Court of Injustice

The fuses have been lit and the explosions are all but certain. The question is: Will enough citizens awake in time and compel our elected officials to take the necessary action to protect America from the blast? No, we are not referring to another imminent attack by Osama bin Laden's minions.

The explosive is not TNT, ANFO, or RDX. It is labeled "ICC," for International Criminal Court, the new UN global tribunal set to go into operation July 1. It is aimed not at specific buildings or individuals, but at blowing away the entire constitutional system that protects our rights as individuals.

Contrary to media reports, White House pronouncements, and congressional statements, recent measures taken by the Bush administration have provided no real and lasting protection against the ICC's threats to our liberties. Indeed, the misperception that current U.S. halfway measures and rhetoric afford genuine safety actually compounds our danger by lulling the American people and Congress into a false sense of security and providing a disincentive to take timely and effective action now, when it is most needed.

What is it about the ICC, specifically, that is causing so much concern? The dangers are many, but can be grouped into three main categories:

• The fatal flaws in the Statute of Rome that created and governs the Court;

• The subversive process of "evolving" international law, of which the ICC is a part; and

• The radical actors dominating this process — including despotic countries, the United Nations, nongovernmental organizations (NGOs), and activist legal scholars. (Those actors not only favor empowering the UN with global authority, but also despise the United States.)

Creating a Monster

"The International Criminal Court is potentially the most important human rights institution created in 50 years," according to Richard Dicker, a top apparatchik at Human Rights Watch, an NGO that played a major role in establishing the ICC. "It will be the court where the Saddam Husseins, Pol Pots and Augusto Pinochets of the future are held to account," Dicker proclaimed, referring to Iraq's dictator, the late Khmer Rouge butcher of Cambodia, and the former Chilean president.

But we have no guarantee whatsoever that the Court will restrict its attention to these foreign targets; indeed, we have every reason to expect that, sooner or later, the ICC will be brought to bear against common American citizens. Then, in the words of Professor Charles Rice of Notre Dame University Law School, we will be confronted by "a monster" that effectively "repudiates the Constitution, the Bill of Rights, and the Declaration of Independence."

The Rome Statute that created the ICC was hammered together in a multi-year process that culminated at a 1998 summit convened in Rome by the UN General Assembly. We have space here for only a brief survey of the most egregious flaws in the Statute's 128 articles spanning 100 pages of ponderous legalese.

No Jury Trial. One of the most cherished rights of Americans threatened by the ICC is the right to a jury trial. Alexander Hamilton noted (*The Federalist*, No. 83) that trial by jury was popularly considered by Americans of the Founding era as a "safeguard to liberty" and "the very palladium of free government."

The U.S. Constitution (Article III, Section 2) provides that the "trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed…." This right was considered sufficiently important that it was repeated again in the Sixth Amendment of the Bill of Rights.

In the Declaration of Independence, our Founding Fathers charged King George with combining with others "to subject us to Jurisdiction foreign to our Constitution, and unacknowledged by our Laws," as well as "depriving us, in many cases, of the benefits of trial by jury," and "transporting us beyond the seas to be tried for pretended offenses." The ICC confronts us with the prospect of returning to that earlier tyranny; it allows for no jury trial and threatens us with foreign jurisdiction and transport beyond the seas.

Unaccountable Foreign Judges. Instead of a jury trial, those brought before the ICC will have their fates determined by international judges, who, according to the Statute, will be "persons of high moral character, impartiality and integrity" with competence and experience in law. Article 36 mandates that "there shall be 18 judges of the Court."

In the next breath, however, it provides for an ever-expanding judicial bench, allowing the presidency of the court to "propose an increase in the number of judges," that may be approved by a vote of two-thirds of the Assembly of State Parties.

