

***AMICC'S ANALYSIS OF REMARKS BY US DEPARTMENT OF STATE LEGAL ADVISER JOHN B. BELLINGER III,  
"THE UNITED STATES AND THE INTERNATIONAL CRIMINAL COURT:  
WHERE WE'VE BEEN AND WHERE WE'RE GOING", CHICAGO, ILLINOIS, APRIL 25, 2008***

On April 25, 2008, US Department of State Legal Adviser John B. Bellinger III addressed the Midwest Regional Conference on International Justice in Chicago on "The United States and the International Criminal Court: Where We've Been and Where We're Going" (available at <http://www.state.gov/s/l/rls/104053.htm>). There are several elements of this speech regarding US policy toward the Court which require analysis and clarification.

In his remarks, Bellinger argued that "a relatively straight line" runs from the positions of Congresses of the 1990s and the Clinton Administration through the Rome negotiations to the current Bush Administration. While some, but not all, of the objections made by President Bush were shared by President Clinton, Bellinger's speech did not describe the sharp differences in policy between the two administrations which are still formally in effect. Further, he did not acknowledge that a future administration which has similar concerns about the ICC may choose to address them and deal with the Court much differently.

Soon after taking office, the Bush Administration departed from Clinton policy and stopped attending all meetings of the Assembly of States Parties of the ICC. On May 6, 2002 US Under Secretary of State for Political Affairs Marc Grossman formally announced the Bush Administration's policy on the ICC which is still in effect. Grossman stated that the US would not support the Court and would completely disengage from it, but would respect the decision of those nations which chose to join the ICC.

During its first term, in contradiction of the formal policy of benign disengagement, the Bush Administration began negotiating Bilateral Immunity Agreements (BIAs) intended to protect American citizens from the Court's jurisdiction. Many UN member states which support the ICC have good reason to believe that the conduct of the BIA campaign was designed to discourage ratifications of the Rome Statute. This effort to deny the Court support, as well as US-sponsored Security Council resolutions intended to shield US nationals on UN peacekeeping missions from the ICC, made it clear that the US did not respect other nations' decisions to join the Court.

Changing circumstances also forced the Bush Administration in its second term to diverge from the Grossman policy statement, especially because of the profound effect of the crisis in Darfur. In response to pressure from its constituents and internationally, the Bush Administration did not block the March 2005 Security Council referral of the situation in Darfur to the ICC. Subsequent US dialogue with and offers of cooperation to the Court on Darfur are also in conflict with current US policy of complete disengagement. Statements regarding the US willingness to cooperate with the ICC on Darfur are not new but have become more qualified over time. The US stated in 2005 that it "stands ready to assist" on Darfur but now, according to Bellinger, "we would be prepared to consider an appropriate request from the ICC for assistance in its Darfur work consistent with applicable U.S. law." (More statements are available at <http://www.amicc.org/docs/CooperationUSICC.pdf>.)

Bellinger also suggested that the next US administration may share the same concerns as previous administrations, despite positive yet cautious statements on the ICC by the current leading candidates of both





parties (available at <http://www.amicc.org/docs/2008%20Candidates%20on%20ICC.pdf>). Nevertheless, in contrast to the current policy of disengagement, Bellinger stated that the 2010 Review Conference could provide an opportunity for the next administration to address US concerns about the Court. He did not acknowledge, however, that future administrations will approach the ICC and their concerns about it taking into account other aspects of their foreign policies and other factors such as the performance of the Court. The commitment of 106 nations to the Rome Statute, including most American friends and allies – far more than at the end of the Clinton Administration and the start of the Bush Administration – will also influence a future President’s engagement with the Court.

In sum, the Bush Administration established an ICC policy quite different from that of the Clinton Administration. In addition, the Bush policy has not been consistent, failing to fully disengage from the Court or to respect the decision of other nations to join it. Bellinger’s remarks in Chicago did not recognize these policy differences or inconsistencies, giving the false impression that the next administration would have to continue a consistent 20-year policy toward the ICC.

*Updated April 30, 2008*

