Getting Serious about Sovereignty1

Ray Evans

Tomorrow the World Heritage Committee meets in Paris to decide whether it will put the Kakadu National Park on its "In Danger" list. Until very recently this Committee has ignored Australian legal processes, the policy of the Australian Government, and the evidence put forward by the Australian Government during the last eight months. The substantial and expensive lobbying efforts which the Government has recently undertaken may or may not procure a favourable outcome. If not, that will put Australia in a position where, according to the Committee, it is in breach of its obligations under the World Heritage Convention.

At a presentation given to a mining industry meeting held in London on 20 October, 1998, a week or so before the inspection of Jabiluka by the World Heritage team, the speaker was Dr Mechtild Rossler from the World Heritage Centre. This lady was quite candid in her attitude and language, and she listed Kakadu and the forthcoming visit to Jabiluka as the leading example of her organisation's effectiveness in protecting National Parks. Unfortunately I do not have a transcript of her remarks, but judging from her demeanour, and her words, I would have to say that as far as the World Heritage Centre was concerned, it was already clear that the Australian Government, prior to the visit by the World Heritage Centre team, had been found guilty, and that all that remained to be decided was the manner in which the judgment was to be delivered.

On 23 June last a letter addressed to US President Bill Clinton and signed by 34 US congressmen, all Democrats, was made public. The drift of the letter is clear from the first and final paragraphs:

"Dear President Clinton,

"We are writing to you on behalf of the two 1999 Goldman Environmental Prize winners, Jacqui Katona and Yvonne Margarula of Australia. These extraordinary Aboriginal women have been leading a popular national campaign to prevent construction of the Jabiluka uranium mine on the land of the Mirrar people. Yvonne Margarula is the leader of the Mirrar people and bears the responsibility of ensuring the protection of their lands and culture in accordance with 60,000 years of her forefathers…..

"Mr President, we thank you for all of your fine efforts to preserve and protect America's natural heritage. We ask you to extend the same courtesy and assistance to the Australian environmental, human rights, and indigenous rights advocates who now need your help. We and the American public are counting on your firm leadership in the ongoing effort to protect this premier example of the world's natural and cultural resources from irrevocable harm".

The driving force behind the congressional letter was Cynthia McKinney, an African-American congresswoman from Atlanta, Georgia. The answer to the obvious question, why would a black congresswoman from Atlanta be interested in events in the Northern Territory, is revealed when it is discovered that one of her staffers is an Australian, whom I understand is an environmental activist from Adelaide. Globalisation is more than trade liberalisation and rapid movements of capital. The signatories urged the President to ensure that the US delegates to the World Heritage Committee vote against Australia at the meeting in Paris which begins tomorrow, and thus contribute to declaring the Kakadu Park to be "In Danger" as a result of the development of the Jabiluka mine.

My understanding is that there is no need for President Clinton to issue any instructions to the US delegation. The head of the delegation is Karen Kovacs, a former World Wide Fund for Nature staffer, and although she has kept her intentions close to her chest, it would be remarkable if she reversed the position she has taken at previous meetings, at least as far back as October last year.

Australia is the only signatory to UNESCO's *Convention for the Protection of the World Cultural and Natural Heritage* (1972) which has passed domestic legislation to give effect to that Convention. The statute in question is the *World Heritage Listed Properties Conservation Act 1983*, and the point of the legislation was to give the Commonwealth constitutional authority, through the external affairs power, to supersede the States on questions of land management.

Having trumped the States on who exercises power on land management issues, the Commonwealth now finds itself in the position where it in turn risks being trumped by a Committee of green apparatchiks from around the world who have no interest in, knowledge of, or responsibility to Australia and its people.

The degree of intellectual confusion which the Government has displayed in this affair almost beggars belief. The World Heritage Committee has only once before taken upon itself supranational powers when, in 1982, it voted to place the Old City of Jerusalem on its list of endangered sites. Israel, which claimed legal authority over the site and was certainly in effective control of it at the time, was not a party to the *World Heritage Convention*, had not asked to have it listed as "in danger", had not been consulted about its views, and had not even received an on-site inspection by World Heritage officials. When the vote was taken it was 14 - 1, with 5 abstentions. The US was the sole dissentient.

