Chapter Ten
National Interest versus International Law: The International Criminal Court

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Last week the United States Senate approved a law authorising the use of force to rescue Americans held by the International Criminal Court at The Hague. Democrat David Obey said that meant sending US troops to invade The Netherlands. It was too preposterous, he said.[1] Obey is right – but not in the way he intended.

That international law has come to this – the US needing to invade a Court in The Hague to shore up its right to govern its own people – would be funny if it were not so very serious.

There is a spectre hanging over Western liberal democracy these days. It hardly seems secure. But the danger is not an external threat. The real danger is the enemy within.

Australia's "peace, order and good government" is being tinkered with. Our Constitution's Preamble may not have the glamour of America's "life, liberty and the pursuit of happiness", but it has served us equally well – in that understated Australian sort of way. But, increasingly, it's being threatened by a merry band of pseudo-intellectuals, cosmopolitan globalists, bureaucrats in Brussels, human rights activists, law-making judges and politicians who treat democracy with disdain, all united under the banner of international law.

At the domestic level – within a country such as Australia – these activists encounter too much of what Tennyson called the "common sense of most".[2] So their causes go nowhere.

At the international level, there is too little common sense. Supranational bodies are full of other so-called champions of social justice. There's no electorate acting as a brake on the inclinations of this élite mob. That's why they use international forums to do an end run around domestic democracy. International forums get them somewhere.

We have to understand their tricks. Calling something a matter of "social justice" – as if something were so incontrovertible only a philistine would question it – is one of the tricks used by globalists to override democracy. The other trick is to place yourself beyond "dirty" domestic politics, as if supranational or international status itself confers legitimacy. But they have no legitimacy because they suffer a democratic deficit.

For many, September 11 was the first step in a clash of civilizations – countries imbued with democratic ideals fighting it out for survival against those with very different religious and cultural beliefs. Samuel Huntington, a Professor at Harvard University seemed prophetic when, in 1996, he described this coming "clash of civilizations".[3]

Francis Fukuyama had got it wrong, it seemed. He argued that Western liberal democracy represented the end point in a long evolutionary trail of governance: democracy was inevitable.[4] His good news theory seemed overshadowed by those terrorist attacks of September 11.

But Huntington's darker theory is also incomplete. If we factor in the world's modern day obsession with international law, there is a battle – but it's with the enemy within Western liberal democracies.

If that all sounds a little dramatic, think about the exponential growth of international law in the last 50 years. We've gone from governing relations between countries to dictating relations between people. We've gone from asserting fundamental civil and political rights to force-feeding countries on a fashionable diet of new-fangled economic, social and cultural rights. And what each of those means depends upon who happens to be sitting on the relevant committee on a particular

day. In other words, your guess is as good as mine. At this rate, where will we be in 50 years time? One thing is clear – the western liberal democratic nation state will be neither democratic nor a nation state.

And so pervasive is this anti-democratic trend that even conservative politicians are getting in on the act. A couple of weeks ago our own Workplace Relations Minister was enticed. Faced with a Senate refusing to enact the Government's promise of delivering exemptions for small businesses from the unfair dismissal laws, Tony Abbott indicated he might take the high road – the road to international law.[5] It's all so convenient. When Parliament gets in the way, find a Convention in international law that allows you to get the result you want. Judges do it. And politicians do it.

As Professor Pat Lane said recently, "the Commonwealth government's innumerable international assurances lie in ambush", waiting to overturn the decisions of domestic democratic bodies.[6]

It's legislating through the back door – a strategy not normally favoured by conservative governments.[7] But as Mr Abbott told his gathering, "times change". Indeed they do.

Times have changed so much that German playwright, Bertold Brecht, is mixing in high society these days. His 1953 joke from the play, *The Solution* about the East German Communists losing faith in the people – and needing to elect a new people[8] – is no joke these days. Brecht is at work in the salons of Paris, in chic Sydney restaurants and, of course, in the labyrinth of offices housing international law bureaucrats.

Whenever democracy fails to deliver what you want, the tendency these days is to seek out a new, more sympathetic electorate. And what could be more sympathetic than a group of like-minded, self-proclaimed champions of social justice meeting in Geneva or Brussels or New York. And the International Criminal Court (ICC) – the newest and sexiest weapon in the armoury of international law – is a crystallisation of this trend and all that is wrong with international law these days.

Where is Australia headed on the ICC?

In March, as part of a 28-nation civics survey, the Australian Council for Educational Research reported that half of Australian students had little understanding of democracy. How could it be otherwise when our politicians seem to suffer the same affliction?

