

Ultimatum to Europe in advance of Iraq war

## US demands total impunity on war crimes

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With the Bush administration gearing up for a “preemptive” war against Iraq, Washington this week dispatched a senior US diplomat, Marisa Lino, to Europe to demand that the governments of the European Union (EU) agree to a blanket exemption of all US citizens from the jurisdiction of the newly formed International Criminal Court.

In May, the US formally rejected the treaty establishing the ICC, the first permanent international institution dedicated to trying cases of genocide, war crimes and other human rights abuses. Now it is insisting that governments around the world sign bilateral treaties agreeing not to turn over any American citizens in the event that they are indicted by prosecutors at the court.

With the more impoverished and former colonial countries, Washington has threatened to cut off aid unless agreements are signed. As far as the regimes in Eastern Europe, it has threatened to block their membership in NATO. Already sharp tensions between the US and its Western European allies were exacerbated last month when Washington succeeded in signing a treaty with Romania before the EU was able to cobble together a common position on the US ultimatum.

That position, agreed to in late September, granted extensive immunity to American citizens from prosecution before the court. It allowed every member state within the EU to sign agreements with Washington exempting all US soldiers and diplomats serving abroad from the court’s jurisdiction. The Bush administration had publicly pitched its opposition to the treaty as a defense of US soldiers serving in “peacekeeping operations” from the threat of “politically motivated” prosecutions.

While the EU decision provoked sharp criticism from human rights groups and supporters of the court, who warned that it would severely undermine the new institution, the cave-in by the European powers—led by Britain’s Prime Minister Tony Blair—did not go far

enough to satisfy Washington.

Lino, the former US ambassador to Albania, is now assigned full-time to scuttling the ICC. She is demanding that the EU widen the immunity to include all US citizens, whether they are serving in the military or government or not, and whether they are abroad or in the US. In short, she is demanding that the European governments provide a full guarantee that no US citizen would ever be turned over to the court for any reason whatsoever.

The Bush administration is not so much concerned that US soldiers will be dragged before the court, as it is worried that Bush himself, his defense secretary, Donald Rumsfeld, Vice President Richard Cheney and others at the top of his administration could face indictments.

Concern over potential international legal action against leading American officials has grown over the past several years, partly in response to multiple attempts by courts in Europe and Latin America to charge or question former secretary of state Henry Kissinger in connection with the CIA-organized coup in Chile in 1973 and the subsequent wave of US-backed repression that claimed tens of thousands of lives throughout South America’s Southern Cone.

The statutes founding the ICC specifically rule out its adjudication of atrocities committed before the court’s formation. Some legal analysts, however, have argued that Kissinger could still be tried because of the nature of the crimes committed by the Latin American dictatorships that he helped bring to power. Many of their victims were abducted by military and police squads and subsequently “disappeared,” with no accounting to this day for their deaths. Since their cases remain unresolved, there is a possibility that fresh charges could be laid.

The Bush administration is particularly anxious to get immunity agreements signed before it launches its war against Iraq. John R. Bolton, the US undersecretary for arms control and international security, flew to London and Paris last week to put further pressure on the

European governments.

The timing and the nature of the US campaign of diplomatic intimidation underscores a crucial motive behind the Bush administration's repudiation of the ICC. Top US officials are fully conscious that they are preparing actions against the people of Iraq that would be prosecutable before the court.

In reality, the court's rules, crafted at a United Nations-sponsored conference in Rome in 1998, provide ample assurance that no leader of a major power, nor, for that matter, any US soldier charged with atrocities overseas, would ever be placed in the ICC's dock. In particular, the court's rules bar it from prosecuting any one charged with war crimes if their government is conducting its own investigation, even if such a probe does not result in charges.

Despite the extreme improbability of a UN-sponsored institution attempting to bring American officials to justice, the Bush administration is not taking any chances. The war that Washington is preparing against Iraq fits the definition of war crime too well.

First and foremost, under its announced doctrine of "preemptive" attack, the Bush administration is planning an unprovoked war of aggression, a recognized war crime and the principal charge leveled against Germany's Nazi leaders at the Nuremberg War Crimes Tribunal.

Moreover, the type of war the US is preparing will, without question, involve the slaughter of unarmed Iraqi civilians. The American military's own "weapons of mass destruction," from cruise missiles, to fuel-air explosives, cluster bombs and napalm will all be brought into play against a relatively defenseless and already war-devastated nation.

As part of its plans for "regime change," the US government is already advancing plans for a war crimes tribunal against Saddam Hussein and other senior leaders of Iraq's Baathist regime. White House spokesman Ari Fleischer indicated this week that the Bush administration would seek the creation of a special international tribunal. Asked why Washington did not sign on to the ICC and use that body to conduct such a trial, Fleischer declared that the international court "has nothing to do with" the US proposal for trying the Iraqi president. "What worked for Serbia, will work again," he added.

In other words, Washington will seek another "ad-hoc" tribunal like the International Criminal Tribunal for the Former Yugoslavia (ICTY), set up for the purpose of trying Slobodan Milosevic and other Serb officials. A politically motivated indictment of Milosevic was issued

as a means of justifying a 79-day US-led NATO air war against Serbia that left thousands dead and much of the industrial and social infrastructure of the former Yugoslavia in ruins.

No doubt, a similar indictment is forthcoming against Saddam Hussein. It will recapitulate the charges repeated again and again by Bush and his administration about the Iraqi regime's use of chemical weapons in the Iran-Iraq war 20 years ago and in its suppression of the Kurds.

It is also certain that if another ad hoc court is formed, its mandate will ensure that the former members of the Reagan administration who supplied the Iraqi regime with biological weapons materials and provided intelligence to the Iraqi military that aided them in making their attacks on the Iranians will not be tried as accomplices.

The main purpose of such a court would be to dispense the "justice" of the victor against the vanquished, legitimizing a US conquest of Iraq, while ensuring that no precedent is established that could be used to hold the US itself accountable to universally accepted standards of international conduct.

The repudiation of the International Criminal Court is only the latest chapter of Washington's refusal to subordinate itself to international law. In 1984, when the International Court of Justice—a body that is supposed to settle conflicts between UN member states—found the US in violation of international law for mining Nicaraguan harbors, the Reagan administration simply rejected its authority.

Now, Washington is preparing to launch an invasion of Iraq in the name of enforcing United Nations resolutions, even as it seeks to sabotage the international court formed by the UN with the ostensible purpose of preventing crimes against humanity. This apparent contradiction merely exposes the criminal and predatory nature of the Bush administration's war aims.



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