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Point of View by MANJU PARIKH

United States should embrace the International Criminal Court

In June, I traveled through Bosnia with faculty colleagues. We drove back from a trip to Srebrenica, the site of one of the bloodiest massacres during the Bosnian conflict.

I was curious to know the opinions of local Bosnians about the recent visit by U.S. Deputy Secretary of Defense Paul Wolfowitz, and the signing of an "Article 98 Agreement" between Bosnia-Herzegovina and the United States on May 16.

"Will Bosnia-Herzegovina ratify this bilateral agreement?" I asked Emina, our interpreter. She looked straight into my eyes and replied, "Does Bosnia have a choice?" Emina's response prompted me to re-examine the Bush administration's opposition to the International Criminal Court.

An Article 98 Agreement is a bilateral treaty signed between the United States and other nations to bypass the jurisdiction of the International Criminal Court.

By signing this agreement, each party agrees not to surrender, transfer or expel the citizens of the other party to a third country for the purpose of surrender to the International Criminal Court. The intent of the agreement is to circumvent jurisdiction of the court over U.S. citizens and of citizens of the countries that sign the Article 98 Agreement.

Although the Clinton administration had actively participated in the court formulation process and signed the treaty, the Bush administration opposed ratification and withdrew from participation. Instead, it began to encourage the signatory and nonsignatory nations to sign Article 98 agreements.

According to the State Department, 50 nations (mostly developing nations from Africa, Asia, Latin America and a few former Communist Eastern European countries) have signed such an agreement so far.

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Moreover, 35 nations that failed to sign such an agreement have lost U.S. military aid since July 1. Among this group are important countries with significant shared economic and strategic interests, such as Colombia, Brazil, Peru, Venezuela and some of the NATO aspirant nations of "New Europe," such as Bulgaria, Latvia, Estonia, Lithuania, Slovakia and Slovenia. Bulgaria, in fact, had even been a member of the coalition in the recent Iraq war.

These Article 98 agreements have caused confusion and discord with our allies, and deserve greater public awareness and scrutiny.

The International Criminal Court is the first permanent international court set up to deal with crimes of genocide, crimes against humanity and war crimes.

These days, when we hear the word "genocide," we think of horrific killings that took place in the former Yugoslavia and Rwanda in the 1990s. However, in the period after 1948, after the establishment of the United Nations and adoption of the Genocide Convention, the world has witnessed several cases of brutal mass killings of civilians, and their displacement -- for example, Kurds in Turkey and Iraq, East Timorese in Indonesia, Hutus in Burundi, Tutsis in Rwanda, and Cambodians under Pol Pot. Furthermore, continued violence and severe repression of civilians continues in Burma, Tibet, Sierra Leone and Liberia, to name a few.

— Growing awareness of these atrocities, and especially the fact that — these crimes are being committed with impunity, led to the creation of a permanent International Criminal Court that came into effect with the adoption of the Rome Statute in 1998. Some 136 countries signed the Rome treaty, and 90 have ratified it.

The International Criminal Court will act as a court of last resort to prosecute individuals who are responsible for the most heinous crimes: genocide, crimes against humanity and war crimes. Such prosecution will occur only when the countries are unwilling or unable to investigate and prosecute such crimes where they were committed.

So what are the concerns expressed by the Bush administration in its opposition to the court? They say that this court will be politicized and will be used to prosecute U.S. officials and military personnel abroad. This is a serious misconception, however, because the court is designed to deal with the most serious crimes, such as genocide. Its goal is to prosecute leaders known for promoting deliberate policies of genocide and serious war crimes -- such as Slobodan Milosevic of Serbia, Saddam Hussein of Iraq and Pol Pot of Cambodia.

Furthermore, there are several other safeguards that would prevent politically motivated cases against the United States. It cannot take up cases retroactively for events before April 2002. Its jurisdiction is strictly restricted to countries that ratified the Rome treaty. The crimes have to be committed by citizens of these nations and in their territory. The U.N. Security Council can

refer a case to the court, but that would be subject to U.S. veto. Even when a case is referred, a panel of three judges has to determine whether the court can hear the case.

While the United States can claim that its domestic courts would be vigilant in persecuting violations for serious crimes against humanity, what is the basis of confidence that other nations -- many of them poor, developing nations with inadequate resources and legal infrastructure -- would similarly adhere to a high standard of judicial fairness in dealing with their own war criminals?

The strategy pursued by the Bush administration against the court is causing further rift with our traditional allies. Zealously pursuing Article 98 agreements by the United States is seen by the European Union as an attempt to undermine the power of the International Criminal Court before it hears its first case. Now, it has refuelled trans-Atlantic tensions, as the new post-communist nations are torn between pleasing European leaders in order to join the EU, and placating the United States. The loss of \$47.6 million in military aid and \$613,000 in military education will be felt by the 35 nations who did not sign the Article 98 agreements.

Many Caribbean nations were resentful when they were threatened with loss of valuable aid for hurricane relief. A major recipient nation, Colombia, will lose \$5 million in aid this year, and could lose much more next year.

America's two neighbors, Mexico and Canada, have refused to sign Article 98 agreements, along with several important European nations.

At a time when we are more than ever in need of international cooperation in pursuit of several important concerns -- such as the war on terrorism, post-war reconstruction and restoring stability in Iraq and Afghanistan -- we need the support of our European allies. Unilateralism is a seriously flawed policy.

On June 19, Bosnia signed and ratified the Article 98 agreement with the United States. This ensures that U.S. military personnel or citizens, if charged with crimes against humanity in Bosnia, will not be turned over to the International Criminal Court. And if Bosnian Serb war criminals were caught in the United States, I presume they would be assured safe passage back to Banja Luka, Bosnia.

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