

White House Hobbles International Criminal Court, World Security

By Harpinder Athwal and Maggie Gardner | July 1, 2003

Foreign Policy in Focus

The current U.S. administration has a near-religious aversion to the new, permanent International Criminal Court (ICC). The court, now with 90 member countries, was established to ensure that the rule of law prevails in places where the only alternative is impunity for the most gut-wrenchingly vicious crimes against humanity. Its opponents in the administration, however, claim that the court will become a forum for politicized prosecutions. In fact, they are so sure that the court is out to persecute U.S. citizens that they are willing to undermine some of the most basic foundations of international security to protect against this perceived, but nonexistent, threat.

For example, the United States insisted on UN Security Council renewal June 12 of a resolution exempting non-ICC countries' officials and personnel participating in UN-authorized missions from accountability before the ICC. The renewal for another year of the accountability exemption is not popular with council members. France, Germany, and Syria abstained from the vote, and in an open meeting, more than 40 U.S. allies spoke out against the resolution.

These allies repeated the laundry list of reasons why the ICC does not pose a credible threat to the United States, making this resolution unnecessary. Countries that contribute personnel to UN missions already retain full jurisdiction over their citizens through Status of Mission Agreements (SOMAs). Even without these SOMAs, the ICC could only act if no relevant national court were able and willing to investigate the matter; unless the U.S. was clearly shielding someone suspected of committing mass atrocity, there is no doubt that the ICC would defer to the U.S. judicial system. In addition, the ICC's Rome Statute is full of safeguards to prevent frivolous prosecutions, many of which originally were put in place by the United States. The ICC is not a rogue court. Its highly qualified judges, prosecutor, and administrator (all of whom are citizens of major U.S. allies) are concerned with issues such as the use of child soldiers in the Congo and systematic rape in Burma, not with political cases against U.S. citizens.

More disturbing than the U.S. administration's continuing insistence on painting the ICC as a boogeyman is its seeming disregard for the illegality and dangerous precedence of its actions. At the Security Council, our allies voiced the same concerns again and again: This sort of blanket immunity is not allowed under the Rome Statute; in granting it regardless, the Security Council is overstepping its authority by amending the treaty of an independent multilateral institution without the consent of its members. By placing peacekeepers above accountability for the most horrific crimes, the Security Council is discrediting the entire enterprise of the ICC.

As UN Secretary-General Kofi Annan concluded, such immunity undermines "not only the authority of the ICC but also the authority of [the Security] Council, and the legitimacy of United Nations peacekeeping." This is no small loss, for the UN peacekeeping structure greatly benefits the United States, enabling us to help build security around the world while bearing only part of the cost and risk.

Compromising Security

The administration is compromising security in conflict-ridden countries not only by undermining UN peacekeeping operations, but also by threatening to cut off most military assistance to these countries. Under the American Servicemembers' Protection Act of 2002, most countries that belong to the ICC but do not conclude an agreement with the United States exempting all U.S. citizens and all government and military employees (past and present, including non-national contractors) lose

their military aid on July 1 unless the White House has granted them waivers. Some 44 countries had signed such agreements as of June 25, though very few had ratified them. Almost all of these countries are either poor and small (including Palau, Togo, Nauru, and The Gambia) or struggling to restore order and desperately in need of U.S. assistance (such as Sierra Leone, Rwanda, and East Timor).

Not all countries reliant on U.S. assistance for basic security, however, have capitulated. Colombia made clear its intention not to sign one of these bilateral immunity agreements, as did Croatia. Six of the seven NATO accession countries are also stalling. (Romania signed one but has not ratified it.) For these countries, it is a matter of principle and of law. Many countries have concluded, in the words of the European Union, that "entering into U.S. agreements—as presently drafted—would be inconsistent with ICC States Parties' obligations in regards to the Rome Statute," making such agreements illegal for them. For some countries, there's also concern about setting a double standard, especially for those being pressured by the U.S. administration to turn their own citizens over to other international courts. As Croatian President Stjepan Mesic put it in a recent interview, "It would be very difficult to explain to the Croatian public how we can have one way of treating our own citizens, and another for citizens of another country."

Rejecting International Justice

As a result, the U.S. administration is demanding that countries choose between much-needed aid from the United States and their legal obligations. The White House, in appropriating this aid, deemed that it will "strengthen the security of the United States and promote world peace." This is not assistance that we should be terminating just to make a point about a court that can't hurt us. Nor should we be encouraging new democracies to disregard their international obligations and abandon their efforts to ensure law and order within their own borders.

Ending aid meant to strengthen our national security is not the only negative outcome of this adamant campaign for bilateral immunity agreements. In the first part of June, the U.S. administration sent a formal demarche to all 15 European Union member states, declaring that their relations with the United States were at risk—not over trade barriers, not over lack of cooperation in the war on terrorism, not over Iraq or the Middle East, but over the ICC. The European Union had sent letters to candidate countries drawing their attention to EU conclusions about the illegality of the U.S. agreements, a move that this demarche referred to as "unfriendly acts," diplomatic speak usually reserved for openly hostile actions.

From peacekeeping to military aid to good relations with our strongest allies, this administration seems willing to sacrifice some of the best tools we have for strengthening international security, all over an institution meant to deter genocides, ethnic cleansing, and the most egregious and systematic human rights atrocities. Since the end of World War II, the United States has worked to develop democracies and build stabilizing international institutions. U.S. administrations have been instrumental in building and promoting the World Bank, the International Monetary Fund, and the UN to incorporate developing nations into international community structures. Under U.S. leadership, the Nuremberg and Tokyo trials and the ad hoc tribunals for Rwanda and the former Yugoslavia established the precedent for holding individuals accountable for committing genocide, war crimes, and crimes against humanity.

In contradiction to this American legacy, the administration of U.S. President George W. Bush has now turned its back completely on the ICC. When it comes to security and global problems, our leaders think we can go it alone, but that mixture of arrogance and machismo will not make us safer.

Rather, dismantling international law and disengaging with the world will only open a Pandora's box of conflicts, impunity, terrorism, and collapsed states; and there will be no one left to help us close it.

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