

A WORLD CRIMINAL COURT, GIVE IT A WELCOME

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America should drop its hostility, and its allies should allay its fears

THE doubts are understandable, but the cause is worthy. As THE ECONOMIST went to press this week, supporters of the long-planned international criminal court were preparing to celebrate the 60th ratification of the treaty drawn up to establish it. With that threshold crossed, the court's creation will at last be assured, years sooner than anyone thought possible. Fulfilling a promise made after the Nuremberg trials more than 50 years ago, the court will provide a permanent forum for trying the world's most despicable criminals—mass murderers, war criminals and plotters of genocide or ethnic cleansing—who have often committed their deeds knowing they would never have to answer for them. But this great blow against impunity comes at a price. The court's creation has opened a rift between the United States and its allies just as the Bush administration seeks co-operation in its war against terrorism and tries to rally support for action against Iraq.

America has opposed the court ever since the idea was first approved by 120 other countries in 1998 at a United Nations treaty conference in Rome. America's opposition has hardened under George Bush. Even Bill Clinton, who signed the treaty just before he left office, made it clear he had no intention of ratifying it. He merely wanted, or so he said, to leave Mr Bush the option of keeping America engaged in planning how the court would function. Instead, the Bush administration is apparently choosing to make no attempt to shape the court and its work.

PUSH FROM WITHIN

This attitude is unwise and unnecessary. Even if the court's design is flawed, as America claims, such flaws can be remedied better through more diplomacy and negotiation than through confrontation. Britain and France, fellow permanent members of the UN Security Council, as well as nearly all America's other NATO partners, believe the court can be made into a valuable institution. And despite American opposition, they have been willing to push ahead with it much faster than anyone expected, even in the aftermath of September 11th, when their support for America has been at its height. In truth, and contrary to the fears of the administration, the court is not aimed at curbing the legitimate use of force, by America or anyone else.

Americans opposing the court say that it will include judges and prosecutors from different countries, trained in different systems of law, espousing different notions of justice, and that some will not come from democracies. An even bigger worry is that the court might be used to restrain the military operations of the world's pre-eminent power, and perhaps to bring "political" prosecutions against its leaders.

America's allies have not been indifferent to its concerns. Indeed, they have done their utmost to meet them. American lawyers and diplomats have played a central role in writing many of the court's rules and, crucially, the definitions of the crimes it will cover. The court will be able to take up a case only if national courts are unwilling or unable to do so themselves. Its prosecutor

will not be able to pursue a case without the agreement of a three-judge panel. The Security Council can suspend any case it believes is misconceived. Other checks and balances make it extremely unlikely that the court will unleash a rogue prosecutor on the world, bringing indictments against American leaders for justifiable actions such as intervening in Afghanistan. America's NATO allies, themselves participants in the Afghan war and with peacekeeping troops in harm's way elsewhere, have as much interest as America does in avoiding that outcome.

And yet, despite these reassurances, America still has doubts. No one can deny that the court is something of an experiment. America's proper response to this uncertainty, though, ought to be not hostility but a wait-and-see neutrality. If there is a risk, it is a small one. Like the Hague tribunal--a temporary affair set up by the UN with responsibility for Rwanda and ex-Yugoslavia--the new court will have no army or police force of its own, but will rely on national governments, and mostly on the great powers, for much of its evidence and the arrest of suspects. If it acts recklessly, or without widespread international support, it will be ignored.

A successful court, on the other hand, would embody values of international law and the protection of civilians championed by successive American governments since the second world war. America has been the chief instigator and biggest financial backer of the Hague tribunals. In fact, it was America's success in winning support for the creation of those tribunals that persuaded its allies that a permanent criminal court was feasible. Slobodan Milosevic, Serbia's former dictator, is now on trial in The Hague only because America first provided the evidence needed to indict him, and then threatened to withhold aid to Serbia if it did not surrender him.

The task now facing America's allies is to overlook the Bush administration's hostility to the court, and to dispel its fears by ensuring that, when the court is established next year, it actually operates as the responsible and effective institution they have promised. The court's backers should do something more. They should demonstrate to Mr Bush that the court could yet be a useful weapon in his campaign to bring about a safer and more civilised world by announcing to Saddam Hussein that, if he commits further atrocities, against his own people or others, they will seek to indict him.

AN INDICTMENT TO REMEMBER

Under the terms of the court's treaty, it has no jurisdiction over crimes committed before July 1st, when the treaty formally goes into effect. So the court cannot be used to try Mr Hussein for his past crimes. But a warning from America's allies that he could stand trial for any future atrocities would show Mr Bush that they support his aim of restraining Mr Hussein, even if they still hesitate at the idea of going to war with him. Mr Hussein would scoff at such a warning. Mr Milosevic also once laughed at the idea that he would ever have to answer for his actions before a court of law.