

Case Study:

Media Reports on US opposition to the ICC

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 Saturday-Sunday, January 29-30, 2005

U.S. lobbies Security Council on Darfur prosecution

By Warren Hoge

UNITED NATIONS, New York: The United States, acting in the face of strong European opposition, is lobbying the Security Council to avoid referring the judgment of atrocities in Sudan's Darfur region to the International Criminal Court.

The Bush administration renounced the Clinton administration's decision to sign the treaty creating the Hague-based court in 2002 and has since mounted a global campaign against the tribunal on

the grounds that it might bring frivolous prosecutions against American soldiers and civilians abroad.

The dispute has come to a head now because a commission created this fall to determine whether genocide has occurred in Sudan and to recommend "accountability mechanisms" under which people accused of human rights crimes can be judged is to make its report public next week.

The five-person panel is widely expected to find that gross violations have occurred, cannot yet be defined as gen-

ocide, and to recommend that the Security Council refer them to the International Criminal Court.

A majority of the 15 members of the Council is known to favor that course. In addition Secretary General Kofi Annan, who created the commission, has publicly supported such a recommendation.

The finding will pose a dilemma for the United States, which has been in the forefront at the UN in demanding accountability and seeking sanctions against the Sudanese authorities, but which opposes the international court.

According to diplomats attending a briefing of key countries at the UN Thursday on the American proposal, Pierre-Richard Prosper, the United States ambassador-at-large for war crimes, recommended referring the Darfur charges to a new African war crimes tribunal to be based at the headquarters of the UN-run war crimes court in Arusha, Tanzania trying suspects in the 1994 Rwandan genocide and to be jointly administered by the UN and the African Union.

The New York Times

Compare these three articles:

In media reports, the reason for the Bush administration's strong opposition to the ICC is always *the fear of "frivolous", "capricious" or "malicious" prosecution of US military personnel.* The admission reported in the earlier articles (*see below & next page*) is consistently 'forgotten'.

On court, U.S. focus shifts to shielding top aides

By Elizabeth Becker
The New York Times

WASHINGTON: The Bush administration is shifting its emphasis in seeking exemptions for Americans from the jurisdiction of the International Criminal Court, telling European allies that a major reason is to protect the country's top leaders from being indicted, arrested or hauled before the court on war crimes charges, administration officials say.

In most of their public utterances, administration officials have said that they feared American soldiers might be subject to politically motivated charges. But in private discussions with allies, officials say, they are now stressing deep concerns about the vulnerability of top civilian leaders to international legal action.

As an example, a senior official pointed to the legal actions brought against former Secretary of State Henry Kissinger in Chilean and American courts. The actions were brought by people who accuse Kissinger of aiding in the

1973 Chilean coup and in the ensuing 17-year dictatorship of General Augusto Pinochet.

"The soldiers are like the capillaries, the top public officials — President Bush, Secretary Rumsfeld, Secretary Powell — they are at the heart of our concern," the senior official said. "Henry Kissinger, that's what they really care about."

"They don't really care about the Lieutenant Calleys of the future," added the official, referring to William Calley, who was given a life sentence by a U.S. military jury for the 1968 My Lai massacre in Vietnam, but then paroled.

Officially, the White House on Friday repeated what its spokesmen have said in public speeches and statements: that their primary concern is that American soldiers, and not public officials, would be brought before the court on politically motivated charges.

But they also said that the notion of protecting top officials has always been part of their opposition to the court, which was established this year to pro-

secute those charged with genocide and crimes against humanity.

"We do not make the distinction between ranks here," said Sean McCormack, a spokesman for the National Security Council. "Our concern is politicized prosecutions of everyone — our servicemen and women and government officials."

America is concerned over the vulnerability of civilian leaders to international legal action.

State Department officials also acknowledged the concern about protecting top American officials and pointed to a speech in May by Mark Grossman, undersecretary of state for political affairs, who said the administration "must ensure that our soldiers and government officials are not exposed to the prospect of politicized prosecution and investigations."

Using this new argument about se-

nior officials has been persuasive, the senior Bush administration official said, and the government has won initial agreement from two European allies to sign an exemption saying all American soldiers, officials and civilians are outside the reach of the court.

The administration is pressing hard to persuade all countries that are party to the court to sign accords to exempt Americans from the court's jurisdiction. The court is the first permanent international body to be able to try people charged with genocide and other crimes against humanity.

Human rights groups that monitor the court debate say that the administration has been reluctant to acknowledge its concern over anyone but the common soldier.

