

7-11-2003

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Recommended Citation

LADB Staff. "US Cuts Aid to ICC Supporting Countries." (2003). <https://digitalrepository.unm.edu/notisur/13165>

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US Cuts Aid to ICC Supporting Countries

by LADB Staff

Category/Department: Latin America

Published: 2003-07-11

The US on July 1 declared 35 countries ineligible for military aid because they have joined the International Criminal Court (ICC) and have not exempted US citizens from possible prosecution. The US action angered many allies. Countries in the Americas affected by the cutoff include Antigua and Barbuda, Barbados, Belize, Brazil, Colombia, Costa Rica, Dominica, Ecuador, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay, and Venezuela.

The court is the culmination of a campaign that began with the Nuremberg and Tokyo trials for German and Japanese war criminals after World War II. The ICC has jurisdiction over war crimes, crimes against humanity, and genocide committed after July 1, 2002, involving any nations that have signed the treaty, but it will step in only when the states are unwilling or unable to dispense justice.

Under the Rome Statute, intervention by the ICC must be requested by party states or by the ICC prosecutor. In addition, the UN Security Council can ask the ICC to handle a case from a nonsignatory state. The ICC is made up of 18 judges of different nationalities. Former President Bill Clinton signed the Rome Statute in December 2000, just a few weeks before George W. Bush became president.

In May 2002, the Bush administration "unsigned" the document and withdrew from all negotiations to set up the ICC (see NotiSur, 2002-09-13). It also threatened to veto extensions of UN peacekeeping operations unless the Security Council exempted citizens of non-ICC states parties to the Rome Statute which includes US personnel participating in UN peacekeeping missions or UN authorized operations from the ICC's jurisdiction for one year. That was extended under US pressure for a second year in June, although France, Germany, and Syria abstained.

Before the UN vote, nongovernmental organizations (NGOs) called on Security Council nations not to support the request. Richard Dicker, head of international justice programs at Human Rights Watch (HRW), said granting another exemption would create a two-tier system of international law one for US citizens and another for the less-privileged citizens of the rest of the world.

Human rights groups and European governments, including Britain, said US fears were greatly exaggerated. "The US experts know that there is practically no justification for the Security Council exemptions and the likelihood that a US peacekeeping soldier would come under the jurisdiction of the court is almost zero," said William Pace, convener of the Coalition of the ICC, which includes 2,000 NGOs worldwide.

Lincoln P. Bloomfield Jr., US assistant secretary of state for political military affairs, said the administration had no intention of undermining the court, but wanted to preserve its right to remain outside its purview, especially with attempts to charge US officials with war crimes. He said several US officials were indicted for war crimes in Belgium this year for their roles in the 1991 gulf war,

including Vice President Dick Cheney and Secretary of State Colin L. Powell. But supporters of the ICC said the Belgian court is a national body with very different rules from those of the ICC, which has safeguards that would help protect US officials.

Bush administration exempts many

The Bush administration supported legislation that would authorize the use of "all means necessary" to free US citizens in the court's custody. It warned last year that, under the American Servicemembers Protection Act (ASPA), any country that became a member of the ICC but failed before June 30, 2003, to exempt US citizens serving within its borders would lose military aid. The original bill emphasized US service members, but the administration has interpreted it to include all US citizens.

The ASPA does not apply to the 19 members of NATO, nor to the US-designated "major non-NATO allies" Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, New Zealand, South Korea, and soon, the Philippines nor to Taiwan. In its determination to undermine the court's power, the Bush administration has put strong pressure on countries to agree not to hand over US citizens to the court. Bolivia, El Salvador, Honduras, Nicaragua, Panama, and the Dominican Republic are among the countries that have signed Article 98.

"US ambassadors have been acting like schoolyard bullies," said Dicker. "The US campaign has not succeeded in undermining global support for the court, but it has succeeded in making the government look foolish and mean-spirited."

As the deadline passed for governments to sign exemption agreements, Bush issued waivers for 22 countries. Countries that backed the US in its war against Iraq were angry that Bush did not exempt them, but he only exempted countries that had signed the Article 98 agreements but needed more time to ratify them.

State Department spokesman Richard Boucher said in some cases, most money allocated for this year was already spent. Money not yet disbursed for the current US fiscal year would be blocked, along with all military funding programs from the start of the new year on Oct. 1, he said. "The US is on the horns of an excruciating policy dilemma of its own making," said Dicker. "The thinking underlying this policy is comparable to the lack of thought for post- Saddam Iraq."

Many Latin American countries caught in cutoff

The US decision brought protests against US human rights policies. Critics said that, during the administration of former US President Jimmy Carter (1977-1981), the US cut off military aid to Latin American dictatorships for violating human rights, while the Bush administration is cutting aid to countries that defend those rights.

"US authorities are carrying out a worldwide campaign to pressure small, vulnerable, and often fragile democratic governments to sign bilateral agreements with Washington," said an HRW letter

to Colin Powell. "Whatever the administration thinks of the International Criminal Court, its tactics in pursuing these bilateral campaign agreements are unconscionable. Other governments can plainly see that punitive measures are being used primarily against poor and relatively weak states with few options other than to give in to the United States....This is an initiative that is likely to do far more harm to the United States than it could ever do to the court."

Hemisphere will feel effects of cutoff

Of the countries in Latin America, Colombia stands to lose the most, but is probably the least likely to really be cut off. Boucher said that only US\$5 million of this year's funding to Colombia has not been dispersed, and that would be frozen. But he also pointed out that much of the aid to Colombia is part of the US anti-drug funds, which are not affected by the cutoff.