The Old City of Jerusalem is still on the "in danger" list and the Israeli Government has found it prudent not to ratify the *World Heritage Convention*.[2]

The proper response of the Australian Government to this second attempt by the World Heritage Committee to exercise supranational authority was to state that the Committee, under the terms of the Convention, has no such authority; and to give notice, without equivocation, that if the Committee seeks to claim and exercise such authority Australia will immediately revoke its ratification of the *World Heritage Convention*, and withdraw from UNESCO.

Senator Hill is reported in the press[3] to have "told the bureau that the World Heritage Committee could not list a property against the objections of a member State". Such protestations sit oddly with the enormous effort and expense which the Government has recently been putting into obtaining a favourable vote. It would have been much cheaper just to send a letter to the Chairman of the World Heritage Committee and the Director-General of UNESCO explaining the consequences of WHC presumption. Such an action would have earned the Government a great deal of prestige at home and abroad.

The Jabiluka episode portrays a Government which has allowed itself to be made a fool of, again. I'm reminded of Arthur Calwell's line on this: "He who fools me once – shame on him. He who fools me twice – shame on me". I fear that it is not merely twice or thrice, or even four times. The Government, and I am speaking of Australian governments over more than a decade, has been made a fool of many times. This has happened because of repeated attempts to use international tribunals as weapons in domestic politics, and also because there is a body of opinion in Australia which believes that the "international community" (an oxymoron if ever there were one) has a greater claim to our political loyalty than our

own country.

A recurring theme which emerges from looking at the history of government indifference to Australian sovereignty, particularly with respect to environmental treaties or multilateral environmental agreements (MEAs), as they are called, has been the willingness of Australian governments over the years to make international commitments which are open-ended, undefined or, at the very least, whose consequences are not understood.

When Australia plucked defeat from the jaws of victory at the Kyoto Conference of Parties to the *United Nations Framework Convention on Climate Change* (UNFCCC) of December, 1997, by agreeing to a 108 per cent target of 1990 greenhouse gas emission levels for the year 2010 (a target increase which, it is now understood, will be well exceeded by Western Australia alone), the Government presumably thought that either Australia would be able to live with such a commitment, or that the Kyoto Protocol would never in fact come into effect. Thus, having signed the Kyoto Protocol in May, 1998, Cabinet, in its muddle-headed way, announced just before the 1998 election that it would not ratify the Kyoto Protocol unless and until the US ratified.

Nevertheless, officials from the Australian Greenhouse Office and Environment Australia speak as if ratification of Kyoto is a foregone conclusion, and that regardless of the huge economic dislocation which a regime of carbon withdrawal will bring in its train, Australia has no choice but to accept the Kyoto targets.

Worse still, the Howard Government's recent *Environment Protection and Biodiversity Conservation Act* gives statutory authority to the Kyoto targets, in a way which raises grave concerns as to the willingness of the Howard Government to sacrifice the economic well-being of the next generation of Australians, merely to get a tax Bill through the Senate for temporary political gain.

The Basel *Convention on the Transboundary Movement of Hazardous Wastes and their Disposal* is an important example of a treaty which the Australian Government ratified, and which the Howard Government legislated into domestic law in September, 1996, in which essential details were completely unknown when the legislation was passed. Lists of materials which were to be subject to trade bans were specified in domestic law by reference to their place in the Basel Convention, but the items in the cited list were still to be determined by committees established by the Basel Secretariat. Australia thus legislated in September, 1996 to ban exports of unknown materials, the identity of which was still to be determined by a committee the membership of which was totally unknown to the Parliament, which would meet in Geneva or elsewhere in Europe, and decide what materials were going onto the list, and would thus be subject to an Australian statutory export ban.

