

AUSTRALIA'S FORMER PRIME MINISTER HOWARD ACCUSED OF WAR CRIMES BEFORE THE INTERNATIONAL CRIMINAL COURT IN THE HAGUE

By the SEARCH Foundation, Sydney

07 June, 2014

Countercurrents.org

Early in 2012 the Committee of the SEARCH Foundation, Sydney, Australia resolved to submit a complaint to the International Criminal Court in The Hague, Netherlands, against Mr. John Winston Howard, former Prime Minister of Australia between 1996 and 2007, for his decision to send Australian Forces to invade and wage war against Iraq.

SEARCH is an acronym for Social Education, Action and Research Concerning Humanity Foundation, an Australian not-for-profit company.

The International Criminal Court is a permanent international tribunal to prosecute individuals for genocide, crimes against humanity, war crimes - and for the crime of aggression from some time in 2017. The Court was set up through the Statute of Rome, which was drafted and signed on 17 July 1998 and came into force on 1 July 2002.

Australia signed the Statute on 9 December 1998, ratified it on 1 July 2002, so as to be bound as from 1 September 2002.

Art. 17 of the Statute, which deals with 'Issues of admissibility' prescribes that every step of the domestic jurisdiction of a country be exhausted before the Court may take jurisdiction over a complaint.

The SEARCH Foundation believes that it has satisfied the preconditions for admissibility.

Here are the steps taken.

On 16 March 2012 the SEARCH Foundation sent a complaint to Commissioner Tony Negus APM, the head of the Australian Federal Police, in Canberra. The complaint is substantially the same as the one which would be sent to the Court. As far as the domestic jurisdiction is concerned, the complaint was based on Mr. Howard's violation of the provisions of Division 268 of the Australian Criminal Code Act 1995. That Division 'received' the substance of Art. [6: Genocide](#), [Art. 7: Crimes against humanity](#) and [Art. 8: War crimes](#), as contained in the Statute of Rome.

On 23 March 2012 (the date of the year is incorrect on the letter) the Office of the AFP Commissioner replied with the attached letter to the effect that the complaint had been sent 'for assessment. [and that] A response [would have been] forthcoming in due course'.



OFFICE OF THE COMMISSIONER

GPO Box 401 Canberra City ACT 2601
Telephone 02 6131 6300 Facsimile 02 6132 8800
www.afp.gov.au
1800 00 00 100

23 March 2011

Mr Robert Durbridge
President
SEARCH Foundation
Level 3, Suite 3B
110 Kippax Street
SURRY HILLS NSW 2010

Dear Mr Durbridge,

Thank you for your correspondence to the AFP Commissioner regarding a complaint against Mr John Winston Howard, former Prime Minister of Australia. I wish to acknowledge receipt of this correspondence on behalf of the Office of the Commissioner under reference number CMS2012/5826.

Your request has been referred to the relevant portfolio for assessment. A response will be forthcoming in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T. J. Mackell', is written over a light blue horizontal line.

T. J. Mackell
Office of the Commissioner

This is the response.



OPERATIONS SUPPORT
GPO Box 401 Canberra City ACT 2601
www.afp.gov.au
1300 799 621 149

Our Ref: 4585598

03 May 2012

Mr Robert Durbridge
Search Foundation

Via Email: admin@search.org.au

Dear Mr Durbridge

I refer to your correspondence dated 16 March 2012 to the Australian Federal Police (AFP) regarding the allegation that the former Prime Minister, Mr John Howard has committed an offence against Division 268 of the *Criminal Code Act 1995* (the Code).

An assessment by the AFP Legal Branch, of the information you have supplied, does not disclose an offence against Division 268 of the Code, and therefore the matters raised cannot be investigated by the AFP. You may wish to seek further independent legal advice to clarify this.

A copy of your correspondence has been recorded by the AFP.

Yours sincerely

Client Liaison Team
AFP Operations Coordination Centre

The SEARCH Committee took time to reconsider the matter, to seek further legal advice, and resolved to submit a similar complaint to the Commonwealth Director of Public Prosecutions.

The complaint was sent on 9 May 2013 to Mr. Robert Bromwich SC, Commonwealth Director of Public Prosecutions, in Canberra.

The reply arrived promptly. A copy of it follows:



DPP

Commonwealth Director of Public Prosecutions

Your reference:

Our reference:

18 June 2013

Mr Robert Durbridge
 President
 SEARCH Foundation
 128 Chalmers St
 SURRY HILLS NSW 2010

Dear Mr Durbridge

Complaint against John Winston Howard

Thank you for your letter of 9 May 2013, in which you request that the Commonwealth Director of Public Prosecutions ("the CDPP") initiate a prosecution of Mr Howard, former Prime Minister of Australia, for war crimes offences against Division 268 of the Criminal Code.

The CDPP has considered the material which you have provided and will not initiate a prosecution of Mr Howard based on this material. The material is not a brief of evidence, containing admissible evidence against Mr Howard. It also notes that the allegations set out in your letter do not appear to fall within the terms of any offence contained in Division 268 of the Criminal Code.

Yours sincerely

Mark de Crespigny
 Senior Assistant Director

HEAD OFFICE

4 Marcus Clarke Street Canberra City 2601
 GPO Box 31140 Canberra ACT 2601
 Telephone: (02) 6263 3666 Facsimile:

The SEARCH Committee resolved that, all avenues of domestic jurisdiction having been attempted without success, time had come to approach the International Criminal Court.

This was done on 3 September 2013.

The full text of the complaint is reproduced hereafter:



3 September 2013

The Head
Information and Evidence Unit
International Criminal Court
Office of the Prosecutor
Post Office Box 19519
2500 CM The Hague
The Netherlands
Email: otp.informationdesk@icc-cpi.int

Facsimile: +31 70 515 8555.

COMPLAINT AGAINST JOHN WINSTON HOWARD

Dear Madam / Sir,

Please accept my regards.

I have the honour hereby to file with you and your office the following Complaint against Mr. John Winston Howard, former Prime Minister of Australia, who is responsible for sending Australian military personnel into, over, and into the waters of, the Republic of Iraq, pursuant to a 17 March 2003 decision of the Australian Cabinet to join in the invasion of the Republic of Iraq.

As a result of this decision, I believe that offences were committed, and that these offences are punishable under Article 6 Genocide, Article 7 Crimes against Humanity, and Article 8 War Crimes of the Rome Statute.

I ask that you initiate an investigation under Article 15, with a view to issuing a warrant of arrest for Mr. John Winston Howard.

Australia's ratification of the Rome Statute came into force on 1 September 2002, and these crimes were committed after that date. The offences we enumerate are most serious.

On 16 March 2012, our organisation made a complaint in these same terms to both the Australian Federal Police, which is the primary agency responsible for investigating breaches of the Commonwealth Criminal Code 1995 which was amended to implement Australia's ratification of the Rome Statute i.e. Chapter 8 - Offences against humanity and related offences, Division 268 - 'Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court'. That Division of the Code 'receives' the provisions of the Rome Statute of 1998, as amended.

