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40 Brayshay Road
Newcomb, 3219
7th August, 2001

To the Treaties Committee,

The Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
Canberra, ACT,

Submission No. 227

Dear Sir/Madam,

As you would be aware, in July 1998 various nations signed a Rome Statute creating the International Criminal Court (ICC) – a court with absolutely unprecedented jurisdictional reach.

This Statute purports to bind all peoples once a mere 60 nations have ratified it.

Australia's Attorney General promotes the view that ICC human rights law is merely complementary to Australian justice. Indeed, Article 1 of the Statute does state that the ICC is designed to be complementary to national jurisdictions.

However, further reading reveals the complementarity operates to "take jurisdiction any time a nation is unwilling or unable to act." (ICC Statute, Article 17(1a)). In other words the domestic legal system will be supplanted whenever it differs from the ICC human rights law.

Our Attorney General is further reported to have said that as the Statute deals only with crimes of most serious concern to the international community we needn't worry.

The potential reach of Articles 6, 7 and 8 of the Statutes in reference to "a crime of most serious concern to the international community" is limited more by the imagination of International lawyers and the judges charged with interpreting the language than by the language itself.

For example, the crime of 'enslavement', as terrible as the word sounds, is defined as "the exercise of any or all power attaching to the right of ownership over a person". In this sense it can and has been used to support the abolition of the institution of marriage.

I understand the Attorney General also holds that the Statute will have no impact on the Australian Constitution.

If an Australian MP were charged by the ICC, the immunity created by Article 49 of our constitution is no defence since, under ICC rules, a criminal defendant cannot make a claim of official immunity. ICC compliance demands an amendment to the Constitution.

Accommodatingly, the ICC Manual (pp.55/6) suggests how to obscure radical constitutional changes. "If a State needs to amend its constitution, it may be possible to accomplish this with a simple sentence that addresses a number of difference issues at the same time".

If, as is reported, the Attorney-General believes claims that the ICC is a suitable vehicle for social engineering are false, the legal proceedings in *Nulyarimma v Thompson* paint a different picture.

The ICC includes, under the heading of 'genocide', causing members of a group "serious mental harm". In *Nulyarimma v Thompson*, the claimants argued they had suffered extreme

mental stress and as a result had been subjected to 'genocide' at the hands of the Prime Minister and Federal Parliament.

The Attorney General is said to hold that it is absurd and outrageous to claim that the ICC could be used for political ends. If so, an examination of the Statute itself is revealing.

Under the Statute, prosecutions are initiated by the prosecutor (not by States) and may be based on anonymous complaints made by NGOs and others.

Further, Article 44 allows the prosecutor to accept "any ... offer" of "gratis personnel offered by States' Parties, intergovernmental organizations or non-governmental organizations" ('gratis personnel' are paid for by third parties but are doing the work of the court).

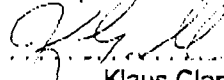
The havoc that can be wrought by an independent prosecutor whose office is staffed by individuals with radical ideological axes to grind is beyond imagination.

About ten years ago the International Law Commission produced an International Criminal Court draft that complies with existing dictates of international law without unduly tramelling existing sovereign states.

What is being presented to us is a weird construction that serves the interests of the vast majority of people of the world very poorly but admirably serves the interests of a radical minority.

It is outrageous that the Attorney General is so blatantly misleading the public and has obviously done so even before the Committee's recommendation is tabled.

Yours,



Klaus Clapinski
Phone: 5248 1187

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