

Senator Calls on Congress and White House to Protect Troops from International Criminal Court

by Sen. Jon Kyl
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President Bush has signed legislation denying economic assistance to any foreign government that refuses to protect U.S. troops, government personnel, and civilians from arbitrary arrest and prosecution before the United Nations International Criminal Court (ICC).

While nearly 100 nations have signed "non-surrender" agreements with the U.S., many refuse to do so.

The United States is not a party to the ICC and does not recognize its jurisdiction. Even so, the court can arrest and prosecute our troops and personnel operating in UN peacekeeping missions if the host nation is a member of the ICC, accepts its jurisdiction voluntarily, or is directed by the UN Security Council.

Consider: A UN report issued last week called for the Security Council to refer suspected cases of war crimes to the ICC. Almost simultaneously, war crimes charges were filed in a German court against Defense Secretary Rumsfeld for prison abuses at Abu Ghraib in Iraq. A German human rights group argued, under the much abused and misunderstood concept of "universal jurisdiction," that any citizen or group can file a claim against any world leader who may be guilty of committing crimes against humanity. Can anyone reasonably believe that more such cases are not soon to follow?

Although the Clinton Administration helped negotiate the terms and scope of the ICC, and even signed the treaty that created it in 1998, it was never submitted to the Senate for ratification. On May 6, 2002, the Bush Administration formally renounced any commitment to join the ICC or recognize its jurisdiction, citing fundamental structural flaws that would allow the court to undermine the role of the UN Security Council in maintaining international peace and security, as well as concerns over unchecked prosecutorial power and efforts to assert jurisdiction over citizens of states that have not ratified the treaty.

Congress then overwhelmingly passed the American Servicemembers' Protection Act, which spelled out strong objections to the ICC and prohibited any level of U.S. government cooperation with it. The legislation also required the administration to pursue measures to protect Americans from the court's reach.

It is no secret that the majority of UN peacekeeping operations are conducted in countries that are non-democratic and whose leaders are hostile to U.S. policies. Leaving our leaders, troops, and personnel vulnerable to arrest and use as political pawns would be a colossal mistake and one President Bush was right to avoid. But given the likelihood that the United States will be

called upon to send troops to future UN peacekeeping missions, it is critical that additional steps be taken now to create more concrete and permanent protections.

First, Congress and the administration should conduct a review of where U.S. troops and personnel are operating as peacekeepers, and determine whether their continued deployment is an appropriate use of our resources in the ongoing war against terrorism. The administration must insist on "non-surrender" agreements with host countries to prevent any Americans from being turned over to the ICC. No troops or personnel should be committed to any mission without such protection.

Second, Congress must reaffirm its own commitment to protecting American citizens by passing a joint resolution calling on the UN Security Council to pass a permanent resolution providing immunity for U.S. troops and government personnel, and if necessary, exercise our veto over any resolution offered that would involve the utilization of U.S. resources.

Such provisions should not be interpreted as placing Americans overseas above the rule of law. The government will continue to hold all of our citizens, including our troops, to the highest standards of accountability. But at the same time we must recognize the unique nature of our position in the world, and the historical tendency of non-democratic leaders to use international institutions purely to score political points against the United States. Ceding criminal authority to an unaccountable and politicized ICC would hardly advance peace and security in today's world.

Our troops and personnel work around the globe every day to wage the war on terror and to secure freedom not only for our citizens, but also for countless others. Just as it is our duty to provide them with the tools they need, it is our solemn responsibility to protect them from being used as political pawns by despots and dictators.