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27 March 2024

The Hon. Christopher Jessup, KC,
Inspector General of Intelligence and Security
complaints@igis.gov.au

Dear Inspector General

I wish to make a complaint under the Inspector General of Intelligence and Security Act 1986, No. 101, 1986, concerning the propriety of activities of the Australian Signals Directorate, under Sections 4(a) and 8(2)(a) of that act.

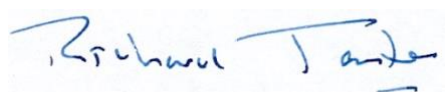
I am an Australian citizen, and my complaint is not anonymous. I have not raised this matter with the ASD. I have not raised this complaint with the Australian Signals Directorate.

I am an Honorary Professor of International Relations at the University of Melbourne and a Senior Research Associate at the Nautilus Institute for Security and Sustainability.

I write as an academic and researcher with considerable experience studying and writing a series of technical and historical studies of the Joint Defence Facility Pine Gap, undertaken with two co-authors, the late Professor Desmond Ball of the Australian National University and the Canadian signals intelligence researcher Mr Bill Robinson.

The eight research papers published to date are available at The Pine Gap Project, Nautilus Institute, at <https://nautilus.org/briefing-books/australian-defence-facilities/pine-gap/the-pine-gap-project/>. I will refer below to certain aspects from these studies, and to more recent work yet to be published.

Yours sincerely,

A handwritten signature in blue ink that reads "Richard Tanter". The signature is written in a cursive style with a horizontal line underneath the name.

Richard Tanter



Does Pine Gap place Australia at risk of complicity in genocide in Gaza?

A complaint concerning the Australian Signals Directorate to the Inspector General of Security and Intelligence

Richard Tanter

27 March 2024

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<https://www.igis.gov.au/complaints>

1. The principal complaint

As a signatory to the 1949 Convention on the Prevention and Punishment of Genocide Australia has an obligation to prevent genocide (Article I) and an obligation not to be complicit in genocide (Article III(e)).

Australia must ensure that it is not complicit in any acts of genocide in Israel including acts identified by the ICJ in its order.

Following the International Court of Justice Order of 26 January 2024 in [Case 192 - Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\)](#), the Australian government has a responsibility to ensure Australia is not complicit in any acts of genocide by Israeli forces in the Gaza Strip, including acts identified by the ICJ in its order.

In these circumstances the Inspector General of Intelligence and Security has a responsibility to inquire into recent and current activities of the Australian Signals Directorate in relation to Israel and situation in the Gaza Strip to ensure Australia is not complicit in any acts of genocide in Israel, including acts identified by the ICJ in its order.

Under Sections 8 (2) (a) of the Inspector General of Intelligence and Security Act 1986, No. 101, 1986, the IGIS is tasked with ensuring compliance by the ASD with the act in terms of

- ‘(iii) the propriety of particular activities of that agency; or
- (iv) an act or practice of that agency that is or may be inconsistent with or contrary to any human right...’

Minimally, in the face of even the interim order, the Australian government has an obligation to scrutinize its direct and indirect military relationships with Israel, to ensure that nothing Australia has done or is doing in any way vitiates our obligations under the Genocide Convention.

Furthermore, the Inspector General of Intelligence and Security has a responsibility to ask whether the activities of the Australian Signals Directorate at the Joint Defence Facility Pine

Gap in relation to possible complicity in acts the ICJ regards as plausible claims of genocide are characterized by propriety, in the common sense of 'conformity to conventionally accepted standards of behaviour or morals' (Oxford Languages).

2. The ICJ Order of 26 January

After establishing the jurisdiction of the Court to hear the matter, the Order of 26 January determined, amongst other matters, that :

'... at least some of the rights claimed by South Africa and for which it is seeking protection are plausible...' (Paragraph 54)

'... there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision.' (Paragraph 74)

The Order stated that Israel must

'... take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group....'(Paragraph 78).

3. Possible complicity of Australia in activities specified by the ICJ order through the Joint Defence Facility Pine Gap

The essential argument of this complaint is that unless the Australian direct and indirect military relationship to Israeli activities in the Gaza Strip specified in its Order are closely reviewed by the Inspector General of Intelligence and Security, it is not possible for the Australian government to assure the parliament and the Australian public that Australia is not complicit in plausible acts of genocide.¹

¹ It should be noted that this complaint refers to Australia's obligations under international law as a party to the 1949 Convention on the Prevention and Punishment of Genocide. A 1995 report of a Senate inquiry into Commonwealth power to make and implement treaties noted that

There are five elements to this argument, for which evidence will be briefly adduced below:

- The technical capabilities and roles of United States geosynchronous signals intelligence satellites controlled through Pine Gap with coverage of the Gaza Strip
- The historical record of United States geosynchronous signals intelligence satellites controlled through Pine Gap in United States provision of military intelligence to Israel
- Flows of raw and processed intelligence data from Pine Gap to the United States National Security Agency
- Documentation of signals intelligence cooperation agreements between the United States and the Israel Defence Force
- the absence of restrictions apropos the Gaza conflict following the ICJ Order placed either by the Australian government on intelligence flows to the NSA, or by the US government on NSA flows to IDF intelligence units.

4. US geosynchronous signals intelligence satellites controlled through Pine Gap with coverage of the Gaza Strip

Four United State geosynchronous signals intelligence satellites are controlled from Pine Gap sitting 36,000 kms above the equator in geosynchronous orbits, in more or less stationary above particular locations.² These 6-tonne satellites contributing to US space-based signals intelligence gathering have the capability to intercept very faint signals

¹It has been generally accepted that treaties are not directly incorporated into Australian domestic law by the international act of ratification or accession by Australia. Treaties therefore do not “run” in domestic law unless implemented by legislation. This view has been shared by successive Governments of different political persuasions.’ *Trick or Treaty? Commonwealth Power to Make and Implement Treaties*, Report of the Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, November 1995, paragraph 6.1. Australia has not put the Genocide Convention into domestic law generally. This means that in Australian domestic law, there is no obligation on the government to prevent and punish genocide (this obligation only exists at the international level). Australia has made the commission of genocide a crime in the Criminal Code Act 1995 (Cth). This means that individuals can be charged with genocide under s 268.121(1). The consent of the Attorney General is required for commencement of proceedings concerning genocide, crimes against humanity, war crimes and crimes against the administration of justice of the International Criminal Court.

