

## **U.N. DISCUSSES FIRST EVER INTERNATIONAL CRIMINAL COURT**

### **CNN DIPLOMATIC LICENSE**

Aired April 13, 2002 - 04:30 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: A page in the history of human kind is being turned.

UNIDENTIFIED MALE: Nobody can do it alone in the Middle East.

UNIDENTIFIED MALE: Will you still need me? Will you still feed me when I'm 64?

(END VIDEO CLIP)

RICHARD ROTH, HOST: There was an old U.S. television show, probably still playing in reruns these days from Mongolia to Malawi. It's called "Route 66", a series based on a famous U.S. roadway.

Welcome to DIPLOMATIC LICENSE. I'm Richard Roth.

Well, 66 countries this week have set the course down a different global highway. Destination, the first ever international permanent criminal court.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: I wish you all a warm welcome to this historic event.

(END VIDEO CLIP)

ROTH: Faster than ever expected, the world has a new permanent war crimes tribunal.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: I now invite the representatives of the 10 states to present their instruments of ratification.

(END VIDEO CLIP)

ROTH: In a ceremony at the United Nations, the tribunal came into force as Bosnia led a procession of 10 countries whose backing gives the court the nod from the required 60 governments.

(BEGIN VIDEO CLIP)

KOFI ANNAN, UNITED NATIONS SECRETARY-GENERAL: The best defense against evil (ph) will be a court in which every country plays its part.

(END VIDEO CLIP)

ROTH: But not every country will -- for one the United States.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: The provisions of that convention could arbitrarily and capriciously be applied to United States forces defending America's national security abroad.

(END VIDEO CLIP)

ROTH: In response the U.S. Congress is proposing to punish countries that deal with the court and block U.S. contact with prosecutors.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: No nation is as vulnerable as America would be to a court like this.

ANNAN: I don't think this is a court that is going to run (UNINTELLIGIBLE) intrusive and take on cases, which are before national courts.

(END VIDEO CLIP)

ROTH: The Clinton administration did sign the treaty, but never sent it on to the Senate for ratification. Former U.S. War Crimes Ambassador David Scheffer, who placed his signature on the Tribunal Treaty, is disappointed Washington is not a part of the criminal court.

(BEGIN VIDEO CLIP)

DAVID SCHEFFER, FMR. U.S. AMB. FOR WAR CRIMES: The point is that in the future with the establishment of this court there will be instances where terrorism is of such magnitude, with such great loss of life, that in fact the crime will slip into the jurisdiction of the court.

(END VIDEO CLIP)

ROTH: Creators say it's a court of last resort when mostly failed states fail to act on crimes such as genocide. Only acts committed after July 1st of this year could be considered. The Palestinians say they are ready to send to the court information on Israeli generals, but court leaders indicate many of these prosecutions are highly unlikely for now for political reasons and judicial eligibility. Yet the Palestinian U.N. Delegate on Friday insisted that the War Crimes

Court will have some -- quote -- "good customers after July 1st" referring to Israeli military leaders Palestinians claim are responsible for war crimes.

Is that really possible for a look at this new court, which is forever as one supporter put it, we turn to our own three-judge panel -- well (UNINTELLIGIBLE) active judges -- even though one of them almost was.

With me here David Scheffer, the former U.S. war crimes ambassador; in Little Rock, Arkansas, the former supreme allied commander for NATO and now a CNN military analyst, retired General Wesley Clark; in Washington, a town where Clark told us he had some problems getting support during the Kosovo war, from the CATO Institute, not their fault, Gary Dempsey, specialty post-Cold War U.S. foreign policy.

David, you're now out of the Clinton administration, obviously, and you're with the United Nations Association of the U.S., senior vice president. How do you feel now that the court has become active and the U.S. is not there? We saw you put your signature there on the treaty.

SCHEFFER: Well I think the good news is that there will be a permanent court that can deal with the worst masterminds of assaults on human kind in parts of the world where it's been difficult to achieve justice in the past. I think the bad news is that American interests are not being properly protected anymore. We have withdrawn ourselves entirely from the process of negotiations, and we're not there at the table as a signatory to the treaty. We are a signatory to advance our interests and also ensure that this court takes the proper course. That's what state parties do. They ...

ROTH: All right.

SCHEFFER: ... don't just walk away.