It has to be said that this is a gross dereliction of constitutional duty. One of the most important activities of a sovereign state is engaging in political activity with other sovereign states. The analogy which assists in understanding this activity is that of a citizen who engages in commercial activity with other citizens and accepts contractual obligations in pursuit of his commercial interests. The difference between the sovereign state and the private citizen is that the sovereign state is acting on behalf of all the citizens. The private citizen has only his own interest to consider. Very few citizens would commit themselves to contracts in which their obligations were open-ended, undefined, or subject to the whims of outside parties. But this is precisely what the Australian Government did when it gave domestic legislative authority to the *Basel Convention*.

The ratification of the *Basel Convention*, the Paris meeting tomorrow of the World Heritage

Committee, and even more the Kyoto Protocol, are important mile-stones in a step-by-step process which will take Australia, unless we bestir ourselves, to a point where we will indeed find ourselves no longer a sovereign nation.

In order to understand the nature of this seditious process we need to understand what sovereignty means and how it came about. We have to understand, in clear and simple terms, why it is important. And we will have to steel ourselves to say some rather unpleasant things about those people – bureaucrats, politicians, opinion leaders – who at best count Australia's sovereignty very cheap, and at worst seek, actively, to subvert that sovereignty.

The nation-state, and the sovereignty that is the essential characteristic of the nation-state, was born in 1295, the year that Edward I called together a House of Commons to legitimise the raising of taxes, primarily from the cash-rich merchants and traders of the medieval towns. Edward needed extra revenue to finance his dynastic wars in France. These wars were usually triggered by the failure of provincial dukes and counts to provide male heirs. Economists tell us that the money spent on rent-seeking trends upwards towards the value of the rents that are perceived to be available. The Hundred Years War[4] between France and England for control of Flanders and other provinces on the southern side of the English Channel economically devastated the two countries,[5] and cost both sides to the prolonged struggle probably a thousand-fold or more times the rents that could conceivably have flowed to the successful war-lord.

In order to finance the war against his French rival for control of Champagne, and then Flanders, Edward I had to convene a Parliament to raise taxes, particularly from the merchant classes; and as the war dragged on and on, and King succeeded King, Parliament became institutionalised as the instrument of legitimate taxation. That connection persists to this day, and was most recently highlighted, in the Australian context, in the 1975 constitutional crisis.

In this prolonged struggle between the English and French monarchs, the Pope was a key player, and the papal courts were of great importance. In order to ensure that these processes would operate to French advantage, the French King, Philip the Fair, kidnapped Pope Boniface VIII, and forced him to march from town to town until he died of a heart attack. He then persuaded the cardinals to choose a French bishop as the new Pope and relocated the papacy in Avignon. The English response, in due course, was to pass an Act in 1351 under Edward III, known as the *Statute of Provisors*; and then in 1393, under Richard II, to pass a similar Act, the *Statute of Praemunire*.

The offence of *praemunire* is so called from the words of the writ preparatory to prosecution of the offence: *praemunire facias* A.B. (cause A.B. to be forewarned) that he appear before us to answer the contempt wherewith he stands charged. Blackstone defined the essence of the offence as "introducing a foreign power into the land and creating *imperium in imperio*, by paying that obedience to alien process which constitutionally belonged to the King alone".[6] The punishment of the offence of *praemunire* was that the offender was put out of the Crown's protection, and his lands and goods were forfeited to the Crown.[7]

The intent of the *Statute of Praemunire* (and its predecessor the *Statute of Provisors*) was to ensure that English litigants, be they political or ecclesiastical activists, could not go outside England in order to seek a more favourable outcome than they would obtain from the courts at home. The ground for this policy was the very reasonable suspicion that the papal courts,

then under the control of the French, would in reality behave as "kangaroo courts".[8]

The *Statute of Praemunire* became an important part of our history when it was used by Henry VIII to destroy Cardinal Wolsey. Wolsey's two great mistakes were, first, to tax with unprecedented zeal in order to finance his activist foreign policy and, second, to fail to deliver the papal dispensation which would allow Henry to have his marriage with Catherine of Aragon annulled, leaving him free to marry Ann Boleyn. His taxation policies made him a deeply hated man, and when the King turned against him he had no friends, anywhere. The fact that Henry had been completely involved in everything that Wolsey had done in seeking the approval of the papal courts for the annulment was irrelevant. Wolsey pleaded guilty to the charge, and then tried to save his life, and some small remnant of the immense wealth he had acquired as Chancellor and Cardinal. He died just in time to avoid being tried for treason and thus certain execution.

