

Statement by Harold Hongju Koh, Bernice Latrobe Smith Professor of  
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before the House International Relations Committee

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*Relevant excerpt on the importance of US support for the ICC:*

The second goal, accountability, means bringing to account, civilly and/or criminally, those who are responsible for the most serious human rights violations. In the last administration, we pressed hard to support the development of a post-Cold War global justice system by supporting the International Criminal Tribunals for the Former Yugoslavia and Rwanda, mixed international-domestic tribunals in Cambodia and Sierra Leone, the Pinochet prosecution in Spain and Chile, the civil adjudication of international human rights violations in U.S. courts under the Alien Tort Claims Act, and, during his last days in office, President Clinton's signature of the International Criminal Court (ICC) Treaty. I congratulate this Administration, as its report chronicles, for continuing to support international accountability efforts in Cambodia, Sierra Leone, and East Timor.

The current administration faced four options with respect to this global justice system: first, continued support for its growth and development; second, constructive engagement, to encourage it to develop in a manner that served long-term American interests; third, benign neglect--to leave the system alone to evolve its own way; or fourth, declaring hostility to that system and placing the United States outside of it, in effect adopting a double standard toward global adjudication. Secretary Powell initially signaled to Congress his preference for benign neglect, but in recent months the Bush Administration has decisively opted, with three decisive measures, to pursue a hostile course.

First, in May 2002, the Administration sent the U.N.'s Secretary-General a letter seeking to "unsign" President Clinton's December 2000 signature of the International Criminal Court Treaty. Second, the administration's military commission scheme de facto "unsigned" our commitment to global adjudication by declaring that claims involving international crimes of terrorism should henceforth be heard not in international court, or even in U.S. civilian or military courts, but rather, in ad hoc military commissions under military control. Third, the Administration has pursued an extraordinarily counterproductive effort to bully countries who will not sign agreements exempting our citizens from ICC jurisdiction, initially vetoing extension of the U.N. law enforcement assistance mission in Bosnia because the Security Council would not grant an indefinite and universal exemption from ICC jurisdiction for all U.S. officials engaged in peacekeeping operations. As I speak, the Administration is devoting extraordinary political capital to threatening aid cutoffs against scores of nonsignatory countries whose support we will surely need in the continuing war against terrorism. Each of these decisions ignores two realities. First, for more than half a century, the United States has promoted international criminal adjudication as being in our long-run national interest. Second, in many cases, supporting global adjudication has served U.S. national interests by sparing us from far more costly military interventions.

Without the Yugoslav Tribunal, for example, it would have been hard for the United States to avoid sending troops to Belgrade to seize and oust Slobodan Milosevic. The second Gulf War has already underscored America's shortsightedness in rejecting a permanent standing international criminal court. As the war began, President Bush announced that high-ranking Iraqi war criminals, including Saddam Hussein, would be prosecuted, raising the obvious question: "Where?" Iraqi courts are in shambles, and American courts will be viewed throughout the Mideast as prejudiced adjudicators. Neither the United States nor Iraq have ratified the ICC, eliminating that as a possible venue.

Nor, given the intense misgivings that Security Council permanent members France and Russia expressed about the war, will the United States easily persuade the Security Council to create an ad hoc tribunal under chapter VII, as it did in spearheading the movements to create international tribunals to try war criminals from the former Yugoslavia and Rwanda. International legal structures like the ICC provide us with more, not fewer, options for ensuring accountability for human rights violators. By turning against the ICC just as it was coming into existence, the Administration has unwisely ceded any influence we might have had on that body to those who do not share our priorities and might now turn the court against us.