ROTH: Gary Dempsey, what's wrong with the U.S. being in this court where we've been -- the U.S. has been a big push behind the Rwanda and the Bosnian courts. Madeleine Albright was a fierce fighter for this. What's wrong?

GARY DEMPSEY, CATO INSTITUTE: Well, there are four different categories of objections. One is the practical objection. Another is the national interest objection. There's a constitutional objection, and then there's a Pandora's box objection. The practical objection is that this court is unlikely to have the effect that its proponents suggest. That is to say would-be dictators won't be deterred from committing crimes. They'll just be -- an incentive will be created for them to fight to the bitter end and to not sign peace agreements and to not sign amnesty agreements.

There's a national interest concern, and I think this is the main concern of the present administration and the previous administration that the court could be abused and that there could be politically motivated cases or ...

(CROSSTALK)

ROTH: We'll get back to the Pandora's box. Also I want to hear what's in that for a moment. You mentioned, perhaps, discrimination against Americans. I assume we've heard the case made against American soldiers overseas or diplomats. General Clark, you've been in Europe. You've commanded the force that was attacking Kosovo. Slobodan Milosevic is now in The Hague at a war crimes tribunal. As a military man, what's your feeling on the court?

GEN. WESLEY CLARK, (RET) FMR. NATO SUPREME ALLIED COMMANDER: Well, I think it's very important for the United States to be in a court like this and use the full power of international law to back our interests. We have the interest in international law. It's mostly the law that we created. We -- we're the ones that believed after World War II that we couldn't anymore live in a world in which might makes right.

We set out to really codify international law, put it into place, and push it. We have -- this is one of the consequences, and by the way, just to address that practical matter, we know that Slobodan Milosevic was well aware of the war crimes charges that could be brought against him during the Kosovo campaign, yet he did eventually give in to all of NATO's conditions. I guess he figured he could play it long and beat the rap at The Hague.

ROTH: Well he's there now and ...

CLARK: But he's there, and I think that shows the utility of a war ...

ROTH: Mr. Dempsey, there's the American Serviceman's Act, legislation kicking around on Capitol Hill. Tell us about that. It opposes very strongly this court and it has even language saying that if an American serviceman or woman was in The Hague on trial that the U.S. military should go in and invade The Hague.

DEMPSEY: Yes, I think some of the terms of these Serviceman's Protection Act including a new one this week are a little excessive. I think unsigned the treaty or the statute at this point doesn't gain us very much. It's largely symbolic and largely taking our name off of it.

(CROSSTALK)

ROTH: The Bush administration is considering designing.

(CROSSTALK)

ROTH: Even for the CATO Institute that's too far?

DEMPSEY: I don't think that's prudent because there's not very much to gain from that. In the short run it's going to alienate other countries especially our allies in Europe where leadership there is very supportive of the -- of the ICC (ph) at this point. ROTH: All right, David Scheffer, unsigned, the U.S. has hinted it's considering this.

SCHEFFER: I think it would be extremely ill advised and very destructive of American interest. We would be sending a powerful signal to the rest of the world. first. that we're walking away

from international justice. The very body that they're embracing to advance that principle, we would lose our leadership on that whole category of legal development around the world and military law development frankly.

But secondly, we'd send a powerful signal to countries that have signed treaties that we support that we have ratified, but which they have not yet ratified, like the Torture Convention, the Chemical Weapons Convention, the 12 Anti-Terrorism Conventions. They would use this as their example to simply as well unsign those treaties and walk away from treaties that are extremely important to our interests.

ROTH: Gary Dempsey, you think that Europe is once again in the wrong on this trying to tell the United States what to do?

DEMPSEY: Well, I would actually make a distinction between multi lateral treaties such as NATO or NAFTA and what I would consider super national treaties, which grant new authority to these new institutions, such as the ITC (ph).

So I would hesitate from characterizing the administration's position on this issue as unilateralist, which has caused much concern and consternation in Europe, but more as an opposition to the super national potentialities of this -- of this agreement especially given the open-ended amendment process in seven years. Other crimes could be added to the jurisdiction, and we still have the (UNINTELLIGIBLE) category of aggression and what that would constitute especially in light of now the war against terrorism.

(CROSSTALK)

ROTH: Well speaking of terrorism ...