On 23 March 2011, the Office of the Australian Federal Police Commissioner acknowledged receipt of our complaint and on May 3, 2012, the AFP Operations Coordination Centre stated that our information did not disclose an offence against Division 268 and so declined to investigate.

On 9 May 2013, after consulting with many lawyers about how to proceed, we sent our complaint to the Commonwealth Director of Public Prosecutions, the other agency which can consider a prosecution under Division 268.

On 18 June 2013, the DPP replied that it would not initiate a prosecution of Mr. Howard, noting that the information provided was not a 'brief of evidence' and that the allegations we made did not appear to fall within the terms of any offence under Division 268.

Copies of the correspondence to and from the AFP and the Commonwealth DPP are attached.

Under Article 17 (b) of the Rome Statute, the Prosecutor cannot investigate if

“The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;”

However, we have demonstrated that the Australian State has not investigated this complaint. We argue that this is because the Australian State is unwilling to prosecute a former Prime Minister, since it is very clear to us that the invasion of Iraq directly produced breaches of Articles 6, 7 and 8 of the Rome Statute, as we set out below.

Therefore we consider that this complaint is open to your investigation under Article 17.

FACTS

- 1) On 11 September 2001 Mr. Howard was in Washington DC, U.S.A., on a state visit while the terrorist attacks on the Twin Towers in New York and the Pentagon were taking place.

The day after the attacks he is reported as having declared support for the United States of America in retaliation: “We will help them. We will support actions they take to properly retaliate in relation to these acts of bastardry against their citizens and against what they stand for.” [ANNEX 1]

2) Five days later the Australian Government, with the support of the Opposition Labor Party, passed a motion in the Australian Parliament invoking the ANZUS military alliance with the United States on the ground that the criminal actions of *Al Qaeda*, the terrorist organisation responsible for the attacks of 11 September 2001, were the equivalent to a state “attack on the United States.” [ANNEX 2]

3) In January 2002 Mr. Howard was in Washington and endorsed former President George W. Bush’s State of the Union speech, in which the President labelled Iran, North Korea and Iraq as an “axis of evil”, on the grounds that the three countries possessed “weapons of mass destruction” (WMDs).

Speaking at a doorstep interview at the United Nations, New York, on 30 January 2002, about President Bush’s ‘axis of evil speech’, Mr. Howard said:

“I think he was right to make the point that the campaign against terrorism doesn’t end with a successful operation in

Afghanistan. As to the question of a further Australian involvement then that would be a matter that would be looked at by Australia in a positive way, but not by way of a blank cheque approach, on a case by case basis. We are close allies of the United States in the campaign against terrorism. But obviously the military commitment we made in relation to Afghanistan was in relation to Afghanistan. If there are any further requests in relation to other parts of the world well they are requests that we will look at in the context of the circumstances. ... [In relation to Iran, Iraq and North Korea] I understand exactly what he was saying". [ANNEX 3]

- 4) In June 2002 Mr. Howard returned to Washington to declare support for the Bush doctrine of "pre-emptive strike", a doctrine which repudiated the entire framework of post-second world war international relations and asserted that the United States had the right to attack any country it deemed a threat.

At a White House doorstep interview by President Bush and Prime Minister Howard on 13 June 2002, Mr. Bush said:

"I told the Prime Minister there are no war plans on my desk. I haven't changed my opinion about Saddam Hussein, however. He is - this is a person who gassed his own people, and possesses weapons of mass destruction. And so as I told the American people, and I told John, we'll use all tools at our disposal to deal with

him. And, of course, before there is any action - military action, I would closely consult with our close friend.

There are no plans on my desk right now.” [ANNEX 4]

5) Also in June 2002, Defence Minister Senator Robert Hill declared support for U.S. President Bush’s new policy of ‘pre-emptive war’. In an address to some of Australia’s most senior military officers in Canberra on the afternoon of 18 June 2002, Senator Hill said that the determination of the U.S. to act "swiftly and firmly before threats become attacks ... is a position which we share, in principle”. [ANNEX 5]

6) Interviewed on ABC Radio PM by journalist Matt Brown on 18 June 2002, Minister Hill said:

“You don't wait until you are attacked, that's the principle lesson of September 11. When you look back at the history and you look at the attacks that occurred on US embassies in Africa, you look at the attack on the USS Cole in the Gulf, I'm sure now you would say with the benefit of hindsight, a more effective response should have been made at that time to the threat. ... We believe that the weapons of mass destruction program in Iraq is a threat and that threat needs to be dealt with. We would hope that it will be dealt with by Saddam Hussein being prepared to take back the weapons and inspectors and to be prepared to behave in a civilised way, but so far there has been no sign to that [e]ffect. ... I've said in principle, we would endorse the United States taking action

against a threat, rather than waiting to be attacked. ... what we've said is that we've requested to engage in any other theatre, beyond that which we are at the moment, we would consider it on its merits at that time." [ANNEX 6]

- 7) In July 2002 the Australian Foreign Minister, Mr. Alexander Downer, who was in Washington, condemned efforts to avert war through diplomatic negotiations, and confirmed that Iraq was continuing to build weapons of mass destruction. The *Sydney Morning Herald* reported this development on 13 July 2002:

'The Foreign Minister, Alexander Downer, has given Australia's strongest backing so far to a possible United States attack on Iraq, and says he believes Australians would support military intervention.

Mr. Downer said "only a fool" would believe that a policy of appeasement might solve "the problem" of Iraq, after a meeting in Washington with the US Secretary of State, Colin Powell.

Although not specifically committing Australia to providing troops for such an attack, Mr. Downer was pessimistic yesterday about the prospects of a military showdown being avoided.

His remarks went further than those of the Prime Minister, John Howard, and the Defence Minister, Robert Hill.

Asked if he thought the situation might be resolved without military involvement, Mr. Downer said: "It's not heading in that direction at the moment. There's no question of that."

[ANNEX 7]

8) The Department of Foreign Affairs reported in its *Annual Report for 2002-2003*:

"The department played a central role in the development of whole-of-government legal advice in relation to all aspects of Australia's participation in international action to enforce Iraq's obligations pursuant to UN Security Council Resolutions. This included advice to the Government, tabled in Parliament, on the international legal basis for Australia's engagement in Iraq as well as advice on the conduct of operations and the status of Australia's personnel in Iraq. We also contributed to legal advice on Australia's role in the Coalition Provisional Authority in Iraq." (at p. 78)

and

"In coordination with the Department of Defence, the department organised Australia's contributions to the UN WMD inspections process in Iraq and closely monitored the results. We facilitated the deployment of Australian defence forces overseas to back up diplomatic efforts and, when those failed, to take part in the coalition military campaign against Iraq. Our network of overseas posts, particularly those in the Middle East, Washington and London, played a

major role in supporting these outcomes. See sub output 1.1.4 for further information.”(at p. 85) [ANNEX 8]

- 9) While the United States Administration was taking advantage of Australian support, France and Germany were moving to block a planned unilateral U.S. invasion, by offering Iraq a new weapons’ inspection regime supervised by the United Nations Security Council. By August 2002 Iraq had resumed negotiations over conditions for the return of the inspectors. [ANNEX 9]
- 10) On 6 April 2002 Mr. Tony Blair, then United Kingdom Prime Minister, and President Bush met at Crawford, Texas, and at a subsequent press conference asserted that they had evidence of an Iraqi nuclear program which was in defiance of United Nations Resolutions. [ANNEX 10]
- 11) On 7 September 2002 Mr. Howard declared at a meeting of the Liberal Party of Australia that Australia and the United States had a “shared concern” that the United Nations should take action.
- 12) On 13 September 2002 the Australian Office of National Assessments, following a request from Mr. Howard’s Office, presented an intelligence report which declared that it was “highly likely” that Iraq was concealing chemical and biological weapons and that there was “no reason to

believe” it was not seeking “to acquire nuclear weapons.”

