

Dear Mr Morris,

RE: PERMANENT INTERNATIONAL CRIMINAL COURT

Further to our discussions of the 31st October 2000 I confirm that the law Society of South Australia has recently forwarded to me your e-mail of the 17th October to the Society in relation to whether Australia should be bound by the Statute establishing a permanent international criminal court.

I would appreciate receiving relevant material in due course, but, in the meantime, confirm that, in my opinion, it is in Australia's best interests to be bound by the terms of the Statute.

I have been involved in looking at the possibility of the establishment of a permanent court since 1992 including dealings with the United Nations, the States of the United Nations, attending international conferences and have given papers and chaired sessions dealing with this topic.

The information which continues to appear on the internet and elsewhere clearly indicates that the Statute will come into force before too long, once the 60 States have ratified.

There will always be aspects of any Treaty or Statute with which a State will take issue, but the Statute was adopted as you know by the 120 States at the international diplomatic conference held in Rome in July 1998.

Every instinct tells us that the Statute should be ratified by Australia and, indeed, the government has clearly indicated to me and to others that it will introduce legislation by the end of this year to do so. The Attorney General Daryl Williams and the Foreign Minister Alexander Downer have been quite explicit in that regard and, in my opinion, for very good reason.

By doing so it sends a message that it is keen to get on with implementing the concept which is long overdue, and thereby puts itself in a position where it can take appropriate action to comment on deficiencies of other countries, where appropriate, in observing appropriate human rights standards.

If Australia does not participate and ratify the Statute then, in my view, it sends an unacceptable message, which would justify other countries ignoring any comment Australia may wish to make in relation to human rights issues and, further, may indicate that Australia is not concerned as to what the rest of the world thinks about how Australia deals with human rights issues generally.

If Australia is keen to be involved in seeing that an appropriate international criminal court is established, then it must ratify the Treaty and if there are certain aspects of the Treaty which require clarification or discussion then that can occur on an ongoing basis, but this does not, in my opinion, justify refusing to ratify the Statute in its present form and being bound by it.

You would be aware of the fact that some countries do not support the establishment of an international criminal court, the most significant being the United States of America which is actively lobbying other States to have their nationals excluded from the operation of the court.

This is seen by the vast majority of States as being quite inappropriate and arrogant in some respects and the fears expressed by the USA would appear to be largely unfounded.

The United States would better safeguard their interest by being involved in the process.

If every country took the attitude of the USA, then there would be no hope of an international

jurisdiction being established to deal with the problems proposed to be dealt with by the Statute.
Ad hoc courts are not a substitute.

The vast majority of the States of the United Nations is prepared to accept the need for this court
and Australia must not be seen to be the odd one out.

Perhaps I will finalise my comments at this point but should there be any specific aspects in
relation to which you consider comments from me would be of use to your committee please let
me know.

Yours faithfully,

Philip Scales, AM