

Letters to the Editor in response to Wedgwood op ed

## **U.S. HAS LITTLE TO FEAR FROM INTERNATIONAL COURT**

04/24/2002

The Wall Street Journal

Ruth Wedgwood (Rule of Law, April 15) criticizes the new International Criminal Court by raising the specter of prosecutors seeking creative ways to indict U.S. soldiers and leaders. She cites claims that during the 1999 Kosovo air campaign, NATO improperly targeted civilians and non-military infrastructure. But these charges were thoroughly investigated and rejected by the prosecutor at the existing Yugoslav war crimes tribunals. Prosecutor Carla del Ponte concluded in June 2000 that "there had been no deliberate targeting of civilians or unlawful military targets by NATO during the bombing campaign."

As Prof. Wedgwood acknowledges, the Yugoslav tribunal and its companion for Rwanda are working models of how the ICC will operate. Given the high caliber of prosecutors who have served in these courts, rejection of the claims against NATO was not surprising. Any marginally competent international lawyer can see through bogus or politicized charges. That such claims might continue to be raised by fringe opponents of the U.S. is only a concern if one ignores how they have already been treated by an international criminal court.

The sad truth is that opponents of the ICC will not be satisfied until the U.S. is given a blanket exemption from the court's jurisdiction. They are wholly unmoved by the many checks built into the court's statute to avoid frivolous prosecutions. They are not satisfied that the law applicable in the court would require the U.S. to adopt genocide, crimes against humanity or war crimes as official policy in order for indictments to issue. They are not satisfied that under the principle of "complementarity," the U.S. would avoid the court's jurisdiction altogether simply by investigating charges against its own citizens (a full-blown prosecution, as Prof. Wedgwood claims, is not necessary). They are not satisfied that the prosecutor could not even begin an investigation without convincing a panel of judges that a case has merit.

Of course, an international criminal court that gave the U.S. a free pass would not be "international" in any meaningful sense. And the method of initiating prosecutions that Prof. Wedgwood prefers -- cases referred only by the U.N. Security Council -- would effectively exempt citizens of Russia, China, France and the U.K. as well, by virtue of those countries' veto in the council. Why would anyone sign on to a court capable only of prosecuting citizens of the world's least powerful nations? And isn't this an odd argument coming from a country whose Supreme Court has inscribed above its entrance, "Equal Justice Under the Law."

Prof. Wedgwood concludes that "cudgels, as well as sensible norms, are necessary to protect the peace." But as the conflict in the Middle East sadly demonstrates, cudgels that trample on sensible norms bring us anything but peace.

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## INTERNATIONAL JUSTICE

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The Wall Street Journal Europe

Ruth Wedgewood omits several key facts from her critique of the International Criminal Court ("Still a Bad Idea," April 16). She finds dangerously malleable the existing legal requirement that militaries avoid undue harm to civilians. But she neglects to mention that this rule was redrafted for the ICC statute to make it more deferential to the judgments of military commanders. The language adopted was the exact language proposed by the Pentagon.

She similarly complains that while the deliberate bombing of civilian infrastructure unconnected to legitimate military targets was tolerated during World War II, it is no longer tolerated today. But she never mentions that the rules making this change were drafted with U.S. participation, incorporated into U.S. military manuals, and are considered by Washington to be binding international law.

She suggests that the U.S. must fear the ICC's prosecution of the yet-to-be-defined crime of "aggression" while ignoring that the ICC treaty would require aggression to be defined consistently with the U.N. Charter, meaning that the U.S. government would have a veto over any such charge.

She suggests that military commanders could be prosecuted for "good faith differences in warfighting doctrine" while ignoring that proof of criminal intent would be required for any prosecution to go forward.

She decries Slobodan Milosevic's charges of U.S. war crimes made before the World Court, an often politicized body for resolving civil disputes between states. But she never mentions that these charges were all rejected by the prosecutor for the International Criminal Tribunal for the Former Yugoslavia, a criminal court which is more analogous to the ICC.

She criticizes the decision not to have the U.N. Security Council approve ICC prosecutions without mentioning that such a rule would effectively exempt from prosecution the citizens or friends of the council's veto-wielding members.

Finally, she complains about the fairness of the soon-to-be-appointed ICC judges and prosecutors without mentioning that their selection will be dominated by America's closest allies, and that the Bush administration is threatening to squander its influence in that selection by "unsigned" the ICC treaty.

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