



## Australia

POBox 2080  
Templestowe Heights 3107  
Tel. 61-3-9850925  
Fax 61-3-8582235  
e-mail: [prea@alphalink.com.au](mailto:prea@alphalink.com.au)  
website: [www.deiryassin.org](http://www.deiryassin.org)

### Submission to the Joint Standing Committee on Treaties

#### Statue for an International Criminal Court

Deir Yassin Remembered/Australia founded on April 2000 to promote justice for Palestinians. The Board of Advisers of Deir Yassin Remembered in U.S.A., consists of twenty people – half Jews, half non-Jews, half men, and half women.

At the moment there are five four branches for DYR:

- **DYR-USA**
- **DYR-Jerusalem**
- **DYR-England**
- **DYR-Scotland**
- **DYR-Australia**

#### • **Introduction - Deir Yassin Remembered: Raison d'être**

Part of the struggle for self-determination by Palestinians has been to tell the truth about Palestinians as victims of Zionism. For too long their history has been denied and this denial has only served to further oppress and deliberately dehumanise Palestinians in Israel, inside the occupied territories, and outside in their diaspora. Some progress has been made. Westerners now realise that Palestinians, as a people, do exist. And they have come to acknowledge that during the creation of the state of Israel thousands of Palestinians were killed and over 700,000 were driven or frightened from their homes and lands on which they had lived for centuries. In keeping with Simon Wiesenthal's observation that "Hope lives when people remember," the suffering of Jews has been rightly acknowledged and memorialised. But there are few memorials for Palestinians who died in 1948. Their history, in which the massacre at Deir Yassin is a very significant event, has been largely buried and forgotten. And yet, like the descendants of the victims in Armenia (1915–17), in the Soviet Union (1929–53), in Nazi Germany (1933–45), in China (1949–52, 1957–60, and 1966–76), and in Cambodia (1975–79), the descendants of Palestinians want the world to remember what they suffered, what they lost, and why they died. Today, Israelis and Palestinians are involved in what has been called the "Middle East Peace

Process." In the spirit of reconciliation essential for the success of that process, the organisers of Deir Yassin Remembered believe it is appropriate for the suffering of Palestinians to likewise be acknowledged and memorialised.

But while the main purpose of Deir Yassin Remembered is to build a suitable memorial, the organisation has a broader, more humanitarian objective. It will work to eliminate prejudice against Palestinians and to promote the human side of a people who have been the victims of the Zionist colonisation of their land and of the apartheid conditions under which they now live. The organisers will publicise the building of the memorial, through press releases and documentary presentations, in an effort to heighten awareness, particularly on the part of the Westerners public, concerning Palestinian grievances, and thus enhance support for a just and durable resolution to the conflict.

- **Ratification of the Statute is important**

Deir Yassin Remembered/Australia believes that International Criminal Court is vital for world peace. We believe strongly that ratification of the ICC Statue and the enactment of enabling Australian legislation will advance Australia role within the international community in all levels. This is truly will lead to bring Australians to the world standards citizenship, keep in your mind that Australia consists from immigrant communities from all countries around the world. Large numbers came to Australia escaping wars and destruction in their original countries. Most of them did not and will not forget their own experiences until the war criminal brought to justice. This is why ICC is so important.

At the same time many persons committed crimes against humanity find Australia to be a safe haven and settling in Australia. Nearly ten thousands Israelis<sup>1</sup> settled in Australia permanently, and thousands of Israelis visits Australia every year. We witnessed during Al-Aqsa Intifada, uprising, that Israeli settlers used their heavy weapons killing unarmed Palestinian civilians. These atrocities supported by Israeli government.

... there is an applicant for refugee status currently in Australia who admitted to the tribunal that he had participated in acts in the Sabra-Shatila camps in Lebanon. The issue there comes up as to whether he should be granted refugee status. Under the refugee convention there is an exemption that a person committing war crimes is not entitled to the benefit of the protection of the refugee convention. But I suppose that would raise the additional issue of whether that person ought to be prosecuted here in Australia or elsewhere.

Parliament Joint Standing Committee on Foreign Affairs, Defence, and Trade, Human Rights Sub-Committee Hansard, 24 November 1997. Oral Evidence by Dr Balkin, Attorney-General Department.

---

<sup>1</sup> Most or all of them served in the Israel Defence Force

Also, millions of Australian dollars find its way to Israel to humiliate Palestinians in daily basis, inside Israel and the occupied territories. Australian taxpayers' money used to humiliate Palestinians and change populations in the occupied territories; Rabbi Josef Gutnick is a very clear example.

- **Recommendations**

Deir Yassin Remembered/Australia supports Amnesty International Summary Checklist for Effective Implementation of the International Criminal Court. Their checklist is:

## ***Part 1. Complementarity:***

### **I. DEFINING CRIMES, PRINCIPLES OF CRIMINAL RESPONSIBILITY AND DEFENCES**

1. Legislation should provide that the crimes in the Rome Statute, including other crimes under international law, are crimes under national law.
2. National courts should be able to exercise universal jurisdiction in all cases of crimes under international law.
3. Principles of criminal responsibility in national legislation for crimes under international law should be consistent with customary international law.
4. Defences in national law to crimes under international law should be consistent with customary international law.