[ANNEX 11]

Writing in the *Sydney Morning Herald* on 19 June 2004, Mr. Andrew Wilkie, formerly an analyst with the Office of National Assessments, who resigned to protest against the looming invasion in March 2003, noted this as an “unexpectedly hardline ONA assessment”.

“This was an unclassified report put together at the request of the Department of Foreign Affairs. Specifically, the September 13 ONA assessment on Iraq stated that a range of intelligence and public information suggests that 'Iraq is highly likely to have chemical and biological weapons'. It also commented that, 'there is no reason to believe that Saddam Hussein has abandoned his ambition to acquire nuclear weapons'. Yet only the previous day, the 2004 inquiry revealed, ONA had reported that there was no firm evidence of new chemical and biological weapon production.” [ANNEX 12]

13) Speaking to the media in September 2004, United Nations Secretary-General Kofi Annan stated that the invasion of Iraq was “illegal”. [ANNEX 13]

14) On 17 September 2002 Mr. Howard presented the ONA report to Parliament and asserted that, unless Iraq was “disarmed”, its weapons of mass destruction would pose “a

direct, undeniable and lethal threat to Australia and its people.”[ANNEX 14]

15) On 8 November 2002, under intense pressures from the United States and British Administrations, the United Nations Security Council passed Resolution 1441. The wording of that Resolution did not explicitly sanction war. It only said

“that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations.” [ANNEX 15]

As events would develop:

- a) On 14 February 2003 the Executive Chairman of United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), Dr. Hans Blix, said in one of his many briefings to the President of the Security Council: “How much, if any, is left of Iraq’s weapons of mass destruction and related proscribed items and programmes? So far, UNMOVIC has not found any such weapons, only a small number of empty chemical munitions, which should have been declared and destroyed.” [ANNEX 16]
- b) On 12 January 2010 a Dutch Commission headed by the former President of the Dutch Supreme Court, Mr.

Justice Willibrord Davids, and including a former judge of the European Court of Justice and two legal academics, presented to the Dutch Government a report which found, *inter alia*, that the wording of UN Resolution 1441 could not “reasonably be interpreted [as the Dutch Government did] as authorising individual member states to use military force to compel Iraq to comply with the Security Council’s Resolutions.”

[ANNEX 17]

c) Former British government ministers, legal advisers and officials have testified under oath before the on-going British Inquiry headed by Sir John Chilcot that they thought that intervention into Iraq would be illegal and advised members of the British Government to that effect. [ANNEX 18]

15) On 6 February 2003 former United States Secretary of State Colin Powell submitted to the United Nations Security Council information purporting to claim that Iraq was hiding weapons of mass destruction, information that was soon thoroughly discredited. [ANNEX 19]

16) In March 2003 the United States, the United Kingdom and Australia concluded that another resolution to the effect that there was evidence that Iraq was concealing weapons of mass destruction from the United Nations inspectors was

not, in the words of Sir David Manning, then British Ambassador to the United States, “going to run”. Mr. Blair decided that “the diplomatic track had been exhausted and he would accept the need to take military action”, and the Australian Government came to the same decision.

[ANNEX 20]

17) Mr. Howard repeatedly asserted in and out of Parliament that he had given no undertaking to participate in the war. Nevertheless, Australian air, naval and land special forces had already been deployed in late 2002 and early 2003 in the Persian Gulf area. At a Parliament House Press Conference on 10 January 2003, Prime Minister Howard said:

“There has of course been some question about an Australian involvement in the event that military action is taken against Iraq. As I’ve said on numerous occasions in the past and I repeat it here today the Australian government has not taken a decision to be involved in military action, indeed no decision has yet been taken by the United States or other countries to be so involved. But if Australia were to join some international military operation against Iraq, and we certainly hope that is not necessary, then the sort of contribution that Australia would make in that event would be broadly comparable to the contribution that we made in Afghanistan quite recently. There would be in those terms special forces

with appropriate support units; there would be naval vessels, there are already two in the Gulf and that number might be augmented by one; there would be some FA-18 fighters but not more than a squadron of 14; we've already announced the commitment of the Orions to the war against terror and that would continue.

There would not as some reports have suggested be a light infantry battalion or indeed any other ground forces, and there would not be any refuelers. I've even seen and read suggestions comparing what might be the level of contribution here if it were to come about to the level of contribution involvement in Vietnam. That comparison is historically and in every sense erroneous and inappropriate.

I did indicate last November that we had put contingency arrangements or the ADF had put contingency arrangements in place. That's only sensible and prudent. It doesn't mean that we have made a decision that the peace process has failed and there's only a military outcome feasible or possible. It is quite erroneous for people to allege that just because you take sensible contingency precautions and arrangements you lack a belief and a confidence that the peace process can work. I hope it does, but if it doesn't then if we do make a commitment we have to have prepared for that commitment and our men and women are entitled to the opportunity of that preparation in the interests of their own safety and their capacity to execute their obligations in a very professional way. And in that context it could be over the weeks ahead

there will be some forward deployment of assets and personnel. If that occurs then appropriate announcements will be made at the time. And I want to emphasise that we remain very very committed to the weapons inspection process. We hope it works, the world hopes it works, it will work if Iraq understands the weight of world opinion. I believe, the Government believes, our close allies believe that Iraq still possesses weapons of mass destruction and that's the reason why we remain very committed to this process and why we simply can't walk away and pretend that it's not a challenge. I hope the UN process works. We support it, we'll continue to support it, and I hope that the leadership of the Iraqi regime sees the good sense of resolving it in the way that I've described.

... Just because you take preparation for a possible military action doesn't indicate you want that military action to occur.

JOURNALIST:

So the mobilisation of 100,000 troops you don't believe constitutes an aggressive act by the United States?

PRIME MINISTER:

No, I think it is a thoroughly understandable thing for the United States to be doing and I think it's one of the things that has contributed to a greater willingness on the part of Iraq and a greater willingness on the part of the international community to focus on this issue. But it's not a sustainable

proposition to say that just because you take prudent military precautions you want military conflict. There are plenty of examples in history of countries taking prudent military precautions which have prevented military conflict. Sadly there are probably more examples of countries that if they had taken prudent military precautions might have avoided military conflict but, of course, they didn't, they foolishly imagined that by running away from problems you make them disappear." [ANNEX 21]

18) On 26 February 2003 forty-three Australian international law experts publicly warned that:

"The weak and ambiguous evidence presented to the international community by the U.S. Secretary of State, Colin Powell, to justify a pre-emptive strike underlines the practical danger of a doctrine of pre-emption. A principle of pre-emption would allow national agendas completely to destroy the system of collective security contained in Chapter Seven of the UN Charter and return us to the pre-1945 era, where might equalled right."

