

The Human Rights Blame Game

Europe and America are at odds over the new International Criminal Court. They shouldn't be

By Andrew Moravcsik, NEWSWEEK INTERNATIONAL

Newsweek, April 22, 2002 —Half a century after the notion was first proposed, the International Criminal Court last week became a reality. It is the first permanent tribunal empowered to try individuals responsible for the most heinous crimes a state can commit: genocide, war crimes, torture, mass murder and rape. It evolved from Nuremberg and continued with the ad hoc tribunals for Rwanda and the former Yugoslavia—before which Slobodan Milosevic now finds himself a defendant.

AMONG THE LAST of the 60 required ratifications were, symbolically, those of Bosnia and Cambodia. Yet one nation was conspicuously absent: the United States. Not only has America refused to ratify the treaty establishing the court; it has gone into virulent opposition. Congress has denied funding for any cooperation with the ICC. Last year 78 senators voted to permit the use of “any and all means”—including force—to free U.S. personnel brought before it. (International NGOs immediately dubbed it the “Hague Invasion Act.”) This despite protections the United States had written into the treaty that virtually guarantee that no American soldier will ever be called before the court. Now it appears that the Bush administration will “withdraw” the signature President Clinton affixed to the treaty in the waning hours of his administration—an unprecedented step that David Sheffer, the former chief U.S. negotiator, calls “bizarre and dangerous.”

Now begins the finger-pointing. Angry Europeans, in particular, view America's opposition to the ICC as only the latest instance of flagrant unilateralism. The United States and Somalia are the only U.N. members not to sign the convention protecting children's rights. The U.S. death penalty offends most educated Europeans. Its ambivalence about applying the Geneva Conventions to Guantanamo has deepened Europe's reservations about the U.S. war on terrorism. British Foreign Secretary Jack Straw recently warned Colin Powell that attacking the ICC would provoke a “head-on clash.” Barring an American invasion of Iraq, human rights has emerged as the single most severe irritant in U.S.-European relations.

It is a curious discord. For when it comes to human rights, few real differences divide the United States and Europe. America's support for global human rights is every bit as vigorous as Europe's. It just takes a different form. Since 1985 the United States has used trade sanctions to promote human rights twice as often as EU governments. It has led military interventions, most recently in Kosovo. Pierre-Richard Prosper, the Bush administration's war-crimes envoy, boasts of a room in the State Department devoted to collecting evidence for a future trial of Saddam Hussein. The United States played a constructive role in creating not just the ICC itself but numerous other ad hoc tribunals—though the Bush administration is now reversing policy.

So what's going on? The truth is that the transatlantic gulf over human rights isn't really about the substance of policy, let alone vital national interests. Instead it's about symbolism and subtext, testifying to a widening divergence between U.S. and European identities.

Part of the schism is ideological. America has always tended toward libertarianism—human rights as a matter of individual liberty. By contrast, Europeans are more egalitarian—human rights as social equality. The current political moment (conservative Republicans governing the United States, social democrats governing many European countries) magnifies these tensions. So does the fact that for most Europeans, particularly on the left, the promotion of human rights has become the unquestioned ideological foundation of foreign policy.

At the same time, experience has shown Europeans the benefits of international tribunals, in a way that it has not for Americans. The European Court of Human Rights in Strasbourg receives thousands of cases a year. When it instructs the British government to integrate gay people into the military, or the Italian government to provide more speedy trials, they comply without question. Europeans also believe in “civilian power”: they seek to prevent the emergence of rogue regimes in their sphere of influence through multilateral trade, assistance, integration and human-rights agreements. Unilateral military power is secondary, even suspect.

The United States has had little experience with multilateral tribunals. It provides scant civilian foreign assistance and invests heavily in the global projection of military force. The current U.S. administration is particularly committed to a realist brand of unilateralism as an answer to the problem of rogue regimes. In sum, formal human-rights institutions lie closer to the core of Europe's international identity; unilateral military action against perceived enemies lies closer to America's.

America's hard-line attack on the ICC—and the equally tough European response—only deepens the gulf. The ICC, while a limited tool, is one of the few we have to check the actions of future Slobos and Saddams, or at least to corroborate and condemn their crimes. With the great majority of global democracies now irrevocably committed to it, the ICC will become an effective institution whether the United States joins or not. And to thwart or capture violators, Europeans must sometimes rely on America's military. The failure of either side to acknowledge shared interests demonstrates the alarming speed with which their values are headed in opposite directions.