



The International Criminal Court: An Opportunity for Justice, Security, and U.S. Leadership

About the International Criminal Court:

The International Criminal Court (ICC) is the first and only permanent international court established to try individuals accused of perpetrating genocide, war crimes and crimes against humanity, and abides by the highest standards of fairness and due process.

Despite playing a leading role in the establishment of the Court, the United States has refused to join and participate in the ICC due to mistaken concerns that Americans could be brought before the court for political reasons. However, the ICC is now a reality and enjoys the support of the majority of the world's countries, including other western democracies such as the United Kingdom, France, and Canada. As of June 2008, 106 member states have joined the Court. Public opinion polls consistently show strong American support for U.S. membership in the ICC. In July 2006, the Chicago Council on Global Affairs found that 71% of Americans believe that the U.S. should participate. Current ICC cases include the upcoming trial of former Congolese Vice President Jean-Pierre Bemba for gender-based crimes in the Central African Republic. Since 2002, the Bush administration has aggressively pursued Bilateral Immunity Agreements with every nation that has joined the ICC and has withheld aid from those that have refused.

What are Bilateral Immunity Agreements?

Bilateral Immunity Agreements (BIAs)

force ICC member states to choose between violating their international legal obligations under the ICC's Rome Statute on one hand and losing millions of dollars in economic and military aid from the U.S. on the other. They are also called "Article 98" agreements, and prohibit nations from sending Americans for prosecution at the International Criminal Court, even though these agreements are unnecessary (see box above). This includes U.S. service members, nationals, and government employees, past and present, including non-national contractors.

***The International Criminal Court:
Bringing War Criminals to Justice***
The ICC acts only when national courts are unable or unwilling to handle cases, and when the crime is broad and sweeping in nature. National courts may claim jurisdiction over a case before the ICC, which only prosecutes crimes which are sufficiently serious and grave. In fact, the ICC prosecutor has recently refused to investigate allegations of crimes committed in Iraq by American and British forces, finding that the alleged crimes were not sufficiently grave, that the ICC would not have jurisdiction over Americans there, and that both nations have functioning judicial systems that are willing and able to investigate such allegations. Considering that the United States' military justice system is one of the most developed in the world, it is hard to conceive of the ICC ever prosecuting an American soldier.

Major General William L. Nash (U.S. Army, Retired) explains that under the Rome Treaty, "Under a clause known as the Complementarity Clause, the United States has full authority to act in it's own right and deal with the issues...As we participate in the efforts of the ICC...not only do we further our own goals, but we contribute to the conditions that, over time, we would all hope would create a better world."

Foreign Policy Implications:

Conditioning economic aid on the conclusion of BIAs is a counterproductive policy that burns political capital and limits the American sphere of influence. American insistence on bilateral immunity agreements has been a source of considerable friction between the U.S. and its allies in Europe, Africa, and Latin America.

National Security Concerns:

Withholding military assistance to nations that refused to sign BIAs has jeopardized American national security priorities, such as:

- **Building cooperation in combating terrorism:** African and Latin American allies such as Brazil, Paraguay, Tanzania (the location of the 1998 American embassy bombing), Central African Republic, Namibia, and Niger actively cooperate with the U.S. to fight terrorism within their own borders, but recently had their military aid suspended.
- **Combating drug trafficking and transnational crime:** The U.S. has withheld military aid from Latin American allies such as Brazil, Peru, and Venezuela, strong partners in the war on drugs.
- **Enlargement and strengthening of NATO:** Some Eastern European nations have lost aid that was intended to modernize their armies so they could join NATO.
- **Creating stability in Africa, avoiding the deployment of American peacekeepers:** Countries such as Benin, Mali, and South Africa have taken important leadership roles in regional peacekeeping efforts in African conflicts, and previously received military aid from the Foreign Military Financing program. The program aimed to “improve key capabilities of friendly countries to contribute to...peacekeeping and humanitarian crises... [thereby] helping to reduce peacekeeping engagements by the U.S.” However, aid was frozen due to their refusal to sign BIAs.

Considering that other nations such as China have moved to replace funds that used to come from the United States, Secretary of State Condoleezza Rice has acknowledged that invoking sanctions on key U.S. military allies may be “sort of the same as shooting ourselves in the foot.” Additionally, regarding economic support fund cuts, former Republican chair of the Appropriations Committee Jim Kolbe warned, “At a time when we are fighting the war on terrorism, reducing this tool of diplomatic influence is not a good idea...the U.S. will be hamstringing itself, placing a straightjacket on its diplomatic tools...” Furthermore, economic support funds withheld due to refusal to sign BIAs were previously being used to promote American values and economic and social progress, contributing and developing trade capacity, democratic practices and institutions, judicial reform, sustainable economic growth and stability, governmental transparency and accountability, independent media, and respect for human rights.

Recommendations:

Candidates for Congress who seek to restore America’s reputation in the world as well as protect U.S. national security interests should oppose bilateral immunity agreements and encourage the president to utilize executive privilege to waive current aid restrictions. Candidates should also support U.S. participation in the ICC as an observer and oppose attempts to undermine the court and its legitimacy.

For more information, see CGS’ [BIA Resource Center](http://www.globalsolutions.org/issues/bia_resource_center)
www.globalsolutions.org/issues/bia_resource_center

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