They further warned that:

"The International Criminal Court now has jurisdiction over war crimes and crimes against humanity ... It attributes criminal responsibility to individuals responsible for planning military action that violates international humanitarian law and those who carried it out. It specifically extends criminal

liability to heads of state, leaders of governments, parliamentarians, government officials and military personnel.” [ANNEX 22]

19) The Australian Government, led by Mr. Howard, defied legal opinion. Parliament was adjourned on 8 March 2003. In the late hours of 17 March 2003, Mr. Howard and his Cabinet voted to authorise Australian air, land and naval personnel to attack Iraq. US Assistant Secretary of State Richard Armitage made an official request for the involvement of Australian troops late on the night of March 20. It later became known that Australian special operations troops, with Cabinet authorisation, had entered Iraq as much as 30 hours before the outbreak of war.

The *Sydney Morning Herald* reported on 18 March 2003:

“Prime Minister John Howard today declared that Cabinet had decided to commit Australian troops already deployed in the Gulf to war with Iraq.

“The government has authorised the chief of the Australian Defence Force, General (Peter) Cosgrove, to place the Australian forces already deployed in the Gulf region as part of any US-led coalition operation that may take place in the future, directed in accordance with existing authority under UN resolutions to disarm Iraq,” he said in a statement to the press.

“The government strongly believes that the decision it has taken is right, it is legal, it is directed towards the protection of the Australian national interest and I ask the Australian community to support it,” he said.

Iraq had aspirations to acquire chemical and biological weapons and unless those weapons were taken from Iraq, there was a danger they would fall into the hands of terrorists.

That would represent a clear, undeniable threat to a western nation such as Australia.

He said the action had "a sound legal basis" in the decisions of the security council in the past.

Mr. Howard said he had decided to release the government's legal advice - after refusing to do so yesterday - as a result of "the eloquence of the questioning" on the issue.

He would not discuss the timing of military action as that was an operational matter". [ANNEX 23]

The House of Representatives Official *Hansard* records later that day, at 2.03pm, that Prime Minister Howard moved a resolution asking parliament to support the Cabinet decision.

The record reads in part:

“This morning I announced that Australia had joined a coalition, led by the United States, which intends to disarm Iraq of its prohibited weapons of mass destruction.”

And after an interjection:

“The government has now authorised our defence forces, which were predeployed to the gulf to acclimatize and contribute to the campaign to persuade Saddam Hussein into compliance, to take part in coalition operations. There is no more serious decision for any government than to commit its forces to military conflict abroad. Under our system, this decision lies with the executive of government: the cabinet. Nevertheless, it is appropriate that the parliament, at the first opportunity, have the chance to debate this motion. It is essential that the reason for that decision be made plain to the representatives of the people and that they have a full opportunity to debate them and to have their views recorded.”

[ANNEX 24]

20) As a result of the 20 March 2003 invasion of Iraq, there have been at least 105,439 – 115,149 civilians killed, and the Wikileaks war logs suggest a further 13,750, according to Iraq Body Count. [ANNEX 25]

NATURE OF THE COMPLAINT

The establishment of a permanent International Criminal Court with the capacity to investigate and prosecute genocide, the crime of aggression, war crimes and crimes against humanity, was a long standing human rights and foreign policy objective of the Australian Government.

The Commonwealth of Australia signed the Rome Statute, establishing the International Criminal Court 'the I.C.C.', on 9 December 1998. It deposited its instrument of ratification on 1 July 2002.

Australia's instrument of ratification includes a declaration affirming the primacy of Australia's criminal jurisdiction in relation to crimes within the jurisdiction of the Court. It outlines the conditions under which a person in Australian custody or control would be surrendered to the Court and clarifies Australia's interpretation of the crimes within the Statute. The declaration has full effect in Australian law and is not a reservation. It reinforces safeguards already built into the Statute to preserve Australian sovereignty over its criminal jurisdiction.

The provisions of the Rome Statute have been 'received' into Australian domestic legislation, which must be read in a way consistent with that Statute; and that includes the provisions of the *Commonwealth Criminal Code Act* [No. 12 of] 1995, particularly those of Chapter 8 - Offences against humanity and related offences, Division 268 - Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court.

The provisions referred to hereafter are, in order of their appearance in this complaint, reproduced *seriatim* in ANNEX 26.

By the operation of Art. 12 (1) Australia has accepted the jurisdiction of the International Criminal Court.

The Accused is a subject of the Commonwealth of Australia.

The Accused's criminal policy and practice could be characterised as an "act of aggression", the "supreme international crime" as early defined by the International

Military Tribunal at Nuremberg” (hereafter IMT), and thus in violation of the United Nations Charter’s Art. 2 (3) which prescribes the use of peaceful means to settle international disputes between Members, Art.2 (4) which proscribes the use of force against sovereign states, Art. 33 which sets down the duty to exhaust peaceful settlement of disputes and Art. 39 which states that the power to determine threats to peace or acts of aggression rests with the Security Council. [ANNEX 26]

The Accused knew or was in a position to know that no chemical, biological or nuclear weapons of mass destruction had been found in Iraq.

The Accused had no legal justification to participate in the “coalition of the willing” in a war against Iraq under Security Council Resolution 1441, because that Resolution could not “reasonably be interpreted [as the Davids Commission found] as authorising individual member states to use military force against Iraq to comply with the Security Council’s Resolutions.”

The Accused rendered himself liable of endangering the international peace and security of the people of Iraq by causing the death of untold numbers of Iraqi people, by authorising the destruction, burning and looting of priceless historical treasures including those of two ancient civilisations which are the common inheritance of entire humanity.

The Accused is responsible for:

- ▲ acts of aggression, as defined in United Nations G. A. Res. 3314, Art. 1 (1974),
- ▲ breaches of international humanitarian law and human rights,

- ⤴ crimes against peace, as defined in Art. 6(a) of the Charter of the IMT at Nuremberg and Art. 16 of the Draft Code of Crimes Against the Peace and Security of Mankind (1996),
- ⤴ war crimes, as defined in Art. 6 (b) of the Charter of the IMT at Nuremberg and in Art. 8 of the I.C.C. Statute,
- ⤴ crimes against humanity, as defined in Art. 6(c) of the Charter of the IMT at Nuremberg and Art. 7 of the I.C.C. Statute,
- ⤴ crimes against Prisoners of War, including acts in contravention of the Article 8, and against the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and Arts. 13 and 14 of the Geneva Conventions Relative to the Treatment of Prisoners of War (1949), and their 1977 Protocols,
- ⤴ crimes against civilians in contravention of Article 7 and Article 8, including the targeting of civilian populations and civilian infrastructure such as markets and residential areas, causing extensive destruction of property not justified by military objectives, using cluster bombs, using depleted uranium weapons; and acting in violation of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) and the relative Protocol 1, Art. 54 on the protection of objects indispensable to the survival of the civilian population, and Art. 55 on protection of the natural environment.

