

THE ICC CAN SERVE THE U.S.: PROSECUTING INTERNATIONAL CRIMES WILL BOLSTER AMERICAN SECURITY.

By Samantha Power
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U.S. officials and United Nations diplomats this week resumed their high-stakes game of chicken over the future of the newly-minted International Criminal Court. With a July 15 deadline fast approaching for extending the U.N. mission in Bosnia, the Bush administration is threatening to yank U.S. support from this and all peacekeeping operations around the world if U.S. soldiers are not granted immunity from the ICC. The administration fears that, absent such immunity, anti-American judges will haul our soldiers into the dock.

Court supporters argue these worries are unfounded. For an American to be tried, a panel of eminent international judges would have to charge that he or she had carried out genocide, "systematic and widespread" crimes against humanity or war crimes. Only if the U.S. justice system itself then refused to investigate these alleged attacks would the ICC be able to proceed.

Until the court becomes functional and proves itself, neither side will be able to prove its point. But while the Bush administration focuses on the risks posed by the court, it has devoted virtually no time considering the ways the ICC could benefit the U.S.

In fact, as is illustrated by two recent cases of genocide -- Iraq's brutal campaign against the Kurds in 1988 and the Serb assault against the Bosnian Muslims in 1992-1995 -- U.S. interests are greatly undermined by policies antithetical to American values. And U.S. security will best be advanced if genocide and crimes against humanity are suppressed and their perpetrators punished. The ICC can be an important tool in achieving that end.

In a six-month campaign in 1988, Iraqi dictator Saddam Hussein systematically gassed and machine-gunned Kurds in northern Iraq, killing 100,000 Kurds and bulldozing some 1,000 villages. The first Bush administration viewed Iraq as a bulwark against Iran, and reasoned that the way Saddam acted inside his own borders was his own business. In 1988, while Saddam was carrying out the gas attacks, the U.S. provided Baghdad some \$500 million in credits to buy American farm products. The year after the genocidal campaign, the U.S. doubled its contribution to Saddam's coffers, offering \$1 billion in credits.

"Human rights and chemical weapons use aside," one shockingly misguided secret State Department assessment said, "in many respects our political and economic interests run parallel with those of Iraq." Chemical weapons use aside?

In 1990, emboldened by his ability to get away with literal murder, Saddam invaded Kuwait. Because the occupation threatened U.S. oil supplies, the Bush administration of

course changed course. Mr. Bush detailed the horrors that he had previously ignored and threatened Nuremberg-style trials.

"Saddam Hussein must know the stakes are high, the cause is just, and today more than ever, the determination is real," the president declared.

There was just one problem: No such court existed. But suppose the ICC had already been established. Saddam's genocide against the Kurds would certainly have earned him and his top officials indictments. If U.S. forces had ventured to Baghdad in 1991 -- or if they were to reach the Iraqi capital this year -- they would carry a list of indictees prepared by a panel of independent judges. The arrests and the subsequent ICC trials would have far greater credibility internationally than any that might be carried out at U.S. bidding. The trials would also rid postwar Iraq of many of its most ruthless officials, a purge that would spur the development of the rule of law. The U.S. role in law enforcement would have all the more standing because the U.S., too, had accepted court jurisdiction.

In the case of Bosnia, while militant Serbs ethnically cleansed and murdered their way through 70% of the country in 1992, the Bush administration concluded it had "no dog" in the fight. But eventually editorial and elite pressure at home convinced George H.W. Bush that he could not do nothing. In December 1992 Secretary of State Lawrence Eagleburger named leading war crimes suspects in the Balkans, and publicly warned that a "second Nuremberg" awaited them.

But again there was a catch: No court existed. Thus, the most noxious, bloodthirsty thugs in the region continued to prosper, hijacking the negotiation process, murdering U.N. peacekeepers and humanitarian aid workers, and dragging on the bloody war.

President Clinton proved no more willing than his predecessor to confront the Serbs. Walking away from his campaign pledge to bomb the Serbs and lift an arms embargo against the outgunned Bosnian Muslims, Mr. Clinton instead pressed for the establishment of a war crimes tribunal.

But when the ad hoc UN court came into existence in 1994, two years into the Bosnian war, it deterred no one. How could it? Ad hoc tribunals are slapdash creations that have to raise money, hire staff, establish rules, and earn credibility. All of this takes time -- time that murderers exploit. While the court issued indictments during the war, the Serbs knew that Western troops were unwilling to risk casualties by making arrests. The massacres continued, the war criminals were feted at peace talks in Western capitals, and the toothless U.N. court came to symbolize Western apathy.

As in Iraq, however, allowing genocide in the Balkans proved costly to the U.S. As the clock ticked, some of the desperate Bosnian Muslims began to radicalize, as they deduced that their only hope of rescue lay with Islamic extremists. For the last two years of the Bosnian war, while the indicted war criminals roamed free, Osama bin Laden's al Qaeda and other radical Islamic groups used Bosnia as a training base. While the U.S. and its allies were bystanders to genocide, bin Laden traveled on a Bosnian passport.

The U.N. court gradually earned its keep. Once NATO troops proved themselves willing to stage daring arrest raids, beginning in 1997, panicked indictees began turning themselves in. Forty-seven of the most dangerous men in southeastern Europe are currently behind U.N. bars. Hundreds, perhaps even thousands, who have blood on their hands have been driven underground, afraid that they may have been secretly indicted. If the U.N. tribunal did not exist, these killers and bandits would otherwise be spending their days tormenting NATO peacekeepers and threatening returning refugees.

With the permanent International Criminal Court no more than a week old, it is far too early to assume it will become the virulently anti-American institution that administration officials fear. The best way for the U.S. to guard against this is to reserve self-fulfilling judgment and work with the court to supply advice on personnel and procedures.

What one can say with certainty is that genocide, crimes against humanity and war crimes will abound in the next decade. And the ICC -- because it is permanent and not ad hoc -- can play an indispensable role punishing and incapacitating war criminals and thus deterring future atrocities -- atrocities that typically come back to haunt the U.S.