Last month the Parliament's Joint Standing Committee on Treaties rubber-stamped the Government's proposal that Australia ratify the 1998 Treaty of Rome establishing the International Criminal Court.[9]

That the push for ratification comes from Australia's top law officer says much about our respect for democracy, because the ICC threatens how we rule ourselves as a sovereign nation. But, as an international law devotee, the Attorney-General reverted to the popular bandwagon fallacy in explaining why Australians should not be concerned about the ICC impinging upon our national sovereignty. That fallacy rests on the flawed assumption that if enough countries say the world is flat, then the world is flat.

In his submission to the Treaties Committee, the Attorney-General said that all countries are concerned to protect their national sovereignty, and because other democratic countries have ratified the treaty, we should be comforted enough to do the same:

> "One can safely assume that ensuring that the ICC does not threaten national sovereignty is of as much concern to Canada, New Zealand, France, Germany, South Africa and Italy. Those countries are clearly satisfied on that front and have ratified the treaty".[10]

And so should Australia, says the Attorney-General.

But his logic is lazy. The ICC throws up a timely challenge to countries like Australia. So let's take a slightly more sophisticated path than the one our Attorney-General would have us

take. Let's meander a bit down the European Road, and then down the American Road, before we decide where Australia should go on the ICC. The two roads lead in very different directions.

The European road by-passes the national in favour of the supranational. This road leads north, away from the individual nation state to the highly regulated, highly bureaucratic supremacy of the supranational European Union (EU) and its love of all things global. The American road leads in the other direction – south – to the American people and the nation state.

Take the American road south?

Writing in *The Spectator* a few weeks ago, Mark Steyn said:

> "In America, power is vested in 'We, the people' and leased upwards, through town, county, state and federal governments, in ever more limited doses".[11]

America is the most democratic country on earth. Democracy is everywhere. It's in the school classroom, it's in the local town hall, it's in the State legislature and it's there on Capitol Hill. Importantly, democracy starts at the bottom and rises, giving the American people what Steyn calls the "spirit of liberty" – something lacking in Europe, where the supranational is extolled as superior to the national, and therefore far superior to the workings of suburban democracy.

In 1840, Frenchman Alexis de Tocqueville understood what millions of French people and their European neighbours just don't get:

> "Town meetings [suburban democracy] are to liberty what primary school is to science: they bring it within people's reach, they teach men how to use and enjoy it".[12]

In the days after September 11, friends kept asking Steyn why Mayor Giuliani, rather than the President, took charge of Ground Zero and the streets of Manhattan:

> "The implication seemed to be that the mayor is some kind of understudy, that the system isn't working unless the top guy's there".

But "that's to get it exactly backwards", according to Steyn. "It's in the mayor and ... and other municipal institutions that you measure the health of a society".

And America is much healthier than Europe, where the democratic deficit sees Eurocrats in Brussels wielding power over just about everything from speed limits on laneways in Cornwall to economic and foreign policy. As Steyn says:

> "The issue is not how to make the chaps in Brussels more accountable, but why all that stuff is being dealt with in Brussels in the first place – why so much of the primary school science can only be entrusted to the laboratory's men in white coats, like Chris Patten".

That same question applies to much of international law, and most certainly to the ICC. The question is not how to make unaccountable bodies more accountable – but why invest such power in supranational bodies at all.

The internationalists argue that we need international forums to deliver international justice. The US believes the opposite: only the checks and balances of the nation state can ensure international justice. In a speech to the Centre for Strategic and International Studies last month, US Under Secretary of State for Political Affairs, Marc Grossman said:

> "Nations with accountable, democratic governments do not abuse their own people or wage wars of conquest and terror.
>
> "A world of self-governing democracies is our best hope for a world without inhumanity".[13]

That's the American road.

The American road – unsigning the ICC treaty

That road led President George W Bush to do the unthinkable last month[14] when he "unsigned" the 1998 treaty establishing the ICC. Defence Secretary Donald Rumsfeld said, at the time, that the US will regard as illegitimate any attempt by the ICC to sit in judgment of American citizens.

Bush's action contrasts exquisitely with the Clintonesque logic behind America's initial signing of the treaty on New Year's Eve 18 months ago. Like so many things Clinton did in that busy midnight hour, signing the 1998 Rome treaty was foolish. Clinton noted "significant flaws" with the treaty but signed anyway, convincing himself that the US could then work from within to remedy the problems.[15]

That strategy failed. It simply proved that, for western liberal democracies like Australia and the US, embracing the current genre of international law means letting others define the issues for you. And that means subjecting yourself to one of two fallacies propping up much of international law these days – the bandwagon fallacy I referred to earlier (enough countries say X, so X must be true), or the appeal to authority fallacy (someone powerful says X, so X must be true).