Praemunire then is central to the history of sovereignty and to our understanding of sovereignty, and it is certainly relevant to the debate over the role of the World Heritage Committee and its intrusion into the domestic affairs of Australians with respect to the Kakadu National Park and the Jabiluka mine.

In order to help clarify our ideas about sovereignty, I want to relate some episodes from our history which illuminate the concept. These examples (not a comprehensive list), and which are not related to each other except that the Commonwealth Government has been a player in all of them, help us more to reach an understanding than spending time in legal argument.

1. As part of the agreement reached between Colonial Secretary Joseph Chamberlain and the Australian delegation in London in August, 1900 (the debates were very tense), appeals from Australian courts to the Privy Council were allowed in common law cases, and in constitutional cases involving private citizens. But the High Court was supreme in constitutional cases involving disputes between the Commonwealth and States, so-called *inter se* matters, although the Constitution still allows for the High Court to issue a certificate which allows the parties in an *inter se* dispute to go to the Privy Council.

Getting Serious about Sovereignty (Continued)1

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The right of appeal to the Privy Council was first interdicted by the Gorton Government in 1968 with respect to federal matters, then restricted further in 1974 by the Whitlam Government, and finally finished off by the *Australia Acts* of 1986. (Whilst I agree with the argument that constitutional matters should be resolved within Australia, I see no reason why common law matters should not go to the Privy Council. The availability of an authoritative and indifferent court in commercial disputes, for example, can lead to greatly reduced transaction costs in business life, and thus provide a significant economic benefit to every citizen.)

2. In 1908, the Great White Fleet of the US Navy visited Australian ports. The invitation to do so was issued by the UK Government. The Colonial Office was extremely hostile because of the way Prime Minister Alfred Deakin had used his contacts with US officials to secure the visit.

3. Soon after war broke out in August, 1914, Australian policy with respect to exports of wool was governed by British directives. Under the provision of the *War Precautions (Supplementary) Regulation No 23* of 23 September, 1916, the entire Australian wool clip was to be acquired on behalf of the British Government for the remainder of the war at a price of 15.5 pence per pound, 55 per cent more than the pre-war price. The British Government had initially proposed prohibiting exports of wool from Australia and New Zealand to all destinations other than the UK and allied countries. The Australian Prime Minister, W M Hughes, however, protested strongly that this would occasion hardship to producers given the shipping problems, so he urged that the UK acquire the whole clip. The onus was then on the British government to provide shipping. That arrangement continued until 30 June, 1920. From September, 1916, any approval for sales to Japan had to be obtained from London. Not surprisingly, as allies of the British, the Japanese (who had been important buyers of Australian wool prior to 1914) insisted the embargoes were discriminatory.[9]

4. In 1931 the UK Parliament passed the *Statute of Westminster*, which gave legislative form to decisions agreed to at Imperial Conferences held in 1926 and 1930. In particular, the self-governing Dominions were to be regarded as “autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations”. The Royal assent was granted on 11 December, 1931 and that date is, in constitutional terms, the birthday of Australia as a sovereign nation.

5. In 1992, the US environmentalist movement worked hard to get a Bill through the US Congress which, if it had passed, would have implemented a phase-out programme for lead, leading to its eventual prohibition throughout the US. This Bill failed to get through the House, although only by a relatively small margin. After missing out in Washington, DC, the activities of the lead-banners then moved to the OECD. When nations join the OECD they commit to accepting an OECD Council Act as binding on their domestic law. However, an OECD Council Act requires unanimity to get through.

