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## **BUSH, KERRY SPAR OVER INTERNATIONAL CRIMINAL COURT** ICC Among Law-Related Campaign Issues Over Which Candidates Differ

BY JAMES PODGERS

The Bush administration "needlessly alienated our friends and allies by its ham-handed approach to the issue of the International Criminal Court," says a statement submitted to the *ABA Journal* on behalf of Democratic presidential candidate John Kerry.

But President Bush's campaign says "submission to the jurisdiction of the ICC would put our troops and officials at unacceptable risk of politically motivated prosecutions."

Those contentions are among the two campaigns' responses to a series of questions on issues of particular interest to lawyers. The *ABA Journal* submitted the questions in writing to each candidate through his campaign staff, and the responses came back through the staffs rather than directly from the candidates.

Responses to the rest of the *ABA Journal's* questions are published in the magazine's October issue. Election day is Nov. 2.

The International Criminal Court was created under a statute negotiated in 1998 in Rome and has been in official existence since July 1, 2002. The Rome Statute has been ratified by 97 countries, including most European nations and other U.S. allies. The United States, however, opposes the ICC, claiming that the court's jurisdiction is too broad and might extend to members of the U.S. military.

Here are the candidates' responses to two questions concerning international law issues:

**ABA Journal:** *In pursuing the war against terrorism, how should conflicts between U.S. policy concerns and the principles of international law be reconciled?*

**Bush:** International law and the United Nations Charter both affirm the right of all nations to act in self-defense to safeguard their national security. There can be no doubt that terrorist groups such as al-Qaida represent a direct threat to the security of the United States, and that international law permits the United States to take action, including military action, to eliminate that threat.

International law also supports the manner in which the United States has waged its war on terror. The United States is committed to honoring its treaty obligations, including the Geneva Conventions and the Convention Against Torture. Although al-Qaida is not a party to the Geneva Conventions, and although the Taliban has not followed the rules that would qualify its members for prisoner-of-war protections, I have affirmed that our armed forces are to treat captured members of al-Qaida and the Taliban humanely, in keeping with the principles of these conventions. In Iraq, where the Geneva Conventions apply, the United States has, from the outset, affirmed our commitment to our military's observance of the conventions' guarantees, and has taken action to appropriately proceed against those who have violated the military's rules for the treatment of detainees. In sum, the United States abides by its international law obligations, and has aggressively waged its war on terror in a manner that is consistent with those obligations.

**Kerry:** As a former prosecutor, I appreciate the importance of the rule of law and accountability. I would never give any nation or international institution a veto over our national security. At the same time, we must uphold U.S. laws and meet our international commitments. America will be stronger and more secure in a world in which the rule of law is respected.

**ABA Journal:** *The International Criminal Court has been in existence for more than two years. Under what circumstances would you ask the Senate to ratify the 1998 Rome Statute that created the ICC? Short of ratification, what should the relationship between the ICC and the United States be?*

**Bush:** Submission to the jurisdiction of the ICC would put our troops and officials at unacceptable risk of politically motivated prosecutions. For this reason, when President Clinton signed the ICC treaty, he explicitly stated that the treaty would have to be altered significantly before the United States could consider joining it. The reforms necessary to protect our troops have not yet been instituted, and until they are, no president should consider sending the treaty to the Senate for ratification.

I believe that every country is obligated to take action against persons subject to their jurisdiction who violate fundamental forms of international law. Where countries are not able to do so, specific international tribunals can be formed to hold individuals to account, like in The Hague tribunal that is now hearing the prosecution of Slobodan Milosevic. We are now working with countries around the world to sign Article 98 agreements. These agreements, allowed under the Rome Statute, would protect U.S. nationals by not allowing them to be surrendered to the ICC without the consent of the U.S. government. I believe this solution will provide needed protections for our personnel while respecting other countries' desire to join the ICC.

**Kerry:** The Bush administration needlessly alienated our friends and allies by its ham-handed approach to the issue of the International Criminal Court. My administration will carefully consider the full range of U.S. interests at stake with respect to the court as we review our policy and fashion a more constructive approach.

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