As we've seen with our own Attorney-General, globalists busily rely on both fallacies in their quest to sell the ICC to the world. The "appeal to someone important" fallacy was given a boost when Clinton signed America's name to the ICC. The internationalists delighted in the apparent legitimisation of the Court. The most powerful country in the world agrees to the ICC and so other countries must follow, went the mantra. Last month Bush rejected both fallacies and renounced the treaty. It was a gutsy move.

The response from the internationalists was predictable: they immediately reverted to the bandwagon fallacy – 66 other countries have ratified, so the rest of the world must follow. When America still refused, you can image their disdain. The "anti-American pseudo-intellectual bourgeois clique", as Alexander Downer puts it, which derides President Bush as a simpleton, went into overdrive. Michael Kelly, an Associate Professor at Creighton University School of Law in Omaha, Nebraska was outraged:

> "Signature removal is unprecedented in American international legal practice and ... would signal to the world that democracies can unilaterally sign or unsign treaties whenever there is a change of government".[16]

What exactly is dangerous about sending the signal that democracies can unsign treaties, one wonders? National sovereignty is in serious trouble when, even as a matter of practice, democracies cannot unsign treaties, as Kelly would have it. The world needs more, not less, signature removals if the internationalists are to understand this thing called democracy.

The ability to make and unmake laws is fundamental to the functioning of liberal democracies. Laws are made, changed, unmade, remade, repealed, reformed by parliamentary representatives at the direction of the voting people. And if that means unsigning a treaty, it's still democracy at work. Bush understands this and knows an attack on democracy when he sees one. September 11 was an obvious one; under the guise of internationalism, the ICC is a less obvious but only slightly less sinister one.

Australia could do with a large dose of Bush's gutsy simplicity when it comes to protecting our own democratic institutions. The alternative is the European Road.

Or the European road north?

Take a short stroll down that path and it soon becomes obvious why even some of the original Euroglobalists are starting to question the wisdom of supranational bodies.

Historically, Europe's geography – countries living cheek by jowl – has seen the nation state cause immense problems. Europeans have grown used to supranational solutions as an antidote to excesses of nationalism. But the EU – that gargantuan supranational bureaucracy in Brussels – has simply created a different sort of excess – a supranational one. That excess was obvious in Austria when Jorg Haider's right wing Freedom Party won government in 2000 only to be greeted by sanctions imposed by the EU! It was Brecht at work: the EU pseudo-intellectuals longing for a new electorate and showing their utter disdain for the nation state.

And so the EU is busy selling its supranational model to the world. And it uses its superior numbers to create international bodies (such as the ICC) that have the power to override independent nation states.[17]

But as Daniel Johnson said in London's *Daily Telegraph*,[18] there is a revolt against the ruling élites and their brainchild, the European Union and its derision of national sovereignty. We saw that revolt when the far-Right French politician, Jean-Marie Le Pen, dealt Socialist Prime Minister Lionel Jospin a knock-out blow in France's first round Presidential elections in April. The press cried foul, and denounced Le Pen's win over Jospin as a "blow to democracy" – Brecht at work again. But they were mixing their prepositions. Le Pen's win was a blow *by* democracy.

For all his faults – and his hotchpotch of anti-globalisation, anti-genetic foods, anti-Americanism suggests many policy flaws – Le Pen rode the wave of resentment building in countries like France, where "national interest" is treated by mainstream politicians, on both the Left and Right, as a dirty word. To raise the question of national interest on issues like the EU and immigration is to question the unquestionable.

The orthodox view was that nothing more that apathy explained Le Pen's win in April. Many voters did not bother to vote, so disaffected were they by politics – the corrupt Jacques Chirac, the bland Lionel Jospin and the fissiparous French Left. The BBC reported that a record 28 per cent chose to stay home or leave town to enjoy the spring weather. Writing in *The Australian* at the time, I said that apathy and good weather can hardly explain Norway, Denmark, Austria, Italy, Spain, Portugal and Belgium, where precisely the same reactions have taken place.[19] That's an awful lot of apathy and sunshine.

Others label any swing to the Right in Europe through the prism of 1933 Nazi Germany – Fascism at work again. But neither apathy nor Fascism gets to the heart of what's happening. It's a backlash – a revolt – against a smug establishment, who treat the genuine concerns of the masses over national sovereignty, multiculturalism and immigration with disdain.