² In technical terms, all satellites discussed are geosynchronous satellites, of which geostationary satellites are a special case. The ORION satellites are not geostationary, in so far as they are positioned around a particular longitudinal point on the equator with a slight inclination in their orbit which moves them somewhat north and south of the equator in a daily figure of eight pattern to extend their geographical coverage. Communications satellites mentioned below are normally geostationary, positioned exactly on the equator with no inclination.

emanating from the earth's surface in a number of frequency bands. The main target interception priorities of these satellites are communications of other satellite systems, including uplinks from foreign telecommunications and satellite phones; a wide range of microwave transmissions, including telecommunications towers through which many cell phone and internet connections are transmitted; air defence systems, radars and radio communications systems; and machine communications from computers and missile telemetry.

David Rosenberg, a senior contractor for 18 years at Pine Gap for the US National Security Agency colloquially remarked in his memoir (passed for publication by the NSA) that in his time at Pine Gap

‘Eventually, anything transmitting in the electronic spectrum became fair game for collection...’³

Pine Gap itself, and companion stations in Oman, Cyprus and the United Kingdom, also hosts a separate ground-based surveillance system, the targets of which have a similar range of types, but concentrating on interception of downlinks from foreign communications satellites used by satellite phones and cell phones.⁴

Between the four Pine Gap-controlled ORIONS, interception is possible from the mid-Pacific to the eastern edge of the Atlantic, from the equator to the star of the polar regions, including Africa, Europe, Russia, Central Asia, East Asia, Southeast Asia, and the western Pacific.

³ David Rosenberg, *Inside Pine Gap: The Spy Who Came in from the Desert*, (Hardie Grant Books, 2018) p. 80.

⁴ For discussion of the capabilities and geographical coverage of US geosynchronous signals intelligence satellites and US-auspiced ground-based signals interception facilities as at Pine Gap, see Desmond Ball, Bill Robinson and Richard Tanter, *The SIGINT Satellites of Pine Gap: Conception, Development and in Orbit*, Nautilus Institute, Special Reports, 15 October 2015, pp. 1 – 9, and 31-46; Desmond Ball, Duncan Campbell, Bill Robinson and Richard Tanter, *Expanded Communications Satellite Surveillance and Intelligence Activities Utilising Multi-beam Antenna Systems*, Nautilus Institute, Nautilus Institute, Special Reports, 28 May 2015; and Desmond Ball, Bill Robinson and Richard Tanter, *The Antennas of Pine Gap*, Nautilus Institute, Special Reports, 22 February 2016.

Table 1 shows the longitudes of all four Advanced ORION satellites currently-controlled from Pine Gap. The area of the earth’s surface within which each can effectively intercept transmissions is shown in Figure 1.

Of these four satellites, the westernmost three ORION satellites are in positions that enable targeting and interception of communications in the Gaza Strip and other nearby regions: ORION 5, ORION 7 and ORION 9.

Table 1. Advanced Orion geosynchronous signals intelligence satellites controlled by Pine Gap, arranged longitudinally

	Orion-5 USA 171 2003-041A	Orion-7 USA 223 2010-063A	Orion-9 USA 268 2016-036A	Orion-3 USA 110 1995-022A
Longitude, degrees east	67.97	95.46	105.03	126.07
Inclination, degrees	12.75	5.11	6.31	15.09
Date of observation	19 Sep 2022	7 Sep 2021	7 Sep 2021	17 Jan 2021

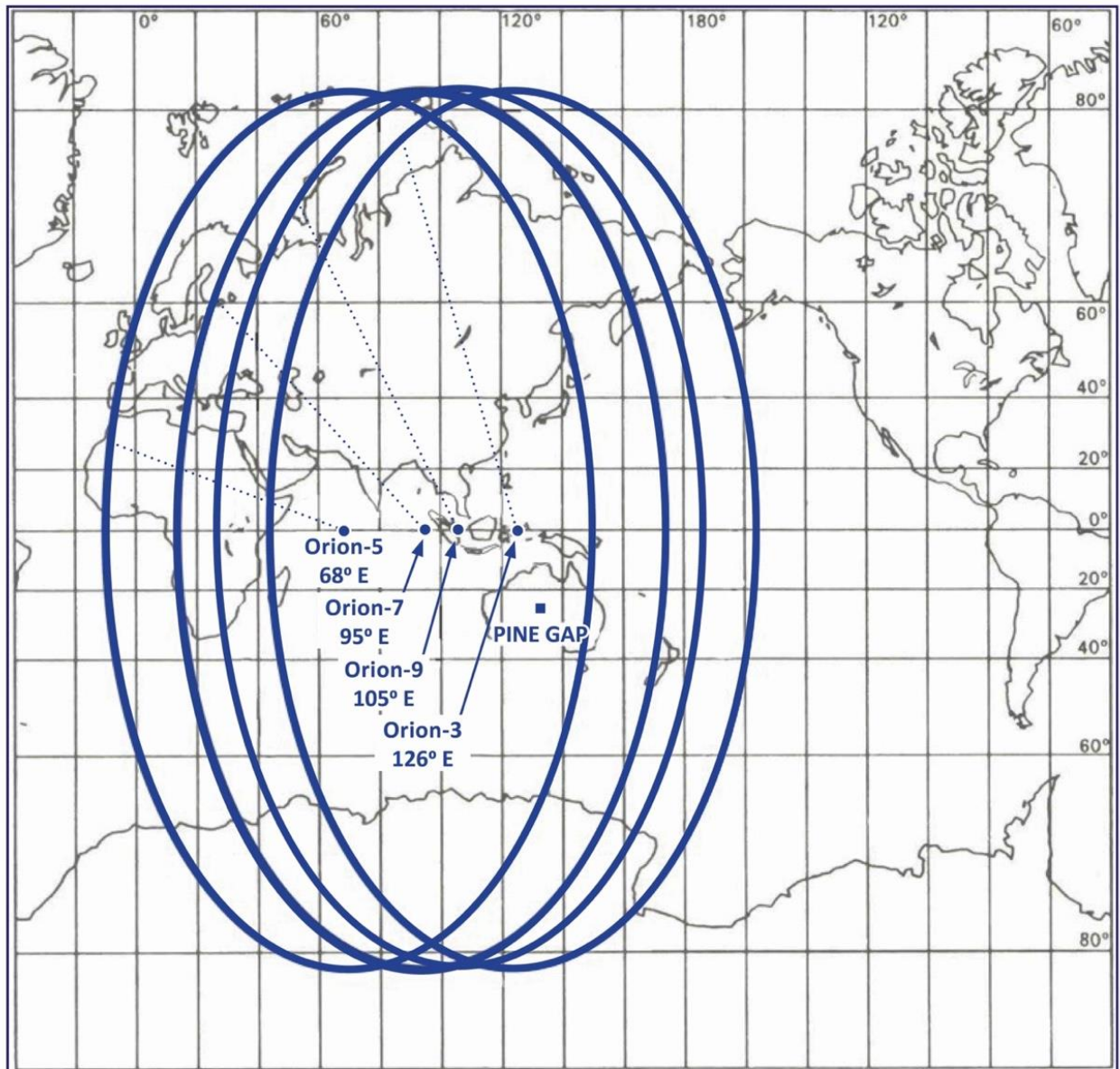
Source: Jonathan S. McDowell, ‘Geostationary Orbit Catalog: Current orbits’, *Jonathan’s Space Home Page*, updated 23 February 2024, at <https://planet4589.org/space/gcat/data/derived/geotab.html>.

