

March 31, 2001

Submission No. 188

The Joint Parliamentary Committee on Defence.
Parliament House
Canberra.
ACT 2600

Dear Sir or Madam:

It has come to my notice that a decision was made on 12 December, 1999 to ratify the Statute of the International Criminal Court.

Very serious abrogations of Australian sovereignty are threatened by the attempts being made to set up the court with wide powers of compulsion.

It appears that the proposed I.C.C. could override national courts if, in its own opinion, they were "unwilling or unable to deal genuinely with alleged crimes by way of investigation or prosecution". It hence appears that if by a rule of Australian law it were found by an Australian court that no offence had been committed, if the proposed ICC did not approve of that rule, it would be empowered to assume jurisdiction and override Australian law. This would be so whether the person being prosecuted was a soldier or airman, for example, who carried out orders in his role as a member of the Defence Forces, or a public servant or politician who authorized or encouraged the relevant actions. Likewise this position would arise if the proposed ICC considered that the treatment of Australian aboriginals, for example, amounts to "genocide" or "crimes against humanity".

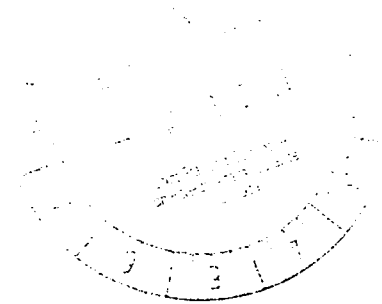
This position is exacerbated by the vagueness of some of the terms proposed for empowering the court. Very differing views are held as to what amounts to an infringement by way of a "crime against humanity". It is evident that the ICC might take a much wider view of these matters than would an Australian court.

Australia chaired the original meeting, in Rome, of sixty like minded states which supported the establishment of the court and, apparently, Australia continues to play an active role in the post Rome negotiations, in the Preparatory Commission which is working the Elements of Crimes and the Rules of Procedure and Evidence for the court, as mandated by the Rome Conference and continues to chair the Likeminded Group.

One may well ask, Why are representatives of Australia taking such an active – and indeed activist – role in attempting to bring about the institution of a court with a jurisdiction that will be able to be exercised against Australians and that could prevent Australian nationals from being protected by their own country? Who are the public service advisers who are responsible for the advice that has led to this position, and why has internationalism rather than the interests of their own country been paramount in their minds? For, inter alia, if the court comes into existence, no significant advantage will flow to Australia if it becomes a Party State, as opposed to a non-party. Even as a non-party it would be able to communicate with the Prosecutor, if it were considered desirable in Australia's interests that a particular prosecution should be carried out.

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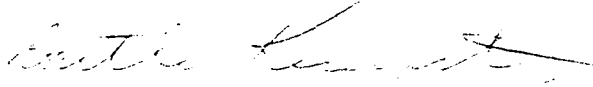
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- In conclusion, submission to the jurisdiction of such a court or ratification would not be in the interests of Australian nationals.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bartle Kempster". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Bartle Kempster