"They weren't explicit about this, but everyone knew they were nervous about Pinochet and Henry Kissinger," said Elisa Massimino, of the Lawyers Committee for Human Rights.

There were hints of the administration's current emphasis three years ago

in an article by John Bolton, undersecretary for arms control and international security and the administration's point man for the court.

"The main concern should be for the president, the cabinet officers who comprise the National Security Council, and other civilian and military leaders responsible for our defense and foreign policy," he wrote in the magazine *National Interest*. "They are the potential targets of the politically unaccountable prosecutor created in Rome," referring to the Rome treaty that created the court.

The European Union, which strongly supports the court, is trying to find a compromise with the United States that neither undermines the court nor alliances at a time when the administration is also pressing Europe to support its campaign against terrorism and any action against Iraq.

"We always figured that the Kissinger precedent was behind this outrageous position," said a senior diplomat whose country is a strong supporter of the court. "But it has taken some time for the Americans to admit it."

International Herald Tribune
Monday, May 6, 2002

U.S. rejects global pact on war-crimes tribunal

Bush to 'unsign' Clinton-era agreement

By Neil A. Lewis

The New York Times

WASHINGTON: The Bush administration has decided to renounce formally any involvement in a treaty creating an international criminal court and is expected to declare that the signing of the document by the Clinton administration is no longer valid, according to government officials.

The "unsigning" of the treaty, which is expected to be announced Monday, will be a decisive rejection by the Bush White House of the concept of a permanent tribunal designed to prosecute individuals for genocide, crimes against humanity and other war crimes.

Secretary of State Colin Powell confirmed Sunday that the United States would disengage from the treaty.

"Within the next day or so, the United States will notify the secretary-general of the United Nations, Kofi Annan, that we will not ratify it, that we have no intention of ratifying the international criminal court treaty," Powell said on ABC.

The administration has long maintained that the court has the potential to create havoc for the United States, exposing American soldiers involved overseas and U.S. officials to capricious and mischievous prosecutions.

"We think it was a mistake to have signed it," an administration official said. "We have said we will not submit it to the Senate for ratification."

The renunciation, officials said, further means the United States will not recognize the court's jurisdiction and will not submit to any of its orders.

Also, other officials said, the United States will simultaneously assert that it will not be bound by the 1969 Vienna Convention on the Law of Treaties.

Article 18 of the Vienna Convention requires signatory nations, including the United States, to refrain from taking steps to undermine treaties they sign, even if they do not ratify them.

As with the treaty for the International Criminal Court, the United States signed but did not ratify the Vienna agreement.

A government official said the administration planned to make its decision known Monday in a speech by an undersecretary of state, Marc Grossman, in Washington and in a briefing for foreign journalists by Pierre-Richard Prosper, the State Department's ambassador for war crimes issues. Representatives of human rights groups also said they expected the decision, which was first reported by the Reuters news agency Friday, to be announced then.

The pointed repudiation of the International Criminal Court, while not unexpected, is certain to add to the friction between the United States and much of the world, notably Europe, where policymakers have grumbled ever more loudly about the Bush administration's inclination to steer away from multinational obligations.

Despite the strong stance by the United States, the International Criminal Court will begin operations next year in The Hague. More than the required number of 60 countries had

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signed the treaty as of last month, and the court's jurisdiction will cover crimes committed after July 1 of this year.

It will become the first new international judicial body since the International Court of Justice, or World Court, was created in 1945 to adjudicate disputes between states.

Until now, individuals were tried in ad hoc or specially created tribunals for war crimes such as those now in operation for offenses committed in Rwanda and the countries that formerly made up Yugoslavia, both modeled on the Nuremberg trials of Nazi officials after World War II.

Powell said Sunday that the United States believed the treaty could be used against U.S. military personnel and the court would not be accountable to the United Nations or any other body.

"We found that this was not a situation that we believed was appropriate for our men and women in the armed forces or our diplomats and political leaders," he said.

Harold Hongju Koh, a Yale law professor and a former assistant secretary of state in the Clinton administration, said the retraction of the signature on the treaty would be a profound error.

"The result is that the administration is losing a major opportunity to shape the court so it could be useful to the United States," Koh said.

"Now that the court exists, it's important to deal with it. If the administration leaves it unmanaged, it may create difficulties for us and nations like Israel."

Most democratic countries and all European Union countries have ratified the treaty, except Greece, which is in the process of doing so. Canada, New Zealand and a number of African, Eastern European and Central Asian countries also have ratified it. Israel has signed but not ratified it. Egypt, Iran and Syria have signed. India, Pakistan and China have neither signed nor ratified. Russia has signed but not ratified.