

# Should Australia support an International Criminal Court?

The Australian Government stands poised to support the establishment of a permanent International Criminal Court. But is doing so in our national interest? Will the International Criminal Court help combat atrocities or does it represent an unacceptable loss of our national sovereignty? These are the questions being investigated by Parliament's Treaties Committee, and strong views are being put on both sides.

The International Criminal Court (ICC) would try cases against individuals for war crimes, crimes against humanity, and large-scale human rights abuses, such as genocide.

It is being established as a permanent institution under an international treaty and will be based in the Netherlands (at The Hague). All the principal officers would be elected and each of the principal officers will serve a fixed-term with only a limited capacity for renewal of office. No two judges may be of the same nationality, and the Prosecutor and Deputy Prosecutors must all be different nationalities. The ICC would not be part of the UN.

The establishing Statute emphasises that the Court will be complementary to national criminal jurisdictions, recognising that it is the duty first and foremost of every state to exercise its national criminal jurisdiction over those responsible for international crimes. The Court will operate where a national jurisdiction is unwilling or unable to genuinely carry out the investigation or prosecution of persons alleged to have committed crimes.

The Australian Government says establishment of the Court has been one of its prime human rights objectives.

The national interest analysis done by the Department of Foreign Affairs and the Attorney-General's Department says "in terms of the global promotion of peace and security, the Statute stands as the third pillar

beside the Charter of the UN and the Statute of the International Court of Justice (the ICJ). Both the UN and the ICJ focus on the accountability of States: the Court will complement these with a mechanism to hold accountable the individuals who commit the most serious crimes of international concern".

The Treaties Committee's inquiry has so far received more than 200 submissions and taken evidence at public hearings from more than 30 witnesses.

Critics of the ICC argue that ratification would jeopardise Australia's sovereignty, potentially exposing Australians to the mercies of an unrepresentative international court.

Some of the key issues emerging from the evidence are:

- the degree to which the ICC's jurisdiction would complement or diminish the jurisdiction of Australian courts;
- the imprecision with which the ICC Statute defines the crimes of genocide, crimes against humanity and war crimes; and
- the potential effect of the ICC on peacekeeping operations undertaken by the Australian Defence Force.

**For more information, including copies of submissions to the inquiry, visit:**

[www.aph.gov.au/house/committee/jsct/ICC](http://www.aph.gov.au/house/committee/jsct/ICC)

**International Criminal Court home page:**  
[www.un.org/law/icc/index.html](http://www.un.org/law/icc/index.html)

**Australian National Interest Analysis:**  
[www.austlii.edu.au/au/other/dfat/nia/2000/2000024n.html](http://www.austlii.edu.au/au/other/dfat/nia/2000/2000024n.html)

## Establishing the International Criminal Court

The process to establish the International Criminal Court is well under way.

The Court is being established under a multilateral international treaty, the *Statute for an International Criminal Court*. The first stage of the establishing process – adoption of that Statute – was completed on 31 December 2000, with the signatures of 139 nations. To bring the Court into being, 60 countries now need to ratify that Statute by passing implementing domestic legislation. Currently just over 30 nations have ratified the Statute.

The Australian Government is keen to introduce the implementing or ratifying legislation, arguing the Court's establishment will play a crucial role in enhancing international peace and security, including in our immediate region. It is a view shared by many community organisations working in the field.

The Government has already taken an active role in developing the ICC Statute, its *Rules of Procedure and Evidence*, and the *Elements of Crimes* documentation.

There are, however, strong opposing views and the Government has indicated it will not ratify the Statute before the Treaties Committee has completed its review. It is likely that, before reporting, the Committee will also examine any legislation prepared by the Government to implement the terms of the Statute.

## Opinion on the International Criminal Court

*"... the final nail in the coffin containing the remnants of our freedom, sovereignty and independence ..."*

June Beckett

*"... probably the most sophisticated and comprehensive codified right to a fair trial of any court system in the world ..."*

New South Wales Bar Association