Where will these moral, impartial, and competent jurists come from? From countries that have ratified the ICC, naturally. Bastions of liberty and human rights, such as Cambodia, Congo, Bulgaria, Bosnia, Mongolia, Nigeria, Romania, Sierra Leone, Tajikistan, and Venezuela. As well as from models of justice that have signed the ICC and may soon ratify: Albania, Algeria, Burundi, Croatia, Haiti, Iran, Namibia, Russia, Sudan, Syria, Uzbekistan, Zambia, and Zimbabwe, to name a few. The judges will be selected with regard to "representation of the principal legal systems of the world" and "equitable geographical representation," thus guaranteeing a predominance of judicial talent from Communist, socialist, and Islamic nations.

There is no provision for impeachment in any real sense. Article 46 provides for removal of a judge for unspecified "serious misconduct" by a "two-thirds majority of the States Parties *upon a recommendation adopted by a two-thirds majority of the other judges*." (Emphasis added.) So, if your cronies on the bench don't recommend your removal, you have a free ride.

No Speedy Trial. Our Bill of Rights guarantees "a speedy and public trial." Under federal law, that has been defined as the right to be brought to trial within 70 days. The ICC statute has no such guarantee, although it makes a number of references to "reasonable time" and "undue delay." Many of the governments that are parties to the ICC recognize no such right and regularly detain people for years. Under the Yugoslav War Crimes Tribunal, which ICC architects have held up as a model for the new court, we have seen the tribunal prosecutor arguing that *five years* is a reasonable time for a defendant

to wait in prison for a trial.

No Habeas Corpus. In *The Federalist*, No. 84, Hamilton quotes famed British jurist Sir William Blackstone concerning the writ of habeas corpus as “the BULWARK” (emphasis in original) against “arbitrary imprisonment” and the “confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten.” Because of the importance the Founders attached to this issue, suspension of the writ of habeas corpus is the very first item mentioned in our Constitution’s list of specific prohibitions against congressional power (Article 1, Section 9).

The ICC Statute does state that an arrested or detained person has the right to apply for release during investigative, pre-trial, and appeal phases, but few of the nations that will supply the Court’s judges can claim legal systems where this is practiced. Moreover, the Court’s structure, combining executive and judicial powers, subverts the very function of the writ. This “Great Writ” developed as a check of the judicial branch on the executive police powers. It is a court order for the prosecutor or jailer to turn over the prisoner to the court. But, in the case of the ICC, the prosecutor and jailer are *part of the court*, not officers of an opposing executive branch. As we will see further on, this mixing of governmental powers is an endemic defect in the Statute.

What if you are being held not by the ICC prosecutor but by a national authority, say the U.S. Department of Justice, at the direction of the ICC? Our government is allowed to grant you an “interim release” provided it “can fulfill its duty to surrender” you to the Court when demanded. However, unlike our system, a federal court would not be able to question the merits of the charges in the warrant. Article 59 of the Rome Statute states that “it shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance” with the Statute.

Unrestrained Global Prosecutor. The ICC has been endowed (Article 15) with formidable executive authority, in the form of its own global “prosecutor” with “*proprio motu*” — essentially unlimited — powers to investigate criminal cases on his own initiation, or to undertake cases that have been referred to his office by state parties, the UN Security Council, or NGOs — anywhere in the world. Imagine a planetary Janet Reno without constitutional limits launching investigations and prosecutions based on accusations brought by the ACLU, Amnesty International, or Greenpeace, and you begin to get some sense of the frightening possibilities. There’s still more on that score: The prosecutor is empowered (Article 42) to appoint as many deputy prosecutors — with the same unrestrained powers — as he or she may deem necessary. These assertions of authority and jurisdiction by the ICC are obviously in fundamental opposition to American law and present a genuine threat to U.S. citizens that cannot be ignored.

Broadly Defined Crimes. Dictators of all stripes love vague, subjective definitions for crimes; it provides them unlimited opportunity to incriminate, prosecute, and imprison whomever they will. Thus, it is no small matter that the Rome Statute invites expansive court interpretations with its definitions for the “core” crimes of genocide, war crimes, and crimes against humanity.