By 1995 every OECD member except Australia, Mexico, Turkey and Canada had agreed to support the lead ban. Canada was perceived to be a bit wobbly. Mexico and Turkey had

been given some hard treatment for their opposition to the proposed ban. Nevertheless, Australia had let it be known that, even without any other support, it would veto the lead ban all on its own. I understand that the Canadian Prime Minister was lobbied energetically by the US Vice-President but, in the end, to no avail. Australia did not end up having to cast a veto on its own, but if it had come to that, I am confident that our Government would have done so. The Department of Foreign Affairs and Trade (DFAT) officials who were responsible for the carriage of Australia's position deserve high commendation. It often goes against the grain to maintain a position, month after month, which however well supported by argument and logic, in the end simply says "No".

6. At a Cabinet meeting held in Bendigo, some months before the October, 1998 election, and coincidentally the same day that Pauline Hansen was in town, a decision was taken, against the advice of DFAT, that the Government would no longer accept the words "self-determination" in the UN *Draft Declaration of the Rights of Indigenous Peoples*. This policy change caused outrage amongst indigenous group leaders at the time, and when the Australian delegation to the *Draft Declaration* meeting held in Geneva in December, 1998 affirmed the new Australian policy, further outrage was exhibited by the Aboriginal representatives in Geneva.

The key issue in the language of the *Draft Declaration* is the underlying theme that indigenous peoples are, in some way, entitled to the prerogatives associated with sovereignty. The words "self-determination", "peoples" (rather than people), and collective rights more generally, either explicitly or implicitly suggest that the Indigenous Peoples Non-Government Organisations are demanding a status for indigenous peoples which is akin to the status of sovereign nations. The position of these bodies can be summarised as follows: Given the existence in international law of the right of all peoples to self-determination, and the fact that indigenous peoples are peoples, indigenous peoples have, *ipso facto*, the right of self-determination as stated in Article 3 of the *Draft Declaration of the Rights of Indigenous Peoples*.[10]

What is extremely important in this particular debate is that the Labor Party, taking note of the new position declared by the Government in Bendigo, did not then contest with the Government on this issue. The ALP leadership could see that if it were to become an election issue, they would pay a heavy price for being on the wrong side of that debate.

7. Last November the Appellate Body of the World Trade Organisation (WTO) handed down its decision in the shrimp-turtle case. In doing so it created a crisis situation for the WTO membership because, for the first time in the history of the GATT-WTO, the sovereignty of the member-states of the WTO has been placed at risk.

In order to understand why we are facing a crisis, it is necessary to give a brief history of the GATT-WTO and of the turtle-shrimp case. The General Agreement on Tariffs and Trade (GATT) was founded in 1947 as part of the post-war construction of a new international order. The idea was to create a rule of law in international trade which would provide predictability and confidence. The GATT was based on three principles. The first is that of non-discrimination between the parties to the GATT; i.e., a tariff applied to one member of the GATT had to apply to all members. This is called the Most Favoured Nation or MFN principle and it was set down in Article I of the Agreement.

The second is the equal treatment principle. Once an import had been let into the country (having paid whatever duties were required), it could not be discriminated against in favour of domestic goods. This was set down in Article III.

The third is the tariffication principle. It was accepted at the outset that the parties to the GATT would not agree to open borders. Protectionism was too powerful a political force for that. But it was agreed that barriers to imports would only be imposed as a tariff, and not as a quota or as some other non-tariff barrier (Articles II and XI).

The thinking behind the tariffication principle is that of transparency. Once people realise that trade barriers are no different from taxes, then domestic pressures will build up for reduction of tariffs. And that is indeed what has happened since the GATT was established in 1947.

Having agreed to these basic principles, the parties to the GATT then decided that exceptions were needed so that these basic principles would not cause political havoc. These exceptions were listed in Article XX, the exceptions clause, and they legitimised, for example, quarantine regulations.

