

The Wrong Kind Of American Exceptionalism
By Barbara Crossette
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UNITED NATIONS The U.S. Bush administrations obsession with the new International Criminal Court shows no signs of abating any time soon, and anger is rising around the United Nations at the apparent willingness of Washington to undermine all international peacekeeping if that is what it takes to curtail the tribunals jurisdiction and not just over Americans.

Early this month, the suffering Liberians nearly paid the price. Security Council debate on the formation of a stabilization force to restore order after a cease-fire and the departure of President Charles Taylor was held hostage to a U.S. demand for immunity not only for itself but also for other contingents that may also want to elude international legal jurisdiction.

If this is not setting the stage for a bandwagon effect, it is certainly inviting countries with dubious human rights records that have been big troop contributors to breathe more easily knowing that their soldiers cannot be charged internationally with war crimes. The United States claims home countries should have exclusive jurisdiction, but some troop-contributing nations are already notorious for failing to punish their soldiers for even minor infractions.

The American gift of immunity, welcome especially to those nations that, like the United States, have not signed on to the court, comes at a time when the Security Council and the secretary general are asking the U.N. peacekeeping department to enforce stricter standards in the protection of human rights.

Because Liberians were being battered mercilessly by undisciplined government troops and a lethal, if hooligan, rebel army dressed in outlandish costumes, no Security Council member wanted to veto the resolution establishing a peacekeeping force. But three members France, Germany and Mexico abstained rather than vote for a measure encumbered by a highly irregular and unacceptable demand. Council unanimity was denied for this life-saving mission.

Secretary General Kofi Annan was moved to remark afterward, Frankly, my sentiments are with those countries that abstained.

In a recent interview, the secretary general elaborated on his concerns. He looked back to June, when the United States essentially threatened to stop all future peacekeeping operations if Americans, military and civilian, were not given another years immunity from the International Criminal Court. A year earlier, after renouncing the Clinton administrations signature on the court treaty, Washington had also won a years grace. Now it looks like this will be an annual event.

Were going to come back to this problem, Annan said, I don't know how they are going to deal with it. This was the second time the council offered the 12-month exemption. I'm not sure how it is going to come out the third time, because I think one should not encourage this sort of blanket exemption. I suspect there is going to be quite a lot of

debate and resistance. I hope everyone is going to use the interim period between now and the expiration of the current extension to look for a more sustainable and legally satisfactory solution.

The 18-judge International Criminal Court, which came into existence a year ago and is beginning to function in The Hague with the internationally respected legal expert Luis Moreno Ocampo as its chief prosecutor, was created to try individuals for genocide, war crimes and crimes against humanity. It was intended to take on future tyrants in the mold of Pol Pot, Idi Amin or Saddam Hussein.

The United States says, not without some justification, that Americans will be hounded by politically motivated attempts to put its officials on trial. Supporters of the court counter that critics should focus on what cases the court accepts rather than how many ideologically based stunt accusations are sent its way. The first case accepted involves atrocities in the Democratic Republic of the Congo.

The U.S. is much more exposed globally than any other country and in time they are perhaps going to need this court much more than anybody, Annan said, turning the Bush administration's argument around. It's not every time that you can take the prisoners to Guantanamo Bay, he added.

Annan criticizes U.S. efforts to wrest broad treaties of immunity from dozens of nations, cutting off American military aid to those countries that refuse to pledge that they will never to turn over an American to the court. More than 50 such agreements have been signed, though it is uncertain how many will be ratified by national parliaments, said William Pace, convener of the nongovernmental Coalition for the International Criminal Court, a joint venture of more than 2,000 legal, human rights and other organizations around the world. In cases where countries have not signed on to the court, Pace said, the United States has reciprocated on immunity, saying it will also shield the signatory's troops from prosecution. That amounts to a reward for staying clear of the ICC.

Pace has been following problems the United States has created in Europe with its campaign against cooperation with the court. In late spring or early summer, he said, the United States sent what amounted to a warning to the European Union, which has been extremely supportive of the court, not to take a common stand against the U.S. agreements with individual nations, some of which are Eastern European nations waiting to become EU members. NATO members are exempt from American punishment if they refuse to sign immunity pacts. That will offer a way out for some post-communist nations, but it will only enhance the divide between them and poorer, more distant countries that have no leverage with Washington.

There have been tense discussions between EU and U.S. officials. With at least some European leaders at odds with Washington over the Iraq war as well as trade and agriculture policies, this is hardly the time to quarrel over the future of the International Criminal Court.

Andrew Moravcsik, professor of government and director of the European Union program at Harvard, agrees that the United States might rethink its pressure on this issue.

On the U.S. side, the Bush administration policy of overt rejection is ill-advised, because the cost of alienating European public opinion is out of proportion to any (exceedingly modest) gain in protection for U.S. servicemen or former politicians given the protections of the ICC statute, he said in an exchange of e-mail messages from Italy. The courts rules unequivocally give the first option for prosecution to national courts. International jurisdiction kicks in only when those fail.

But Moravcsik also cautions against overestimating the damage. The ICC is an issue of considerable concern in Europe, but almost no real importance, he said, calling it more a thorn in the side of trans-Atlantic management than a critical element in the relationship. "The EU does not now, and is unlikely to have in the future, the capacity to block member states from signing such agreements.

The Europeans, of course, are powerful enough to stand down the United States, but many other countries increasingly representing the majority of the world's people are not. They are left to fight lonely battles against a punitive American government that has already suspended military aid to several dozen countries. Despite the pressure, and the loss, some nations continue to resist, among them South Africa, Namibia, Brazil and Barbados.

In a commentary last month, the Barbados Daily Nation reflected what many others are saying, asking why a country that established the principles of war crimes trials in Nuremberg and Tokyo and pushed for the creation of ad hoc tribunals for the Balkans, Rwanda, Cambodia and Sierra Leone now wants to destroy a court that so many American legal experts support.

The difference, it said, is the universal nature of the court, which makes Americans vulnerable.

And that, for the most powerful and arrogant nation in the world, is simply inconceivable and unacceptable, it said.