

## US Warms to Hague Tribunal

By Jess Bravin

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WASHINGTON -- The U.S. is quietly beginning to accept the International Criminal Court, the Hague tribunal that President Bush repudiated in 2002, as the White House seeks to temper criticism that it considers itself unbound by international law.

That new approach will be on display today, when the ICC's chief prosecutor reports to the United Nations Security Council on his investigation into alleged war crimes in Darfur. The U.S., which now considers the ICC perhaps the only chance to bring Darfur war criminals to justice, will attend the briefing. U.S. Ambassador John Bolton, for years among the ICC's harshest critics, will send a deputy.

The move comes as the Bush administration softens its stance toward multilateral diplomacy on many fronts, seen most recently in the decision to offer negotiations with Iran.

U.S. officials concede they can't delegitimize a court that now counts 100 member countries, including such allies as Australia, Britain and Canada. While insisting the Bush administration will never allow Americans to be tried by the court, "we do acknowledge that it has a role to play in the overall system of international justice," John Bellinger, the State Department's chief lawyer, said in an interview.

That is a far cry from the tone President Bush took during his 2004 re-election campaign, when he blasted the court during a presidential debate. "It's a body based in The Hague where unaccountable judges and prosecutors can pull our troops or diplomats up for trial," he said. "I just think trying to be popular, kind of, in the global sense, if it's not in our best interest makes no sense."

In a May speech, Mr. Bellinger said "divisiveness over the ICC distracts from our ability to pursue these common goals" of fighting genocide and crimes against humanity.

When the ICC opened in 2002, Washington treated the independent war-crimes tribunal as a threat. President Bush signed legislation cutting aid to certain countries that refused to immunize Americans from court proceedings -- and authorizing the use of military force to free any Americans, should they ever be arrested by the court.

Bush administration officials felt the tribunal was at odds with their vision of international law and multilateral institutions. They prefer that countries apply their own versions of international law in their own courts. One example is the Iraqi Special Tribunal, which the U.S.-backed Baghdad regime favored over an international court to prosecute ousted dictator Saddam Hussein.

The ICC represents a different model, one it traces to the international tribunal at Nuremberg that tried Nazi war criminals.

The ICC was conceived at a 1998 U.N. conference in Rome, six years after the Security Council established a war-crimes tribunal for the former Yugoslavia, the first of several ad hoc courts for specific conflicts. Delegates hoped a single, permanent court for crimes against humanity would help institutionalize emerging doctrines of international law -- and would be less expensive than setting up a court from scratch for each future war zone.

The U.S. delegation managed to impose some checks on the court's power, but failed to force a requirement for Security Council approval before the court could launch a prosecution. Nevertheless, in December 2000 the U.S. signed the treaty establishing the court. President Clinton said that while the treaty had "significant flaws," signing it symbolized America's commitment to punish war criminals, and allowed Washington "to influence the evolution of the court."

But along with such treaties as the Kyoto Protocol on climate change and the Antiballistic Missile Treaty, the incoming Bush administration considered the ICC treaty, known as the Rome Statute, an impingement on U.S. sovereignty. Mr. Bolton, then an undersecretary of state, personally signed the letter renouncing the treaty. During Mr. Bush's first term, Mr. Bolton orchestrated a diplomatic campaign to obtain immunity agreements from foreign governments, pledging not to cooperate with the ICC should it pursue an American.

The U.S. position began to force conflicts with allies. Several, including Mexico, have refused to sign U.S. immunity agreements. That has led to cutoffs of some military assistance, including a program that brings foreign military officers to the U.S. for training.

But some officials now say the immediate loss of military relations is a greater concern than the speculative danger that the ICC could pursue an American for war crimes. In recent weeks, officials from the Defense and State departments have been briefing congressional staffers on proposals to loosen the limits on foreign aid.

At the same time, ICC Chief Prosecutor Luis Moreno-Ocampo -- a prominent Argentine lawyer who has taught at Harvard and Stanford -- "seems to be going to great lengths to avoid stirring up the ire of the United States," says a Bush administration official who monitors the court.

In particular, the official said, Washington took note when in February Mr. Moreno-Ocampo rejected complaints activists had filed with the ICC accusing the U.S. of atrocities in Iraq. "The death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime," Mr. Moreno-Ocampo wrote, absent such factors as the deliberate targeting of civilians.

In Darfur, militias backed by the Sudanese government are accused of systematically attacking thousands of villages. It is that case that the U.S. is looking to see what Mr. Moreno-Ocampo can deliver.

The U.S. has called the Darfur militia campaign “genocide,” and last year proposed establishing an ad-hoc international court for atrocities there. But European Union countries argued that the ICC was created precisely for such situations as Darfur.

Sudan is not an ICC member, so under the Rome Statute, the court could only act there if requested by the U.N. Security Council. With Britain and France refusing to consider alternatives to the ICC, Washington had to choose which it considered worse: lending the ICC the prestige that would come with a Security Council referral, or leaving atrocities in Darfur unpunished.

When the referral came before the Council in March 2005, the U.S. abstained, allowing investigations to proceed.

In an interview at the time, Antonio Cassese, the Italian jurist who headed a U.N. inquiry on Darfur, called it “a turning point” for both the fledgling court and the U.S.

Secretary of State “Condoleezza Rice deserves a lot of credit” for “a wise and well-balanced position,” Mr. Cassese said. “She did not give in to those people...who are ideologically opposed to the ICC.”