

BAMBOOZLING THE U.S. PUBLIC ABOUT THE I.C.C.

By Prof. Ben Ferencz

On July 1, 2002, for the first time since the Nuremberg war crimes trials, a permanent International Criminal Court (ICC) was created to hold accountable those leaders responsible for major war crimes and crimes against humanity. On July 12, 2002, the United States badgered the Security Council of the United Nations into granting a limited exemption for American peacekeepers. Overwhelming protests from other nations reflected their opposition to any attempt to undermine the new court.

Conservatives intent on destroying the new tribunal misstated the facts and have done a disservice to our nation and its military personnel.

The United States threatened to withdraw its peacekeeping forces unless the ICC was divested of any authority to try Americans. The main argument was that US military personnel might be subjected to politically motivated prosecutions by the new tribunal. The facts have been egregiously misstated. There is no such danger.

Only crimes committed after July 1, 2002, can be considered. Jurisdiction of the ICC is limited to genocide, crimes against humanity and major war crimes of concern to the international community as a whole. Surely, American soldiers do not intend to commit such crimes. 18 highly qualified judges, male and female, sworn to uphold the law and justice, will be elected from those many nations that have ratified the treaty creating the court.

No investigation can be started by the prosecutor without prior authorization by a three-judge panel. The accuser's country must be informed and the case transferred to them if they wish to try the suspect. Only leaders responsible for planning or perpetrating the major crimes are the intended targets and only if their own state is unable or unwilling to give them a fair trial. The US is not in that category.

The prosecutor must prove that the defendant knew the act was criminal and intended the unlawful consequences that followed. The Pentagon makes every effort to avoid criminality. Guilt must be established beyond reasonable doubt. Proceedings must be transparent for all the world to see.

At any time, if it appears necessary to prevent interference with pending peace negotiations, the Security Council can direct the ICC to cease and desist for 12 months. That period is renewable without limit. The US insistence upon getting advance immunity now and its involvement of the Security Council implies that the ICC is seen by our government as a threat to peace. Such unfounded allegations makes other nations nervous about US intentions.

The US representatives seem to ignore the fact that the tribunal will have the entire Assembly of State Parties looking over its shoulders at all times. The Assembly now numbers 76 nations, including the entire European Community, England, Canada, Australia and other faithful friends of the US. They control the budget and can fire

anyone who might be tempted to politicize the office. The ICC has no police force or enforcement mechanism. Its acceptance depends upon its reputation for integrity and competence. Politicization of the court would amount to its suicide.

The American Bar Association, the New York Bar Association and the leading international lawyers in the country, including every living former Nuremberg prosecutor, all agree that it is in the interest of the US and its military to support the ICC. I believe the majority of the American public, if they knew the truth, would share the same conclusion.

The Bush Administration's unparalleled renunciation of President Clinton's signature to the treaty astounded and angered many of our allies. Congressional legislation now pending would authorize US troops to liberate any American detained by the ICC. It is ridiculed by opponents as "The Hague Invasion Act." Arrogant unilateralism does not create world leaders -- nor does it encourage others to help us in combating terrorism.

The US inspired the world at Nuremberg by demanding that never again would crimes against humanity be allowed to go unpunished. We weaken our standing in the world when we insist that law applies to everyone else but not to the United States. No nation and no person has a sovereign right to commit crimes against humanity with impunity.

The best way to protect our military, and the peace of the world, is through universal and equal enforcement of the rule of law for everyone.

Benjamin B. Ferencz has had a distinguished career as a Professor of Law at Pace University, New York. He was a prosecutor at the Nuremberg war crimes trials after World War II.