The GATT-WTO has become perhaps the most important international institution that we have, and its success is measured by the extraordinary growth in international trade that has taken place since it was established in 1947. Dr Alan Greenspan, the Chairman of the US Federal Reserve System, referred to this in a speech in Dallas a few months ago:

"One of the most impressive and persistent trends of the last half century is the expansion of international trade. Adjusted for price change, trade across national borders has increased fourteenfold – far faster than the fivefold increase in world GDP.

"The evidence is overwhelmingly persuasive that the massive increase in world competition – a consequence of broadening trade flows – has fostered markedly higher standards of living for almost all countries who have participated in cross-border trade. I include most especially the United States".

Arguably the most important thing about the GATT-WTO is that it has, at the centre of its legal and philosophical structure, a strong commitment to preserving the sovereignty of the WTO membership. This might not matter to strong and powerful countries like the United States, but it matters greatly to small and much less powerful countries like Australia. Since 1947 almost all of the detailed work of the GATT, and of the various trade rounds, has been focused on reducing trade barriers, to our very great benefit.

A key element in protecting the sovereignty of the member states of the GATT was that Article XX did *not* legitimise trade sanctions or trade discrimination based on how an article was made, or to use the technical jargon, on production and processing methods (PPMs). That is to say, it was contrary to the GATT Articles to discriminate against an import because it had been made with cheap labour, or because it had been made from battery-grown hens, or, and here we go straight to the shrimp-turtle case, because the shrimp had been caught with nets that did not have the turtle extruder devices (TEDs) that were mandatory in US waters.

The fundamental reason why trade sanctions, because of PPMs, were illegal under the GATT is that, without such an agreement, the sovereignty of the GATT or WTO member states is fatally impaired.

Sovereignty is all about self-government; it is about the capacity to make political decisions affecting the life of the nation without recourse to foreign powers or foreign tribunals. It is about constitutional closure or self-containment. Labour market regulation, for example, is central to the exercise of sovereignty. Whether we give legal privileges or not to trade unions is something for us, and us alone, to decide – at least as long as we remain a sovereign nation. The International Labour Organisation (ILO) requires that trade unions

are legally privileged, and that is why the ACTU keeps running off to the ILO to complain about Peter Reith.

Environmental regulation is, likewise, a matter for sovereign decision making. How we catch our shrimps, cut down our trees, or mine uranium, is something for us and us alone to decide, provided we retain our sovereignty.

This central element of the GATT structure has meant, at least up until the Appellate Body's decision in shrimp-turtle, that GATT disputes panels were vigilant in defending the sovereignty of the member states in matters of labour market regulation, environmental regulation, and so on. But this critical element of the GATT rules and structure has been under attack from environmental Non-Governmental Organisations (NGOs), in Europe and the US, for more than a decade. They want the power to use trade sanctions to enforce their environmental policies around the globe, and in the case of Thailand, the US Government, because of green NGO pressure, banned imports of Thai shrimp because the nets used by the Thai fishermen did not have these Turtle Extruder Devices.

The Thai Government took the case to a WTO Dispute Panel and won, and the argument used by the Dispute Panel in finding against the US was the traditional GATT doctrine that PPMs did not give grounds under Article XX for trade sanctions.

The US Government then appealed to the Appellate Body and, once again, the Appellate Body found against the US; but, and this is where the alarm bells are ringing, the Appellate Body found against the US not because PPMs were used as the basis of the trade sanction, but because the US had not used the correct procedures to apply the trade ban.

This is a very bald summary of the case, and GATT experts will criticise it as "simplistic". But it is the essence of it, and its implications are profound.

If it becomes accepted that powerful interest groups in the US or Europe can impose trade sanctions on imports because they do not like the methods used to produce the product, then our sovereignty becomes effectively subordinate to the pleasure of these interest groups.

The comparison with the World Heritage Committee is important. Whether or not the Committee finds against us in Paris tomorrow – but of course particularly if it does – the Government will have a great deal of egg on its face, and those of us who care about our sovereignty should lose no opportunity to point out just how foolish Australia has been, for nearly two decades, in going down this road. But Government Ministers have an extraordinary capacity to pretend that the egg on their collective face is just an illusion, and life will go on pretty much the same.