The globalists deride the so-called "lurch to the Right" in Europe, but it's getting pretty hard to define the European Right these days. The only thing the ex-military man, Le Pen has in common with the late Pim Fortuyn – the 54 year old openly gay, former television personality and sociology Professor shot down nine days before Dutch elections in May – is their distrust of the EU, immigration and multiculturalism.

If the Euro-globalists long for a new electorate after the latest swing to the Right across Europe, then there is a large rump of voters in France, The Netherlands, Norway, Denmark, Austria, Italy, Spain, Portugal and Belgium – by the last count – who hanker after that relic, the nation state.

Time for a wake up call for international law

Politics at the national level are mirrored at the international level. So that what happened in the French presidential elections in April and May is precisely what happens at the supranational level. Whenever the electorate – in this case a member state – disagrees with the accepted wisdom of the international élite, immediately the member is denounced as an international pariah. Every time a country questions a treaty or a Convention, it's awarded this badge of shame.

It happened when Australia refused to sign the *Kyoto Protocol*. It happened a couple of years back when Australia refused to sign the *Optional Protocol to the Convention for the Elimination of Discrimination Against Women*. And as for America, it has so many of the international pariah badges, it's running out of lapel space.[20]

But if the recent trend to the Right at the national level of politics is any indication, then the enemy within may be in for a wake-up call. The one big difference between national and international politics is that a national electorate can deliver this wake-up call on a regular basis at democratic elections. Delivering that same message at the supranational level is much harder.

There are no elections. And so the globalists have been allowed to get away with so much in recent times. The International Criminal Court is their latest win.

The ICC – a monument to all that is wrong with international law

When 120 countries adopted a treaty in Rome in 1998, it was as if they agreed to build a monument to all that is wrong with international law. And they did a mighty fine job of it. Ex-President Jimmy Carter told *CNN* that the ICC would be a great deterrent. And if we can't deter, then at least we can prosecute the next Milosevic, said our Foreign Minister, Alexander Downer.[21]

Look a little closer at the *Statute* and it becomes clear that the ICC does more than seek to prosecute the butchers of the future. It subverts a free people's ability to govern itself. The ICC is an altogether different beast from those *ad hoc* bodies set up to prosecute the Nazis in Nuremberg, genocide in Rwanda and ethnic cleansing in the Balkans.

Illegitimate jurisdiction – the rule of complementarity and opting out

In a disturbing break with accepted principles of international law, the Court – having reached the requisite number of ratifications in April this year – now, rather audaciously, claims power over the whole world. The notion of consent – the very foundation of international law 50 years ago – is being undermined by this new international beast. It has power to investigate, try and punish citizens of countries that have not signed and ratified the treaty.

This shows how far international law has moved from its original purpose of dealing with the rights and obligations of sovereign nations. The Rome Treaty, like a myriad of international law treaties, conventions and committees, regulates individuals. What's novel about the ICC is that it regulates individuals from countries who have *not* ratified the treaty.

While a member state can "opt out" of any new crimes added to the ICC Statute, thereby exempting its nationals from the Court's jurisdiction for those new crimes, a non-member who has never ratified the treaty is caught by any new "crimes".

For those who do ratify the treaty, the ICC says, magnanimously, that it won't intervene if a member state "genuinely" investigates the alleged crime. But the motley crew of ICC judges has absolute power to review and reject that country's decision.[22]

Earlier this month, Malcolm Fraser said it was "unlikely" that Australians would be tried without our consent.[23] Quite frankly, "unlikely" is not good enough. And understandably, "unlikely" is not good enough for the Americans with their global deployment of military forces in peacekeeping efforts and in the war on terrorism.

It's revealing that those who opposed US military intervention in Afghanistan are the very same crowd who cheer the ICC. But their desire to curb US military might is as dangerous as it is naïve. As Jeremy Rabkin, from Cornell University, points out:

> "Much of the world wants to pretend that international justice can be delivered on the cheap. Mass murder in Rwanda? No need to send troops and risk casualties of your own. Just send in a team of lawyers to show you care".[24]

These globalists make a serious mistake in misunderstanding the differing roles of military action, diplomacy and justice.

The more realistic position is that the world will continue to look to the US for military muscle. But in light of the ICC, that's untenable for America. So Americans are in the laughable position of having to legislate to reaffirm their right to rule their own citizens.[25] And they will now be reluctant to play saviour in the next Kosovo, for fear of ending up at the mercy of a political court on trumped-up political charges.