### **II. ELIMINATION OF BARS TO PROSECUTION**

5. No statutes of limitations are permitted.
6. No amnesties, pardons or similar measures of impunity by any state should be recognised.
7. Immunity of officials from prosecution for crimes under international law should be eliminated.

### **III. ENSURING FAIR TRIALS WITHOUT THE DEATH PENALTY**

8. Trials must be fair.
9. Trials should exclude the death penalty.

## ***Part 2. Cooperation:***

### **I. BASIC OBLIGATION TO COOPERATE**

10. National courts and authorities must cooperate fully with Court orders and requests.

## **II. STATUS OF THE COURT IN NATIONAL LAW**

11. The Court must be authorised to sit in the state.

12. The legal personality of the Court must be recognised.

13. The privileges and immunities of the Court, its personnel, counsel, experts, witnesses and other persons whose presence is required at the seat of the Court must be fully respected.

## **III. NOMINATION OF CANDIDATES TO BE JUDGES OR PROSECUTOR**

14. States should ensure that they nominate candidates to be Judges and the Prosecutor in an open process with the broadest possible consultation.

## **IV. FACILITATING AND ASSISTING COURT INVESTIGATIONS**

15. When the Prosecutor has deferred an investigation, states shall comply without delay to requests for information.

16. States shall give effect to acts of the Prosecutor or warrants issued by the Court prior to an Article 19 challenge to jurisdiction or admissibility and to actions by the Prosecutor to preserve evidence or prevent an accused person absconding pursuant to Articles 18 (6) and 19 (8).

17. States should facilitate the ability of the Office of the Prosecutor and the defence to conduct investigations in the state without any hindrance.

18. National legislation should not contain grounds for refusal of requests for assistance by the Court in connection with investigations and prosecutions.

19. National authorities must provide a broad range of assistance to the Court, as outlined below.

### **A. Assistance related to documents and records, information and physical evidence**

- a. Locating and providing documents and records, information and material evidence requested or ordered by the Court.
- b. Preserving such evidence from loss, tampering or destruction.
- c. Serving any documents requested by the Court.

### **B. Assistance related to victims and witnesses**

- d. Assisting the Court in locating witnesses.
- e. Providing victims and witnesses with any necessary protection.
- f. Fully respecting the rights of persons questioned in connection with

investigations of crimes within the Court's jurisdiction.  
g. Assisting the Court by compelling witnesses to testify, subject to any lawful privilege, at the seat of the Court or in the state.

### **C. Assistance related to searches and seizures**

- h. Facilitating searches and seizures of evidence by the Court, including the exhumation of graves, and the preservation of evidence.
- i. Assisting in tracing, freezing, seizing and forfeiting assets of accused persons.
- j. Providing any other assistance requested or ordered by the Court.

## **V. ARREST AND SURRENDER OF ACCUSED PERSONS**

- 20.** States parties should ensure that there are no obstacles to arrest and surrender.
- 21.** National courts and authorities must arrest accused persons as soon as possible after a request by the Court.
- 22.** National courts and authorities must fully respect the rights of those arrested at the request or order of the Court.
- 23.** National courts and authorities must surrender arrested persons promptly to the Court.
- 24.** States should give priority to requests for surrender by the Court over competing requests by other states.
- 25.** States must permit transfers of accused persons through their territory to the seat of the Court.
- 26.** States must not retry persons acquitted or convicted by the Court for the same conduct.

## **VI. ENSURING EFFECTIVE REPARATIONS TO VICTIMS**

**27.** National courts and authorities must enforce judgments and decisions of the Court concerning reparations for victims and should provide for reparations in national law for all victims of crimes under international law in accordance with international standards, including the general principles established by the Court relating to reparations.

## **VII. TRYING CASES OF OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE**

**28.** Legislation must provide for punishment of offences against the administration of justice by the Court.

## **VIII. ENFORCEMENT OF SENTENCES**

**29.** Legislation must provide for enforcement of fines and forfeiture measures.

**30.** Legislation should provide for the enforcement of sentences by the Court, in accordance with the requirements set forth below.

- a.** Conditions of detention must fully satisfy the requirements of the Statute and other international standards.
- b.** Legislation should provide for release of the convicted person on completion of sentence or on order of the Court.
- c.** Legislation should provide for the transfer of persons on completion of sentence.
- d.** Legislation should limit prosecutions and punishment for other offences.
- e.** Legislation should address the question of escape.

#### **IX. PUBLIC EDUCATION AND TRAINING OF OFFICIALS**

**31.** States parties should develop and implement effective programs of public education and training for officials on implementation of the Statute.

#### **• Conclusion**

The historian Martin Buber, a man for whom he professes to have the greatest admiration, and a man whom once wrote the Israeli Prime Minister, Ben Gurion saying

*"The time will come when it will be possible to conceive of some act in Deir Yassin, an act which will symbolise our people's desire for justice and brotherhood with the Arab people."*

The members of *Deir Yassin Remembered* believe that time is overdue.

Deir Yassin Remembered/Australia as an institution strongly believes that the ICC is not viable but an essential step towards international justice. Australia cannot be major player in global peace and justice without ratification Statute of the ICC.

Deir Yassin Remembered/Australia would be pleased to provide further information if requested and also give oral presentation before the committee.

**Asem Judeh**  
**Director**