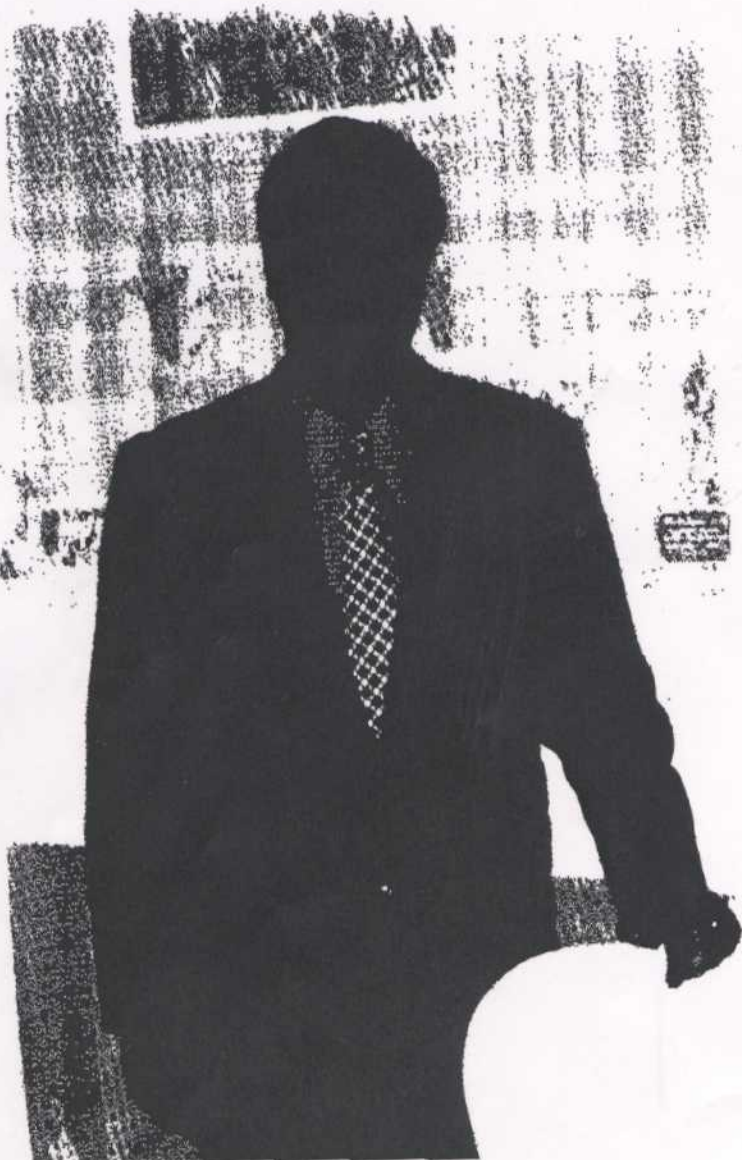


God Giveth, the ICC Taketh Away

*Senator says
world court
threatens America's
sovereignty and
individual rights.*



U.S. Sen. George Allen, R-Va., is gravely concerned that the International Criminal Court would put our soldiers under the thumb of our nation's political and ideological foes. *James V. Carroll*

U.S. military men and women fighting to protect freedom for America and our allies could one day face criminal prosecution in the International Criminal Court at The Hague, Netherlands.

Virginia Sen. George Allen doesn't like that prospect one iota.

ICC, the world's first permanent war-crimes court, was established in 1998 and ratified in July 2002 as part of the Rome Treaty. The court is authorized to investigate – and prosecute if appropriate – those individuals accused of genocide, war crimes and crimes against humanity. ICC prosecutors already are looking into allegations that British troops committed 22 crimes against humanity in Iraq. The Athens Bar Association lodged the complaint. The Greek public, along with many political parties in Greece, opposed the U.S.-led war to oust dictator Saddam Hussein.

The court's jurisdiction is limited to those from countries that ratified the treaty, or to crimes committed in a country that ratified it. Great Britain ratified the Rome Treaty. The United States and Iraq did not.

Supporters of the treaty say the ICC is intended to be a court of last resort that steps in only when individual nations fail to investigate or prosecute offenders. Opponents, such as Allen, say the ICC threatens, among other things, the sovereignty of nations.

The American Legion Magazine interviewed Allen at his Washington office to discuss the ICC.

The American Legion Magazine:
What is the International Criminal Court?

George Allen: The International Criminal Court has as its purpose to prosecute international crimes such as genocide. This country, and certainly every American, is in favor of prosecuting anyone involved in atrocities, tyrannical genocide or torture. But when you look at who will actually run the ICC and some of the countries that supported its establishment, it gives you pause. It doesn't give me a great deal of comfort to know that Saddam Hussein was an early supporter of the ICC. To have our men and women subjected to the ICC, where they would have a political charge and a conviction, is simply more than I can tolerate. I explore the fact that President Clinton, in his last moments in office, signed the Rome Treaty that authorized the ICC. Fortunately, President Bush did the proper thing when he rescinded

the treaty. Why would we as Americans want to give up our sovereignty? This country stands for freedom, liberty and justice. To be a part of the ICC or not work to protect our American military men and women would be contrary to all our principles, philosophy and good judgment.

