

U.S. Policy on the International Criminal Court

Signing and “Unsigning” the ICC’s Rome Statute

President Clinton signed the Rome Statute of the International Criminal Court (ICC) on December 31, 2000, the last day that the treaty was open for signature. The Bush administration “nullified” the U.S. signature by sending a letter to U.N. Secretary General Kofi Annan on May 6, 2002, expressing its intention not to be bound by the treaty.

Security Council Resolution 1422

When the Bush administration could not obtain an exemption from ICC jurisdiction for its officials and personnel involved in U.N. authorized missions, the U.S. vetoed the extension of the Bosnian peacekeeping mission on June 30, 2002. On July 12, 2002, after two weeks of debate and an open meeting at which more than 100 countries expressed their opposition to the U.S. proposal, Security Council members conceded to U.S. demands and adopted Resolution 1422, which provides personnel and officials from non-ICC member states participating in U.N. authorized missions with a one-year exemption from the ICC. Many countries and leading NGOs agreed that this resolution was unnecessary, outside the scope of the Security Council’s authority, and not allowed under the Rome Statute.

Security Council Resolution 1487

On June 12, 2003, the Security Council adopted a resolution renewing the exemption for U.N. peacekeepers from ICC jurisdiction for another year. However, France, Germany and Syria abstained from the vote, and Kofi Annan and more than 70 countries expressed their strong disapproval at an open meeting prior to the vote. Concerned about the questionable legality of the resolution and its effect on the integrity of the Security Council, peacekeeping, and the ICC, these countries, including many Security Council members, made clear that this renewal would not be automatic in the coming years. However, the Bush administration continues to insist on similar language in individual peacekeeping resolutions, such as the resolution authorizing intervention in Liberia (August 2003).

Bilateral Immunity Agreements

The Bush administration has pursued bilateral immunity agreements (so-called “Article 98” agreements) with other countries to prevent the surrender of all U.S. nationals and current and former employees of the U.S. government and military (including non-nationals) to the ICC. So far 82 countries have reportedly signed such agreements, including 34 ICC member states. Many small, poor, or conflict-ridden countries have signed BIAs under the threat of losing their U.S. military assistance. The EU countries, Canada, Argentina, South Africa and other major U.S. allies have firmly refused to sign these agreements, arguing that to do so would put them in breach of their legal obligations under the Rome Statute.

FACT SHEET

American Servicemembers' Protection Act (ASPA)

On August 2, 2002, President Bush signed the American Servicemembers' Protection Act (ASPA) into law, codifying U.S. opposition to the ICC. Under ASPA, many ICC States Parties had their military assistance suspended as of July 1, 2003. (NATO and major non-NATO allies were specifically exempted.) President Bush has issued waivers for 24 countries that are States Parties, receive military assistance, and have signed bilateral immunity agreements. Six other countries set to join NATO in 2004 received partial waivers, even though they have refused to conclude a BIA. However, this leaves more than 20 allies that are members of the Court, but have not signed BIAs, without U.S. military assistance, despite the law's provisions that allow President Bush to issue waivers for national security purposes. Affected countries include important partners in staffing peacekeeping missions around the world and combating the global drug trade.

As the ICC Considers Its First Cases...

Now that the ICC is publicly tracking the conflicts in the Democratic Republic of the Congo and Uganda and might take up its first case within a year, how will the U.S. relate to the Court in practice: Will the U.S. cooperate with the ICC, ignore it, or obstruct its work? Currently, funding restrictions in U.S. law would make it very difficult for the U.S. to cooperate with any ICC investigation or trial, including providing intelligence information or extraditing a suspect to the Court. In addition, because the ICC might need to rely on security provided by UN peacekeepers in conflict zones, the U.S. could undermine the ICC's work by blocking UN efforts to cooperate with the Court. The ICC is firmly established and has broad support around the world, but the continuation of current U.S. policy towards the ICC could hamper and slow the Court's work during its first years.