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### **THE US MISJUDGES A COURT**

On Thursday morning at the UN headquarters in New York, the world community takes a most important step toward effective international justice. And the United States sits it out.

Sixty of the 139 governments that have signed a statute creating an International Criminal Court (ICC) will officially notify UN Secretary General Kofi Annan that they have ratified it. The court will be functioning next year, bringing to fruition what was begun by the Nuremberg war crimes trials in 1946. Nuremberg set the precedent for prosecuting individuals in a new category of offenses: crimes against humanity and waging war of aggression.

It was only logical, after Nuremberg, to create a permanent criminal court. The International Court of Justice, often called the World Court, established by the United Nations Charter, was not appropriate. It judges only disputes between states. The idea of a new tribunal found backing at once in many nations, especially in the United States, which takes pride in the rule of law.

Washington has strongly supported the special courts set up by the UN Security Council to try war crimes and genocide specifically in Yugoslavia and Rwanda. It has urged others in Cambodia and Sierra Leone. Former Yugoslav Prime Minister Slobodan Milosevic is now on trial in The Hague. Former Prime Minister Leonard Kambunda of Rwanda has been convicted in Arusha, Tanzania, of genocide. However, the US and other governments have moved cautiously with the intricate legal architecture of the ICC, which makes unnecessary the cumbersome establishment of more special courts.

In 1997, President Bill Clinton called for a "permanent international court to prosecute the most serious violations of humanitarian law." In 1998, an international meeting in Rome drafted the court's statute, but the US and six others, including Iraq, Libya, China, and Israel, voted against it. The Clinton administration nevertheless signed the statute at the last minute, Dec. 31, 2000, to keep the US in the process, working to have its objections met.

But the Bush administration has added an ideological condemnation that seems to rule out US ratification of the ICC statute. It might even revoke the American signature, an unheard-of gesture of contempt. John Bolton, now undersecretary of State, has called the statute "a pernicious and debilitating agreement, harmful to the interests of the United States ... ill-advised and dangerous." It would, in his words, place some power of law enforcement "outside the complete control of our national government."

Both the Bush and Clinton administrations have been concerned that the 200,000 American troops and other Americans overseas might be vindictively or frivolously targeted for prosecution. In 1999, Russia's foreign minister initially denounced NATO's bombing in Kosovo as a violation of international law, with US and NATO leaders held responsible. Mr. Bolton has called top US civilian and military leaders the "real potential targets of the ICC's politically unaccountable prosecutor," although the statute subjects that post to elaborate safeguards, including dismissal.

Supporters of the court call such criticism highly exaggerated and, for the most part, totally unwarranted. The court is to adjudicate only systematic commission of the gravest crimes: genocide, crimes against humanity, and war crimes. These embrace ethnic cleansing and political slaughter, torture, programmed rape, and indiscriminate use of military force against civilians - not the collateral consequences, damage and casualties, of military operations. Except for Turkey, all the other NATO allies - who also have troops engaged in Afghanistan, the former Yugoslavia, and elsewhere, and who may take part in future police and peacekeeping actions - have ratified the statute.

The ICC is not a divine institution, but it has been designed by the world's best legal minds. It accords fully with Western principles and has already been fine-tuned with binding interpretations to meet the American demand that national security information not be revealed in trials. The ICC will deal only with future conduct, not with anything done before July 1, when the statute takes effect. It is bound by complementarity, which means that cases will first go to national courts. The ICC may assert jurisdiction only when those courts are unable or unwilling to act, as in Rwanda and Yugoslavia.

Where does abstention leave the US? It will sit as an observer while the assembly of ratifying states elects the judges and the other officers of the court, none of whom will, therefore, be American. Washington will have no vote in successive refinements of law and procedure that govern the court. It is adding the ICC to the variety of treaties it rejects, enhancing its dubious distinction as odd man out.

\* Richard C. Hottelet was a longtime correspondent for CBS.

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