The application of such space- and ground-based capabilities to intercept cell phone, satellite phone, and very small aperture terminal (VSAT) internet communication in the Gaza Strip, as well as a variety of forms of very high frequency and ultra high frequency radio communication, can be readily imagined.⁵

⁵ There is considerable open source evidence that despite the scale of physical destruction carried out by the IDF in the Gaza Strip in the activities referred to in the ICJ Order, some Palestinians have been able to maintain at least minimal, intermittent and weak connectivity.

Figure 1. U.S. Advanced Orion geosynchronous signals intelligence satellites under Pine Gap control in 2021-2022

(Bill Robinson and Richard Tanter, graphic by Luke Hambly)



Data source: Jonathan S. McDowell, 'Geostationary Orbit Catalog: Current orbits', *Jonathan's Space Home Page*, updated 23 February 2024, at <https://planet4589.org/space/gcat/data/derived/geotab.html>.

5. Flows of intelligence from the Joint Defence Facility Pine Gap to the United States National Security Agency

The Joint Defence Facility Pine Gap is a joint facility in the sense that, in recent decades, the numbers of Australian and United States staff are about even; the Deputy Chief of Staff of the facility is normally an Australian; Australian senior personnel are appointed, alongside US colleagues, in managerial positions at levels of Deputy Chief of Operations and below;

Australians are present in every section of the facility, with the exception of the US National Cryptographic Room; Australians participate in satellite tasking/targeting decisions; and Australia may obtain all data flowing through Pine Gap.⁶

In 2015, my colleagues Desmond Ball, Bill Robinson and I described the local operational outcome of the current joint character of Pine Gap:

Operations at Pine Gap are now completely integrated, in terms of American and Australian, civilian and military, and contractor personnel working together in the Operations Room; the organisational structure for managing operations, which embodies concerted collaboration of multiple US agencies, including the National Reconnaissance Office, Central Intelligence Agency, National Security Agency, Service Cryptologic Agencies and the National Geospatial- Intelligence Agency (NGA); and functionally with respect to signals intelligence (SIGINT) collected by the geosynchronous SIGINT satellites controlled by Pine Gap, communications intelligence collected by foreign satellite/communications satellite (FORNSAT/COMSAT) interception systems at Pine Gap, and imagery and geospatial intelligence produced by the NGA, as well as missile launch detection and tracking data.⁷

Yet Pine Gap remains a United States facility, which was both established and then greatly expanded to satisfy US intelligence and warfighting interests. High policy direction, command arrangements, priorities of operational tasking, and the globe-spanning socio-technical space-based systems of which Pine Gap is an integral part all confirm that Pine Gap is a US facility in the operation of which Australia participates closely. Those

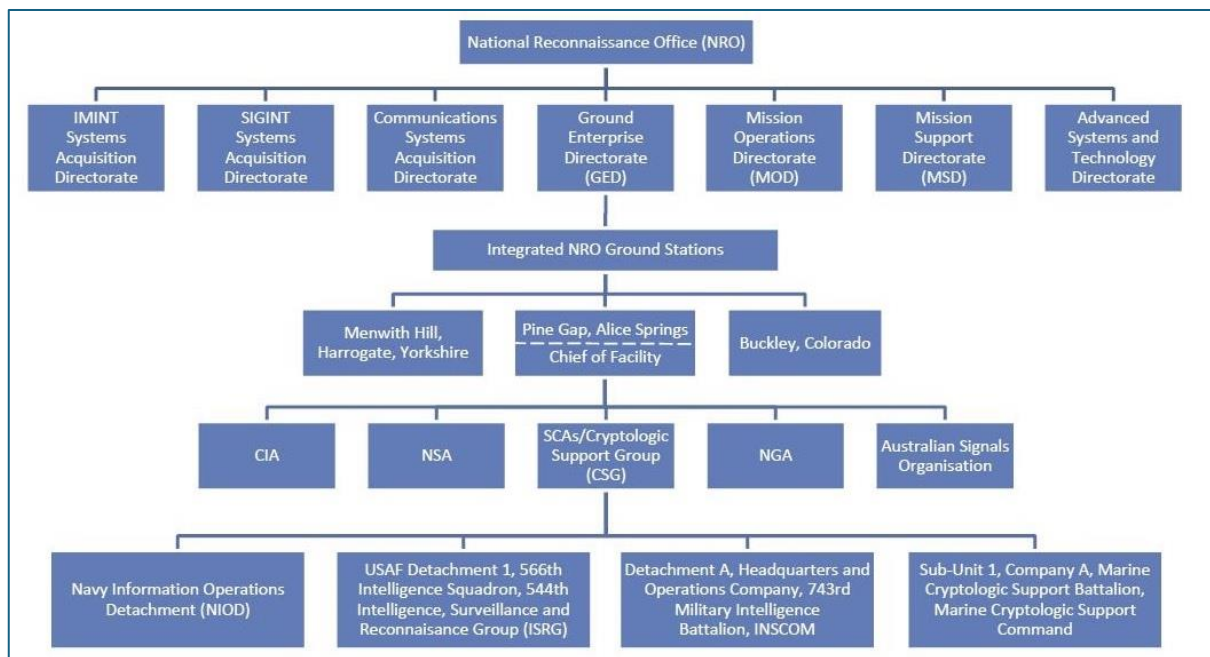
⁶ This text of this section of the complaint draws on materials from previously published papers authored by Desmond Ball, Bill Robinson and myself, including Desmond Ball, Bill Robinson and Richard Tanter, [*The SIGINT Satellites of Pine Gap: Conception, Development and in Orbit*](#), Nautilus Institute, Special Reports, 15 October 2015; [*The Higher Management of Pine Gap*](#), Nautilus Institute, Special Report, 18 August 2015; [*Managing Operations at Pine Gap*](#), Nautilus Institute, Special Reports, 24 November 2015; [*Australia's participation in the Pine Gap enterprise*](#), Nautilus Institute Special Report, 8 June 2016; and [*The militarisation of Pine Gap: Organisations and Personnel*](#), Nautilus Institute, Special Report, 14 August 2015.

