

ICC
Submission No. 9.1

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24 APR 2002

Treaties

Dear Julie,

I write this letter as a personal communication to you on a topic very dear to my heart, which irreversibly affects the future of our nation, and in particular, the alarming service conditions under which our future sailors, soldiers and airmen would be subject to in future military operations. We are asking now, and will undoubtedly ask in the future for our young service personnel to fight and perhaps die in war for our country. I write of my real fears at the clear folly of Australia ratifying the Statute of the International Criminal Court.

In an attached document entitled "The International Criminal Court: the threat to Australians" a sound legal and practical analysis is presented under 10 points. I ask you to read this analysis very carefully for the complications of ratification by Australia are horrendous and utterly unacceptable for our nation.

If we ratify the Statute, the powers of the court alone, as detailed in point 1, being written deliberately in a wide and imprecise nature, would be an unacceptable threat to all Australians. Furthermore, to accept a process whereby the court is composed and controlled by foreign personnel is wrong. It is selling our sovereignty and our soul. No sensible person would sign such a blank cheque and I beg you to desist from continuing what the RSL of Australia, and I, regards as a declaration of war on the future of the people of Australia.

The other nine points clearly support this view.

In a separate communication a past and perhaps the most distinguished Chief Justice of Australia in living memory, Sir Harry Gibbs, stated yesterday as follows:

"By ratifying the Statute which has established the International Criminal Court, the Government would in no way advancing our national interests, but would on the contrary be failing in its duty to preserve our sovereignty and to afford to our citizens the protection of our laws: servicemen and women in particular, would be exposed to the mercies of a court whose standards of fairness might well fall short of our own and whose sympathies in some future conflict would be impossible to predict."

Please do not support ratification of the Statute.

Yours sincerely,

Digger James

Encl.

From: Major General W B Digger James AC MBE MC

THE INTERNATIONAL CRIMINAL COURT: THE THREAT TO AUSTRALIANS

A LEGAL AND PRACTICAL ANALYSIS

1. POWERS OF COURT

The International Criminal Court (I.C.C.) is empowered to hear claims re (1) "genocide", (2) "crimes against humanity" and (3) "war crimes".

"GENOCIDE". This term is defined very widely but imprecisely in the I.C.C. Statute, and extends even to "causing serious bodily or mental harm" to members of a national, ethnic, racial or religious group as such, within intent to destroy that group in whole or in part.

"CRIMES AGAINST HUMANITY". This term also is defined very widely and imprecisely, and extends to various categories of "persecution" against any group on political, racial, national, ethnic, cultural, religious or gender grounds and to "other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health".

"WAR CRIMES". This term also is defined very widely and imprecisely. It extends even to various categories of acts "wilfully causing great suffering", "committing outrages upon personal dignity, in particular humiliating and degrading treatment", and to other similar conduct.

2. THE JUDGES. Under the I.C.C. Statute judges will be able to be chosen from many countries, including countries in Africa, the Middle East, Asia and South America. Many of these countries have themselves very poor human rights records, and some of them are viewed as unfriendly to Australia.
3. "COMPLEMENTARITY". Proponents of ratification by Australia rely upon a so-called principle of "complementarity" – by Article 17 the I.C.C. will not hear a case "unless the State is unwilling or unable genuinely to carry out the investigation or prosecution". However, the basic defect in this argument is that it is the I.C.C. itself which would determine the willingness or inability of Australia genuinely to carry out an investigation or prosecution. Particular judges of the I.C.C. could, if they did not like an Australian decision, assert that Australia has shown itself unwilling or unable genuinely to investigate or prosecute, and Australia would be over-ruled. (Submissions of the Attorney-General's Department relying on complementarity are particularly misleading.)
4. WIDE POWERS OF COURT. The wide powers of the I.C.C. extend to compulsory extradition. Under Article 89, if the I.C.C. requests the arrest and surrender to it of an Australian national (whether a politician, member of the Defence Force or ordinary citizen), Australia must comply, however baseless the relevant accusations are.
5. INABILITY TO WITHDRAW FROM COURT. If Australia ratifies, the loss of Australian sovereignty will be permanent. Australia will never be able to withdraw the ratification.
6. ABSENCE OF NEED FOR AUSTRALIA TO RATIFY. More than 60 countries have ratified the I.C.C. Statute, with the effect that the I.C.C. will come into existence on 1st July 2002 (although more than 100 countries have not ratified it). The only consequence of ratification by Australia would be a permanent loss of sovereignty by Australia.