US repudiates International Criminal Court

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The Bush administration's formal rejection May 6 of a treaty establishing a permanent international war crimes court highlights the unprecedented rupture between the United States and its NATO allies, and signals Washington's continuing pursuit of a foreign policy based on unilateralism and militarism.

In a letter to UN Secretary-General Kofi Annan, Ambassador Pierre-Richard Prosper, the US envoy on war crimes issues, said Washington had no intention of ratifying the treaty establishing the International Criminal Court (ICC) and considered itself "no longer bound in any way to its purpose and objective."

"This is formal notification that we do not want to have anything to do with it," Prosper told reporters after the announcement of the administration's action. He described plans for the court as "flawed."

Administration officials indicated they would also formally renounce a 1969 agreement on the Law of Treaties that spells out the obligation of nations to abide by international treaties their governments have signed, even if they are not subsequently ratified. The US signed but did not ratify both the 1969 accord and the agreement founding the ICC.

While Washington's repudiation of a signed international agreement was unprecedented, at least for the post-World War II era, it hardly came as surprise. The "unsigning" of the treaty culminates four years of semi-hysterical denunciations of the ICC by the Republican right as a violation of US sovereignty and a potential forum for prosecuting American soldiers and officials for war crimes committed overseas.

The Bush administration had planned to announce the rejection last September, but in the wake of the attacks on the World Trade Center and the Pentagon postponed the action while it sought international support for its "war on terrorism."

The Clinton administration was among the promoters of the international conference in Rome that produced the agreement in 1998 to establish an international criminal court to hear charges of genocide and crimes against humanity. By the time the agreement was reached, however, opposition from the Pentagon and criticism from Republican legislators prompted Clinton to turn his back on the project.

In the wake of September 11, with US troops deployed not only in Afghanistan, but also in the Philippines, Georgia and Yemen, not to mention continuing American military operations in the former Yugoslavia and Colombia, the Pentagon's hostility to the proposed court has only grown. US commanders are well aware that the lopsided battles between the American military machine and largely defenseless opponents in backward countries targeted by Washington involve atrocities that meet the definition of war crimes under existing international law. The slaughter of hundreds of Taliban prisoners last November in Mazar-i-Sharif, where American Special Forces troops called in air strikes by helicopter gunships and fighter-bombers against their captives, would certainly qualify as a prosecutable atrocity.

By last month, 66 countries had agreed to support the court, six more than the minimum required by the treaty to bring it into existence. US diplomats boycotted a UN headquarters ceremony where the treaty's ratification was announced. Nonetheless, the court is to begin functioning July 1 in The Hague, and its jurisdiction will cover war crimes committed after that date.

The ICC constitutes the first new international judicial body created since the end of World War II, when the World Court was established in The Hague to adjudicate disputes between sovereign states. The Reagan administration repudiated the authority of the World Court after it found the US guilty of aggression for mining Nicaragua's harbors during the CIA-led "contra" war against the Sandinista government in the 1980s.

Under the Clinton administration, the US backed the creation of ad hoc tribunals such as the one formed to try Slobodan Milosevic. The former Yugoslav president was indicted on alleged war crimes in 1999, even as US warplanes were attacking civilian targets in Serbia, and shortly after the Pentagon organized the largest single act of "ethnic cleansing," the expulsion of the Serb civilian minority from the Krajina region by the Croatian army. Last year Milosevic was kidnapped and delivered to The Hague as part of a deal by Washington to support a $1 billion bailout for the newly installed Yugoslav government. A second tribunal was created to try former Rwandan officials implicated in the massacres of members of the Tutsi minority in that country.

The Bush administration, however, has also distanced itself from these courts, which are largely US creations but are now seen as a precedent for the ICC. Earlier this year, US Ambassador Prosper accused the two tribunals of "mismanagement and abuse," calling for a time limit to be placed on their deliberations. The statement prompted a resolution by the 43-nation Council of Europe, condemning the US for unacceptable political pressure and an attempt to interfere in an international judicial process.

Opposition to the creation of the new court was initially spearheaded by a collection of former US officials whose actions while in office would have made them candidates for war crimes prosecution. Former secretaries of state Henry Kissinger and George Shultz, former CIA director Richard Helms and former national security advisor Zbigniew Brzezinski were among the signatories of a November 2000 open letter warning that the US must put "our nation's military personnel safely beyond the reach

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of an unaccountable international prosecutor operating under procedures inconsistent with our Constitution."

