

AMERICAN BAR ASSOCIATION
Governmental Affairs Office
740 Fifteenth Street, NW
Washington, DC 20005
ph: 202-662-1760
fx: 202-662-1762

April 11, 2002

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Today marks a historic milestone in the rule of law: the sixtieth ratification of the Rome Statute of the International Criminal Court (ICC). Under the Rome Statute, the sixtieth ratification triggers its entry into force, which will now occur on July 1, 2002. The United Nations is recognizing this momentous occasion in a ceremony at UN Headquarters in New York. The American Bar Association (ABA) joins in recognizing this extraordinary event, and congratulates the governments, nongovernmental organizations and individuals that have worked with such resolute determination to realize the dream of a permanent International Criminal Court. As 139 countries have signed the Rome Statute, ratifications are expected to significantly surpass sixty by the time it enters into force. The vast majority of countries ratifying the Rome Statute have democratic governments.

The ABA has been a consistent supporter of the creation of the ICC. An ABA delegation, which included then-ABA President Jerome J. Shestack, attended the Diplomatic Conference in July 1998 that drafted the Rome Statute. In February 2001, the ABA House of Delegates formally recommended that the United States government accede to the Rome Statute. As you know, the ICC will be a court of defined jurisdiction covering only the most serious crimes under international law: genocide, war crimes and crimes against humanity. The ICC will not replace national jurisdictions. On the contrary, the Rome Statute recognizes that prosecution by national courts is preferable, and that the ICC should only be permitted to act if national courts are unavailable or ineffective. To this end, the Rome Statute prevents the ICC from investigating any alleged crimes if a national court is willing and able to investigate. This protection should suffice to allay concerns of the US government that American servicemembers could be targeted by the ICC.

The ICC's exercise of jurisdiction is further circumscribed by stringent safeguards that are designed to prevent frivolous or politically motivated prosecutions. Most of these safeguards, in fact, were included in the Rome Statute at the insistence of the US government. The Rome Statute also includes

extensive rights and protections for defendants and persons accused of crimes which are functionally equivalent to the protections afforded by our own Bill of Rights. In fact, much of the Rome Statute - as well as a supplementary document called the Elements of Crimes - reflects the substantial contributions of the US negotiating team that participated in the drafting of the Rome Statute for many years.

The ABA urges the US government, which has long been the world's preeminent advocate for human rights and the rule of law around the world, to reconsider its opposition to the ICC in view of the historic occasion of the sixtieth ratification and the entry into force of the Rome Statute on July 1, 2002.

In particular, we understand that the US government may seek to "unsign" the Rome Statute, and strongly recommend against such an unprecedented measure. To our knowledge, no country has ever "unsigned" an international treaty. For the US to "unsign" the Rome Statute, therefore, may have long-lasting and unforeseen consequences. We also oppose any legislative and bilateral measures intended to punish those countries that have ratified the Rome Statute. Such steps cannot have any beneficial results, especially when the US is leading a multinational coalition against terrorism.

The US stands alone among Western democracies in its opposition to the ICC. The isolation of the US on this issue is especially regrettable in view of the distinguished history of leadership of the US favoring international criminal tribunals. The US, of course, spearheaded the creation and operation of the international criminal tribunals for Nuremberg, Tokyo, the former Yugoslavia and Rwanda. Our history and our values should compel us to also support the ICC.

Thank you for the opportunity to express our views on this important matter.

Respectfully submitted,

Robert E. Hirshon
President, American Bar Association

cc: The Honorable Colin Powell
The Honorable Donald Rumsfeld
The Honorable Condoleeza Rice