A month ago Washington signalled it might pull its peacekeeping forces out of East Timor unless it is given a guarantee that Americans serving with the UN will not be turned over to the ICC in The Hague. It is, of course, highly unlikely that an American peacekeeper in East Timor

would end up before the ICC. But Washington is serious about establishing the principles of immunity which apply next time its military is required in one of the world's hotspots.

The exact same problem emerges for Australia when we send our military to those same places. And what about those still serving in East Timor? The potential for political prosecutions is there in the language of the ICC Statute.

A problem with language

The globalists have followed Napoleon's advice that a good Constitution should be short and confused. The ICC *Statute* needed to be short, said the globalists, to give the world time to understand the difference between "ordinary" and "extraordinary" criminals. And confused it certainly is. The *Statute* is littered with highfalutin' but nebulous language like "war crimes", "crimes against humanity" and "genocide".

This abuse of language is a common feature of international law. And, like so much else in international law, the original *Statute* is treated as just the beginning – the ICC was always seen as growing into something much bigger.[26] In fact, the ICC is already a jurisdictional leviathan and there is potential for many more currently unknowable crimes. No wonder the globalists are so excited about the ICC.

There are 15 actions which amount to a "crime against humanity". That list includes the sorts of things one might expect to see – murder, torture, rape. But of course it doesn't stop there. It is also a "crime against humanity" to severely deprive someone of one or more of their fundamental rights contrary to international law based on their political, racial, national, ethnic, cultural, or religious beliefs or their gender.

This clause raises obvious problems. The recent Fitzgerald Report found that violence in Queensland's Cape York Aboriginal communities is so endemic that a ban on alcohol is needed if substance abuse continues at current rates. Could that amount to depriving people of a fundamental human right based on their race?

If national sovereignty is to cede to international law where human rights are violated, then the exact content of these human rights becomes vital. But if you look at some of the reports by the CEDAW – the Committee for the Elimination of Discrimination Against Women – the list of fundamental human rights grows by the day.

CEDAW will point to the Taliban as reason enough for their excessive reach, but has then proceeded to advise countries like Germany, Spain and Luxemburg on the need to "eradicate stereotypical attitudes" from their democratic societies.[27] It admonished Belarus for re-instituting Mother's Day celebrations.[28] It criticized Norway and Hong Kong for granting exemptions to religious institutions from those countries' discrimination laws.[29] It criticized the Irish for thinking, living and voting like Catholics, especially in relation to abortion.[30] Could these, one day in the future, be matters dealt with by the ICC?

So you get the feel for where the ICC might be going. And then there is the catchall phrase – another common feature of international law. So it's a "crime" to inflict great suffering or serious injury to someone or to his or her mental or physical health, by means of an inhumane act. Going back to the Fitzgerald example, journalist Kate Legge reported in *The Australian* that:

> "… a doctor in Cape York who assisted Fitzgerald said that if white communities were suffering a tenth of the neglect, violence, sexual abuse, truancy and foetal alcohol syndrome, governments would have sent SWAT teams in to remove the youngsters long ago".[31]

If these indigenous children are removed, can we really assume that indigenous activists won't rush to The Hague for a hearing before the ICC, claiming injury to mental health by removing children from their families? Another so-called "Stolen Generation"?

In response to the Fitzgerald report, ATSIC Commissioner Brian Butler said that a long history of colonialism, racism, assimilation and dispossession bred systemic violence. And these claims are made all the time about government action.

Like other international forums, the ICC will be a tempting arena for these activists. If Australia were to hitch its star to the ICC, can you imagine the fun to be had over immigration policy, and our mandatory detention policy, using these nebulous terms.

With predictable hyperbole, two weeks ago the United Nations Human Rights Commission said human rights violations at Woomera were the worst seen in a string of overseas camps. Foreign Minister Alexander Downer shot back, in Parliament, that "whatever the rights and wrongs of these issues, we will decide them for ourselves, not have bureaucrats in Geneva decide them for us".[32] Brave words, but sheer rhetoric in light of the ICC. These issues may well be decided, not by bureaucrats in Geneva, but by ICC judges at The Hague.

These vague definitions would be unacceptable in a domestic law criminal statute. Why should we countenance them at the international level?

Recently, the Law Institute of Victoria gave the ICC the thumbs up and spoke excitedly about being at the "forefront of the development of international law, for example, through the prosecutions for the crime of aggression".[33] Only problem is that this crime has yet to be defined. Signing up to a Court that has power over a crime yet to be defined is surely a sign of madness. The next time the Australian Navy boards a boat full of illegal immigrants, they might be committing the "crime of aggression". And small facts, as with *Tampa*, where some of the boat people threatened violence, may be ignored. The only thing we know for certain about this new "crime" is that it will be defined with similarly nebulous language. And there will, no doubt, be a catch-all phrase tacked on at the end.

