

Sydney University Law School Amnesty Group
University of Sydney – Faculty of Law
173 Phillip St
Sydney NSW 2000

13 July 2001

Hon A P Thomson, MP
Chairman, Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

Submission No. 224

Dear Mr Thomson,

Support for ratification of the Rome Statute of the International Criminal Court

We write to you as a group of students from the Sydney University Law School to express our support for Australia's ratification of the Rome Statute of the International Criminal Court.

We are all members of the Sydney University Law School Amnesty Group, and while we do not claim to be reflecting fully the views of Amnesty International, we endorse the submissions made by Amnesty to the JSCOT inquiry into the ICC.

We have followed the hearings of the JSCOT inquiry with interest, and we wish to address some of the important concerns that you and other members of the committee have raised during the hearings.

The ICC and national sovereignty

Ratification of the ICC statute should not be characterised primarily as a *surrender* of sovereignty but as a voluntary and advantageous *exercise* of sovereignty.

Firstly, the principle of complementarity will ensure that the ICC does not unjustifiably override the jurisdiction of domestic courts. The Statute contains a range of procedural safeguards to ensure that jurisdiction will not be invoked where a country is willing or able to undertake a prosecution in its own right. As a consequence, it is highly unlikely that, for example, a member of the Australian defence forces will be brought before the Court. By contrast, it is far more likely that the Court will serve to *protect* members of our defence forces serving overseas by deterring the commission of war crimes against them by other parties.

Secondly, ratification may in fact *enhance* Australian sovereignty, because it will broaden Australia's ability to prosecute crimes that are committed by its nationals in another state that is party to the Statute; if Australia did not ratify, its ability to prosecute these crimes would be more limited.

We note also that Australia's extradition regime already provides for a system of shared international responsibility for the punishment of crimes. The ICC will be a further positive step in fulfilling that responsibility.

The impartiality and effectiveness of the ICC

The ICC will not be Eurocentric or Western in its composition or focus, nor will be ineffectual in curbing the atrocities committed by 'rogue countries'. The Statute requires the Court to be

geographically diverse in its composition. Moreover, the range of countries that has already ratified the Statute testifies to its widespread support, even among countries (such as Sierra Leone) whose human rights records are far from pristine. While it is inevitable that some violating countries will not ratify, it should be noted that the UN Security Council will be able to refer serious violations to the ICC that do not otherwise fall within its jurisdiction.

The Statute strictly limits the extent to which the ICC's processes could be manipulated for political ends: it gives the ICC jurisdiction over crimes that are well-defined under international law, and sets out extensive and fair procedural guarantees. Although judges will be elected for limited terms, the high qualifications required by the statute, and the international scrutiny permitted by the Court's public proceedings, will minimise the possibility of political appointments.

The establishment of a standing Court as opposed to further ad hoc tribunals will lessen the degree to which prosecutions are seen to be politicised and selective dispensers of 'victor's justice'. Moreover, a permanent court would be much more effective as a deterrent, because potential perpetrators will be aware that their actions are subject to prosecution and not dependent on the establishment, often with considerable delay, of an ad hoc tribunal.

While it must be acknowledged that the ICC will not be a panacea for human rights violations, it will provide a mechanism that is far superior to existing institutions, and should be commended as such.

Australia's national interest and the international community

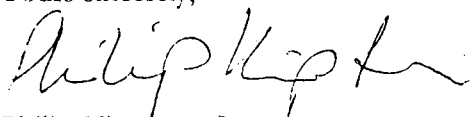
Ratification of the ICC statute would promote Australia's interest in international peace and security – an interest that it has shown a particular concern for through its recent peacekeeping operations and its involvement in the international criminal tribunals for the former Yugoslavia and Rwanda.

If Australia is one of the first sixty states to ratify, it will have an active role in the composition and administration of the Court, ensuring that the ICC complies with the high and impartial standards of justice for which Australia is generally known.

The recent arrest of Slobodan Milosevic has renewed the hopes of the international community that justice can indeed be served on the most heinous violators of human rights, wherever they may be. Australia's ratification will bring those hopes one step further to realisation.

In conclusion, we believe that the ICC is an important step towards the prevention of serious human rights abuses worldwide, and that it is in the interests of both Australia and the international community to support its establishment. We urge you therefore to support a recommendation by the Committee in favour of ratification.

Yours sincerely,



Philip Kimpton, Convenor
for the Sydney University Law School Amnesty Group