The International Criminal Court has jurisdiction. Subject to any other ground that you may find in the course of your investigation, the Accused is responsible for

flagrant, repeated and longstanding violation of the provisions of the I.C.C. Statute Arts. 5 (a) (b), (c) and (d), Article 6 (a), (b), (c), Article 7 (d), (i), (j), (k), and Article 8.

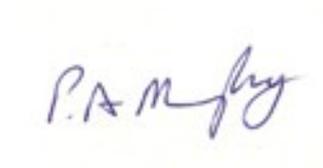
REQUEST

I respectfully request that you as the Prosecutor of the International Criminal Court initiate an investigation with a view to issuing a warrant of arrest for Mr. John Winston Howard, on the basis of the information that I have provided and which is in my view sufficient for that purpose.

I will be pleased to supply further information if requested. In the meantime I look forward to your reply.

Please accept the assurance of my highest consideration.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "P. A. Murphy", enclosed in a thin black rectangular border.

Peter Murphy
Secretary
SEARCH Foundation

ANNEX 1

PRIME MINISTER

**APPLICATION OF ANZUS TREATY TO TERRORIST ATTACKS
ON THE UNITED STATES**

The Australian people have been shocked and outraged at the enormity of the terrorist attacks on the United States. These heinous crimes have caused catastrophic loss of life, injury and destruction. We anticipate that a significant number of Australian nationals are included among those who lost their lives.

I have already conveyed to the President of the United States the condolences of the Australian Government and people, and expressed our resolute support for the United States at this most difficult time.

The terrorist attacks on the United States were discussed today at a special Cabinet meeting that I convened on my return from the United States.

The Government has decided, in consultation with the United States, that Article IV of the ANZUS Treaty applies to the terrorist attacks on the United States. The decision is based on our belief that the attacks have been initiated and coordinated from outside the United States.

This action has been taken to underline the gravity of the situation and to demonstrate our steadfast commitment to work with the United States in combating international terrorism.

The Australian Government will be in close consultation with the United States Administration in the period ahead to consider what actions Australia might take in support of the US response to these attacks.

14 September 2001

(from Parliament of Australia, Library, **Background Note, Australia's military involvement in Afghanistan since 2001: a chronology**)

Accessed at: J Howard (Prime Minister), *Application of ANZUS Treaty to terrorist attacks on the United States*, media release, 14 September 2001, viewed 25 June 2010,

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ANNEX 4

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ANNEX 5

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ANNEX 6

Australia reveals shift in defence policy, ABC, PM Archive - Tuesday, 18 June, 2002, Reporter: Matt Brown.

“MARK COLVIN: Australia's Defence Minister, Robert Hill, has revealed a dramatic shift in Australian defence policy. He's backed President Bush's reported decision to develop a new doctrine of pre-emptive action against states and terrorists groups trying to develop weapons of mass destruction.

Senator Hill today acknowledged the emergence of a first strike policy in the United States, particularly when it comes to Iraq's Saddam Hussein, and in an address to some of Australia's most senior military officers in Canberra this afternoon, Senator Hill said "the determination of the US to act swiftly and firmly before threats become attacks", is a position which Australia shares in principle. Matt Brown has been speaking to Robert Hill in Canberra.

ROBERT HILL: You don't wait until you are attacked, that's the principle lesson of September 11. When you look back at the history and you look at the attacks that occurred on US embassies in Africa, you look at the attack on the USS Cole in the Gulf, I'm sure now you would say with the benefit of hindsight, a more effective response should have been made at that time to the threat.

MATT BROWN: Iraq is the next on the US horizon; the Government has so far said that will simply consider any request when and if a request is made. This statement by you today means, doesn't it, that that request won't necessarily come after an Iraq act of aggression against the United States, that Australia could support American action before that Iraqi act of aggression against the United States.

ROBERT HILL: We believe that the weapons of mass destruction program in Iraq is a threat and that threat needs to be dealt with. We would hope that it will be dealt with by Saddam Hussein being prepared to take back

the weapons and inspectors and to be prepared to behave in a civilised way, but so far there has been no sign to that affect.

MATT BROWN: But Australia would join in pre-emptive military action with the US against Iraq?

ROBERT HILL: Well I don't know about that, we haven't been asked. There is no pre-emptive.

MATT BROWN: In principle, though, given what you've said today.

ROBERT HILL: No, no, I've said in principle, we would endorse the United States taking action against a threat, rather than waiting to be attacked.

MATT BROWN: Would we join them, in principle?

ROBERT HILL: You're playing with words, with respect, what we've said is that we've requested to engage in any other theatre, beyond that which we are at the moment, we would consider it on its merits at that time.

MATT BROWN: And we would consider it even if Iraq hasn't made any attack on the US?

ROBERT HILL: Yeah, well, yes, we are not waiting for attacks any longer, that is the lesson of September the 11th.

MATT BROWN: This preparedness for pre-emptive action as you call it, a first strike policy, does have implications doesn't it for Australian military preparedness for being more ready to spring into action.

ROBERT HILL: We accept that we don't have the generous lead times that we've had in the past, that you've got to be able and therefore have the capability to act quickly and firmly as is appropriate.

MATT BROWN: Will you be increasing the military state of readiness?

ROBERT HILL: We have readiness doctrine that came through the white paper, there's no plan to change that, that improved our readiness and increased our sustainability and we're investing to achieve those objectives.

MATT BROWN: Does this go for covert action, the reports we've heard about President Bush authorising covert action against Saddam Hussein, a pre-emptive strike would entail covert action?

ROBERT HILL: Uh, well I don't know, I'm not sure really what you're asking me, he's...

MATT BROWN: Do you endorse covert action?

ROBERT HILL: I don't know that he's acknowledged any covert action either and what the United States does in this regard is its business.

MATT BROWN: Is covert action a legitimate part of acting before a threat becomes an attack?

ROBERT HILL: If you ask me are we going to act illegally, the answer is no.

MATT BROWN: What's illegally?

ROBERT HILL: Well against the laws of Australia or against the principles of the international conventions to which we are a party.

MIKE COLVIN: Defence Minister, Senator Robert Hill, talking to Matt Brown."

ANNEX 7

Downer supports US attack on Iraq

By Caroline Overington, Herald Correspondent in New York, July 13 2002

The Foreign Minister, Alexander Downer, has given Australia's strongest backing so far to a possible United States attack on Iraq, and says he believes Australians would support military intervention.

Mr. Downer said "only a fool" would believe that a policy of appeasement might solve "the problem" of Iraq, after a meeting in Washington with the US Secretary of State, Colin Powell.

Although not specifically committing Australia to providing troops for such an attack, Mr. Downer was pessimistic yesterday about the prospects of a military showdown being avoided.

His remarks went further than those of the Prime Minister, John Howard, and the Defence Minister, Robert Hill.

Asked if he thought the situation might be resolved without military involvement, Mr. Downer said: "It's not heading in that direction at the moment. There's no question of that."

