

Submission to the Joint Standing Committee on Treaties

Statute of the International Criminal Court

Submission of Australian Lawyers for Human Rights

Australian Lawyers *for* Human Rights Inc (ALHR) is a network of Australian lawyers active in furthering awareness and advocacy of human rights in Australia. Through training, publications and advocacy, ALHR promotes the practice of human rights law in Australia and works with Australian and international human rights organisations to achieve this aim.

ALHR was the only Australian based NGO to attend the Diplomatic Conference of Plenipotentiaries in Rome in July 1998 as a part of the NGO Coalition for an International Criminal Court.

The main purpose of the NGO Coalition for an International Criminal Court is to advocate for the creation of an effective, just and independent International Criminal Court. The Coalition brings together a broad-based network of over 1,000 NGOs, international law experts and other civil society groups. The multi-track approach of the Coalition involves: promoting education and awareness of the ICC and the Rome Statute at the national, regional and global level; supporting the successful completion of the mandate of the Preparatory Commission and facilitating NGO involvement in the process; promoting the universal acceptance and ratification of the Rome Statute, including the adoption of comprehensive national implementing legislation following ratification; and expanding and strengthening the Coalition's global network.¹

¹ See <http://www.igc.org/icc/index.html>

Creation of an international criminal court

The agreement to establish a permanent, independent and effective International Criminal Court (ICC) represents the most important development in international law in the past 50 years. The existence of the ICC will enable the international community to work effectively to combat genocide, war crimes, and crimes against humanity

ALHR welcomes Australia's ratification of the ICC Statute and congratulates Australia on the leading role it has played in its development. Australia's ratification of the ICC Statute will demonstrate Australia's commitment and leadership in the development of effective measures for responding to genocide, war crimes and crimes against humanity.

Australian sovereignty

The issue of Australian sovereignty and the impact of the ICC is a relevant and important question.

ALHR believes that ratification of the ICC Statute and the enactment of enabling Australian legislation will enhance Australian sovereignty. It is critical that the Commonwealth, in cooperation with Australian States and Territories, enact legislation consistent with the ICC Statute. In particular, that the international definitions of genocide, war crimes and crimes against humanity are incorporated into Australian law. Australian legislation that is compatible and consistent with the terms of the ICC Statute will enable Australian courts to try those accused of such crimes in a fair and proper manner. ALHR believes that Australian courts and the Australian legal system should be properly equipped to try those accused of genocide, crimes against humanity and war crimes.

Strong, effective domestic legal provisions means that Australian courts will be the first and best place to try those accused of such crimes. The ICC

should be the court of last resort for matters involving Australian citizens or issues touching on Australia's national interest. However, if the ICC is to be the court of last resort, it is imperative that Australia ratify the ICC Statute with appropriately adapted Australian laws.

National interest considerations

For the following reasons, Australia's ratification of the ICC is in Australia's national interest.

Firstly, ratification of the ICC Statute is a natural complement to Australia's commitments under other relevant international instruments such the *Convention on the Prevention and Punishment of the Crime of Genocide* and the Geneva Conventions and Protocols.

Secondly, the operation of the ICC has a limited impact on the State itself. The ICC's jurisdiction is only over natural persons. The ICC will not have jurisdiction over corporations, organisations or a State. The nature of the ICC's jurisdiction and function is to assist States themselves to bring war criminals to justice.

Thirdly, the principle of complementarity which underpins the way in which the ICC will operate is a clear recognition of State sovereignty and encourages States to initiate prosecutions within their own legal systems.

The ICC is, in effect, a court of last resort. The ICC will have jurisdiction only when a legal system is genuinely unable or unwilling to investigate and prosecute the crimes. Inadmissibility will be presumed for cases where national jurisdictions are seized with the case, or where the case has been investigated by a State that decided not to prosecute the individual, unless it can be established that the national system is "unwilling or unable genuinely" to investigate or try the suspect.

Fourthly, the ICC Statute does not operate retrospectively. It will not have the jurisdiction over past crimes. Article 11 of the ICC Statute specifies that the ICC will have jurisdiction only with regard to crimes committed after the Statute's general entry into force and its entry into force for the relevant State.

Fifthly, for those individuals accused of the crimes over which the ICC will have jurisdiction and for the victims, there is provision to ensure that an accused person is legally represented and receives a fair trial. For the victims of crimes, there is a right to participate in the proceedings in an appropriate manner.

Sixthly, as a State participating in the ICC, Australia will also benefit from the co-operative arrangements which will exist between States for the investigation, extradition and prosecution of war criminals.

Australian Lawyers for Human Rights believes that the ICC will be an important development in those parts of South East Asia and the Asia Pacific region where there are no effective international human rights mechanisms. Australia's leading role in restoring peace in East Timor has been a significant foreign policy initiative. Such a role, if required in the future, would only be assisted by the existence of an effective international criminal court.

In summary Australian Lawyers for Human Rights believes that the cause of advancing awareness and achievement of human rights in Australia is enhanced by Australia's ratification of the ICC Statute.

Australian Lawyers for Human Rights Inc.

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