FURTHER SUBMISSION TO THE JOINT STANDING COMMITTEE ON ~~TREATIES~~

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Since appearing before the Committee on 14th March 2001 on behalf of the R.S.L., the National Observer and the Council for the National Interest I have felt considerable concern at the content of those submissions that favour ratification of the I.C.C. statute.

Ignoring the Australian National Interest

These submissions (which are exemplified by the submission of Justice J.W. Perry) favouring ratification ignore completely or downgrade the Australian national interest (which is the critical matter for the Joint Committee). They are, like the Perry submission, internationalist-utopian. It is significant that Perry has admitted receiving "help" from "Mr. Mark Jennings, a principal legal officer in the International Branch of the Commonwealth Attorney-General's Department". The Perry submission betrays a complete unconcern with the threats that the I.C.C. would create for Australia's Defence Forces and those Australians who might, for example, be falsely accused of genocide or crimes against humanity, whether in regard to the treatment of Aboriginals or in regard to other matters.[1]

Misleading "Complementarity"

The Perry submission deliberately downplayed the weaknesses in the so-called "complementarity" provisions whereby the I.C.C. allegedly would not interfere if appropriate national criminal prosecutions took place. As indicated by myself and by others, this alleged protection is largely illusory, since it is the I.C.C. itself which would

[1] The extent to which the Perry submission is out of touch is illustrated by the writer's high-handed statement. "Indeed, I am surprised that there should be any question about [ratification]...". Of course, apart from other considerations, Perry's submission contains a speech made in May 1999 supporting the I.C.C. and saying that there was every expectation that Australia would ratify, so he is now in the position of supporting himself.

determine whether "the State is unwilling or unable genuinely to carry out the investigation or prosecution". If the I.C.C. on some slight or tenuous ground – such as the adoption of a local procedure which might in some respect differ from its own – held that Australian proceedings were not "genuinely" carried out there would be no remedy for Australia. Australia would be required to arrest and extradite its own nationals.

False Charges re Defence Forces

Another misleading aspect of the Perry submission and similar submissions is that they attempt to slide over the prospect of false charges against Australian nationals, with falsified evidence from foreign nationals in war zones, prepared or assisted in some cases by governments unfriendly to Australia. Australian Defence Force personnel would be continually at risk that contrived evidence would be prepared which would at the least require them to be extradited and at the worst would lead to convictions. The threat of making complaints to the I.C.C. against Australia or Australian nationals would be a powerful weapon, and would be particularly relevant where peacekeeping operations are concerned.

False Charges re Genocide

Another misleading aspect of the Perry submission and similar submissions is a failure to note the risks that false charges of genocide may be made in the I.C.C., against Australian nationals. Aboriginal representatives have frequently alleged genocide and crimes against humanity, and although their grounds may be seen to be without basis by those who are thoroughly conversant with conditions in Australia, they have a specious appeal to those who are not so conversant, and have been given more credence than is proper by some United Nations agencies. The threat of criminal proceedings in the I.C.C., and of the arrest and extradition of Australian officials or parliamentarians, is a matter for considerable concern.

Nor do the Perry submission and similar submissions note the prospect that some judges and prosecutors of the I.C.C. may be unfriendly to Australia or may have biases

such as has been seen in Australia in Sir Ronald Wilson. Although the latter's "stolen generation" report is now largely discredited, it provides a forceful example of the dangers that are created by ideological judges. The nature of the I.C.C. is such that it would be particularly likely to attract ideological or activist judges, prosecutors and officers, who might be particularly apt to make incorrect findings against Australian nationals. (Even international or activist judges or lawyers from Australia would be a matter for concern if they sought appointment to the I.C.C. or its staff. It may be suspected that a desire for appointment underlies the enthusiasm of many key I.C.C. supporters.)

The Law Council

Particular mention should be made of the Law Council, which operates from Canberra. This unrepresentative body, which commonly does not reflect the actual views of legal practitioners around Australia, is poorly regarded by many members of the legal profession. There is a general impression that it is out of touch and that most of its members are concerned with self-advancement or self-publicity.

In the present case the recent statements of Ms. Anne Trimmer, its President, a local Canberra solicitor, give particular cause for concern. In the "Australian Lawyer" for April 2001, in the course of an inaccurate article in favour of the I.C.C. it was stated falsely that, for example, "the position of the new Bush Administration is very uncertain". In fact it is clear that the Bush Administration is opposed to the I.C.C. and that in any event ratification by the U.S. Senate would be refused. The article, which quoted Ms. Trimmer extensively, also misrepresented the "complimentarity" (sic) principle, and suppressed the fact that it would be entirely up to the I.C.C. itself to decide whether, on some good ground or on some technical basis or pretext, it chose to override Australian decisions or proceedings. It is not surprising that in the same issue Ms. Trimmer criticised the decision of the Commonwealth Government not to ratify the Optional Protocol to the C.E.D.A.W., which is supported by feminists, where also she showed no concern at the consequences of exposing Australia and Australian nationals to an internationalist regime that would over-ride Australian law.

The Law Council submission, which is disagreed with by many lawyers including judges, is, like the Perry submission, a good example of pursuing internationalist (and in the case of Ms. Trimmer, feminist) ends without serious concern about the effects of their proposals on Australia and on Australian nationals.

Australian National Interest

It is hence seen that a disturbing aspect of the Perry submission and similar submissions is that they either ignore completely, or downplay improperly, threats that the I.C.C. would pose to Australia and to Australian nationals.

The proposed I.C.C. is so evidently contrary to Australia's national interest that it is reprehensible that that issue is not properly addressed in a number of submissions. Supporters of the I.C.C. who are not mindful of Australia's national interest have been described to me (not without justification) as treacherous in relation to Australia's security, that is, treacherous in the sense that Australia's interests are to be sacrificed to internationalist interests.