



Submission No. 212

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Joint Standing Committee on Treaties  
Parliament House  
Canberra  
ACT 2600



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Dear Sirs

**INTERNATIONAL CRIMINAL COURT**

We have been following with interest the progress of the Statute of the International Criminal Court, and would like to bring the following points to your attention.

It is now more than two and a half years since the Australian Government signed the Statute and it is a matter of great concern to us that no legislation has yet been introduced to ratify the ICC. We urge that this should occur as soon as possible.

We stress the importance of the ICC in the world-wide fight against impunity, where for the first time, it will be possible for the perpetrators of violations against human rights to be brought to justice, rather than on an ad hoc basis.

We further emphasise that the ICC will complement the role of Australian Courts and that Australian troops operating overseas are already subject to the Geneva Conventions Act (Section 7) and the Australian Defence Forces Discipline Act.

We would like to highlight the following issues for your consideration .

**1. An International Criminal court is necessary to tackle systematic violations against women, including rape in war, and sexual enslavement.**

- It is well documented that women have often been seen as the spoils of war, with their rape, abuse and sexual enslavement being seen as part of the normal course of war:
- We hold that rape of women in custody by officials, or de facto officials, constitutes torture, and that the systematic rape of women is a crime against humanity:

- Despite the fact that thousands of Bosnian women were raped in the 1990s, it was only in February 2001, that the ad hoc War Crimes Tribunal on the Former Yugoslavia in the Hague, has decided in the Foca case, that the systematic rape of women in war is a crime against humanity. It is only in the Foca case that individuals have been brought to account for this crime in a war zone:
- Systematic rape and sexual enslavement in armed conflict are now legally acknowledged as crimes against humanity and it is now time to introduce an International Criminal Court to ensure that if national courts are unable or, more likely, unwilling to prosecute those horrendous crimes, then the International Court can step in.

**2. An International Criminal Court will not impinge on Australian sovereignty as Australian courts will be called on to investigate and prosecute first.**

- Australia's sovereignty is in no way prejudiced by the International Criminal Court, as the underlying principle of the ICC Statute is one of complementarity. Article 17 of the Statute provides that only when national courts are unable to handle a matter, or are unwilling to do so, will the International Criminal Court have jurisdiction.
- This would happen where national judicial institutions have collapsed or where prosecutors and/or judges lack the political will to prosecute and try high-ranking official implicated in international crimes. A glaring example of this is the reluctance to indict Indonesian generals over their role in crimes against humanity committed, and still being committed, in East Timor.
- The test will be where the State in question proves "unwilling or unable genuinely to prosecute" and that would be where "the decision was made for the purpose of shielding the person concerned from criminal responsibility".

**3. Australian troops would not be placed in jeopardy because of the creation of an International criminal Court.**

- As a matter of principle, it is unacceptable to say that any Australian soldier who committed a war crime should not be brought to justice for that crime.
- Apart from this, Australian troops are already bound by the four Geneva Conventions relating to armed conflict, and in particular, Australian troops are bound by the Geneva Conventions Act (section 7) and the Australian Defence Troops Discipline Act.
- It is in Australia's interests for other countries to respect human rights and also to be bound by international humanitarian law, as the need for countries to send peacekeepers to countries where war crimes have been committed would be reduced.
- Much of the speculation that Australian troops would be placed in a difficult position is incorrect in fact, and if there were any allegations of wrong-doing, it would be up to Australian courts to investigate first under the principle of complementarity.

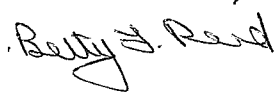
We wish you well in your examinations of the obligations Australia will assume under the Statute, and hope you will consider the issues we have highlighted for your consideration.

We further hope that the legislation to ratify the Statute of the International Criminal Court will not be delayed much longer.

Yours sincerely



Alexander Reid



Betty F Reid