⁷ Desmond Ball, Bill Robinson and Richard Tanter, [*Managing Operations at Pine Gap*](#), Nautilus Institute, Special Reports, 24 November 2015.

fundamental asymmetrical characteristics of the ‘joint facility’ are confirmed by the funding arrangements.

The Chief of Station has always been drawn from the Central Intelligence Agency, but this is a legacy position which in itself does not reflect the dominant position achieved in recent decades by a US military organisation - the National Reconnaissance Office, which builds and manages the satellite systems, with control of signals intelligence policy in US hands, dominated by the National Security Agency which controls signals intelligence, the CIA, and branches of the armed services brought together as the Cryptologic Support Group.

Figure 2. Pine Gap management 2007- 2015



Source: Desmond Ball, Bill Robinson and Richard Tanter, *The Higher Management of Pine Gap*, Nautilus Institute, Special Report, 18 August 2015, p. 27, at <https://nautilus.org/wp-content/uploads/2015/11/PG-Managing-Operations-18-November-2015.v2.pdf>.

The upshot is that management of Pine Gap, or more precisely, what we termed the higher management of Pine Gap, is and has always been an entirely American affair, today

dominated by the National Reconnaissance Office, the formal partner of the Australian Signals Directorate.⁸

As portrayed by David Rosenberg, who worked as an ELINT analyst in the Operations Room at Pine Gap for 18 years (1990-2008), the facility functions essentially as an NSA station. Not only are the great majority of the US civilian and military personnel at Pine Gap employed by the NSA, but NSA personnel occupy the main positions with respect to the management of operations, and the organisational structure for managing operations essentially reflects the NSA's career structure.

The organisation structure of management of Pine Gap reflects this US dominance, leaving questions of the degree of actual Australian control of key operational policy decisions questionable.

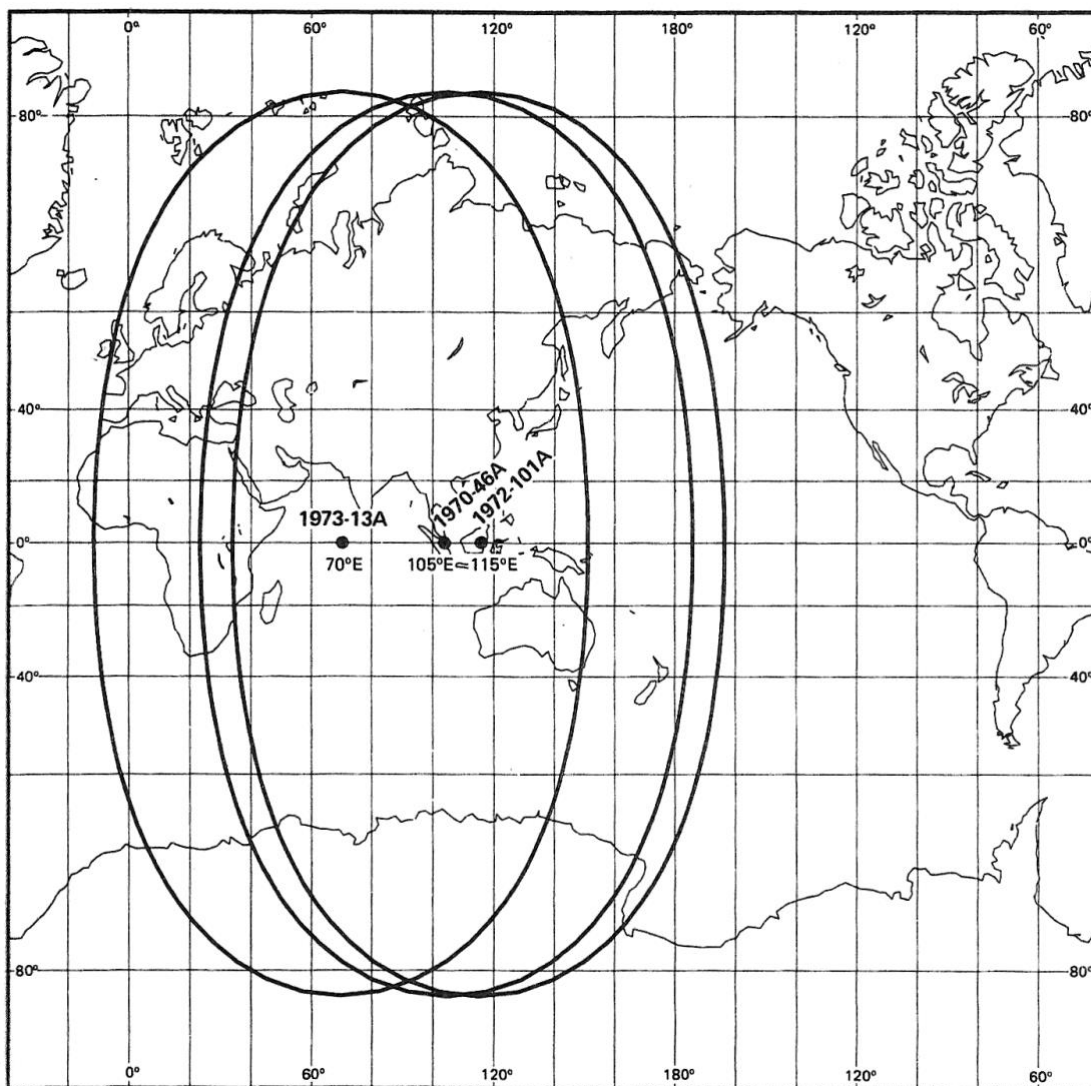
5. The historical record of United States geosynchronous signals intelligence satellites controlled from Pine Gap in provision of military intelligence to Israel

Pine Gap has been in operation for over fifty years. From its first years satellites controlled from Pine Gap have produced signals intelligence on the Middle East, including Israel and its neighbours. In 1973 during the Yom Kippur War in which Israel was attacked by Egypt and Syria, the United States supplied military intelligence to Israel.

The Australian government of the day under Prime Minister Whitlam sought to present an 'even-handed' diplomatic approach to the conflict. However, the United States unilaterally provided Israel with strategically significant Pine Gap-derived intelligence on the positions of Egyptian military forces pressing Israeli forces in the Sinai. Pine Gap-derived intelligence enabled the Israel Defence Force to break through Egyptian lines, and encircle a substantial Egyptian force.

