

BUSH'S COURT CRUSADE

By Tom Malinowski
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Writing in Foreign Affairs magazine at the start of the 2000 Presidential campaign, George Bush's future national security adviser, Condoleezza Rice, promised a "disciplined and consistent foreign policy that separates the important from the trivial." It is becoming hard to square that commitment with the Bush administration's strange and single-minded crusade against the International Criminal Court.

Supporters and critics of the ICC ought to agree on one thing: The fate of the world is not at stake in the debate over this institution. Yet the administration's obsession with the remote possibility of the ICC's pursuing an American has begun to trump its pursuit of virtually every other important national interest.

In July the administration promised to shut down every United Nations peacekeeping mission in the world if the U.N. Security Council didn't grant American peacekeepers permanent immunity from the ICC. The total number of American military personnel serving today as U.N. peacekeepers is -- hold your breath -- one. (Several dozen Americans also serve the United Nations as military observers and several hundred as police monitors, but all are unarmed and therefore hardly likely to be accused of war crimes).

Yet for this the administration was willing to risk operations vital to peace and stability from Lebanon to Cyprus to Bosnia. For this it was willing to create a crisis in the NATO alliance, which met last month to consider, for the first time in its history, the possibility of an American withdrawal from a military engagement in Europe.

Enlarging NATO has been a top administration priority. But now it is telling aspiring allies such as Romania and Estonia that their NATO membership may be at risk unless they promise not to cooperate with ICC investigations of Americans. Last week, the State Department told dozens of foreign diplomats that unless their countries make a similar pledge, they may lose U.S. military assistance. Major European and Asian allies are exempt from this threat; most poor countries in the developing world are not.

Under the ICC Treaty, the United States is entitled to seek so-called Article 98 agreements that would prevent third countries from surrendering American suspects. But many countries that support the ICC will be reluctant to grant such agreements to a country so intent on undermining the court. Now they may be forced to choose between their commitment to the rule of law and their relationships with the United States.

The last time I checked, the United States was pressing countries for military cooperation against terrorists who committed a crime against humanity. Now it is threatening to end military cooperation with many of the same countries if they try to meet their obligations to the ICC, which is also meant to bring terrible criminals to justice.

The administration might also have considered that virtually every member of the ICC is a democracy. (Dictatorships such as China, Cuba and Sudan have not applied for fear of exposing

themselves to the court's jurisdiction). This means that the threat to cut military assistance is also targeted primarily at democracies.

As the State Department warned on Wednesday, it could risk U.S. relations with Colombia, which joined the ICC to pressure the rebels and paramilitaries terrorizing its people. It could deny aid to Mali, a young African democracy that joined in hopes of deterring potential coup plotters. Meanwhile, military aid to such repressive countries as Egypt, Uzbekistan and Saudi Arabia, which are not members of the ICC, wouldn't be jeopardized at all.

This may be the only sanction in American diplomatic history aimed almost exclusively at governments that share American values -- the ultimate dumb sanction. Countries may avoid it by giving in to the administration's demands. But even then some of America's closest friends will feel mugged, and America will reap far more resentment than reward.

Of course, the administration will argue that this is necessary to protect Americans from a rogue international court. But even if the ICC does go badly wrong, the most powerful nation in the history of the world surely will have the resources to defend itself against 18 judges in Holland who will have no army, police or independent enforcement power. The unlikely possibility that someday, somewhere, some American might be investigated by this court is no reason to threaten allies in the middle of a war, or to sanction fragile democracies whose success is important to America.

Privately, many administration officials see this. But they seem trapped by their anti-ICC rhetoric, unable to end a reckless quest that has done more to hurt America than it could ever do to undermine this court. Those who share the president's original, more pragmatic world view must somehow get this message through: It's time to stop sacrificing the important to the trivial. The ICC tail must stop wagging the dog of American foreign policy.

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