

Congress Seeks to Curb International Court

Measure Would Threaten Overseas Aid Cuts to Push Immunity for U.S. Troops

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UNITED NATIONS -- The Republican-controlled Congress has stepped up its campaign to curtail the power of the International Criminal Court, threatening to cut hundreds of millions of dollars in economic aid to governments that refuse to sign immunity accords shielding U.S. personnel from being surrendered to the tribunal.

The move marks an escalation in U.S. efforts to ensure that the first world criminal court can never judge American citizens for crimes committed overseas. More than two years ago, Congress passed the American Servicemembers' Protection Act, which cut millions of dollars in military assistance to many countries that would not sign the Article 98 agreements, as they are known, that vow not to transfer to the court U.S. nationals accused of committing war crimes abroad.

A provision inserted into a \$338 billion government spending bill for 2005 would bar the transfer of assistance money from the \$2.52 billion economic support fund to a government "that is a party" to the criminal court but "has not entered into an agreement with the United States" to bar legal proceedings against U.S. personnel. The House and Senate are to vote on the budget Dec. 8.

Congress's action may affect U.S. Agency for International Development programs designed to promote peace, combat drug trafficking, and promote democracy and economic reforms in poor countries. For instance, the cuts could jeopardize as much as \$250 million to support economic growth and reforms in Jordan, \$500,000 to promote democracy and fight drug traffickers in Venezuela, and about \$9 million to support free trade and other initiatives with Mexico.

The legislation includes a national security waiver that would allow President Bush to exempt members of NATO and other key allies, including Australia, Egypt, Israel, Japan, Jordan, Argentina, South Korea, New Zealand or Taiwan. The waiver was added to the provision, which Rep. George R. Nethercutt (R-Wash.) introduced into a House appropriations bill in July, after the State Department raised concern that the cuts could undermine key programs that advance U.S. foreign policy.

State Department lawyers are studying the language to determine what portion of the economic support fund could be withheld under the law. But congressional staff members say the legislation would disproportionately hurt small countries with limited strategic importance to the United States.

The criminal court was established by treaty at a 1998 conference in Rome to prosecute perpetrators of the most serious crimes, including genocide, war crimes and crimes against humanity. The treaty has been signed by 139 countries and ratified by 97. Prosecutor Luis Moreno Ocampo of Argentina has begun investigating widespread human rights violations in Congo and Uganda.

The Clinton administration signed the treaty in December 2000, but the Bush administration renounced it in May 2001, citing concern that an international prosecutor might conduct frivolous

investigations and trials against American officials, troops and foreign nationals deployed overseas on behalf of the United States. "This is a body based in The Hague where unaccountable judges and prosecutors could pull our troops, our diplomats up for trial," Bush said in his first campaign debate with Sen. John F. Kerry.

Since the tribunal began in July 2002, the Bush administration has been struggling to secure guarantees from governments to sign the pacts exempting U.S. citizens from investigation or prosecution by the court. The congressional cuts would not affect 96 countries that have signed the immunity pacts.

Other governments, including Jordan, have been trying to negotiate the terms of an agreement with the United States that would not violate their own laws that bar them from undermining the court. Jordan's King Abdullah, who supports the tribunal, is expected to discuss the issue with Bush in Washington next month.

But Washington's key European allies, including Britain, France and Germany, have opposed the U.S. effort on grounds that it undermines the treaty. In June, the Europeans spearheaded a campaign to block the United States from securing passage of a U.N. security resolution extending immunity to U.S. citizens in U.N.-sanctioned peacekeeping operations.

The court's advocates maintain that the Bush administration's fears of frivolous prosecution are overstated. They say that the tribunal was created to hold future despots in the ranks of Adolf Hitler, Pol Pot and Idi Amin accountable for mass killings, not to pursue U.S. officials responsible for military operations in Iraq and Afghanistan. They note that the court will take on cases only when a state is unable or unwilling to do so.

"The continuing attempt to cut aid to countries that do not support the International Criminal Court is unnecessary; the U.S. doesn't have anything to worry about," said Sally Eberhardt, a spokeswoman for the Coalition for the International Criminal Court. "There are enough safeguards built into the treaty, which the United States helped draft."

Brian Thompson, a specialist for the court at Citizens for Global Solutions in Washington, said, "They are taking another swing at international relations that I think are already damaged by cutting off economic support programs that promote American ideals."