(CROSSTALK)

ROTH: General Clark, is this really going to deter somebody who wants to strap a bomb to themselves and go into an American city and the person who masterminds it to think oh boy, I may end up in the war crimes tribunal in The Hague.

CLARK: No, it won't, but what it could do is it could greatly increase the legitimacy of an American response to an incident like that, and that's what's really important because when we're dealing with terrorism, we're dealing not only with the situation we find ourselves in today, which we call a war, but it is fundamentally illegal and police and law enforcement judicial problem in many of our allies.

What is the definition of terrorism and how do we make our rules of evidence synchronous and harmonious and so forth, and we need the full backing of legitimacy when we go in to try to persuade others to do what we want them to do, and that's why I think we could use a court like this.

ROTH: David. in explaining perhaps who the court could target and who it can. Explain the

Middle East right now. Could somebody, some party end up in this court after July 1st?

SCHEFFER: Well, the only country that has ratified the treaty in that region is Jordan. They ratified it yesterday in -- or on Thursday April 11th in New York. I think it would be unlikely because it's such a politically charged environment.

I think that any peace agreement that is negotiated in the Middle East, there really should be a provision that is provided by the Rome Treaty (ph), whereby the parties would agree that for that particular region their suspects would not be surrendered to the international criminal court. I think that's the provision that certainly Israel has to insist upon as a part and parcel of the peace agreement that's ultimately arrived at.

ROTH: General Clark, your thoughts on the Middle East and this war crimes tribunal on a personal basis.

CLARK: Well, I think that over time that we'll know exactly what the character of a war crimes tribunal is. But I think it's incumbent on every Army and Air Force to conduct its operations in accordance with international law. We certainly did that in Kosovo. We had lawyers with us at every step along the way, and I don't think it hindered the campaign. I think it helped it. It promoted it, because it gave it the legitimacy of international law.

ROTH: All right. Gary Dempsey, and then I want General Clark to comment. There's a move in Congress as part of that bill and all to get an exemption for U.S. forces in Bosnia so that they don't wind up in the court. Why is that a good idea and perhaps General Clark might disagree. Go ahead, Gary.

DEMPSEY: Well I think it's a good idea that Americans who are in charge disproportionately with peacekeeping around the world and with -- and with troops stationed overseas. We have base rights in 40 countries throughout the world. We have 248,000 troops right now stationed all around the world.

So we're disproportionately stretched around the world and the countries that are largely members of this court and signatories, there's no real threat that they're going to be involved in any hostilities and so you have those countries in a sense judging the United States who is carrying a great deal of the ...

(CROSSTALK)

ROTH: They want -- they want a worldwide exemption. General Clark, your thoughts.

CLARK: Well, we're going to hold our own troops accountable under the uniform code of military justice and under a treaty like this we would have, if we were signatory and participating, we would first use our own investigatory capabilities. We'd use our own code of uniform military justice and then, after that, if there were some review or some other discussion, that could be conducted. But we would have priorities; it's called a principle of complementarity (ph). It's there in the act ...

ROTH: OK.

CLARK: ... and we'll keep going.

ROTH: Brief comment, David.

SCHEFFER: Just that the treaty already provides for our status of forces agreements, which protect our soldiers from these kinds of prosecutions. We negotiated that into the treaty. We need to take advantage of that and recognize it.

ROTH: Well, some members of Congress may not want to (UNINTELLIGIBLE) the existing treaties on the books. We're going to have to stop right there.

David Scheffer, former U.S. War Crimes Ambassador, now with the United Nations Association of the U.S. Thank you very much. In the middle of your picture there and sometimes during the discussion here, Gary Dempsey, the CATO Institute, has an interesting book, "Fools Errands" (ph), America's recent encounters with nation building. I'm sure that's a big hit at the U.N. and over on the right, retired General Wesley Clark, former commander there at NATO. Thank all of you please for coming in.

Amid all of the applause at the United Nations as the criminal court was activated, was a man who has seen a lot in his lifetime, right in the middle there, 82-year old Benjamin Forens (ph), a fierce patriot for the U.S. and a prominent proponent of the criminal court.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: I began working on this when I was 20 years old. I was a prosecutor at Nuremberg when I was 27, and I have been writing books and pushing this whole subject, this big rock up a hill since that time, and I see the progress which is being made. It's fantastic despite the difficulties, despite the hardships, despite the insufficiencies.

(END VIDEO CLIP)