

INTERNATIONAL COURT WILL HAVE NO JURISDICTION OVER ISRAEL

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Sources quoted in the April 12 front-page story "Calls begin for war crimes trials for Israelis" seriously misrepresent the soon-to-be-established International Criminal Court, which beginning July 1 will be empowered to prosecute those responsible for genocide, war crimes and crimes against humanity.

Unnamed "international legal experts" suggest that Israeli officials could be brought before the court for war crimes committed during the current military operation in the West Bank. However, the court has no jurisdiction over crimes committed before July 1. For crimes committed after that date, it will have jurisdiction in just three circumstances: if the suspect's government has ratified the court's treaty, if the government on whose territory a crime was committed has ratified the treaty or if the U.N. Security Council refers a case for prosecution. Because the only government in the Middle East to have ratified the treaty is Jordan and because the United States surely would veto any Security Council referral, the court will have no jurisdiction over Israeli conduct. Worrying about U.S. citizens, deputy State Department spokesman Philip Reeker charges that it is "contrary to the most basic principles of customary international law governing treaties" for the court to assert jurisdiction over a suspect whose government has not ratified the treaty, even if the crime is committed on the territory of a government that has ratified it. Mr. Reeker seems to have forgotten that the United States does this all the time. For example, it routinely pursues alleged terrorists or drug traffickers under treaties that the suspect's government hasn't ratified. Just as governments have an inherent power to prosecute crimes committed on their soil regardless of whether a foreign suspect's government gives consent, so they can delegate that power to the International Criminal Court. Mr. Reeker cites the fear of politicized prosecutions of Americans.

The court has numerous safeguards against that, including extensive due-process rights, narrowly drafted definitions of crimes, provision for multiple appeals and the ability of a suspect's government to block the court's jurisdiction altogether by investigating and, if appropriate, prosecuting the suspect itself. The key is ensuring that these safeguards are applied conscientiously. To enhance U.S. influence on such matters, former President Bill Clinton signed the court's treaty. Incomprehensively, the Bush administration is considering repudiating that signature - an act that would squander U.S. influence for nothing.

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