Consider, for instance, the Statute’s definition of genocide (Article 6). In addition to its first definition of killing “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group,” the Statute mimics the Genocide Convention, asserting that causing “mental harm to members of the group” also constitutes genocide. Various subversive and terrorist groups and their radical lawyers have used this verbiage as the basis for bringing charges of genocide against the United States at the UN and other international forums. Under the “mental harm” definition, terminating employment,

failing to hire or promote, telling an ethnic joke, uttering a racial slur, or executing a sentence of capital punishment can suddenly be transformed into genocide.

The Statute definitions for "war crimes" and "crimes against humanity" are also fraught with danger. Under crimes against humanity, for instance, there is the crime of "persecution," defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." How difficult would it be for an activist judge to find in that definition the pretext needed to strike down any laws — or even the policies of private religious bodies for that matter — deemed to "deprive" homosexuals of their "fundamental rights"? You know the answer to that one; ACLU lawyers and their subversive comrades occupying various court benches have been operating in similar fashion for decades. Also pregnant with danger is the crime of "forced pregnancy," which was included at the insistence of radical feminist lawyers attending the Rome Summit. In their warped universe, any pro-life legislation or other activity aimed at denying women the "right" to abortion on demand is criminal because it forces the woman to remain pregnant, which they see as a state of slavery.

Under "war crimes," the Statute provides such definitions as: "Willfully causing great suffering, or serious injury to body or health"; "Killing or wounding treacherously individuals belonging to the hostile nation or army"; "Intentionally launching an attack in the knowledge that such an attack will cause … injury to civilians or civilian objects."

Now, imagine a panel of UN judges deciding whether a U.S. artillery bombardment constitutes a crime by causing "great suffering" or "serious injury to health"? Then consider the prospect of ICC jurists determining if a Marine sniper or an Army patrol ambushing an enemy force is guilty of "killing treacherously." Or if American forces had "knowledge" that an attack would cause injury to "civilian objects"? Does that mean that if your stray mortar round blows up a tractor or your rifle fire accidentally kills a wandering goat or pig that you could instantly become a candidate for "war criminal" status? We do not know. But based on the make-up of the UN, its historical anti-U.S. bias, and the record of its tribunals in Yugoslavia and Rwanda, those concerns are not wildly speculative.

Undefined Crime. Then there is the crime of "aggression." Since the ICC summiteers couldn't agree on a definition, they decided, incredibly, to write a blank check. Here, exactly, is what the treaty says, in Article 5, Section 2: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime." Do we really want to trust these global public servants not to legislate to our harm in these matters?

More Crimes Coming. The above-mentioned Article 123 is a huge loophole allowing for an unlimited number of crimes to be added to the ICC criminal code in the future. Article 123 provides for an amendment process that "may include, but is not limited to, the list of crimes contained in article 5."

There are, of course, countries and militant NGO constituencies pushing to add dozens of crimes, such as piracy, pornography, intolerance, environmental crimes, economic crimes, hate crimes, crimes against women, crimes against children, etc., to the ICC's jurisdiction. They are pushing on an open door, for the ICC architects are prepared to accommodate their every wish.

Replacing National Laws. ICC proponents insist that the Court is "complementary" to national courts and is not intended to supplant or overrule them. This is nonsense; the Statute repeatedly states that the ICC may intervene if "the State is *unwilling* or *unable genuinely* to carry out the investigation or

prosecution," or if the State's proceedings "were not conducted *independently* or *impartially*." (Emphasis added.) The Court will be the sole judge of these matters.

Many of the ratifying countries have already amended their constitutions and criminal codes to implement the ICC Statute, or are in the process of doing so. Claus Kreb of Germany's Ministry of Justice explained, in the February 28, 2000 issue of *No Peace Without Justice*, that by the end of 2002 Germany expects to have fully adapted its "criminal law to the definitions of crimes laid down in the ICC Statute, as well as those definitions of crimes which exist under other binding international agreements." In the same issue, Canadian official Darryl Robinson explained similar legislation being enacted in Canada. Very alarming is his statement that the new law would assure prosecution "regardless of when or where those events occurred." This *ex post facto* threat contradicts the Statute's explicit assurances (Article 24) of "non-retroactivity."