TALM: *What are your specific objections to the ICC?*

GA: There are three problems. First, we have a justice system that includes the concepts of due process, equal protection, rights of appeal, protection against double jeopardy and the right of habeas corpus. Most of these concepts are missing in the ICC. As a legal construct, the ICC is a failure. Second, as a constitutional sovereignty concept, it is a failure. Third, as a practical matter, it is just wrong to have our men and women in the military subjected to this sort of regime.

Even if the ICC somehow makes good sense for the community of

nations in a feel-good sort of way, there is no reason we should subject our military men and women to this external group of people. There is so little accountability in the way they are appointed, the way they operate, and the basic legal procedures and protections. It fails on constitutional sovereignty grounds, it fails on jurisprudence grounds, and it fails on practical and common-sense grounds, as well. Three strikes and it's out. That's why I'm such a strong supporter of the American Servicemembers Protection Act.

TALM: *What are your thoughts about Greek attorneys filing charges in the ICC against British Prime Minister Tony Blair for war crimes against Iraqi citizens?*

GA: You would think that Athens, the birthplace of democracy, would know better. It just shows you how vague, ill-defined and fraught with the potential of completely un contemplated and wholly unfounded prosecutions

are possible at the ICC. If you get these kinds of charges from Greece, a civilized nation and member of NATO, can you imagine what you can get from North Korea or China?

The reality is that a lot of the world is not governed by what we call the rule of law. They don't have representative democracy. They don't have independent judiciaries. They don't protect intellectual property. The rest of the world doesn't have the same sort of values of justice to underpin their constitutions, much less their governments, as we do. There are kings, monarchs, tyrants and despots ruling countries that lack independent judiciaries, ignore property rights and individual civil liberties. When you have a world like that, you would like to see it change. If the International Criminal Court is the way they would construct a justice system, they need a few more courses in justice.

TALM: *The United States not only opposes the ICC but also is negotiating immunity from ICC jurisdiction. Why?*

GA: If other countries care to subject their men and women who might serve in their military to the ICC, that is their right to give up or cede their sovereignty and protection. I'm one who is not going to do that to Americans. To the extent that we have our men and women in any of these other countries, we need an agreement from them to protect our military men and women. If these countries want Americans to risk their lives to help them out, if they want our boots on the ground, they must say, "No, we are not going to have these brave patriots subjected to the potential of these absurd prosecutions by the ICC." The reason for a bilateral agreement is to protect our troops. If a nation does not want to sign a bilateral agreement, we are not going to send our troops. There may be restrictions and limits on what military aid we provide, as well.

'I am going to stand with our troops and not have them subjected to this nonsense, even if it does make sense to some people sipping wine and nibbling Brie.'

TALM: *Do you agree that signing the Rome Treaty would violate the U.S. Constitution?*

GA: That's an interesting argument. A treaty by its nature binds a country to that. Any treaty to some extent has as its purpose an externality. In the case of the ICC, we are potentially ceding our justice system and the constitutional rights of Americans to the International Criminal Court. The rights we have are not granted by government. We look at them as individual rights, universal rights, God-given rights endowed by our Creator. The reason the people of this country constituted and formed this government was to protect those rights. If this government was constituted to protect individual rights, then a case could be made that the ICC would be a transgression, an abdication, of those rights. I think an individual might have the standing to challenge the right of our government to bargain away, trade away or by treaty take away those individual rights without the consent of the individual. These sorts of rights of liberty and freedom and due process cannot be contracted away without the consent of the individual.

I would hope that Americans would elect senators, representatives and presidents who understand these basic principles. President Clinton put us on as signatory to the Rome Treaty as a lame duck so he didn't have to face the voters. President Bush immediately rescinded our signature.

TALM: *Would you support the ICC under any circumstances?*

GA: No. I suppose I could be creative, but I think it is fundamentally flawed from so many

perspectives I cannot see where we want to do it. If the ICC adopted our jurisprudence - double jeopardy, jury trials, appellate rights, all of those things - I still wouldn't be for it. I don't think our men and women in the military should be subject to jurisdiction for criminal activities while serving our country

by anyone other than our courts or for that matter, courts-martial under our military law.

TALM: *Are you in support of ad-hoc arrangements like war-crimes tribunals?*

GA: Yes, I think that's the approach that should be taken. Nuremberg is one example. Slobodan Milosevic is another. It's not as if I don't think such abuses occur and there should be justice meted out to those actors who commit them. But I would not even want a tribunal to be constructed with the lack of protections found in the ICC.

TALM: *What's the greatest risk for U.S. troops in all of this?*

GA: We ask a great deal of the men and women, generally young who voluntarily devote the best years of their lives to protect our country. They are risking their futures, maybe the ability to ever get married and enjoy their children, watching them grow. There is no way I see us, in the midst of that, to ask them to also submit themselves to the tinhorn dictatorships, the petty bureaucrats and lack of due process that would be occasioned if we were a part of this International Criminal Court. The Bill of Rights is the best part of our Constitution. To (agree to the ICC) is to potentially ask them to not only give up their lives for our country but to also give up their rights. No way. You have to stand strong for freedom. I am going to stand with our troops and not have them subjected to this nonsense, even if it does make sense to some people sipping wine and nibbling Brie. □

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