⁸ Desmond Ball, Bill Robinson and Richard Tanter, *The Higher Management of Pine Gap*, Nautilus Institute, Special Report, 18 August 2015, p. 8. For the NSA view of Pine Gap's signals intelligence ground structure, satellite components, and relationship to Australia, see National Security Agency, *Site Profile G – (U) RAINFALL*, c. 2012, published by Peter Cronau, 'The Base: Pine Gap's role in US Warfighting', *Background Briefing*, Radio National, 20 Aug 2017 through <https://live-production.wcms.abc-cdn.net.au/49d11afbd0066a76eed5a00817a71268>. *The Base* contains links to other NSA documents released through Cronau, at <https://www.abc.net.au/listen/programs/backgroundbriefing/the-base-pine-gaps-role-in-us-warfighting/8813604>.

Figure 3. Rhyolite SIGINT satellite stations controlled from Pine Gap, 1973-75



Source: Desmond Ball, *Pine Gap: Australia and the US geostationary signals intelligence satellite program*, Allen & Unwin, 1988, p. 19.

Jeffrey Richelson and Desmond Ball remarked on this precedent in their 1985 study *The Ties That Bind*, documenting intelligence cooperation between the five First and Second Parties to the UKUSA signals intelligence agreements – the United States, the United Kingdom, Australia, Canada and New Zealand, that

‘In times of war or crisis, the demands and obligations of secret agreements and working practices tend readily to conflict with avowed national policies.’⁹

In his memoir, *Inside Pine Gap*, former NSA senior intelligence analyst at Pine Gap David Rosenberg recounts many examples from his direct experience of Pine Gap-controlled signals intelligence satellites contributing directly and substantially to United States and coalition military operations during the Gulf War and the Iraq War, as well as to a range of counter-terrorism operations in Somalia and Afghanistan.

Interviewed several weeks after the Hamas attack on Israel on 7 October 2023, Rosenberg strongly confirmed the involvement of Pine Gap in contributing to US intelligence production on the Gaza conflict, with the intention of providing this intelligence to Israel..

Rosenberg told *Declassified Australia* that

‘Pine Gap facility is monitoring the Gaza Strip and surrounding areas with all its resources, and gathering intelligence assessed to be useful to Israel... Pine Gap has satellites overhead. Every one of those assets would be on those locations, looking for anything that could help them.

‘Pine Gap facility is monitoring the Gaza Strip and surrounding areas with all its resources, and gathering intelligence assessed to be useful to Israel.’

Rosenberg was reported as saying that ‘the personnel at Pine Gap are tasked to collect signals such as “command and control” centres in Gaza, with Hamas headquarters often located near hospitals, schools, and other civilian structures.’¹⁰

Reports from other sources confirm aspects of Rosenberg’s claims. On 15 November 2023 the *Wall Street Journal* reported US government sources as saying that

⁹ Jeffrey T. Richelson and Desmond Ball, *The Ties That Bind – Intelligence Cooperation between the UKUSA Countries*, 1985, p. 304.

¹⁰ Peter Cronau, 'Targeting Palestine: Australia's Secret Support for the Israeli Assault on Gaza Through Pine Gap', *Declassified Australia*, 3 November 2024, at <https://declassifiedaus.org/2023/11/03/targeting-palestine/>.

‘the U.S. assessment this week that Hamas and other Palestinian militants were operating within Gaza's largest hospital complex was based in part on intercepted communications of fighters inside the compound.’

The sources quoted by the *Wall Street Journal* stressed that the multiple US signals intelligence sources employed to produce US claims to confirm Israeli claims were distinct from IDF signals intelligence sources. The *Journal* reported that the US was familiar with sources used by Israel, and had been involved in in close cooperation with Israel on the claims.¹¹

6. Signals intelligence cooperation agreements between the United States and the Israel Defence Force

Israel has long been a Third Party to the UKUSA signals intelligence agreements, although that in itself does not indicate the strength or depth of the relationship.¹² ‘ Writing in 1988, the American intelligence historian Jeffrey Richelson wrote that ‘One of the strongest Western intelligence links is that between the United States and Israel’, citing linkages dating back to the early 1960s when the CIA and FBI supplied Israel with top secret signals intelligence capabilities in the form of cryptanalysis computing facilities.¹³

Richelson was writing before the release by former NSA contractor of a large numbers of NSA documents dealing with the United States-Israel intelligence relationship, and particularly with signals intelligence exchange agreements.

¹¹ Nancy A. Youssef and Warren P. Stobel, ‘U.S. Relied on Intercepts in Assessing Hamas's Operations at Gaza Hospital; Signals intelligence gathered independently of Israel was among information behind assessment that Hamas and other militants were using Al-Shifa Hospital complex’, *Wall Street Journal*, 15 November 2023. The people familiar with the matter declined to provide more details about the U.S. intelligence on Al-Shifa, but stressed it was based on multiple streams of data and was collected independently of Israel. The U.S. assessment "is U.S. information based on a variety of sources, but we are not getting into sources and methods," a U.S. official said.’

¹² See slide titled ‘Approved SIGINT Partners’ in NSA presentation *Foreign Partner Review*, dated fiscal year 2013, published in Glenn Greenwald, *No Place To Hide*, (2014). Reproduced in ‘[NSA's Foreign Partnerships](https://www.electrospaces.net/2014/09/nsas-foreign-partnerships.html)’, *electrospaces.net*, 4 September 2014; updated: February 7, 2018, at <https://www.electrospaces.net/2014/09/nsas-foreign-partnerships.html>.

¹³ Jeffrey T. Richelson, *Foreign Intelligence Organizations*, (Ballinger, 1988), p. 233.

The first formal bilateral intelligence exchange, established by President Lyndon Johnson and Prime Minister in 1968, was known as the CYR Agreement.¹⁴ Two decades later the CYR was 'adjusted, broadened, reinforced and extended' the 1968 starting point, as the ICE CASTLE Agreement, and eight years later 'updated and renamed' as STONE RUBY.

By 1999, the complexity and breadth of the bilateral intelligence exchange that had developed required institutionalisation in the 'Israel – US 1999 Agreement'. Signals intelligence was at the heart of the new suite of institutions and procedures: most intelligence exchange categories were classified as SECRET or lower, but 'Exchanges between the DoD and IDF organizations involving only signals intelligence have been upgraded to TOP SECRET'. An annex to the 1999 Agreement on Foreign Materiel Exploitation spelled 'combined exploitation', 'making such materiel available to each other', 'sharing the technical exploitation results', and agreeing to share 'the results of foreign exploitation materiel carried out on their own'.¹⁵ The 1999 Agreement provided Israel with remarkable access to US signals intelligence materiel, including raw and processed data to analyse itself or together with the United States.