Global Empowerment Process

We have touched on only a fraction of the atrocious defects in the Rome Statute, all of which concern gross violations of constitutional principles. There are no limits set on the ICC's jurisdiction, and its structure violates the most fundamental rules concerning separation of powers and checks and balances. As such, it fits smoothly into an emerging global structure of UN institutions that claim to be advancing a process of "evolving" international law for the benefit of mankind.

One of the most hotly debated issues at the Rome Summit was the insistence by many delegates that the ICC must have "universal jurisdiction," even over nations that refuse to ratify the Statute. Clinton State Department spokesman James Rubin announced, following the summit, that despite language changes, "Once the treaty comes into force, it would extend the court's jurisdiction over the nationals of countries that are not party to the treaty. Never before has a treaty put itself over those who have not been included in it."

The ICC is a law unto itself, answerable to no other authority. According to Article 19 of the ICC Statute, "The *Court shall satisfy itself that it has jurisdiction* in any case brought before it." (Emphasis added.) Article 119 declares: "Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court." Article 21 provides that in reaching decisions the Court shall apply "this Statute," as well as "treaties and the principles and rules of international law," "general principles of law derived by the Court from national laws of legal systems of the world," and even "principles and rules of law *as interpreted in its previous decisions*." (Emphasis added.)

Under Article 4, the Court "may exercise its functions and powers … on the territory of any State Party and, *by special agreement, on the territory of any other State*." (Emphasis added.) Special agreement with whom? The UN? The Assembly of States Parties? It doesn't say.

It gets worse. Besides the broad interpretive claims of the Court and the formal amendment process mentioned above, both of which are certain to continuously enlarge the ICC's global reach, the ICC's powers easily may be expanded *ad infinitum* by amendment of its institutional structure (Article 122), the Rules of Procedure and Evidence (Article 51), or the Elements of Crimes (Article 9). To protect the American people from governmental usurpations of power, our Founding Fathers made amending the U.S. Constitution a slow, difficult process; the ICC amendment procedure, by contrast, will be fast and easy.

James Madison (*The Federalist*, No. 47) observed that "the accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or many … may justly be denounced

as the very definition of tyranny." By this cogent definition, the ICC, which combines all of these powers, is truly a tyrannical monster-in-the-making.

It was Madison, the "Father of the Constitution," who warned:

> It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it.

The Bush administration and many other ICC "opponents" do not reject it in principle; they are willing to allow it to '"trengthen itself by exercise and entangled the question in precedents." The ICC is set to become a global rolling crime collective claiming the authority to rule on a multitude of issues that are internal affairs of the sovereign United States of America. The United Nations Association, the Council on Foreign Relations, the World Federalist Association, the American Bar Association, and over 1,000 NGOs — together with much of the liberal-left media — have lined up in support of subjecting our country to its jurisdiction. That is the way to national suicide and global tyranny under the United Nations. The ICC integrally fits the whole UN program for power. The Bush administration is presenting rhetorical, equivocal, temporary, and reversible opposition to the ICC, while providing massive funding and support to the UN, the World Bank, and other internationalist, one-world institutions that will help the ICC grow and strengthen. The only genuine constitutionalist position for genuine Americans to take is to support efforts like Congressman Ron Paul's (R-Texas) American Sovereignty Restoration Act, H.R. 1146, to withdraw U.S. membership from the UN and cut all U.S. funding to the entire subversive UN apparatus.

