or life imprisonment are given to vaguely defined ‘crimes’ which are being distorted by human rights advocates, there is a grave risk of sending people to jail for a wide range of relatively insignificant ‘crimes’.

2.9 Provision of ‘Gratis’ Staff

The proposed Treaty for the ICC allows any group to provide ‘gratis’ or free staff to the ICC (Article 44). Thus groups such as the Womens Caucus for Gender Justice, one of the outspoken advocates of human rights for women, will be able to provide staff who will represent their interests in the Court. They will not operate from an unbiased perspective.

2.10 Lobbyists with a Personal Agenda as Judges on the Court

One prospective judge for the ICC has said she would indict the Pope because of “crimes against humanity” because of his treatment of homosexuals and discrimination against them by not accepting homosexual practices within the church.²

Even though the Vatican would not be likely to sign the Treaty, it is believed that because the Pope’s messages are broadcast in countries that have signed the treaty he could be prosecuted.

Another woman, Dianne Post, a legal and feminist scholar who is running for the position of judge, wants marriage abolished because she believes it enslaves women. This could be used to oppose religious groups who believe that marriage and family is the foundation of society.³

2.11 Wide Ranging Powers of the Prosecutor

The prosecutors in the ICC would have extremely wide-ranging powers. They would have the power to prosecute when they receive a complaint from a single Non-Government Organisation (NGO). Since many of these NGOs are human rights lobby groups, this could mean that charges may be laid on very flimsy ‘evidence’.

2.12 No Accountability of the Prosecutor

There would be no check on the prosecutor and the ICC. There must be constraints and political control on such a court, otherwise they can pursue their own interests.

2.13 Australia including ICC laws into domestic law

In addition to the dangers in the actual International Criminal Court, we believe that Australia should not implement the laws covered by this court into Australia's domestic law.

The vagueness of the terms in the Treaty already means that such action would make significant changes to Australia's laws, especially in the area of so-called 'human rights'.

The additional concern is that any changes that were made in the future to the international Criminal Court could automatically be incorporated into our laws without an Act of Parliament.

Salt Shakers believes that Australia must not implement the provisions of the International Criminal Court into Australian domestic law.

3 Conclusion

Salt Shakers believes that Australia should not ratify the treaty that would establish the International Criminal Court.

We also believe that Australia should not enact the laws included in the International Criminal Court into Australian law.

We urge the Joint Standing Committee to recommend that this treaty not be signed and that the International Criminal Court NOT be ratified by Australia.

Peter and Jenny Stokes

Salt Shakers

Endnotes

1. UN Charter, Article 2, Paragraph 7

2 and 3. Source: Professor Richard Wilkins, Professor of Law, who attended the 1998 Diplomatic Conference and Preparatory Commission meetings.