

Submission No. ....43.....

The Secretary  
Joint Select Committee on Treaties  
Parliament House  
CANBERRA ACT 2600

Dear Mr Morris

## ENQUIRY INTO STATUTE FOR A NEW INTERNATIONAL CRIMINAL COURT

SUBMISSION BY DR GLENISTER SHEIL

INTERNATIONAL CRIMINAL COURT

### AN INTERNATIONAL CRIMINAL COURT

Courts are an invention of people rather than lawyers. The people who subject themselves to the law being dispensed by a particular court must understand the court, as well as have access to it, and be able to afford it. The authority establishing the court must be able to sue and be sued in order to prevent the court becoming arbitrary.

Before consideration of the establishment of an International Criminal Court there are several important questions that must be answered, eg :

- Who decides the constituency of the court? Not all nations are members of the UN, and those which are comprise such a variety of views on law that it would be impossible for them to agree on a uniform set of laws to administer.

Moslems for example, if they are not already in an Islamic State, are working tirelessly to turn the country they live in into an Islamic State, and in an Islamic State the Sharia Law is the State Law and cannot be varied. This could cause immediate conflicts on the Bench of the Court; eg: One of Islam's precepts is retribution killing, whereas the Christians' Ten Commandments forbid retribution killing.

- The prospect of "split benches" using different Judges for different trials involving different laws could lead to the biggest legal confusions in history. As an example look at the split decisions of our own High Court causing so much social discord in Australia today, in the face of our Constitution which instructs Judges that our Laws are for the "peace, order and good government" of the Commonwealth!
- Courts can grow away from the people they serve, and this would be a huge risk for a remote body such as the proposed International Criminal Court. For example take the case of our own High Court again:

Ever since the High Court has not been required to explain its expenditure to either the People or the Parliament, and there has been no appeal from its decisions, the High Court has, in my opinion, been running wild. This is a dangerous position for a country to be in. The High Court has even based recent decisions on "implied rights" in the Constitution; on "lasting social values", when the High Court itself decides what "lasting social values" are!; declaring well established and well used national and international law to be a "repugnant fiction", when it may have been repugnant to some, but it was never fiction; declaring Britain to be Constitutionally a foreign power, when she is only a foreign power legally – her Queen is Constitutionally our Sovereign, who appoints and removes our Governors-General and who possesses all the powers of Australia's Crown whenever she is personally in Australia!

In addition, the People in 35 referenda out of 43 held since Federation, have voted against giving more power to the Commonwealth Government at every referendum, yet the High Court in decision after decision has given more power to the Commonwealth Government. That is, the High Court is acting against the Constitution as well as the wishes of the People. If this can happen in a Western, stable, civilized country like Australia, how much more inequitable could an International Criminal Court be?

The name of the political game is power, and once a body has power it will use it, and use it for its own purposes. If it is given insufficient power for its own purposes it will seek more power, as the UN is doing now. The secret of success is to dissolve power by putting it in the hands of an ultimate and untouchable, independent agency which cannot be corrupted, and is powerless in itself. If this were the case no political rogues or tyrants could usurp power.

Other questions arise, as to :-

- Who will decide on the laws to be administered?
  - . . . . . Qualifications of the Judges?
  - . . . . . Standards of investigation and evidence?
  - . . . . . Sentencing, Corrections and rehabilitation?
- Will there be a Statute of Limitations?

- What about differences in perceptions? For example a Bantu would have a different perception of "freedom" from an Eskimo or an Australian.
- What would be the treatment of even current controversies such as the Nato aggression on Kosovo? Would Mr Clinton (USA President) and Mr Blair (British PM), be declared War Criminals over the Nato aggression? The Russian attack on its own State of Chechnya? The Chinese atrocities in Tien An Min Square – when both China and Russia have bluntly told the UN to keep out of their domestic affairs!
- What would the Court do should Australian Aborigines complain to the UN that they have been robbed of their Sovereignty? The UN definition of Sovereignty is "the control a government has over a territory, to the exclusion of other powers, and includes the recognition by other states and interaction with them in International Law". This hardly fits Australia in 1770 or 1778.
- NGOs are threatening to take over the role of the Governments of the Countries into which they move. For example there are 400 NGOs registered with the UN in Kosovo right now! The recent Venezuelan mudslide caused the Red Cross to move in and instigate a 10 year plan! which will divert the Venezuelan Government's plans, when Venezuela is oil rich but one third of its people are poverty stricken.

There is very little prospect of the Security Council moving to dilute its powers, or to reorganize itself on a regional basis.

"Taxing the global commons" sounds sinister, and surely it must be a wild eyed bureaucratic concept! The third world has just had its massive debt cancelled, which shows the height of irresponsibility on both sides, and an unhealthy disrespect for money. I trust the UN is not in the process of allowing the Third World to amass another huge debt. In any case, much of this debt had apparently gone into the pockets of Third World leaders without benefit to their Peoples.

### **Sovereignty :**

The UN has a care that some Members are hiding gross crimes behind a façade of "Sovereignty". The UN claims that the sine qua non of a Nation's Sovereignty is recognition of that Sovereignty by the UN. Therefore the UN should make possession of Sovereignty precious to every Nation, and the loss of it damaging.

That is to say, should a Government oppress or persecute or slaughter its people to the point of their being forced to become refugees, then that Nation should lose its Sovereignty as recognized by the UN. This could take the form of trade sanctions with closure of its borders, ports and airports, non-recognition of its currency, people and representatives. Clandestine activity outside the sanctions should immediately bring the miscreant Nation a loss of its Sovereignty. Rascal groups acting on behalf of a Country should cause the blame to be placed on that Country until it

has cleared them out.

Nations should be required to show that their Government upholds their signature to the UN Charter, and that they are pursuing "peaceful and democratic" principles towards their People.

Glenister Sheil.