By 2006 this institutionalisation – and the consequent depth of Israeli access to US space-based and ground-based signals intelligence – was such that an NSA staff meeting on Israel intelligence relations involved '750 NSA people who work directly or indirectly' with the ISNU, with 27 face to face meetings yearly and 'countless telephone conversations'.¹⁶

A 2009 Memorandum of Agreement, formalising protection for US citizens caught up in raw US signals intelligence, indicated the extent to which to which Israel had been given privileged access NSA raw data and refined product.

¹⁴ 'Israel-US 1999 Agreement', published by *The Intercept*, 3 August 2014, at <https://theintercept.com/document/israel-us-1999-agreement/>. All quotations in this and the following paragraph are from this document.

¹⁵ Annex 3, 'Israel-US 1999 Agreement', published by *The Intercept*, 3 August 2014, at <https://theintercept.com/document/israel-us-1999-agreement/>.

¹⁶ Antoinette Punzavitz, Data Acquisition Staff (S3) National Security Agency, '(TS//SI) Town Meeting: Coordinating the SIGINT Relationship with Israel', *SID Today*, 26 April 2006, published by *The Intercept*, The Snowden Archive, 15 August 2018, at <https://theintercept.com/snowden-sidtoday/4755658-town-meeting-coordinating-the-sigint/>.

A definition of 'raw intelligence' in the 2009 MOU specified that

'Raw SIGINT is any SIGINT acquired as a result of search and development, or targeted collection operations against a particular foreign intelligence target before the information has been analyzed for foreign intelligence and minimized.

'Raw SIGINT includes, but is not limited to, unevaluated and unminimized transcripts, gists, facsimiles, telex, voice, and Digital Network Intelligence metadata and content.'¹⁷

Four years later, in 2013, the NSA distributed a TOP SECRET assessment of the *NSA Intelligence Relationship to Israel*, to be released only to the USA and to Israel, which laid out in detail the dimensions of the relationship between the NSA and ISNU and other Israeli intelligence bodies, the division of labour between the two sides, and 'the exchanged transnational target set'.¹⁸

It is difficult in brief compass to convey the extraordinarily intimate intelligence relationship between the two countries and their principal signals intelligence organisations reported in the Information Paper. The salience to the issue of possible complicity with activities discussed by the ICJ Order of 26 January is clear in this short document.

The following set of quotations from this two page document formally summarising the signals intelligence relationship makes clear its salience to the issue of possible complicity with activities discussed by the ICJ Order of 26 January.

¹⁷ *Memorandum of Understanding (MOU) between the National Security Agency / Central Security Service (NSA / CSS) and the Israel SIGINT National Unit (ISNU) pertaining to the protection of U.S. persons'*, March 2009, at <https://s3.documentcloud.org/documents/785495/doc1.pdf>. Significantly for the current purposes, in this agreement Israel recognized the place of Australia (and the UK, Canada and New Zealand) in US signals intelligence activities, and the consequent need to extend to Australian citizens, the same protections as outlined in the agreement for US citizens.

¹⁸ National Security Agency / Central Security, (*TOP SECRET//REL to USA, ISR*) *Information Paper: NSA Intelligence Relationship with Israel*, 19 April 2013, at <https://s3.documentcloud.org/documents/1240002/nsa-intelligence-relationship-with-israel-april.pdf>.

NSA signals intelligence was to be made available to Israel en masse and in detail, including data captured by Pine Gap-controlled ORION satellites, passed on in standard operating procedure from Pine Gap to the National Security Agency, and from the NSA as a matter of course to the Israel SIGINT National Unit.

- ‘NSA maintains a far-reaching technical and analytic relationship with the Israel SIGINT National Unit (ISNU) sharing information on access, intercept, targeting, language, analysis and reporting.
- ‘This SIGINT relationship has increasingly been the catalyst for a broader intelligence relationship between the United States and Israel.’
- ‘What NSA Provides to ISNU: The Israeli side enjoys the benefits of expanded geographic access to world-class NSA cryptanalytic and SIGINT engineering expertise, and also gains controlled access to advanced U.S. technology and equipment via accommodation buys and foreign military sales.’
- ‘The mutually agreed upon geographic targets include the countries of North Africa, the Middle East, the Persian Gulf, South Asia, and the Islamic republics of the former Soviet Union. Within that set of countries, cooperation covers the exploitation of internal governmental, military, civil, and diplomatic communications; and external security/intelligence organizations. Regional Weapons of Mass Destruction Proliferation and "Stateless"/International Terrorism comprise the exchanged transnational target set.
- ‘A dedicated communications line between NSA and ISNU supports the exchange of raw material, as well as daily analytic and technical correspondence... NSA and ISNU led their communities in the establishment of U.S. - Israeli Intelligence Community VTC [video telecommunications] connectivity that allows both sides to broaden and accelerate the pace of collaboration against targets' use of advanced telecommunications.
- ‘Success Stories: ...Significant changes in the way NSA and ISNU have traditionally approached SIGINT have prompted an expansion to include other Israeli and U.S. intelligence organizations such as CIA, Mossad, and Special Operation Division (SOD).’

The globally public visibility of the severity of the conflict in Gaza, United States concerns to both support the Netanyahu government and limit what it sees as that government's excesses, and the risks for broader US foreign policy goals of regional escalation, all combine to make Gaza and the surrounding region an extraordinarily powerful and contradictory strategic focus for the United States.

At the heart of those strategic concerns lies the availability of timely, reliable and usable intelligence on all the major actors – from Hamas and other militant groups in Gaza and the West Bank, to the Israeli government and the roiling internal alignments of Israeli politics, to neighbouring countries including Lebanon, Egypt, Syria, Turkey, and above all, Iran – and in the US narrative, Iran's Houthi 'client' in Yemen.

All US signals intelligence facilities that can possibly be brought to bear will have elevated tasking schedules focusing on Gaza. Rosenberg's remark above, to the effect that the 'Pine Gap facility is monitoring the Gaza Strip and surrounding areas with all its resources, and gathering intelligence assessed to be useful to Israel...' reminds us that at Pine Gap, Gaza has been suddenly elevated to the top of satellite tasking schedules.

And perhaps important to recall for this discussion of possible Australian complicity in genocide through the provision of Australian-sourced intelligence to Israel, it is likely that, on the basis of what is known about the formerly secret web of US-Israel signals intelligence agreements set out above, Israel is pressing for its concerns to be added to those US space-based signals intelligence satellite tasking schedules.