This genre of international law is objectionable for the same reason that domestic judicial law-making is objectionable. It's policy-making, social engineering and governance by an unelected, unaccountable group of élites who by-pass the traditional democratic processes of law reform.

And you won't be surprised to hear that Amnesty International and Human Rights Watch wanted the ICC's power extended beyond deciding the guilt or innocence of a party, to the murky area of awarding reparations to victims. Western activist judges must be salivating. What could be more noble than applying your well-practised law-making skills to these amorphous notions? And awarding damages to boot. Makes tinkering with the domestic law of negligence look pretty boring.

The flip side of activist Western judges are non-Western judges who defer to government before deciding anything. No Chinese judge would dream of deciding anything without getting a rubber stamp from what passes for his government of the day. And with China and Syria on the UN Security Council, expect to see a Chinese and/or Syrian judge on the ICC some time soon.

It's bad enough ceding national sovereignty to a foreign Court which is based on liberal democratic traditions. Australia decided to abolish appeals from our High Court to the English Privy Council sixteen years ago. Why would we even consider subverting our judicial system to a supranational one in The Hague made up of activist judges and judges from countries with no history of democracy?[34]

A court of politics, not law

So the ICC will be a court of men, not laws; a court of politics, not principles. This was clear on the day that the ICC became a reality. When 66 states ratified the treaty, an Israeli-Arab politician suggested that the Israeli Prime Minister and his Cabinet be immediately investigated for war crimes.[35] This should have come as no surprise, because international bodies have always been about subjective politics, not objective law. Delve a little into the recent history of some

international forums and the writing is on the wall for the ICC. Look at what happened in Durban last year.

When the United Nations was awarded the 2001 Nobel Peace Prize for their work for "a better organized and more peaceful world", it brought to mind the best of that tireless British sitcom, "Yes, Minister". The UN gets a prestigious gong just a month after hosting what can only be described as the most disorganized and disastrous UN conference ever. Disastrous because the most significant outcome of the Conference on Racism, Racial Intolerance, Xenophobia and/or Related Intolerance was to inflame large doses of racism, racial intolerance, xenophobia and/or related intolerance – against the Jews and the West. Over 150 nations couldn't agree on how to define racism and religious intolerance, let alone how to eradicate it. That the gabfest in Durban went ahead at all says much about what the United Nations is about: it is not about uniting nations. It is about pointing the finger at the West for the world's growing list of woes.

That the Third World was born guileless and innocent, only to be brutalized by the West, is a popular slogan in many parts of the world. It's especially popular with the globalists in the West. And the Nobel Prize-winning UN has done little to correct it. As delegates dispersed from Durban, they were left with the resounding message that slavery is only slavery when carried out by the West. Never mind that African countries like Sudan and Mauritania still tolerate the ownership of black slaves. And, racism is only racism when whites discriminate against blacks, or when Christians or Jews discriminate against Muslims. Never mind that racism and religious intolerance is rampant in countries like Saudi Arabia, India and Malaysia. And the globalists wonder why Israel has taken the American Road and renounced the ICC! As Edward Greenspan said at a conference in Toronto, Canada this year, "How can the world expect Israel to trust the UN or any organ created by it after that debacle?".[36]

When the French Ambassador to Britain referred to Israel as "that shitty little country" in an off-the-cuff remark back in December last year,[37] he summed up the animosity that Israel faces from the so-called "international community", meaning Europe and the Arab world.

Writing days after the Durban conference and a few days before the terrorist strikes on September 11, Arnold Bleichman, a research fellow at the Hoover Institute, expressed concerns in *The Washington Times* about "[t]he majoritarian power of Islamic culture in the United Nations – 22 Arab League members, 55 Organisation of Islamic Conference members and various pro-Arab delegations…".[38] That majoritarian power was clear in Durban. It was also evident when Muslim and Arab countries tried to distance themselves from the US military response in Afghanistan. And it's there in the UN's opposition to Israel's self defence against Palestinian terrorists.

The Nobel Prize Committee's own words reveal a rich, and no doubt unintended, irony. The Committee described the UN as "an organization that can hardly become more than its members permit". Durban revealed just what sort of organisation it has become: one that encourages anti-West sentiment under the banner of "tolerance", and one that preaches democracy from a very undemocratic pulpit.

