

## **A TREATY BUSH SHOULDN'T 'UNSIGN'**

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Somebody in Washington has come up with a bizarre and dangerous idea: to nullify the American signature on the Rome treaty for establishment of an international criminal court. The treaty will take effect in a few weeks no matter what the United States does, because several countries are ready to be the 60th to ratify it, and 60 ratifications is the threshold.

The United States has not ratified the Rome treaty and is not likely to do so soon; many in Congress fear the court will expose American citizens to unfair judgment. But a Bush "unsigning" would be a decisive repudiation that would not only devastate America's credibility as the champion of international justice but reveal an American denial of reality.

The new, permanent court -- succeeding ad hoc tribunals like those now prosecuting cases of atrocity in the Balkans and Rwanda -- is going to exist. The Bush administration may claim the power to unsign the Rome treaty, but doing so would leave the United States with no influence over the court's operations. And American advocacy and support for temporary tribunals like the one trying Slobodan Milosevic would ring hollow.

President Bush recently said that although the campaign reform bill he signed on March 27 is "flawed," it would "improve the current system overall." Similar reasoning led to President Bill Clinton's decision to sign the Rome treaty in 2000.

The permanent court can improve the overall system of international justice, especially if the United States helps to lead it. We should leverage our signature to pursue proposals that serve American interests and make the court more acceptable. The unprecedented act of unsigning the treaty would sacrifice that leverage and only increase the risk that charges might be made against Americans.

Some Americans fear the court's theoretical power to investigate United States citizens, particularly the officials who guide our foreign and military policies. But the Rome treaty regime is girded with safeguards that the United States successfully negotiated to protect Americans from politically motivated or unwarranted investigations; the most prominent is the court's duty to defer to national courts first to investigate and prosecute atrocities. Alarmist arguments about foreign judges and unconstitutional practices ignore reality. Our allies and friends, the court's strongest backers, are destined to populate the bench. The treaty regime protects due process rights of defendants.

The Bush administration can further safeguard American interests by taking advantage of rights the United States negotiated into the Rome treaty to apply even to countries that do not ratify it. Federal and military law should be amended to leave no doubt that American courts can prosecute all of the atrocity crimes listed in the treaty and thus require the international court to back off.

Other initiatives to improve the court are viable only if the United States is not seen as the court's enemy. Washington should use its leverage as signatory and as leader of the campaign against terrorism to secure agreements that prevent the surrender of Americans to the court, while still supporting the treaty's basic purpose. It should consult with treaty parties about referrals of

cases and the selection of judges and prosecutors. And it should use its power in the United Nations Security Council to refer atrocities to the court.

Other governments might take American nullification of its signature on this treaty as an opportunity to unsign other treaties -- like the Chemical Weapons Convention -- that are critical in our campaign against terrorism. But an even greater danger is that rejecting the international criminal court outright would relegate America to the backwaters of international justice. The court's leadership might see little point in favorably considering the interests and concerns of a country opposed to its very existence.

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