

US policy on international court unlikely to shift

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Associated Press

October 14, 2008

WASHINGTON --Long held U.S. antagonism to the International Criminal Court could soften under a new president, but that does not mean that either Barack Obama or John McCain is ready to sign on.

Both Obama and McCain generally favor the concept of a standing tribunal to deal with war crimes, but they share President Bush's anxiety about the potential of politically motivated prosecutions of U.S. officials or soldiers.

They do not share, however, what has been at times Bush's outright hostility to the court.

Obama "has a wait-and-see, go-slow approach. The policy is unchanged from where he has been," said Mark Lippert, a foreign affairs adviser for the Illinois Democrat.

McCain's campaign did not respond to requests for comment, but in a written response to questions from an international legal affairs organization, the Arizona Republican said, "I want us in the ICC, but I'm not satisfied that there are enough safeguards."

The court has hardly been mentioned during the campaign for the presidency.

"Is it in the same league as nonproliferation, Iran, Afghanistan? No," Lippert said. "But it registers on (Obama's) radar."

Created by the Rome Statute in 1998, after years of negotiation, the ICC was seen as a permanent extension of the Nuremberg war crimes trials that judged Nazi war crimes suspects after World War II. The new court's jurisdiction covers war crimes, crimes against humanity and genocide.

The court is not an organ of the United Nations, but the U.N. Security Council can refer cases to its prosecutor or temporarily suspend but not cancel investigations. It is that lack of accountability to the Security Council, where the United States has a veto, that worries many U.S. policymakers.

The cautionary tone about the court began with Bush's predecessor, President Clinton. He did not sign the Rome Statute until Dec. 31, 2000, three weeks before Bush was to move into the White House. Clinton recommended that his successors follow his lead and refrain from seeking Senate ratification of his signature "until our fundamental concerns are satisfied."

Not only did Bush not submit the document to the Senate for ratification, he suspended Clinton's signature. "The United States does not intend to become a party to the treaty.

Accordingly, the United States has no legal obligations arising from its signature on Dec. 31, 2000," Bush wrote.

Buoyed by a Republican Congress and numerous like-minded Democrats, Bush actively sought during his first term to ensure that the United States and Americans had nothing to do with the court.

The Bush administration vigorously opposed it at the United Nations. After a terrorist bomb killed 22 U.N. workers in Baghdad in 2003, the United States refused to allow the Security Council to pass a resolution to protect humanitarian aid workers because it mentioned that the ICC had criminalized such attacks. A watered-down version was passed that did not mention the court.

A law passed in mid-2002 withheld U.S. military aid and training from signatories of the Rome Statute who refused to guarantee to protect Americans from the court.

Bush imposed the military cuts to 35 countries in the first year of the Servicemembers' Protection Act, and more than 100 countries eventually signed the required guarantees. With congressional support, Bush waived the military aid cuts for several countries, some in appreciation for help in the U.S.-led military operations in Afghanistan and Iraq, others to support former Soviet bloc countries' entry into NATO.

International opposition to the policy was heated, and some U.S. officials complained about the law as well. In testimony to a congressional panel in 2003, Army Gen. Bantz Craddock said enforcement of the servicemembers law had made it impossible for him to do his work as head of the Southern Command, in charge of U.S. forces in Latin America. The next day, Secretary of State Condoleezza Rice told reporters the policy had been "sort of the same as shooting ourselves in the foot."

Bush appeared to soften his position on the court in 2005, at the start of his second term.

The first solid evidence came when the United States abstained rather than vetoed a U.N. resolution that referred to the ICC the investigation of killings and other crimes in Darfur. The administration later openly endorsed the prosecution by the ICC of people involved in the Darfur violence.

Bush later reinstated some aid to dozens of countries, both the military aid and economic aid intended for strategically important allies targeted by other legislation. He also signed legislation in January that omitted all military aid cuts to signatories who refused to shield Americans from the court.

Other punitive legislation, which withholds a specific type of economic aid from some recalcitrant nations, remains on the books four years after it was enacted although its support has dwindled in Congress.

In a speech recognizing the 10th anniversary of the Rome Statute last April, John B. Bellinger, the State Department's top lawyer, said the United States will cooperate actively with the court but will not ratify the Rome Statute for a long time. He said the U.S. relationship with the court will depend on "the extent to which the United States and ICC supporters agree to disagree."