In a separate interview with *The New York Times* yesterday, Mr. Downer also said he hoped "the Iraqi regime will come to its senses and allow inspections and dismantle any of its weapons of mass destruction capability. But I think it's heroic to be too confident about that."

He said Australians were likely to support military intervention: "I think the Australian people don't have a natural inclination to support acts of appeasement."

His comments were immediately criticised by the Opposition Leader, Simon Crean, also in Washington for talks with the Bush Administration, who said Mr. Downer's approach was immature. "In all the discussions I've had with the US over the course of the last couple of days, they're not talking in the terms that Alexander Downer is talking," Mr. Crean said.

"Americans are talking of toning down the rhetoric in terms of Iraq at the same time Alexander Downer is talking it up."

He said he did not believe Mr. Downer's support would automatically commit Australian forces to a US attack on Iraq, since "even Alexander Downer wouldn't be as stupid as to go that far".

The Australian Democrats' leader, Natasha Stott Despoja, said Australia should distance itself from US plans for a pre-emptive strike on Iraq.

"The Government should rule out supporting a first strike unless there is evidence an attack by Iraq is imminent," she said.

The New York Times reported last week that the US military was planning to send 250,000 troops and hundreds of aircraft to invade Iraq, possibly launching from Kuwait, Turkey and Jordan.

Britain's *Financial Times* newspaper reported yesterday that Britain was planning to pull most of its forces out of the peacekeeping operation in

Kosovo, possibly to prepare
to join a US invasion of Iraq.

Mr. Downer told *The New York Times* the Australian Government "certainly shares with the United States very deep concerns about biological weapons, chemical weapons and potentially the nuclear weapons capability of Iraq."

Accessed at: [Downer supports US attack on Iraq - The Sydney Morning Herald www.smh.com.au](#) › [Home](#) › [National News](#)

13 July 2002 – The Foreign Minister, *Alexander Downer*, has given Australia's strongest ... *The Sydney Morning Herald*. ... Article, Saturday *July 13, 2002*.

ANNEX 8

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ANNEX 9

[The Iraq Crisis and War - Timeline - a chronology of events](#)

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[British inquiry underscores Australian complicity in Iraqi war crimes](#)

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– *Inspectors had been ordered out of Iraq in 1998. By August 2002, the regime of Saddam Hussein had resumed negotiations over conditions for their return.* In response, the Bush and Blair governments launched an offensive ...

ANNEX 10

President Bush, Prime Minister Blair Hold Press Conference,
Remarks by President Bush and Prime Minister Tony Blair in Joint
Press Availability, Crawford High School, Crawford, Texas, 6 April
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ANNEX 11

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on ASIO, ASIS and DSD December 2003, Canberra, at p. 32.

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ANNEX 12

[The big lie - Sydney Morning Herald](#), www.smh.com.au › [National](#) ›

[Anti-Terror Watch](#), *Andrew Wilkie's job was to find links between Iraq*

and terrorism. What he found was that the ... *Welcome to Sydney Morning Herald Online. ... June 19, 2004 ...*

ANNEX 13

Iraq war illegal, says Annan

Updated September 16, 2004 10:00:00

United Nations secretary-general Kofi Annan says the United States decision to invade Iraq in March 2003 was "illegal".

Australia was a key supporter of the war on Iraq and sent troops to joined the United States-led invasion last year.

Mr. Annan's comments are likely to reignite debate over whether US President George W Bush, Prime Minister John Howard and British Prime Minister Tony Blair acted within the bounds of international law by failing to get a final UN Security Council resolution on Iraq.

Speaking in an interview with BBC World Service radio, Mr. Annan says the UN Security Council should have issued a second resolution, if a US-led invasion of Iraq was to be allowed.

"I'm one of those who believe that there should have been a second resolution," he said.

"Yes, if you wish. I've indicated that it was not in conformity with the UN Charter from our point of view, and from the Charter point of view it was illegal."

The UN Charter is one of the cornerstones of international law.

Mr. Annan says that given the current level of violence and unrest, it is unlikely that Iraq would be able to hold credible elections as planned in January 2005.

"I think there have been lessons for the US and lessons for the UN and other member states," he said.

"I think that, in the end, everybody's concluded that it is best to work together with our allies and through the UN to deal with some of these issues.

"I hope we do not see another Iraq-type operation for a long time...without UN approval and much broader support from the international community."

The council had adopted a number of resolutions over the years to compel Saddam Hussein to abandon the pursuit of weapons of mass destruction.

The final resolution was adopted in November 2002, when UN inspectors re-entered Iraq, warning the Iraqi regime of "serious consequences" if it was found to be in material breach of the earlier resolutions.

Mr. Annan says the decision on whether to act on Iraq should have been made by the UN.

"It was up to the Security Council to approve or determine what those consequences should be," he said.

Mr. Annan told a news conference in The Hague, Netherlands, shortly before the invasion that if the United States took military action without Security Council approval "it would not be in conformity with the Charter".

The United States and Britain withdrew a draft resolution in the council in mid-March after it was clear there were not enough votes.

France had threatened to veto the draft if UN inspectors were not given more time to account for Saddam Hussein's weapons of mass destruction.

-- **AFP/Reuters**

Topics: [unrest-conflict-and-war](#), [world-politics](#), [united-states](#), [iraq](#), [united-kingdom](#)

First posted September 16, 2004 09:02:00

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ANNEX 14

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HOUSE REPRESENTATIVES, Official Hansard, No. 12, 2002,
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FIRST SESSION—THIRD PERIOD, p. 6365.

ANNEX 15

[Full text: UN security council resolution 1441 on Iraq | World news ...](#)
www.guardian.co.uk/world/2002/dec/20/iraq.foreignpolicy2 20 Dec
2002 – Full text: *UN security council resolution 1441* on Iraq. This
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December 2002 . para.13

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[OpenElement](#)

ANNEX 16

[BRIEFING OF THE SECURITY COUNCIL, 14 ... - United Nations](#)

www.un.org/Depts/unmovic/blix14Febasdel.htm, BRIEFING OF THE SECURITY COUNCIL, 14 FEBRUARY 2003. Executive Chairman of UNMOVIC, Dr. Hans Blix ... This brings the total period of inspections so far to 11 weeks. ... It also included verification of previously tagged equipment, application of seals and tags, taking samples and discussions with the site ...

ANNEX 17

[Netherlands International Law Review](#) (2010), 57 : pp 81-137

REPORT OF THE DUTCH COMMITTEE OF INQUIRY ON THE WAR IN IRAQ

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ANNEX 18

[BBC News - Iraq inquiry - day by day timeline of evidence given](#)

www.bbc.co.uk/news/uk-politics-12224606

17 Nov 2011 – A *UK inquiry* into the 2003 Iraq war is looking at the run-up to conflict, ... Separately, *inquiry* chairman *Sir John Chilcot* says the final *report* will not be ... The former *head* of the armed forces said Tony Blair's government had ...

[BBC News - Q&A: Sir John Chilcot's Iraq war inquiry](#)

www.bbc.co.uk/news/uk-politics-12224602

17 Nov 2011 – The *inquiry* panel, *headed by Sir John Chilcot*, is currently sifting through all the evidence. It will not publish its *report* until the summer of 2012 - six months ... 179 *British* service personnel were killed in Iraq between 2003 and ...

