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Big-stick diplomacy ill-serves our cause

By Judith Kelley

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DURHAM -- Imagine the following: An American is suspected of having committed war crimes in Trinidad and Tobago. After intense negotiations with the U.S. government, Trinidad and Tobago decides that a fair trial in America is impossible. Subsequently, the International Criminal Court, also convinced that the United States will not carry out justice, requests the surrender of the American to the court. Against all U.S. efforts, Trinidad and Tobago surrenders the American to the ICC.

This scenario is about as likely as George W. Bush joining the Democratic Party. Yet the United States has withheld military aid for Trinidad and Tobago to get it to sign a so-called Article 98 agreement never to surrender an American to the ICC.

Indeed, the administration has withheld aid to dozens of other countries, and has left no stone unturned to get other nations to sign these agreements. As one U.S. official said about a year ago: "If you find a rock with a flag on it, we'll negotiate an agreement." The campaign has been a huge diplomatic blunder. Now, a new proposal before Congress is about to make matters worse.

The effort started in August 2002. One month earlier, the 1998 Rome Statute establishing the ICC to prosecute genocide, war crimes and crimes against humanity went into effect. In response, Congress passed the American Service Members Protection Act, which makes U.S. support of peacekeeping missions and U.S. military aid conditional on the conclusion of non-surrender agreements. About half the world's countries have rebuffed the U.S. effort, and there is evidence that the military aid sanctions made some countries less likely to sign, a key lesson in diplomacy.

Certain countries clearly gave in to U.S. pressure. For example, tiny Dominica lost \$400,000 in military aid for its Coast Guard, causing vessels to be grounded due to lack of fuel. In May, 15 Dominicans drowned in a capsized boat accident while the Coast Guard helplessly stood by. Dominica then relented and signed the non-surrender agreement.

Nevertheless, many countries have bluntly rebuffed such coercion. The prime minister of St. Lucia said "We would not flinch in the face of a decision by the U.S. to withhold assistance." The Namibian Defense Minister said: "Let's go hungry if we must." A state representative of Trinidad and Tobago called the U.S. efforts an "affront" and, because the United States exempted all its important allies from the military aid cuts, noted: "The implication is that there is one rule for large states and another for small states. The U.S. can use sanctions against us, but not against South Korea, Europe and so on."

Nonetheless, we're at it again. The 2005 government spending bill contains a provision that will bar the transfer of other foreign assistance money, not just military aid, to countries that have not signed a non-surrender agreement. The House and Senate are slated to vote on the budget Wednesday. This provision could affect U.S. Agency for International Development programs to promote peace, democracy and economic reforms, and to fight drugs. In short, it undercuts U.S. national interests.

The effort to get Article 98 agreements has contributed to anti-U.S. sentiments worldwide and should be abandoned. Most legal experts dismiss U.S. fears of politically motivated trials, arguing that the ICC treaty contains sufficient safeguards to prevent such misuse of the court. While the Bush administration argues it is a matter of legal principle to prevent the ICC ever from having jurisdiction over any American, this largely symbolic campaign has embarrassed our allies and humiliated countries dependent on U.S. military aid. If Congress passes the provision, it will not only further damage America's reputation, but also undercut our influence and derail important projects in countries with longstanding relations with the United States.

It is revealing that the average level of democracy and rule of law is much lower in the countries that have signed such agreements. Their human rights records are also significantly worse. What symbolism is achieved by aligning these countries with U.S. policy? What message does that send? It seems a rather moribund strategy.

In contrast, the many countries refusing such agreements are sending a clear message: we respect the court and the international rule of law, we care about our international commitments and we value our reputation and ability to make autonomous decisions.

Since Nov. 2, the world has been abuzz with what a second Bush term will mean for international relations. President Bush says he has earned political capital and now he is going to spend it. It would be tremendous if he chose to invest some of it internationally and stopped efforts to pass such provisions.

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