Look at the UN Human Rights Commission. Once it probably enjoyed a certain cachet. But, like Durban, too many activist groups hoping to cash in on the cachet to push their own pet causes have left the Commission's legitimacy and credibility seriously damaged.

Less than half the UN member states are democracies. Many have not signed human rights treaties, yet that doesn't preclude them from sitting on the Human Rights Commission. In May, 2001 the US was dumped from the Commission, despite having been a founding member in 1947. Instead, the overseeing of human-rights abuses is left to one-party states such as China, Cuba, Pakistan and Libya. Again, it might be funny were it not so serious. And the ICC is likely to go the same way.

Last month, a Commission resolution supported the use of "all available means, including armed struggle" to achieve a Palestinian state. It condemned "mass killings" of Palestinian civilians by Israeli incursions on the West Bank, but said not a word about Palestinian terrorism –

the suicide bombing of Israeli civilians. The resolution exposed how the Human Rights Commission is completely captured by anti-American and anti-Israel forces. The 57 member Organisation of Islamic Conference (OIC) drew up the resolution, and all but one OIC member on the Commission voted in favour. Most of the EU members fell in behind the Arabs.[39] Even those who indicated they did not fully support the resolution decided to sign anyway.[40]

The Commission is the latest manifestation of "bourgeoisophobia" – a long word for what David Brooks in *The Weekly Standard* calls the newest and most virulent form of racism – anti-American and anti-Israel sentiment[41] – now flowing through the veins of the three stooges – the EU, the UN and the Arab world. It looks set to run through the judicial veins of the ICC. But as Greenspan said: "Today Israel is the favourite whipping boy of the UN. Tomorrow it will be another country [that] today supports the ICC".[42]

Conclusion

Modern international law is often described as a new political movement.[43] But this new order is looking less like a political movement, and more like a religious one. There is a zeal to international law and all its accoutrements these days. It's built around a moral authoritarianism, and the people are required to cede power to a higher authority. The underlying thesis is, as the New Zealand politician Max Bradford said a few years back:

> "… that the closer to God you are, the greater the moral authority you have to impose your view of the world on those below you. As international organizations are perceived to be closer to God than member states, the greater is the moral authority they can wield …".[44]

And wield it they have, and under the ICC they will continue to do so. In fact, the ICC sits at the pinnacle of the international law monolith, and thus sits closer to God than any other international body. It's a hard line to swallow for us pagans who believe we make the laws. And when pagans challenge the religion of international law, we are reviled for not believing in "human rights". In fact it's the globalists who have little time for "human rights" – real human rights, like the democratic right to vote.

The ICC, like so many international organs, is a blunt instrument in the quest for "global justice". It might just manage to prosecute this century's Milosevic, but the collateral costs to free nations along the way are too enormous. There are other ways of dealing with the hard men of history. But there's only one way to protect the ability of a free people to govern itself. The ICC deserves the thumbs down. Sometimes it really is best to do nothing. The ICC is one of those times.

So the decision on which road to take is no decision at all. Taking the European Road means joining the enemy within – becoming a member of bourgeoisophobia, as David Brooks calls it, or what Mark Steyn calls the slyer virus: the West's anti-westernism. Whatever you call it, the irony is that the West's tolerance and associated liberties have created this road that leads to the enemy within – this perverse trend to deny the achievements of the Western liberal democratic tradition.

This road is best left untravelled. At every opportunity Australians need to remind the Government that, as Alexander Hamilton once said, "Here, sir, the people govern". And the Government can pass that message on to the rest of the world.

Endnotes:

1. *International Herald Tribune*, 13 May, 2002.

2. *Locksley Hall*, (1842).

3. *The Clash of Civilisations and the Remaking of World Order*, New York, Simon & Schuster (1996).

4. *The End of History and the Last Man,* Avon Books (1993).

5. *The Australian Financial Review,* 31 May, 2002.

6. See Professor P H Lane, *Recent Trends in Constitutional Law*, March, 2002, 76 *Australian Law Journal* 154 at 155.

7. See J T Ludeke, *The High Court exceeds its brief*, in *The Australian Financial Review,* 30 July, 1993.

8. *"Would it not be easier*
In that case for the government
To dissolve the people
And elect another?"

9. See Report 45, *Statute of the International Criminal Court,* Joint Standing Committee on Treaties, May, 2002.

10. *Ibid*., para 2.16 at p.19.

11. *The Spectator*, 18 May, 2002, pp. 19-20.

12. *Democracy in America* (1840).