Colombia's former foreign minister Augusto Ramirez Ocampo called on the Uribe government to remain firm in its support for the ICC. In a radio interview, he said that he did not understand why the US "violates a world norm that it expects everyone else to accept." He said this shows the contradictions in many policies of the US, "which creates its own international judicial order."

Andean countries resist US pressure

The Ecuadoran government said international treaties it has signed make it impossible to grant US military personnel immunity from prosecution for human rights violations. Foreign Minister Nina Pacari said Ecuador signed the Rome Statute in 1998 and it was ratified by Congress last year.

"There are certain universal laws such as respect for human rights and the equality of human beings before the law; obviously those concepts will prevail in our final decision," said President Lucio Gutierrez. Carlos Vallejo, president of the congressional international affairs committee, suggested that the government ask US troops to leave Manta. "[The US decision] is a moral offense to the Ecuadoran people," said Vallejo. "I cannot make a decision, but I can recommend to the government...that it ask the US to leave Manta." The US has troops stationed at Manta military base.

Movimiento Popular Democratico (MPD) Deputy Luis Villacis agreed, saying the US action is basically blackmail against Latin American governments, and in response, "Ecuador should solicit the withdrawal of US troops from Manta." The Asociacion Pro Derechos Humanos (APRODEH) said that, if the countries whose aid has been cut off support the US position, it will doom the ICC.

The Peru office of Amnesty International (AI) said that Washington's attitude was an "unacceptable pressure" on Peru to force it to be an "accomplice to impunity for possible human rights violations." It added, "We are faced with mixed messages, in which the US is demanding that countries respect human rights and at the same time it demands impunity for its soldiers if they violate them."

On July 4, the Venezuelan government said the US was trying to impose bilateral treaties in a "compulsive way." It said that, in observance of national and international laws, it would not sign the agreement. Argentina, Brazil, and Paraguay criticize US actions As a major non-NATO ally,

Argentina was let off the hook. Nevertheless, the US State Department is leaning on the Argentine Foreign Ministry to sign Article 98.

The Kirchner administration has said it will not sign the exemption and is backing legislation that would narrow existing immunity for foreign personnel. Government officials also said the US demand contradicts criteria of legality, and they considered it "politically not viable" that the Argentine Congress would ratify a measure that would grant special treatment to US troops.

A report from the Argentine Foreign Ministry said that the US proposal wanted immunity for all US citizens. "To accept that completely exceeds the reaches of other immunity agreements such as the Vienna Convention, which regulates such questions, or even the extradition treaty that has been in effect between our two countries since 2000," said the report.

Brazil also maintained that Washington's request "would be contrary to the letter and spirit of the Rome Statute" and would threaten the equality of legal treatment of all countries.

The Brazilian Foreign Relations Ministry said in a communique that the government of President Luiz Inacio Lula da Silva "could not refuse to fulfill, through a bilateral agreement, a commitment assumed collectively with the countries that signed the treaty."

Paraguay's Foreign Minister Jose Moreno Ruffinelli said the ministry had received a new note from Colin Powell urging Paraguay to sign the exemption, despite the country's lack of US military aid. He said the outgoing government of President Luis Gonzalez Macchi would not sign the document. Washington's pressure to get an exemption for all its citizens has also led to a confrontation with the European Union (EU), which backs the ICC.

On July 2, the European Commission (EC) expressed disapproval of the US pressures. At the same time, Diego Ojeda, spokesperson for European affairs at the EC, said he was encouraged that a large number of countries were resisting the US pressure. "At a time when America is losing vital public support abroad," said Heather Hamilton, program director of the World Federalist Association, "this kind of bullying of some of the world's poorest countries will only undermine our long-term safety and security."

Argentine named chief prosecutor

The celebration of the first anniversary of the ICC coincided with Mexico's extradition of Argentine citizen Ricardo Miguel Cavallo to Spain on charges of crimes against humanity (see SourceMex, 2003-06-18). Human rights groups, academics, and political leaders around the world said both events strengthen the principle of universal justice. The extradition made Cavallo the first serving or former Latin American military officer to be prosecuted by a judge from a third country after being arrested in a country where he had no legal problems.

Prince Zeid Raad al-Hussein of Jordan, president of the ICC governing body, the Assembly of States Parties, that signed the treaty establishing the court, said 90 countries had become members despite

Washington's opposition. "The simple conclusion is that the American campaign has not had a negative effect on the establishment of this court," said the prince, who is Jordan's ambassador to the UN. "We have a court in place, a very fine panel of judges, a prosecutor, and we should be fully running by the end of the year."

William Pace said that since the Rome Statute went into effect, the ICC has received requests to hear 400 cases. International-law expert Diego Beas of the Universidad Iberoamericana in Mexico said that, even with its limitations, the ICC is one of the "most important instruments that the international political will has created." Argentine lawyer Luis Moreno Ocampo was sworn in June 16 at The Hague's Great Hall of Justice as the chief prosecutor for the ICC.

The 50-year-old lawyer was the unanimous candidate of the court's member countries, elected in New York in April during a meeting of the Assembly of States Parties. Moreno Ocampo has led a series of high-profile cases in Argentina, including the extradition of former Nazi officer Erich Priebke to Italy in 2001 and the trial of Chilean secret police for the murder of Gen. Carlos Prats. In the 1980s, he was deputy prosecutor in the trial of nine former top military commanders charged with torture and killing during Argentina's "dirty war" in the 1970s and 1980s. Moreno Ocampo said the major achievement of the ICC in its first year has been its formation, and added that the court is "a dream for many but also a nightmare for others."

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