

On the eve of Iraq war

America snubs new International Criminal Court

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On Tuesday March 11 the newly founded International Criminal Court (ICC) was officially opened in a ceremony in The Hague, capital of the Netherlands. Taking part in the ceremony, which included the swearing in of the court's first 18 judges, were Queen Beatrix of the Netherlands and United Nations Secretary General Kofi Annan. Washington pointedly snubbed the ceremony, with US Ambassador to the Netherlands, Clifford Sobel, turning down an invitation to attend the gathering.

The ICC is supported by a total of 89 countries. An additional 50 countries have signed on to the statutes of the court but have yet to ratify their collaboration. The ICC has been described as the descendent of the tribunal at Nuremberg set up after the Second World War to try leaders of the Nazi party for conducting wars of aggression and war crimes. The court is mandated to deal with any war crimes and crimes against humanity committed after July 1, 2002. These would include genocide, the bombing of civilians, and systematic rape and torture.

Among the most prominent non-signatories to the court are the United States, Russia and China. The United States is the only country to have actively conducted a campaign against the ICC and has signed treaties with more than 20 nations giving its citizens immunity from the ICC.

The timing of the ceremony, on the eve of an American-led war against Iraq, was not lost on those attending the occasion. Just a day before the opening in The Hague, Kofi Annan declared that, should the UN Security Council fail to agree on a second resolution authorizing the use of force, a war against Iraq would be illegal. Nevertheless, Edmond Wellenstein, director general of the Dutch task force for the ICC, tried hard to counter any speculation that the first task for the court would be an investigation into the crimes committed in the course of a war with Iraq. The opening ICC ceremony, he said, was "about hope, and fighting impunity. It is not about a cynical coincidence."

The US administration has campaigned long and hard against the ICC. With soldiers deployed in more than 140 countries, the Bush administration has made it absolutely clear that it will do everything in its power to undermine the work of the court. Leading Republican politicians have condemned the institution's very existence as "a violation of US sovereignty".

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

It was political pressure from the right in America which led former President Bill Clinton to drop initial proposals for US participation in the court. In particular since the events of September 11, and following the launching of a war against Afghanistan together with preparations for a war with Iraq, the American government has intensified its campaign against the ICC.

Last spring, the US envoy on war crimes issues, Ambassador Pierre-Richard Prosper, sent a letter to Kofi Annan, stating that Washington had no intention of ratifying the treaty establishing the 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."

In June 2002, the US then threatened to use its veto to stop all UN peacekeeping operations unless the Security Council adopted a resolution to override the court's jurisdiction and provide immunity to any citizens of non-ratifying countries engaged in UN authorized operations. The US initiative was countered at that time by the Canadian ambassador who complained that the provision of blanket immunity by way of a Security Council resolution would "dramatically alter and undermine" the court's statute. British diplomats initially took the same view, but were then instructed to support the American position.

The White House then went on to mount a parallel effort to secure promises from individual countries never to surrender US soldiers or officials to the ICC. Countries as diverse and vulnerable as East Timor and Romania were pressured into bilateral treaties. At first, the US stance was strongly opposed by the EU, which tried to present a common front on the issue. But in September 2002, London again broke ranks, leaving its European partners

with little alternative but to concede to Washington's unilateralist position.

With US troops currently 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 defenceless opponents in backward countries targeted by Washington involve atrocities that meet the definition of war crimes under existing international law (not to mention the illegal and inhumane treatment, including the use of torture, of captives in Guantanamo Bay, and the allegations of US military complicity in the massacre of unarmed prisoners in Afghanistan).

The US Congress has gone so far as to agree a law which permits the American government and military to utilize "every possible means" to liberate American citizens from the custody of the ICC, dubbed by some as the "Hague invasion clause."

The ICC is empowered to conduct trials into war crimes provided that either the accused are citizens of a country that has ratified the court's statute, or the alleged crimes were committed on the territory of a ratifying country—regardless of the nationality of the accused. The US is not a signatory to the ICC statutes which means that the court is not in a position to try American politicians or military leaders for waging war against Iraq. Nevertheless, the court could prosecute American soldiers for crimes committed on the territory of countries who have ratified the court.

The situation is different for Great Britain, which is itself a ratifying country of the ICC. A number of senior lawyers in the UK have declared that military action against Iraq without a second UN resolution would be illegal. Any alleged war crimes committed by British forces in Iraq are subject to ICC jurisdiction and under the principle of command responsibility this includes the prime minister. Moreover, the statute explicitly strips him and all other leaders of any immunity that might normally benefit heads of state under international law. This opens the way for the possibility of prosecution of leading British politicians, in the first place British Prime Minister Tony Blair, for undertaking an illegal war.

The British government has been sufficiently concerned about the threat of legal action should it go to war with Iraq that it has called upon the Attorney General Lord Goldsmith to clarify whether Prime Minister Blair could be legally prosecuted.

International human rights lawyer Stephen Solley QC has stated that British troops will feel "vulnerable" to war crimes charges. "No one thought when they were planning the ICC it would have to consider the consequences of a unilateral invasion by America and Britain of another country." With regard to the prospect of imminent war, Solley said: "I feel this is a defining moment in our history, which our children will want to ask us about. No one has made a legal case for war."

The threat of possible legal action will also have consequences for British troops and their officers in the field, according to the chairman of the Bar human rights committee, Peter Carter. Potential life sentences for soldiers acting on the orders of the prime minister mean that British commanders will have to "adapt

a very different attitude to their American colleagues so they can justify every military act of attrition against every target," Carter said. This state of affairs could cause real difficulties in joint actions between the forces.

In fact, it is unlikely that the International Criminal Court would prosecute British or US soldiers or officials. The statute for the ICC sets out a system of "complementarity", whereby priority is accorded to national courts to investigate war crimes. 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. In practice US and other foreign military contingents have been able to operate with impunity across the Balkans, even though the International Criminal Tribunal for the former Yugoslavia has had jurisdiction there since 1991.

Nevertheless, under conditions of open disunity in the United Nations and with the current US-led intervention in Afghanistan facing continuous criticism from human rights organisations, the Bush administration is vehemently intent on sabotaging any international agency which possesses the potential power to investigate American (and British) military policy.

Richard Dicker, director of Human Rights Watch, has accused the US government of trying to create a "two-tier justice system with one law for US citizens and another for everyone else". He went on to greet the creation of the International Criminal Court as follows: "The opponents in the US have vilified the ICC and spread such misinformation, suggesting that innocent US army personnel could be tried by Iraqi or North Korean judges. With the inauguration of British and French judges, amongst others, it will become harder for those suggestions to have any meaning."

Under conditions of growing antagonisms between Europe and America over an Iraq war, the Bush administration's enmity towards the ICC is not likely to be moderated by the fact that European judges will be in a position to sit in judgement on American war policy. Before even beginning its work, the International Criminal Court has itself become a political instrument in the bid by European and other world powers to develop their own political spheres of interest independent from the unilateral aspirations of US imperialism.



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