7. The absence of restrictions on intelligence flows apropos the Gaza conflict following the ICJ Order

Any suggestion that Australia is in any way currently complicit, directly or indirectly, in activities prohibited by the ICJ Order of 26 January, could be immediately vitiated by either of two actions by government.

The Australian government could announce that until such time as the Court makes final judgement, restrictions have been placed on intelligence (raw and minimized) exchanges with the National Security Agency of Pine Gap-derived materiel that may have bearing on the conflict in the Gaza Strip.

The United States government could announce that until such time as such time as the Court makes final judgement, restrictions have been placed on intelligence (raw and minimized) exchanges of materiel by the National Security Agency with Israeli intelligence agencies, including the Israel SIGINT National Unit.

Such precautionary, temporary steps have not been announced following the ICJ Order by either government. Given the level of public interest in the conflict and worldwide in-depth media coverage of the debate about the conflict, it is reasonable to assume that no such restrictions have been put in place in secret.

8. Conclusion

Both domestic Australian and international law require the Australian government to investigate in good faith the possible complicity of this country in genocide through the provision of Australian-sourced intelligence to Israel.

Under the 1948 United Nations Convention on the Prevention and Punishment of Genocide, which Australia has signed, ratified and publicly championed, Australia has an obligation to 'prevent and punish' plausible or demonstrated cases of genocide.

'Prevention' clearly requires consideration of plausible and imminent possibility, a mandatory legal imperative rendered more compelling by strong evidence of possible Australian involvement through the provision of military intelligence to Israel through Australia's apparently unrestricted institutional and technological integration into United States-auspiced global signals intelligence networks.

Faced with Australia's responsibilities under both domestic and international law, Attorney-General has a responsibility to investigate such a possibility, and to report to both the Cabinet and the parliament on Australia's standing in relation to the ICJ's interim order.

More specifically, the independent Inspector-General of Intelligence and Security has a statutory obligation concerning the six Australian intelligence agencies whose activities it reviews, including the Australian Signals Directorate concerning Pine Gap,

'to ensure that the agencies act legally and with propriety, comply with ministerial guidelines and directives, and respect human rights.'¹⁹

Following the announcement of the ICJ Order, the Australian Human Rights Commission, through its president, Professor Rosalind Croucher, urged 'the Australian Government to work with all parties to enforce the ICJ order for provisional measures.'²⁰

Minimally, in the face of even the interim order, the Australian government has an obligation to scrutinize its direct and indirect military relationships with Israel, to ensure that nothing Australia has done or is doing in any amounts to complicity in the activities set out by the ICJ order regarding a plausible and imminent danger of acts amounting to genocide.

Propriety, in the common sense of 'conformity to conventionally accepted standards of behaviour or morals' may not be a highly precise term in law, but its use in the IGIS Act indicates an intent that intelligence agencies should be scrutinised by the Inspector General according to a shared idea of 'conventionally accepted standards of behaviour or morals'. It would be difficult to exclude possible Australian complicity in the acts specified in the ICJ's order from such a consideration.

¹⁹ 'The Role of the IGIS', *Inspector General of Intelligence and Security*, [accessed 22 February 2024], at <https://www.igis.gov.au/about/the-role-of-the-igis>; and Inspector General of Intelligence and Security Act 1986, No. 101, 1986. Compilation No. 42, 12 December 2023, at <https://www.legislation.gov.au/C2004A03342/latest/downloads>.

²⁰ Australian Human Rights Commission, *Statement on the ruling of the International Court of Justice 26 January 2024*, Media Release, 29 January 2024.

UN Special Rapporteurs' statement and the preservation of evidence

In its Order, the ICJ Court took

'note of a press release of 16 November 2023, issued by 37 Special Rapporteurs, Independent Experts and members of Working Groups part of the Special Procedures of the United Nations Human Rights Council, in which they voiced alarm over "discernibly genocidal and dehumanising rhetoric coming from senior Israeli government officials".' (Paragraph 53)²¹

In the press release referred to by the Court, the group of UN Special Rapporteurs stressed that

'All States must "ensure respect" for international humanitarian law by parties to an armed conflict, as required by 1949 Geneva Conventions and customary international law....

'States must accordingly refrain from transferring any weapon or ammunition – or parts for them – if it is expected, given the facts or past patterns of behaviour, that they would be used to violate international law...

'The Genocide Convention of 1948 requires States parties to employ all means reasonably available to them to prevent genocide in another state as far as possible.'

Writing directly to the activities of the Australian Signals Directorate at the heart of this complaint, the Special Rapporteurs emphasized that

'Military intelligence must also not be shared where there is a clear risk that it would be used to violate international humanitarian law.'

²¹ See 'Arms exports to Israel must stop immediately: UN experts', Press Release, Office of the High Commissioner for Human Rights, 23 February 2024, at <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>.

A review by the IGIS should ensure that nothing Australia has done or is doing in any way amounts to complicity in the activities set out by the ICJ order.

In this light, attention should be paid to the requirement by the Court's Order that Israel '... must also take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II and Article III of the Genocide Convention against members of the Palestinian group in the Gaza Strip.' (Paragraph 81).

Australia is not legally required to follow the requirement in the Order to prevent the destruction and ensure the preservation of evidence is not directed at the Australian government.

However, in order ensure Australia is not complicit in the activities set out by the ICJ order, it is incumbent on the Australian government to take positive steps to ensure the preservation of evidence. In particular, documentation of ongoing exchanges of Pine Gap-derived intelligence materiel that may be passed through the National Security Agency to the Israel Defence Force should be preserved.

'Full knowledge and concurrence'

As a matter of policy in a democratic country, the question arises of the state of knowledge by the Australian government of the activities under discussion, and what may be thought of reasonable knowledge of Australian government activities by the public. A first obstacle to a reasonable level of public knowledge that an IGIS inquiry would need to address concerns the attitude of successive governments to any serious discussion of the matters this complaint addresses.

Asked in a Senate Estimates hearing on 14 February 2024 to comment on suggestions of connection between Pine Gap and Gaza of the kind that this complaint addresses, the Director of the Australian Signals Directorate, Ms Rachel Noble, replied that

‘It is, as you said, the longstanding practice of successive governments not to make public commentary about operational activities at Pine Gap...’²²

While the question of operational security and the protection of genuine military secrets is certainly an important matter, there is a significant difference between what are properly regarded as operational matters at the JDFPG and the high level policies of the Australian and United States government that frame and direct those operational matters.

