

CONGRESSIONAL RECORD -- *EXTENSIONS*

Thursday, September 19, 2002

107th Congress, 2nd Session

*148 Cong Rec E 1630*

REFERENCE: Vol. 148, No. 119

SECTION: Extension of Remarks

TITLE: THE UNITED STATES AND THE FUTURE  
OF THE INTERNATIONAL CRIMINAL COURT

SPEAKER: Mr. LEACH

TEXT: [\*E1630]

HON. JAMES A. LEACH

of Iowa

in the House of Representatives

Thursday, September 19, 2002

Mr. LEACH . Mr. Speaker, one of the profound issues in world affairs today relates to the widespread perception abroad that the United States has become so disproportionately powerful that we need no longer be constrained in our actions by international rules, treaties, and even traditional security partnerships. This perception has helped fuel mistrust of American motives and resentment of American power, potentially hobbling the effectiveness of U.S. foreign policy at a critical juncture in world politics.

In many respects, controversy surrounding the new International Criminal Court is an apt symbol for this debate. The International Criminal Court, which came into being on July 1, will be the first global permanent international court with jurisdiction to prosecute the most heinous individual violators of human rights\_genocide, war crimes, and crimes against humanity.

The United Nations, many human rights organizations, and many U.S. allies have expressed support for the new court. The Administration, however, strongly opposes it and has renounced any U.S. obligations under the treaty.

Although the U.S. has several valid concerns about the ICC\_ chiefly that the ICC might become politicized and capriciously assert jurisdiction over U.S. soldiers or

high officials charged with "war crimes" our belligerent opposition to the Court also carries obvious downside risks to American leadership.

America's well-deserved reputation as a champion for human rights and extension of the rule of law has been called into question. Our efforts to play hardball in the UN Security Council by threatening to withhold support for UN peacekeeping missions unless the U.S. is granted immunity from the ICC alienated friends and allies abroad. The withholding of military assistance to members of the ICC may be seen as an attempt to undermine the court and influence the decisions of other countries to join the ICC. By demanding special treatment in the form of immunity from the ICC, the US may be seen as bolstering the perception of its preference for a unilateral approach to world affairs and a determination to operate in the world exclusively on our own terms. As a result, U.S. efforts to build coalitions in support for the war against terrorism as well as the enforcement of UN resolutions against Iraq may have been impaired.

Mr. Speaker, as an early advocate for the establishment of a permanent international criminal court based on balanced recognition of international statutes, I confess to being chagrined both at the inability of the international community to accommodate legitimate American concerns, and the all-or-nothing approach of our government that has left us without effective means to ensure that the ICC operates in ways that are consistent both with credible rule of law principles and with sensitivity to U.S. interests designed to advance democratic governance.

The problem is that as a great power called upon to intervene in areas of the world or disputes such as the Balkans, Afghanistan and troubled areas of the Middle East, the U.S. is vulnerable to charges being leveled against actions which we might reasonably consider to be peacekeeping, but another power or government might charge to be something very different. For instance, what would happen if Serbia were to bring a case against an American naval pilot when such a pilot is operating under both a U.S. and NATO mandate? The President has suggested we should, exclusive of all other countries, be allowed a veto over applicability of international law with regard to the ICC. Many other

countries, including strong U.S. allies, have angst about this demand because they see this approach as establishing the principle of one country being entitled to operate above the law.

This is not an unresolvable dilemma. When the ICC treaty was under negotiation, it was the assumption of many that the Security Council where all the permanent members have a veto would play a determinative role in bringing matters before the ICC. If such was the case, the U.S. could fully protect itself as could the other permanent members. Unfortunately, because the past administration played a confused, ambivalent role in development of the treaty, it failed to get this common sense approach adopted and put the new administration in the embarrassing position of objecting to an important treaty because of the failed diplomacy of its predecessors.

Based on discussions with representatives of several governments sympathetic to the U.S. dilemma it is my understanding that there may be an inclination to seek a reasonable compromise on treaty language, even at this late date. It would appear to be an umbrage to many countries to craft a provision excluding the U.S. alone from ICC jurisdiction, but it would seem not unreasonable on a process basis to return to a Security Council role. On this basis the U.S. and the international community should be credibly protected.

The court would function as a treaty organization founded on state consent, while respecting Security Council authority to refer any matters affecting international peace and security to the court's jurisdiction. This approach has the advantage that it does not make a pure exception for the United States. Understandable concerns about inequitable protection of the nationals of permanent members of the Council would need to be balanced against the enhanced durability and legitimacy of the institution.

Mr. Speaker, I have long believed that laws, to be effective, must constrain governments in their foreign policies as well as individuals in domestic acts, and that in order to hold governments accountable there must be individual accountability at the highest as well as lowest levels of society. Justice must be brought to the international frontier or life for too many will, in Hobbes' piercing phrase, continue to be "nasty, brutish, and short." Creation of an ICC is a step in the direction of evolving international society but it only makes sense if the United States is able to join without concern for the legitimate exercise of its global responsibilities.

The United States should thus seek revision or a protocol to the treaty enconcing a Security Council role. Such an approach would achieve American objectives without calling for exclusive consideration.