Attempts by judges in Chile, Argentina, Belgium, France and Spain to have Kissinger held for questioning in connection with his role in the 1973 coup in Chile and subsequent murder and torture of tens of thousands of workers, students and opponents of dictatorship in that country and elsewhere in Latin America have been cited by the ICC's critics. "It is unjust and ridiculous that a distinguished servant of this country should be harassed by foreign courts in this way," an administration official declared recently. "The danger of the ICC is that, one day, US citizens might face arrest abroad and prosecution as a result of such politically motivated antics."

Helms, the architect of countless coups and secret wars and the mastermind of Operation Phoenix, the assassination program that claimed the lives of more than 20,000 Vietnamese, dismissed the ICC as "a kangaroo court."

Opposition to the court gave rise at the end of last year to the American Servicemembers' Protection Act, sponsored by Senator Jesse Helms (R-NC) and passed by an overwhelming majority of the US Senate. The legislation, which went largely unreported by the US media, barred all cooperation with the ICC and would have blocked US participation in any UN "peacekeeping" missions absent a prior UN waiver exempting US troops from war crimes charges.

It also would have cut off any military aid to non-NATO countries that ratified the treaty creating the new international court. Finally, the bill included an apocalyptic section dubbed "The Hague invasion act," that authorized the president to "use all means necessary and appropriate," including military force, to free US personnel and their allies held on war crimes charges at the court in the Netherlands.

The legislation passed the Senate by a vote of 78-to-21, with a large number of Democrats, including New York Senators Hillary Clinton and Charles Schumer, supporting it. A House-Senate conference committee subsequently killed it, with President Bush signing a streamlined amendment barring the use of US funds for the ICC's creation.

Administration officials now say that "status-of-force" agreements governing the deployment of the US military in more than 100 countries around the world are under review to ensure that their governments do not seek ICC prosecution of American troops.

In reality, there never was a significant threat that the ICC would try US military personnel. The architects of the tribunal, both American and European, took care in drawing up its rules to make sure that those responsible for the crimes of their armies in the former colonial countries would never appear on the ICC's docket.

Last year, Robin Cook, then the British foreign secretary, gave parliament his categorical assurance that no British soldier would ever face prosecution before the ICC. He based himself on a treaty provision that bars the court from pursuing any case that is already being investigated by the state charged with a war crime, even if the in-house probe results in no charges.

The treaty language also makes it clear that ICC prosecutors are extremely unlikely to look into any war crimes unless they are specifically instructed to do so by the UN Security Council, where the US, France and Britain exercise veto power. The Security Council will also have the right to call any prosecution to a halt for up to a year at a time.

What the court is designed for, as all its proponents in the governments of Western Europe are fully aware, is the prosecution of officials in so-called "failed or failing states." Only cases where governments are "unwilling or unable" to investigate would trigger ICC jurisdiction, according to the treaty. Prominent among those cases, clearly, would be countries invaded by the US or other major powers, whose governments are shattered and leaders subject to capture and extradition to The Hague.

Washington's message with the "unsigning" of the Rome Treaty is that it has no desire to share with its erstwhile NATO allies the determination of which leaders it will try, which it will assassinate and which it will exonerate as it pursues US interests abroad. If a court is required to legitimize US foreign policy, then Washington wants the exclusive right to handpick the judges and prosecutors and set the ground rules. It has no need for a permanent international body, with Europeans looking over its shoulders.

In short, the US is determined to do things its own way. It has already demonstrated its preferred methods in the Afghanistan war, with the establishment of military tribunals for foreign citizens and the flagrant violations of international law through its internment of prisoners at Camp X-Ray at the Guantanamo Naval Base in Cuba.

For the European powers, the Bush administration's action on the ICC is one more indication that US interests and their own are growing increasingly incompatible. It follows a series of decisions that spell out Washington's determination not to be bound by any international agreements, from its repudiation of the Kyoto treaty on the environment and the anti-ballistic missile treaty, to the rejection of an international ban on biological weapons and, on the trade front, the unilateral imposition of steel import tariffs.

"Impunity has been dealt a decisive blow," proclaimed UN Secretary General Kofi Annan at the ceremony officially launching the ICC. On the contrary, this entire episode has served to underscore the absolute impunity claimed by US imperialism in the pursuit of its strategic interests around the globe.

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