Sidebar — NGOs: The ICC's Partners in Crime

On June 23, 2001, an organization calling itself the Korea International War Crimes Tribunal convened in New York City to issue indictments against "all U.S. Presidents, all Secretaries of State, all Secretaries of Defense, all Secretaries of the armed services … all U.S. military commanders in Korea and commanders of units which participated in war crimes, over the period from 1945 to the present, with … War Crimes, Crimes Against Peace and Crimes Against Humanity in violation of the Charter of the United Nations," and "other international agreements and customary international law." The "tribunal" was hosted by the International Action Center (IAC), a hub of ultra-radical Marxists led by former U.S. Attorney General Ramsey Clark. Similar charges have been prepared by the IAC and other subversive groups against thousands of American servicemen who have served in Asia, Latin America, and Europe over the past several decades. You can be certain that their briefs will soon be filed with the ICC's global prosecutor.

During the 1998 ICC Summit in Rome, Human Rights Watch (HRW), one of the main groups orchestrating the activities of the huge mob of NGO militants, issued, with great fanfare and media coverage, a 440-page report entitled *Shielded From Justice: Police Brutality and Accountability in the United States*. Richard Dicker, HRW's point-man on the ICC and a top NGO handler at the summit, issued daily, scathing indictments of the United States. HRW is headed by Kenneth Roth, a member of the Council on Foreign Relations (CFR), the nerve center of the one-world elitists promoting the ICC

and other naked UN grabs for global power. William R. Pace of the World Federalist Association (WFA), who seems equally at home with the NGO street revolutionaries and the CFR corporate and foundation revolutionaries, heads the Coalition for an ICC (CICC). The World Federalists have been calling for decades for transforming the UN into a fully empowered world government. Dicker, Pace, and a handful of other HRW/CICC honchos have provided the indispensable leadership needed to keep the clamorous NGOs in line. The NGO rent-a-mob, funded by foundations like Ford, Rockefeller, and Turner, and by the UN itself, is composed of hundreds of groups, ranging from the World Council of Churches and Women's Caucus for Gender Justice to Amnesty International, the American Bar Association, the Gray Panthers, Earth Action, and Greenpeace. This extremist cabal presents itself as the voice of "global civil society." They are virulently anti-American. As Reuters reported from the Rome summit, "the American NGOs were the scourge of the United States" at the conference.

Linked arm-in-arm with these misfits at the summit was the very influential Rome-based Transnational Radical Party (TRP), an openly Marxist organization headed by Emma Bonino, former commissioner of the European Union. The TRP and its sister organization, No Peace Without Justice (NPWJ) have offices in New York across the street from the UN and, together with their U.S. comrades, continue to push for more "empowerment" for the ICC and UN. TRP, NPWJ, and other revolutionary groups have received enormous financial and political support from the radical forces running the European Union and most of the governments of our EU/NATO "allies." Few Americans realize that Prime Minister Tony Blair of England, Prime Minister Lionel Jospin of France, Prime Minister Costas Simitis of Greece, Prime Minister Wim Kok of the Netherlands, and Chancellor Gerhard Schröder of Germany are all members of the Socialist International, which proudly traces its lineage directly to Karl Marx. They use their offices to push for empowering the ICC and the UN, while also scalping hundreds of millions of dollars from European taxpayers to pour into the radical NGO network.

Image: International Criminal Court logo

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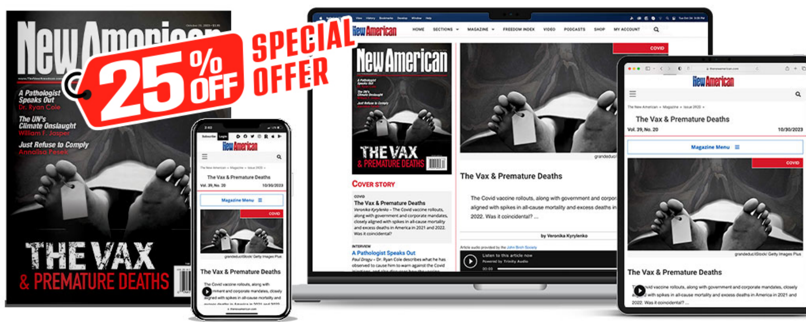

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