

UNCLE SAM STAYS OUT IN COLD

Douglass W. Cassel, Jr.
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A gala event will take place in the Big Apple next Thursday, April 11. Among the world's democracies, nearly everyone who is anyone will be there. From Europe the 25 guests of honor come from, among nations, Britain, France, Germany, Italy and Spain. From the Americas will come Canada, Costa Rica, Trinidad, Argentina, Peru and more.

Also in attendance will be Africa's most important democracies -- South Africa, Nigeria, Senegal and Botswana. Although short on democracies, Asia and the Pacific will be represented by, among others, Jordan and New Zealand. Why the festivities? To celebrate the fact that by Thursday, at least 60 countries -- and perhaps as many as 70 -- will have joined the treaty to create an International Criminal Court for war crimes, genocide and crimes against humanity. As a result, the treaty will go into effect July 1, and the court, known as the ICC, will open for business early next year.

Not on the guest list will be such unsavory or repressive regimes as Iraq, Iran, Libya, Sudan, North Korea, Cuba and China. Also conspicuously absent will be the world's self-proclaimed champion of human rights -- the United States of America. She will be missed, but the party must go on without her.

The event is well worth the celebration. Never in history has the world had a permanent criminal court with global jurisdiction. We have had temporary courts -- Nuremberg and Tokyo after World War II, and the current tribunals for Yugoslavia and Rwanda. We have a so-called World Court -- the International Court of Justice in The Hague -- but it hears only lawsuits between nations, not criminal cases.

When atrocities cry out to the conscience of humanity for justice, we have been forced to rely on national courts, often controlled by the very despots who commit the crimes. The results are unconscionable. The world's greatest criminals -- the likes of Pol Pot, Saddam Hussein and Idi Amin -- bask in impunity. Even Gen. Augusto Pinochet enjoyed an amnesty before Chilean courts for so long that by the time the courts of Spain and Britain finally caught up with him, he was too old and feeble to stand trial.

International tribunals have shown that they can do a better job. Slobodan Milosevic is now on trial before the International Tribunal for Yugoslavia. The former prime minister of Rwanda's genocidal regime now serves a life sentence imposed by the International Tribunal for Rwanda. But the United Nations cannot create an expensive new court for every new crisis. And special UN courts can in any event be vetoed; China, for example, long vetoed any international prosecution of Pol Pot.

The case for an ICC, then, is simple: If the world's worst criminals are to be brought to justice, nothing else works.

More's the shame, then, that the U.S. will be the odd democracy out at the party next week. Throughout years of negotiations in the 1990s, the Pentagon never warmed to the idea of an ICC with jurisdiction over everyone. We're special, say the generals. Other people can be internationally prosecuted for war crimes, but not Americans.

Even after the ICC was loaded down with procedural safeguards against frivolous prosecutions and endowed with a full array of internationally recognized due process protections, the brass did not budge. President Clinton's negotiating position reflected their resistance. In theory he supported an ICC but only under the control of the UN Security Council. The ploy was transparent: By wielding its veto power, Washington would be able to block any prosecution of Americans. Clinton never quit trying to have it both ways. Shortly before leaving office, he signed the ICC treaty, but he would not send it to the Senate unless it were modified.

President Bush is more straightforward. He has not only announced his opposition to the ICC, but a year-long review by his administration is rumored to conclude that he should take the unprecedented step of "un-signing" the treaty. So while most world democracies gather in New York to celebrate the advent of the new court, our commander-in-chief will not only skulk off into a corner but may well let sound a Bronx cheer.

Some day even Washington will come to see that at this moment of hope for humanity, our government stood on the wrong side of history. Let that day hasten. Meanwhile the American people, at least, can rejoice in this historic achievement by the world's leading democracies -- a chance, at last, for justice.

Human Rights By Douglass W. Cassel Jr. Cassel is director of the Center for International Human Rights at Northwestern University's School of Law, where he also serves as a clinical associate professor. The views expressed here are solely those of the author.