ANNEX 19

[CNN.com - Transcript of Powell's U.N. presentation - Feb. 6, 2003](#)

edition.cnn.com/2003/US/.../sprj.irq.powell.transcrip... - United Kingdom

6 Feb 2003 – Following is a transcript of *U.S. Secretary of State Colin Powell's* presentation ... Thursday, *February 6, 2003* Posted: 11:29 AM EST (1629 GMT)

ANNEX 20

Quoting from: George Tenet [former C.I.A. Director] with Bill Harlow, *At the Center of the Storm: The CIA During America's Time of Crisis*, (HarperCollins, New York 2008) at p. 174.

ANNEX 21

J Howard (Prime Minister), *Transcript of press conference*, media release, 10 January 2003, viewed 23 February 2010,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22media%2Fpressrel%2FB3A86%22> Prime Minister Howard press conference, foreshadowed 'some forward deployment' of elements of the ADF to the Persian Gulf'.

ANNEX 22

Coalition of the willing? Make that war criminals

February 26 2003

The initiation of a war against Iraq by the self-styled "coalition of the willing" would be a fundamental violation of international law. International law recognises two bases for the use of force.

The first, enshrined in Article 51 of the United Nations Charter, allows force to be used in self-defence. The attack must be actual or imminent.

The second basis is when the UN Security Council authorises the use of force as a collective response to the use or threat of force. However, the Security Council is bound by the terms of the UN Charter and can authorise the use of force only if there is evidence that there is an actual threat to the peace (in this case, by Iraq) and that this threat cannot be averted by any means short of force (such as negotiation and further weapons inspections).

Members of the "coalition of the willing", including Australia, have not yet presented any persuasive arguments that an invasion of Iraq can be justified at international law. The United States has proposed a doctrine of "pre-emptive self-defence" that would allow a country to use force against another country it suspects may attack it at some stage.

This doctrine contradicts the cardinal principle of the modern international legal order and the primary rationale for the founding of the UN after World War II - the prohibition of the unilateral use of force to settle disputes.

The weak and ambiguous evidence presented to the international community by the US Secretary of State, Colin Powell, to justify a pre-emptive strike underlines the practical danger of a doctrine of pre-emption. A principle of pre-emption would allow particular national agendas to completely destroy the system of collective security contained in Chapter Seven of the UN Charter and return us to the pre-1945 era, where might equalled right. Ironically, the same principle would justify Iraq now launching pre-emptive attacks on members of the coalition because it could validly argue that it feared attack.

But there is a further legal dimension for Saddam Hussein on the one hand and George Bush, Tony Blair and John Howard and their potential coalition partners on the other to consider. Even if the use of force can be justified, international humanitarian law places significant limits on the means and methods of warfare.

The Geneva Conventions of 1949 and their 1977 Protocols set out some of these limits: for example, the prohibitions on targeting civilian populations and civilian infrastructure and causing extensive destruction of property not justified by military objectives. Intentionally launching an attack knowing

that it will cause "incidental" loss of life or injury to civilians "which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" constitutes a war crime at international law.

The military objective of disarming Iraq could not justify widespread harm to the Iraqi population, over half of whom are under the age of 15. The use of nuclear weapons in a pre-emptive attack would seem to fall squarely within the definition of a war crime.

Until recently, the enforcement of international humanitarian law largely depended on the willingness of countries to try those responsible for grave breaches of the law. The creation of the International Criminal Court last year has, however, provided a stronger system of scrutiny and adjudication of violations of humanitarian law.

The International Criminal Court now has jurisdiction over war crimes and crimes against humanity when national legal systems have not dealt with these crimes adequately. It attributes criminal responsibility to individuals responsible for planning military action that violates international humanitarian law and those who carry it out. It specifically extends criminal liability to heads of state, leaders of governments, parliamentarians, government officials and military personnel.

Estimates of civilian deaths in Iraq suggest that up to quarter of a million people may die as a result of an attack using conventional weapons and many more will suffer homelessness, malnutrition and other serious health and environmental consequences in its aftermath.

From what we know of the likely civilian devastation caused by the coalition's war strategies, there are strong arguments that attacking Iraq may involve committing both war crimes and crimes against humanity.

Respect for international law must be the first concern of the Australian Government if it seeks to punish the Iraqi Government for not respecting international law. It is clearly in our national interest to strengthen, rather than thwart, the global rule of law.

Humanitarian considerations should also play a major role in shaping government policy. But, if all else fails, it is to be hoped that the fact that there is now an international system to bring even the highest officials to justice for war crimes will temper the enthusiasm of our politicians for this war.

THE EXPERTS

Don Anton, senior lecturer, ANU; Peter Bailey, professor, ANU; Andrew Byrnes, professor, ANU; Greg Carne, senior lecturer, University of Tasmania; Anthony Cassimatis, lecturer, University of Queensland; Hilary Charlesworth, professor and director, Centre for International and Public Law, ANU; Madelaine Chiam, lecturer, ANU; Julie Debeljak, associate director, Castan Centre for Human Rights Law; Kate Eastman, Wentworth Chambers, Sydney; Carolyn Evans, senior lecturer, Melbourne University; Devika Hovell, lecturer, University of NSW; Fleur Johns, lecturer, Sydney University; Sarah Joseph, associate director, Castan Centre for Human Rights Law, Monash University; Ann Kent, research fellow, Centre for International and Public Law, ANU; David Kinley, professor and director, Castan Centre for Human Rights Law, Monash University; Susan Kneebone, associate professor, Castan Centre for Human Rights Law;

Wendy Lacey, lecturer, Adelaide University; Garth Nettheim AO, emeritus professor, UNSW; Penelope Mathew, senior lecturer, ANU; Ian Malkin, associate professor, Melbourne University; Chris Maxwell QC, Melbourne Bar; Tim McCormack, Red Cross professor and director, centre for military law, Melbourne University; Sophie McMurray, lecturer, UNSW; Anne McNaughton, lecturer, ANU; Kwame Mfodwo, lecturer, Monash Law School; Wayne Morgan, senior lecturer, ANU; Anne Orford, associate professor, Melbourne University; Emile Noel, senior fellow, New York University Law School; Dianne Otto, associate professor, Melbourne University; Peter Radan, senior lecturer, Macquarie Law School; Rosemary Rayfuse, senior lecturer, UNSW, Simon Rice OAM, president, Australian Lawyers for Human Rights; Donald Rothwell, associate professor, Sydney University; Michael Salvaris, senior research fellow, Institute for Social Research, Swinburne University; Chris Sidoti, professor, Human Rights Council of Australia; John Squires, director, Australian Human Rights Centre, UNSW; James Stellios, lecturer, ANU; Tim Stephens, lecturer, Sydney University; Julie Taylor, University of WA; Gillian Triggs, professor and co-director, Institute for International and Comparative Law, Melbourne University; John Wade, professor and director of the Dispute Resolution Centre, Bond University; Kristen Walker, senior lecturer, Melbourne University; Brett Williams, lecturer, Sydney University; Sir Ronald Wilson, former High Court judge and president, Human Rights Commission.