In one respect, the Australian government’s position of not commenting on activities at joint facilities such as Pine Gap is a selective one. In November 1991, the Minister Defence, Robert Ray, made a statement in the House of Representatives explaining the role played during the Gulf War earlier in that year by the Joint Defence Facility Nurrungar, then Pine Gap’s companion station for the control of set of Defence Support Program geostationary early warning satellites:

‘In recent weeks the US and Australian governments have discussed and agreed that it would now be appropriate to make public the role of the joint facility in Operation Desert Storm. As part of Desert Storm the coalition forces used space based systems to provide weather data, navigational assistance, information on the geographic disposition of forces and other related intelligence.

‘Nurrungar is, of course, an important part of the defence support program—the DSP—which provides early warning of missile launches, surveillance and the detonation of nuclear weapons.’²³

‘During the Gulf war the DSP detected the launch of Iraqi scud missiles and provided warning to coalition forces and to civilian populations in Israel and Saudi Arabia. The DSP’s superb performance during that conflict confirms the flexibility and the

²² Commonwealth of Australia, Proof Committee Hansard, Senate, Estimates, Foreign Affairs, Defence and Trade Legislation Committee, 14 February 2024, pp. 105-106.

²³ Nurrungar was closed by the United States in 1999, and its functions transferred a newly built Relay Ground Station at Pine Gap. See Richard Tanter, *Hiding from the light: The establishment of the Joint Australia-United States Relay Ground Station at Pine Gap*, Special Report, Nautilus Institute for Security and Sustainability, 2 November 2019, at <https://nautilus.org/napsnet/napsnet-policy-forum/hiding-from-the-light-the-establishment-of-the-joint-australia-united-states-relay-ground-station-at-pine-gap/?view=pdf>.

continued relevance of a system which was designed primarily to provide early warning of missile attack against the US and its friends and allies.’²⁴

Ray’s explanation, which was the subject of criticism as serious overstatement, nevertheless demonstrated that on at least that occasion, the functions of a major joint facility in a time of international conflict and the policies of the Australian government in its direction could be publicly addressed.

However, a second obstacle is the doctrine of Full Knowledge and Concurrence in relation to the joint Australian/United States military and intelligence facilities hosted by Australia enunciated by successive governments for over four decades.

In her Senate Estimates testimony, the Director of the Australian Signals Directorate, Ms Rachel Noble, reiterated a February 2023 statement by the Deputy Prime Minister and Defence Minister, Mr Marles where he described ‘full knowledge and concurrence’ as follows:

‘Full knowledge’ means Australia has a full and detailed understanding of any capability or activity with a presence on Australian territory, or making use of Australian assets.

‘Concurrence’ means that Australia approves of the presence of a capability or function in Australia, in support of mutually-agreed goals.’²⁵

Mr Marles’ reply, cited by Ms Noble, drew on a series of earlier, slightly more extensive ministerial explanations of the meaning of Full Knowledge and Concurrence.²⁶

²⁴ Questions Without Notice: United States Defence Facilities in Australia, Commonwealth of Australia, Official Hansard, Senate, No. 148, 1991, 5 November 1991, page: 2374.

²⁵ Commonwealth of Australia, Proof Committee Hansard, Senate, Estimates, Foreign Affairs, Defence and Trade Legislation Committee, 14 February 2024, pp. 105-106.

²⁶ Richard Marles, Minister for Defence, Ministerial Statement on Securing Australia’s Sovereignty, Commonwealth Parliamentary Debates, (House of Representatives), 9 February 2023 (presented 13 February 2023). See also R. J. Hawke, Prime Minister, Ministerial Statement: Arms Control and Disarmament, Commonwealth Parliamentary Debates, (House of Representatives), 33rd Parliament, 6 June 1984, pp. 2983 – 2989; and Stephen Smith, Minister for Defence, Ministerial Statement on Full Knowledge and Concurrence, Commonwealth Parliamentary Debates, (House of Representatives), 26 June 2013, pp. 7071 – 7077.

After the presentation of the earlier ministerial expositions, an experienced Canberra observer suggested that the practical meaning of Full Knowledge and Concurrence was that

‘Australia must concur to the function and operation of the facility but does not have control over individual US taskings: Broad concurrence, yes. Individual veto, no.’²⁷

This suggests that full knowledge may be absent, and concurrence conditional. In the matter of possible complicity in genocide, the most grave crime in international order, reiteration of an empty mantra is insufficient.

Another informant, familiar with Pine Gap operations, suggested that the claimed ‘joint’ character of Pine Gap for which Full Knowledge and Concurrence is a key rhetorical (and legal) means of legitimation, is in fact illusory. Participation in all sections of Pine Gap’s operations gives Australia ‘full transparency, but no control’. Australia, in this argument simply does not have control over tasking schedules and satellite targeting, despite a seat at the tables that decide those schedules.²⁸

At a minimum, this complaint requests the Inspector-General to initiate a review of ASD activities amounting to complicity in the activities set out by the ICJ order from such a starting to point. It should be possible for a proper and comprehensive inquiry to report in a manner that does not endanger matters of genuine operational security.

It is difficult to conceive of any meaningful sense in which the level of empirical detail or evidence adduced in this complaint could raise genuine security concern – almost all of this information has been available for several decades.

²⁷ Graeme Dobell, 'Australia-East Asia/US Relations: Election plus Marines, Joint Facilities and the Asian Century', *Comparative Connections*, September 2013.

²⁸ For a discussion of the ambiguities and limitations of Full Knowledge and Concurrence in Australian cabinet decision-making in 1997 about the establishment of the Relay Ground Station at Pine Gap that is relevant to these concerns, see Richard Tanter, *Hiding from the light: The establishment of the Joint Australia-United States Relay Ground Station at Pine Gap*, Special Report, Nautilus Institute for Security and Sustainability, 2 November 2019, at <https://nautilus.org/napsnet/napsnet-policy-forum/hiding-from-the-light-the-establishment-of-the-joint-australia-united-states-relay-ground-station-at-pine-gap/?view=pdf>.

Accordingly, simply asserting that considerations of national security would automatically render impossible any inquiry by IGIS reporting responsibly in comparable detail would be unconvincing.

The primary questions the IGIS is asked to address here are simple.

To reiterate the earlier formulation, does anything the ASD has done or is doing in any way amount to complicity in the activities set out by the Order from the International Court of Justice?

Does Pine Gap-derived intelligence forwarded to the National Security Agency do so?

In such a case, does the government concur with such a policy?

And if the government does concur in such a policy, is not a veto, at least while until final judgement by the International Court of Justice, not the appropriate response?

If not for a plausible and urgent claim of genocide, subject to a case before the world's highest court that raises the possibility of Australian complicity, then for what would Australia ever exercise its sovereign right to veto what happens on Australian soil?