

PORTABLE IMMUNITY

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It is a fair criticism that the administration's rejection of the ICC hasn't been persuasively explained to our allies, let alone to the Third World. All that the international public is getting is: The United States alone refuses to submit its personnel to the International Criminal Court. This U.S. action is arrogant, contumacious, and a burden on the machinery of justice. In fact the decision of the Bush administration was strategically wise. The difficulty lies in explaining to non-Americans why this is so.

Everyone with any experience driving through the international diplomatic thoroughfare knows that the experience can be nightmarish for Americans. We hear honking horns every minute, the mini-policemen at intersections stop us repeatedly, they allege that we have violated the traffic laws in this and that way, often while deposing that other nations were not guilty of similar offenses. I was a U.S. public delegate at the United Nations General Assembly's 43rd session, in charge of the Third Committee (human rights), and concluded a study of voting patterns on terrorism, colonialism, the Mideast, nuclear proliferation, and the recognition of revolutionaries and governments-in-exile. The only country that voted with the United States 100 percent of the time was South Africa and in 1973 South Africa was a white man's club. The U.S. voted 14 times on controversial issues. Great Britain was with us 64 percent of the time, France 43, Italy 36, Germany, Greece, and Denmark 29, Japan 21. Most nations were with us half the time, or less.

Now a country's vote in the United Nations is not the indelible fingerprint of national probity. But the record is instructively there to remind us that the U.S. disagrees with much of the world. That is as would be expected -- the United Nations did not anticipate unanimity. On the contrary, it gave special protections to a few nations by extending them a veto in the Security Council. The United States, Great Britain, France, Russia, and China were told that they would never need to submit to U.N. policies they disapproved of. All they needed to do was exercise their veto. This, of course, was regularly done by the Soviet Union, 1945-1991.

Since 1945, the United States has grown hugely in relative power, indeed it is the only superpower. This means that we uniquely can have our way by force of arms, but it means also that commensurate obligations are imposed on us. In economic trade, we agree to acknowledge the authority of the World Court to opine on differences, but we are at liberty to defy the court's judgments. In war and peacekeeping, the position of the government is that no international court may assert jurisdiction over an American citizen. One reason for it is that sassing Big Brother is a quite universal temptation.

There are here and there (most notably in Spain) jurisprudential exhibitionists who would love to haul in the American general in charge of bombing weddings in Afghanistan and Chinese embassies in Belgrade.

It's not a bad idea to keep on talking about how to devise better means of guarding against jurisprudential opportunism. We acknowledge the authority of most laws of most other countries (we would agree to jailing an American who stole in Saudi Arabia, but not to chopping off his hand). In 1951 we passed the Status of Forces Agreement with the NATO countries, and have relied, in principle, on the proposition that American soldiers must be held accountable when violating the laws of countries in which they are doing military duty. And we are not alone in holding out on the ICC. Russia has not ratified the treaty, and it hasn't even been signed by China or India.

The word to get out to our allies is that their primary concern should be to effect U.S. cooperation in peace-keeping exercises. And that means reassuring Congress, which finances and ultimately authorizes such ventures, that Americans aren't going to be held up by a foreign court.