Accessed at: [War, Peace and Terrorism « Human Rights Council of Australia](#)

www.hrca.org.au/hrca-projects-and-resources/.../war-peace-and-terrorism/

ANNEX 23

[Howard commits troops to war - Sydney Morning Herald](#)

www.smh.com.au › [Home](#) › [After Saddam](#), Prime Minister John

Howard declares that Cabinet has decided to commit Australian ...

March 18, 2003 ... Australian Cabinet meets this *morning* for any news on how soon they may go to war, according to *reports* from the British press pool.

ANNEX 24

COMMONWEALTH OF AUSTRALIA, PARLIAMENTARY DEBATES,
HOUSE OF REPRESENTATIVES, Official Hansard, No. 4, 2003,
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PARLIAMENTARY DEBATES. HOUSE OF REPRESENTATIVES.

Official *Hansard*. No. 4, 2003. TUESDAY, 18 MARCH 2003.

ANNEX 25

Accessed at: <http://www.iraqbodycount.org/>

ANNEX 26

INTERNATIONAL CRIMINAL COURT STATUTE

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the

Court with respect to the crimes referred to in article 5.

UNITED NATIONS CHARTER

Art. 2

(3). All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

(4). All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Art. 33

(1). The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

(2). The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Art. 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 3314

(XXIX)

Definition of Aggression

Article I

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State":

(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;

(b) Includes the concept of a "group of States" where appropriate.

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

...

(b) WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

...

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

**DRAFT CODE OF CRIMES AGAINST PEACE AND SECURITY OF
MANKIND** with commentaries, 1996

PART TWO

CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Article 16. Crime of aggression

An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression.

Commentary

(1) The characterization of aggression as a crime against the peace and security of mankind contained in article 16 of the Code is drawn from the relevant provision of the Charter of the Nuremberg Tribunal as interpreted and applied by the Nuremberg Tribunal. Article 16 addresses several important aspects of the crime of aggression for the purpose of individual criminal responsibility. The phrase "An individual ... shall be responsible for a crime of aggression" is used to indicate that the scope of the article is limited to the crime of aggression for the purpose of individual criminal responsibility. Thus, the article does not address the question of the definition of aggression by a State which is beyond the scope of the Code.

(2) The perpetrators of an act of aggression are to be found only in the categories of individuals who have the necessary authority or

power to be in a position potentially to play a decisive role in committing aggression. These are the individuals whom article 16 designates as "leaders" or "organizers", an expression that was taken from the Charter of the Nuremberg Tribunal. These terms must be understood in the broad sense, that is to say, as referring, in addition to the members of a Government, to persons occupying high-level posts in the military, the diplomatic corps, political parties and industry, as recognized by the Nuremberg Tribunal, which stated that: "Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats and businessmen".

(3) The mere material fact of participating in an act of aggression is, however, not enough to establish the guilt of a leader or organizer. Such participation must have been intentional and have taken place knowingly as part of a plan or policy of aggression. In this connection, the Nurnberg Tribunal stated, in analysing the conduct of some of the accused, that: When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing.

(4) Article 16 refers to "aggression committed by a State". An individual, as leader or organizer, participates in that aggression. It is this participation that the article defines as a crime against the peace and security of mankind. In other words, it reaffirms the criminal

responsibility of the participants in a crime of aggression. Individual responsibility for such a crime is intrinsically and inextricably linked to the commission of aggression by a State.

The rule of international law which prohibits aggression applies to the conduct of a State in relation to another State. Therefore, only a State is capable of committing aggression by violating this rule of international law which prohibits such conduct. At the same time, a State is an abstract entity which is incapable of acting on its own.

A State can commit aggression only with the active participation of the individuals who have the necessary authority or power to plan, prepare, initiate or wage aggression. The Nuremberg Tribunal clearly recognized the reality of the role of States and individuals in stating that: Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced. Thus, the violation by a State of the rule of international law prohibiting aggression gives rise to the criminal responsibility of the individuals who played a decisive role in planning, preparing, initiating or waging aggression. The words "aggression committed by a State" clearly indicate that such a violation of the law by a State is a *sine qua non* condition for the possible attribution to an individual of responsibility for a crime of aggression.

Nonetheless, the scope of the article is limited to participation in a crime of aggression for the purpose of individual criminal

responsibility. It therefore does not relate to the rule of international law which prohibits aggression by a State.

(5) The action of a State entails individual responsibility for a crime of aggression only if the conduct of the State is a sufficiently serious violation of the prohibition contained in Article 2, paragraph 4, of the Charter of the United Nations. In this regard, the competent court may have to consider two closely related issues, namely, whether the conduct of the State constitutes a violation of Article 2, paragraph 4, of the Charter and whether such conduct constitutes a sufficiently serious violation of an international obligation to qualify as aggression entailing individual criminal responsibility. The Charter and the Judgement of the Nurnberg Tribunal are the main sources of authority with regard to individual criminal responsibility for acts of aggression.

(6) Several phases of aggression are listed in article 16. These are: the order to commit aggression, and, subsequently, the planning, preparation, initiation and waging of the resulting operations. These different phases are not watertight. Participation in a single phase of aggression is enough to give rise to criminal responsibility.

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis

countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

...

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

...

(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

...

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

INTERNATIONAL CRIMINAL TRIBUNAL STATUTE

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context

of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

**CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT,**

which entered into force on 26 June 1987

**GENEVA CONVENTION RELATIVE TO THE TREATMENT OF
PRISONERS OF WAR,** which entered into force on 21 October 1950

Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is

prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

**GENEVA CONVENTION RELATIVE TO THE PROTECTION OF
CIVILIAN PERSONS IN TIME OF WAR**, which entered into force on
21 October 1950

INTERNATIONAL CRIMINAL COURT STATUTE

Article 5**Crimes within the jurisdiction of the Court**

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

Article 7**Crimes against humanity**

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

...

- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations,

as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of

the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

COMMONWEALTH CRIMINAL CODE ACT [No. 12 of] 1995

Chapter 8—Offences against humanity and related offences

Division 268—Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Subdivision A—Introductory

268.1 Purpose of Division

(1) The purpose of this Division is to create certain offences that are of international concern and certain related offences.

(2) It is the Parliament's intention that the jurisdiction of the International Criminal Court is to be complementary to the jurisdiction of Australia with respect to offences in this Division that are also crimes within the jurisdiction of that Court.

(3) Accordingly, the *International Criminal Court Act 2002* does not affect the primacy of Australia's right to exercise its jurisdiction with respect to offences created by this Division that are also crimes within the jurisdiction of the International Criminal Court.

* * *

The complaint was sent to the International Criminal Court by e-mail on 3 September 2013 and left Sydney on 4 September 2013 by air mail letter registered number RP007553525AU, with return receipt.

To date SEARCH has received no return receipt.

SEARCH has requested acknowledgement from the Office of the Prosecutor that it has received either communication.

To date SEARCH has received no such confirmation.

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* SEARCH is an acronym for Social Education, Action and Research Concerning Humanity Foundation, an Australian not-for-profit company.