

2 Bourne Street
CLAYFIELD 4011

Submission No. 198

15 April, 1999

Hon. Daryl Williams AM MP
Attorney General
Parliament House
CANBERRA

Dear Mr. Williams,

INTERNATIONAL CRIMINAL COURT

I note that on 9th December 1998, Australia became a signatory to the treaty commonly known as the Rome Statute, or the creation of an International Criminal Court.

Although I have no legal training, I have the uneasy feeling that such a court would be against the interests of Australians. In the Constitution of the Commonwealth of Australia, Section 71 provides for judicial power of the Commonwealth being vested in the High Court of Australia, and in such other courts as the Parliament creates. It would seem to me that the establishment of the International Criminal Court would subsume the efforts of the High Court or other Australian courts in relation to Australian citizens in Australia.

Up to 6th April 1999, some eighty countries had signed the treaty, including Australia. The Rome Statute provides for the establishment of the International Criminal Court when sixty countries ratify the treaty. Two countries have already ratified the treaty. Standing out from signing are the United States, Israel, China, Libya, Qatar, Iraq, and Yemen and it appears that there were twenty-one Nations who abstained from the original vote in Rome on 17th July 1998.

From some scanty reading of the gist of the Statute, there is some case for Australia not to ratify the treaty. It is claimed that the ICC will have universal jurisdiction to bring to trial, without the benefit of a jury, individuals charged with genocide, war crimes, crimes against humanity and aggression anywhere on earth, regardless of whether the individuals country is a signatory or not. This would seem to be an unprecedented claim to authority far beyond the terms of our Constitution?

It seems that under "war crimes" there are definitions so wide as to make the task of, say, the Australian Defence Force impossible. For instance, the following make a mockery of our Defence forces;

- "Willfully causing great suffering, or serious injury to body or health" and
- Killing and wounding treacherously individuals belonging to a hostile nation or army" and
- " Intentionally launching an attack in the knowledge that such an attack will cause incidental loss of life"

Within the Australian Defence Force there is a system of Military Law which binds the good conduct and military discipline of our Forces. Will the ICC override that system? How can a nation protect it's citizens before such a court?

Already the United Nations, in establishing the International Court of Justice seems to have jurisdiction on a wide range of matters including decisions on international conventions, international custom, the general principles of law recognised by civilised nations and as a means of determining any rules of law.

Similarly the World Trade Organisation seems to have a judicial mechanism for disputes in the field of free trade and soon, probably, on financial matters. There is a strong perception that the inception of an International Criminal Court might be yet another move to complete the judicial arm of a "one world government".

While advocates of the ICC are at pains to explain that the ICC would not override the sovereignty of nations, this is not what I believe and what is understood by many other observers.

Sir, with respect, perhaps this matter might well be brought to the attention of the Parliament together with copies of the Rome Statute, and as this is a treaty for ratification, it be appropriately examined by the Joint Standing Committee on Treaties. I make this very firm recommendation to you to take that course of action for the benefit of all Australians.

Yours sincerely

Robert Downey