

Submission No.1744/1.....

38 Wilsons Rd.
NEWCOMB Vic. 3219
26th. January 2002

The Secretary,
Joint Standing Committee on Treaties,
Parliament House,
CANBERRA ACT 2600

re: Statute for International Court.

Dear Sir,
I would like to present a personal view on the substance of the International Criminal
Court Bill 2001 Exposure Drafts.



OVERVIEW

Although it is true that there are very serious violations of human rights in many countries of this world that cry out for international intervention the proposed model International Criminal Court (ICC) is quite inappropriate. The extreme authoritative structure and interpretive powers acceded to it makes it a source of potential International conflict.

INCOMPATIBLE CONSTUTION AND LEGAL SYSTEMS

The structural concept of the ICC turns the structure of the Australian Constitution on its head. Our founding fathers had the foresight to give the Australian people the right to determine their government and make changes to the Constitution. In Australia the people have the final say!

The ICC system is the opposite. Governance here is from the top down. International judges, unrepresentative of Australian society and judicial system have the final say in determining Australia's ethical and cultural values. How we think, and how Australians administer their Constitution.

Australia has the good fortune to have a legal and judicial system that is lock step and subject to appeals. The common sense of ordinary people in judging what is right is encompassed in our jury system. This appears quite incompatible with an imposed International Criminal Court which is autocratic and authoritarian, brushing aside our system by imposing control by a learned intelligentsia acting as both judge and jury.

INTERPRETATION AND IDEOLOGY

In a 1998 discussion on the ICC, Luigi Condorelli, the then Professor of International Public and Humanitarian Law at the University of Geneva was reported as saying that the ICC statute would not need to list all crimes over which the ICC could exercise jurisdiction because the judges themselves could decide what is "criminal". If this statement is correct it should impose an automatic disqualification from Australia ratifying the statute because unexpected, new and unwarranted legal actions could be taken against an Australian citizen in the course of a hearing.

The political, religious and ideological maneuverings that take place at UN Committees and Conventions are legend. The Vatican, Islamic and likeminded religious bodies have been forced to become involved to protect their mutual interests from what they see as humanistic, anti-social views vigorously pursued within UN committees. The 1994 report "International Tribunals and the Attack on Australian Democracy" by Senator Rod Kemp evidences how decisions emanating from such Committees have been used to unconstitutionally amend the Australian Constitution.

The structure of the ICC provides a new power to these well-financed and organized groupings. The ICC Statute empowers such bodies to initiate prosecutions, influence the Prosecutor and work for him free of charge. It is hard to imagine any group that would not take advantage of such a position.

EFFECT OF ICC LAW ON AUSTRALIA

Our Government, as a means of making Australian Law compliant and complementary to the Rome Statute, has simply written the legal requirements of the ICC into the Exposure Draft Documents.

Ratification of the Treaty will assuredly be a recognition by the International community that Australia will accept the International Court's interpretation of this loosely drafted, wide ranging text. Conflict seems inevitable.

Australian Parliamentary Ministers are even now, widely accused of causing serious mental harm or seriously depriving (at least one person) of their fundamental human rights which could at present, or in the future, be indictable by the ICC.

Such legal terminology means different things to different people, different cultures and under different regimes.

What is "serious"? What is "mental harm"? Does our Prime Minister qualify for indictment by the ICC for not saying sorry?

If the terminology of a law cannot be accurately interpreted because it has various ideological interpretations then that law is bad Law. Serious restrictions must apply to ill-defined wordings to make our Law mean what the Attorney General says the ICC intends i.e. applicable only to the most heinous crimes.

If a Minister of the Crown were to be indicted by the ICC for such an offence the interpretation of the law will not be made by an Australian Supreme Court as required under our constitution. Neither will the indictment be nullified by reference to the Australian constitution that guarantees them immunity.

The Parliament, by ratifying this ICC Statute, will have made a World Court the guardian of Australian culture and even its style of government for future generations.

Yet, who can guarantee that a world regulated morality will always be best for Australia?

Who can guarantee that a world system of justice will not degenerate by natural attrition or intervention of international cohorts looking after their own economic or political interests?

Who can guarantee that given its new autonomy, the ICC will never take upon itself responsibilities that are prejudicial to Australia's best interests?

PRAGMATIC SELECTIVITY OF ICC LAW

One thing seems inevitable –ICC action will be pragmatically selective. The world powers such as the US, Russia and China will be exempted unless they agree to use the ICC in individual circumstances.

Countries of less significance (Taiwan or Australia) will be vulnerable. Yet the perceived need for the ICC has come about essentially because undemocratic rogue states run by autocrats have created genuine human rights violations worthy of world condemnation. Yet such States (e.g. Zimbabwe, Myanmar) will strenuously resist ICC intervention into their affairs. Past experience indicates that it is necessary to replace the leadership of these countries by force and restore a form of democracy before the ICC Statutes can be brought into effect.

It seems reasonable to presume therefore that the ICC is most likely to flex its muscles against democratic Australia whose policies on ethnic and minority groups are so easily misconstrued by world opinion. Governments such as ours should be permitted their own judicial system to ensure their cultural and religious freedoms remain unencumbered from international political or judicial intervention.

CONCLUSION

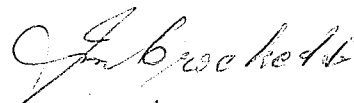
There are a cast of personalities on the world stage, including the periphery of the United Nations and its Committees, whose understanding of "human rights" are far different to ours. For them, the ICC can be a vehicle to implement a form of totalitarianism by imposing new moral norms portrayed as "freedoms".

This is already happening.

In the Western World in particular, the former moral restraints, written into law by a society founded on Judeo Christian beliefs was shown to hold the Family and society together.

This ethic is being irredeemably replaced on the world stage by "discrimination" laws that demand acceptance of promiscuous, materialistic and unstable lifestyles that have demoralized whole empires in the past and will do so again in future.

Yours faithfully,



James Crockett