

WORLD COURT NOW A REALITY  
Will Supersede National Sovereignty, Even Of Countries Refusing To  
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NEW YORK – The International Criminal Court was officially instituted today at the United Nations headquarters.

The court, a permanent tribunal to prosecute "crimes against humanity," strides onto the world stage without the ratification of the United States. Deemed by some as a grave threat to national sovereignty, the United States has lodged strenuous objections to the ICC. As late as Monday there were reports that President Bush had sought means to retract the signature of former president Clinton, who signed the treaty on his last day in office. A signature indicates a nation's intent to seek ratification.

However, the U.S. Senate Foreign Relations Committee would not bring the treaty to the Senate for a vote.

The Rome Statute, a treaty calling for the establishment of a world court to prosecute gross human rights abuse, was launched in 1998. The U.S., China, Iraq and Israel voted against the Statute that year, while nations that favored the court first signed, then ratified the treaty. The final four of the 60 ratifications necessary for the court to become operative were received today as the ninth preparatory committee session ("prepcom") of the International Criminal Court opened at the U.N.

The prepcom, chaired by Philippe Kirsch of Canada, will finalize the arrangements for nomination and election procedures for ICC judges. The first Assembly of States Parties is scheduled for this September at The Hague, Netherlands. Norway has agreed to contribute 784,000 Euros to cover early budgetary requirements for the Court.

Objections to the court by Americans are based largely on fears that such a court could bring politically motivated charges against U.S. presidents and military personnel. Crimes of "aggression" have not as yet been defined, leaving open to future interpretation any number of military operations. When one nation defends itself, is that aggression against another? So-called crimes against humanity include vague phrases such as injury to a population's "mental health." Who is to determine when such a crime has been perpetrated?

Any U.S. citizens prosecuted by the International Criminal Court will be denied the guarantees of the U.S. Constitution. As of yet, the process for electing and rotating ICC judges is incomplete. Opponents of the court suggest that world events in the near future could find the U.S. and its citizens at the mercy of a panel of judges from non-Western nations, or of nations that seek to extort favorable trade agreements from the U.S. Critics ask: What is to prevent the court from prosecuting a U.S. president that topples Saddam Hussein without first seeking assurance from the U.N. that such military activity would not be categorized as a war crime?

U.S. treaty specialists underscore the unique danger of the ICC: It is not a treaty among parties in agreement, but is instead a new, and many believe dangerous, species of an international instrument that subordinates all nation states in the

world to the rule of the United Nations' court. The ICC can prosecute whenever it deems a nation's courts have failed to prosecute its own violators of "human rights." Never before has such power been held over nation states, say court critics.

Opponents of the ICC cite as an example of U.N. interference in domestic matters the April 4 report by U.N. special rapporteur on judges and lawyers Param Cumaraswamy. After a six-week investigation, Cumaraswamy accused Italian politicians of "interfering in the country's justice system." The rapporteur demanded a reform of the Italian justice system.

American supporters of the ICC dismiss those objections as "overwrought." Clinton appointee David Scheffer, former U.S. ambassador for war crimes, described the institution of the court as a "significant moment in world history." Scheffer, who was Clinton's point man for the ICC negotiations, now serves as senior vice president of the United Nations Association of the USA, a U.N. advocacy group.

Key European allies have accused the Bush administration's refusal to support the court as an example of U.S. "unilateralism" in an interdependent world. During important U.N. negotiations on issues from children's rights to trade disputes, European delegates have been increasingly hostile to what they characterize as the United States' "Lone Ranger" attitude. One U.S. delegate to the United Nations, who spoke on the condition of anonymity, noted that Europeans were restless with American dominance since the fall of communist Russia: "They see the ICC as one means to curb U.S. power on this planet."

Several U.S. allies, notably Canada, have urged the Bush administration to support the court as a means to hold genocidal tyrants accountable for their crimes. Heretofore, special tribunals were held to try those charged with war crimes, such as Slobodan Milosevic. The ICC has the power to bring charges against individuals without the consent of their government.

The mechanism for charging citizens without the cooperation of their government – including those nations, such as the United States, that have refused to ratify the treaty – requires that charges be brought by the United Nations itself on behalf of another nation, ethnic group or non-governmental organization. Critics of the International Criminal Court fear that granting such powers to the United Nations sends a message that the U.N. is the definitive world organization that supersedes all nation states – which many regard as a serious assault on the concept of national sovereignty.

The ICC is a concept that dates from the WW II Nuremberg Trials. The United Nations pushed for the establishment of the court after the demise of the Cold War. The adoption of the Rome Statute in 1998 initiated sessions to draw up Rules of Procedure and Evidence for the Court. The U.S. has participated in those sessions, but was unable to delete all of the provisions it considered a threat to U.S. sovereignty.

Final ratifications from Bulgaria, Cambodia, Colombia, Ireland, Jordan, Mongolia, Romania, and Slovakia were deposited with the U.N. Secretary General's office.

The court will formally open for business July 1 in the Netherlands where temporary quarters for the court have been secured. The ICC cannot retroactively prosecute crimes under its jurisdiction.

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