



The case against international jurisdiction

By [Daniel Hannan](#) [Politics](#) Last updated: February 1st, 2010

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The trouble with arguing against international jurisdiction is that you can look as though you are on the side of some pretty unsavoury characters: [Omar al-Bashir](#), [Radovan Karadzic](#) and possibly one day – or so we read – [Tony Blair](#).



Tzipi Livni is arraigned, while Hamas godfathers walk free

If these brutes won't get justice in their own countries, runs the argument, surely they should get justice *somewhere*. It's not an easy argument to refute in a short blog. I did my best to address it in a lecture last week hosted by a splendid organisation called the [Jerusalem Institute for Market Studies](#), to which I'll post a link when I can.

My choice of Jerusalem as a venue was not accidental. Last month, when a writ was served by a British court on the Israeli opposition leader, Tzipi Livni, we saw exactly what is wrong with the growing corpus of global human rights law: dictators and paramilitaries ignore it, while democratic politicians find themselves targeted.

Let me do my best to concertina what deserves to be a much longer and more subtle thesis.

1. Territorial jurisdiction has been a remarkably successful concept. Ever since the Treaty of Westphalia in 1648, it has been broadly understood that crimes are the responsibility of the state where they are committed. [Untune that string and hark what discord follows!](#) Western liberals might say: "Since Karadzic won't get justice in Serbia, he should get it at The Hague." But an Iranian judge might apply precisely the same logic and say: "Adulterers in Western countries are going unpunished: we must kidnap them and bring them to a place where they will face consequences".
2. International jurisdiction breaks the link between legislators and law. Instead of legislation being

passed by representatives who are, in some way, accountable to their populations, laws are generated by international jurists. We are, in other words, reverting to the pre-modern notion that law-givers should be accountable to their own consciences rather than to those who must live under their rulings.

3. In consequence, as Robert Bork has argued in *Coercing Virtue: The Worldwide Rule of Judges*, an agenda is being advanced which has been rejected at the ballot box. Courts make tendentious and expansive interpretations of human rights codes which go well beyond what any reasonable person would take the text to mean.

4. With no meaningful scrutiny, international lawyers are able to suit themselves, meandering their way through gargantuan budgets, changing their own rules when they become inconvenient. As John Laughland showed in his study of the Milosevic trial, the International Criminal Tribunal on Yugoslavia admitted hearsay evidence, repeatedly amended its rules of procedure and, when the old brute proved surprisingly eloquent in his own defence, took the extraordinary step of imposing counsel on him. Eight years and \$200 million later, with the court no closer to a verdict, both judge and defendant were dead.

5. Indicting a head of state – as the ICC did last year when it served a writ against the Sudanese President – amounts to declaring a war which one has no intention of fighting. The only way to bring President Bashir to trial would be to conquer his country and transfer sovereignty from him to the occupying powers: the basis of the Allies' jurisdiction at the Nuremberg trials. Without such a determination, international arraignments are declamatory: a way for those who serve them to feel good about themselves, even though their practical effect is to make tyrants dig in more deeply.

6. Which brings us back to the main objection. While tyrants ignore international rulings, democracies – or, more precisely, judges *within* democracies – don't. Courts in Western countries increasingly use international conventions to challenge the decisions of their elected governments. Four successive Labour Home Secretaries have tried unsuccessfully to repatriate the Afghan hijackers who diverted a flight at gunpoint to Stansted. Despite the nature of their crime, and despite the removal of the Taliban regime from which they claimed to be fleeing, they have been granted leave to remain in the United Kingdom through, in effect, judicial activism.

7. The politicisation of international jurisprudence seems always to come from the same direction: a writ was served against Ariel Sharon, but not against Yasser Arafat. Augusto Pinochet was arrested, but Fidel Castro could attend international summits. Donald Rumsfeld was indicted in Europe, but not Saddam Hussein.

Labour ministers, stung by *l'affaire Livni*, are now talking about changing the statutes so that a senior law officer, possibly the Attorney General, would get to strike down writs of a politically sensitive nature. If this happened in any other context, we should be outraged. Imagine if, say, Robert Mugabe decided that one of his ministers would arbitrarily decide which foreign leaders might be hauled before the Zimbabwean courts. (Mugabe, come to think of it, is another leader whom the international human rights crowd seem not to have got round to indicting.)

The answer is not to politicise these wretched rules, but to return to the well-tried and understood concept of state sovereignty, which operated effectively enough between 1648 and the 1990s. When was the internationalisation of jurisdiction agreed? When was it even discussed? To quote Judge Bork again: "What we have wrought is a *coup d'état*: slow-moving and genteel, but a *coup d'état* none the less."

Tags: [augusto pinochet](#), [international criminal court](#), [international jurisprudence](#), [JIMS](#), [radovan karadzic](#), [robert bork](#), [Robert Mugabe](#), [sovereignty](#), [territorial jurisdiction](#), [tony blair](#), [Tzipi Livni](#), [writ](#)



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