But if the lamb exports we hope to get into the US were subject to a trade ban because powerful interests in the US objected to the way in which our sheep were crutched and their tails docked, then it is a very different story. Or if our gold exports were subject to trade bans because of the use of cyanide in the extraction processes, we would once again have a fiscal crisis to manage.

The most important aspect of the opening of the door to the use of PPMs as a legitimate cause of trade sanctions is that the environmentalists have always seen trade sanctions as the method through which they will impose a carbon withdrawal regime, around the world. The first step in that programme of carbon withdrawal is, of course, the Kyoto Protocol. Up till now the rules and traditions of the GATT-WTO have stood in the way of such ambitions.

Let me conclude with some observations. I have given some examples in which the Australian government of the day upheld our sovereignty, and some examples in which that

sovereignty was suborned. I have briefly outlined the critical situation facing the WTO and its members as a result of shrimp-turtle. I think it is becoming obvious that the Australian people find the use of international tribunals as a weapon in domestic politics completely objectionable. The use of the external affairs power to take from the States the powers given to them under the constitutional settlement is not only egregiously offensive, it is also very dangerous politics. A government that proposed a contemporary version of the *Statute of Praemunire* would get considerable support from the people.

The reason why such support would be forthcoming goes to the heart of sovereignty and its virtues. SEK Hulme, QC once told the story of Owen Dixon and the question he addressed to some young lawyers he was entertaining at lunch. Sir Owen asked them, "Who is the most important person in the courtroom?". The young barristers proposed the judge, the counsel for the plaintiff, counsel for the defendant, and so on. Dixon shook his head. "The most important person in the court", he said, "is the person who is going to lose. He or she must be completely satisfied that having lost the case, with perhaps great personal loss as a consequence, he has, nevertheless, received 'justice according to law' ".

The same argument applies to sovereignty. Politics is a never-ending process of debate and argument. Decisions affecting life and property are made as a consequence. Young men (and nowadays women) are sent off to risk their lives in war. Taxes are levied, with horrendous economic consequences for millions of people. All of us, very often, are at the wrong end of political decisions. But we accept the decision because we are part of the process, and the process is something we have inherited, along with family heirlooms and Shakespeare's plays.

Governments are always testing our acceptance levels. Their great weapon is that our attachment to our homes, our families, and our country, is very great. But unless they pull back from the process of suborning our sovereignty, and pushing our political processes and decision making into foreign capitals such as Paris, Geneva or Nairobi, then before long it will be found that we will not accept decisions arrived at in those far away places, by people who are unknown to us, and who are not accountable in any way to us.

Such an outcome would signal the beginning of the end of our enviable history of domestic peace and political stability.

Endnotes:

1. The author has been greatly helped in his understanding of this issue by an essay by Noel Malcolm, entitled *Sense on Sovereignty*, published in 1991 by the Centre for Policy Studies, London. Malcolm's discussion is in the context of the United Kingdom's position vis-à-vis the European Union, but his arguments and analysis apply to Australia's position vis-à-vis the "international community".
2. Testimony given by Professor Jeremy Rabkin to the US House Committee on Resources and Energy, on HR 883, the *American Land Sovereignty Act*, 18 March, 1999.
3. *The Australian Financial Review*, 8 July, 1999.
4. It actually lasted, off and on, for more than 130 years.
5. See Shakespeare's description of a France devastated by war in *Henry V,* Act V, Scene II, the Duke of Burgundy's speech before Henry V and Charles VI.
6. *4 Blackstone Commentaries*, 103.
7. *The King's Great Matter.*
8. This term, obviously unknown to fourteenth Century lawyers, originated in the USA.

9. Sandra Tweedie, *Trading Partners: Australia and Asia 1790 - 1993* (University of New South Wales Press, 1998).

10. Article 3: “Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.