

NO REASON TO FAULT US OVER BILATERAL PACTS

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The Straits Times (Singapore)
August 17, 2002

I REFER to The Straits Times editorial of Aug 14, 'Not a smart thing to do'. It criticised the United States for encouraging other governments to conclude agreements with it regarding the International Criminal Court (ICC). The agreements would prohibit the surrender of nationals to the ICC, except by prior consent.

As did your May 10 editorial on the ICC, this newest one contained several misleading statements. First, it mentioned only in passing that the US' action is entirely consistent with the ICC's statute. Article 98 of that treaty specifically allows states to enter into international agreements under which they may not surrender persons to the ICC. Why should the US be criticised for seeking to avail itself of a remedy allowed by the statute, not through oversight, but deliberate intent of the participating nations?

Such bilateral agreements do not merely apply to Americans, as asserted in your editorial, but provide reciprocal benefits for the nationals of other signatories; other nations also have concerns about the possibility of misuse of the ICC.

Second, your editorial asserted that the US 'reached an agreement with the United Nations Security Council to exempt US peacekeepers from court action for a year'. The agreement in fact applied to peacekeepers from all nationalities, not just the US.

Meanwhile, nations ratifying the ICC treaty may utilise quietly a provision which allows them to unilaterally defer ICC jurisdiction over their nationals. France, for instance, has declared that it will exempt its nationals from war-crimes prosecutions for seven years, the maximum permitted.

Third, your editorial's main point is to be indignant that the US has indicated that it may not continue military aid to nations which decline to sign bilateral agreements.

However, such assistance is hardly an entitlement of the recipient nations. Nations that insist that they should be free to surrender US soldiers to the ICC over US objections should not be surprised if it wishes to re-examine its military relationship with them as a result. Indeed, US taxpayers from whom such assistance is raised through compulsory taxation might find it highly objectionable if their government did not take such a stance.

Fourth, your editorial quotes approvingly an academic's criticism of the US for seeking to 'remake, in its own favour, 'the rules according to which international law is made, interpreted and changed". This criticism ignores the vigorous efforts by the US, carried out until the last moment, to try to make the ICC statute one which it also could ratify. It raised in vain principled points to several ICC clauses, and offered proposed changes.

We object to the concept that the ICC should have jurisdiction over nationals of non-ratifying nations, including the US (or Singapore, for that matter). Is this situation really a case of the US trying to enforce its own newly-created notions of international law on other nations, or exactly the reverse?

Those who criticise virtually any US' use of force may rejoice that, in the era of the ICC, US soldiers and airmen could be hauled before an international tribunal. All others, however, should be troubled at the prospect of the ICC focusing much of its efforts on the more readily available US military forces, while few or no prosecutions are mounted against the leaders and servants of notorious genocidal regimes. Such criminals usually stay safely at home.

Politically-motivated ICC prosecutions of US forces would not make the world a safer or more lawful place, but would strain seriously US' relations with its allies, and risk fatally weakening American public support for US world engagement. This is the reason the US is seeking to conclude Article 98 agreements with other nations.