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A Court for a New America

By ROGER COHEN**THE HAGUE**

Of the many issues that have soured relations between Europe and the United States under the Bush administration, few have been as poisonous as America's refusal to join the world's first permanent war crimes court here. The snub has been seen as a symbol of U.S. contempt for the rule of law.

In one of his last acts as president, Bill Clinton signed the founding treaty of the International Criminal Court, but the signature never led to U.S. ratification. On the contrary, President Bush withdrew the signature.

This remarkable, and gleeful, "unsigning" was followed by an aggressive campaign to oblige countries to make a formal commitment, under threat of U.S. reprisals, never to surrender U.S. citizens to the court.

Tom DeLay, the former Republican House leader, caught the snarling Bush-Cheney view of the institution when he referred to a "kangaroo court" that was a "clear and present danger" to Americans fighting the war on terror.

As a result, I can think of no better place for President-elect Barack Obama to start in signaling a changed American approach to the world, and particularly its European allies, than the International Criminal Court. Even short of American membership, which would involve a tough battle in Congress, there is much he can do. But "re-signing" followed by ratification should be Obama's aim.

The effect of U.S. rejection of the court, combined with the trashing of habeas corpus at Guantánamo Bay, has been devastating. Allies from Canada to Germany that are court members have been dismayed by the U.S. dismissal of an institution they see doing evident good.

Other smaller nations from Latin America to Africa, browbeaten by the United States on the issue of the court, have looked elsewhere for lost military or financial support. The American idea, grounded in legal principles, has been undermined.

It's time to look again at the International Criminal Court. Over the past six years, the court has achieved what Philippe Kirsch, its Canadian president, called "a great deal of acceptability." There are now 108 member countries, including every European Union nation except the Czech Republic, which appears set to join.

The United States stands alone among major Western industrial powers in rejecting the court: it has in

effect deserted those powers' attempt to mark a new century with a new commitment to eradicating genocide and crimes against humanity by ensuring there is no impunity for them. Washington has broken ranks with the Western liberal tradition of which it should be a cornerstone.

Initial U.S. fears that the court would be politically motivated have proved groundless. The court's respect for the principle that it can exercise its jurisdiction only when national courts prove unwilling or unable to do so has proved unbending. Attempts to bring British forces in Iraq before the court for alleged crimes have been rejected by the prosecutor, Luis Moreno-Ocampo of Argentina.

Obama should now confront U.S. responsibility, and signal a new commitment to multilateralism, in his attitude toward the court. After the terrible decade of the 1990s, with its genocides in Bosnia and Rwanda and the loss there of a million lives while the United States and its allies dithered, it is unconscionable that America not stand with the institution that constitutes the most effective legal deterrent to such crimes.

The International Criminal Court has filed charges against alleged war criminals in Congo, Central African Republic, Uganda and Sudan since it started work in 2002. The first trial, involving a Congolese warlord, Thomas Lubanga, is set to begin in January.

But it is in Sudan that the incoherence of American policy toward the court has been most evident. The United States is against impunity for the genocidal crimes in Darfur, yet it is not a member of the court seeking to prosecute those responsible.

The court has issued arrest warrants for a former Sudanese government minister, Ahmad Harun, and for Ali Kushayb, a leader of the government-backed janjaweed militia. In July, it requested an arrest warrant for Omar Hassan al-Bashir, the Sudanese president, on charges of genocide, but judges are still reviewing whether to push ahead with the prosecution.

When I asked Brooke Anderson, Obama's chief national security spokeswoman, about policy toward the court, I received this e-mail response: "President-elect Obama strongly supports the I.C.C.'s efforts to investigate and prosecute those responsible for atrocities in Sudan."

That's a good start and a good signal.

Obama should follow up by making sure that, even if court membership is not quickly attainable, the United States plays a part in the court's 2010 review conference. This will address critical issues including how to define the crime of aggression, and may extend to whether the court can exercise jurisdiction in cases involving terrorism and drug-trafficking.

The next president should also ensure that the United States cooperates with the court in providing information and assisting in making arrest warrants effective. Its influence on the court's credibility could be enormous.

Only by aligning America again with international law can the damage inflicted on America's image and appeal by the Bush administration be undone.

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