13. Speech given on May 6, 2002. Text at http://usinfo.state.gov. See also *Why Sovereignty Matters: The Erosion of Democracy*, by Geoffrey de Q Walker, *National Observer*, Summer, 2002, pp. 33-38 at 37.

14. On May 6, 2002.

15. *Chicago Tribune,* 1 January, 2001.

16. *USA Today*, 16 April, 2002.

17. See Greg Sheridan in *The Weekend Australian,* May 11-12, 2002. As Sheridan asks, in an aside, if the EU is so keen to be seen as one entity, why does it get so many votes in international forums?

18. *France is still in denial over threat posed by Le Pen*, in *Daily Telegraph*, 6 May, 2002.

19. *The Australian,* 8 May, 2002.

20. According to Amnesty International and Human Rights Watch, on human rights America is no better than Tibet or Rwanda. See *The Human Rights Lobby Meets Terrorism*, by Adrian Karatnycky and Arch Puddington, *Commentary*, January, 2002. Reprinted in the Institute of Public Affairs *Review,* March, 2002.

21. Interview on Channel Nine's *Sunday*, 2 June, 2002.

22. See *The United States and the ICC: Concerns and Possible Courses of Action*, Lee A Casey, Eric J Kadel, David B Rivkin and Edwin D Williamson, 8 February, 2002 at 13.

23. *The Sydney Morning Herald,* 3 June, 2002.

24. *A Dangerous Step Closer to the International Criminal Court*, American Enterprise Institute, January, 2001.

25. The *American Service Members' Protection Bill* requires immunity guarantees for US troops on UN operations and authorizes action to free Americans detained or held by the ICC.

26. See Donald W Shriver, *The ICC: Its Moral Urgency*, in *Monitor,* No. 7 (www.igc.org/icc/monitor.htm).

27. CEDAW/C/2000/I/CRP.3/Add.7/Rev.1, paras 25-28 (Germany); CEDAW/C/1999/L.2/Add.6, paras 24-27 (Spain); CEDAW/C/2000/I/CRP.3/Rev.1, paras 25-26 (Luxembourg).

28. CEDAW/C/1999/L.2/Add.3, para. 30; CEDAW/C/2000/ I/CRP.3/Add.5/Rev.1, paras 9, 23-27 (Belarus).

29. A/54/38, para. 314 (China/Hong Kong); A/50/38, para. 460 (Norway).

30. CEDAW/C/1999/L.2/Add.4, para. 20.

31. *The Weekend Australian*, 24-25 November, 2001.

32. *Now the world is watching*, in *The Sydney Morning Herald,* 8-9 June, 2002.

33. Statement issued 30 April, 2002.

34. See John Stone, *Mad Government*, in *The Adelaide Review*, May, 2002.

35. Mohammad Barakeh, a Communist member of Knesset, the Israeli Parliament. See *The Washington Post,* 12 April, 2002.

36. Speech given at conference at Osgoode Hall Law School of York University, Toronto and co-sponsored by the Friends of Simon Wiesenthal Cente for Holocaust Studies on 20 January, 2002. See *Legal minds at odds over global court of law*, in *Globe & Mail*, 21 January, 2002.

37. *Daily Telegraph* (London), *Islamists overplay their hand but London salons don't see it*, by Barbara Amiel, 17 December, 2001.

38. See *A War of Cultures*, in *The Washington Times,* 6 September, 2001.

39. Of the eight EU members on the UNCHR, six voted in favour – Austria, Belgium, France, Portugal, Spain and Sweden. Britain and Germany sided with Canada to oppose the resolution. Italy abstained.

40. Canada's *National Post* newspaper reports that Sweden's Ambassador approved the resolution "without joy" because the resolution's sponsors, the Organisation of Islamic

Conference, would not accept "improvements to the resolution". Portugal's Ambassador said that his country's support "did not imply total support for some of the formulations of the text".

41. *Among the Bourgeoisophobes*, 15 April, 2002.

42. *Loc. cit.*.

43. See Professor Kenneth Minogue, *National Sovereignty versus Internationalism: The Importance of Repealability*, in *Upholding the Australian Constitution,* Proceedings of The Samuel Griffith Society, Volume 12 (2000), p.337. See also *The Ideological War within the West*, by John Fonte, *Orbis*, Summer, 2002.

44. Hon Max Bradford, *The ILO and Sovereignty: New Dawn or New Dinosaur?*, in *Upholding the Australian Constitution*, Proceedings of The Samuel Griffith Society, Volume 12 (2000), pp. 50-51.