

BILATERAL IMMUNITY AGREEMENTS

US Campaign

The Bush Administration has been conducting a vigorous campaign of trying to conclude bilateral international agreements that will remove US nationals from the reach of the Court. The administration claims that these agreements meet the requirements of Article 98(2) of the ICC Statute. That article reads:

"The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender."

The United States is pressing on countries a [draft text](#) that would prevent them from delivering any of a broad group of persons—including both US and non-US nationals—to the ICC. "Persons" are defined in the agreement as,

"[C]urrent or former Government officials, employees (including contractors), or military personnel or nationals of one Party."

The US says that this agreement is authorized by 98(2). In fact, 98(2) only addresses treaties between countries covering persons that they have sent to each other on official business. The Article's wording explicitly requires the existence of a "sending state" relationship, such as when US military and civilian personnel are sent to a receiving state by the US government pursuant to Status of Forces or Status of Mission agreements (SOFAs or SOMAs). Such treaties often say that if such a person commits a crime in a country where he or she has been sent, he or she is to be returned to the sending country.

While many people have the impression that Article 98(2) was drafted by the US to create a loophole from the jurisdiction of the ICC, it actually grew out of the concerns of many states that their existing obligations under surrender agreements, especially SOFAs and SOMAs could conflict with their obligation to cooperate with the ICC. Therefore, parallel to Article 98(1), which addresses conflicts between the Statute and diplomatic immunity, Article 98(2) was developed to resolve potential conflicts in other kinds of situations where individuals have entered a state's territory on official US business, whether pursuant to a SOFA, SOMA, or perhaps even an extradition agreement.

The agreement the United States wants is not about the conduct of official business. It applies to any of a wide variety of persons who may be on the territory of either party for any purpose at any time. The Rome Statute does therefore not authorize this agreement and countries adhering to it will violate their obligations to the Court under the Statute.

Although the US has said that it is not applying pressure on states to sign non-surrender agreements, some US government officials have indicated that a state's unwillingness to sign could affect US support for its entry into NATO and lead to the cut off of US military aid. While some officials have argued that the administration is obligated by the American Servicemembers' Protection Act (ASPA) to withhold military aid from states parties that do not conclude such agreements, administration Spokesperson Reeker has acknowledged that the ASPA "does not prevent the United States from providing military assistance to any country when the president determines that such assistance is important to the national interests." There have been reports in the media and by foreign officials and NGOs that threats have been made toward smaller countries to cut off non-military aid as well.

Recent Developments

- Citizens for Global Solutions, [Breakdown of Countries Concluding and Refusing to Conclude BIAS](#), including amount of funds at stake, January 2, 2004
- **On July 1, 2003, the President announced suspension in military aid to 35 state parties to the ICC.** Since that time, the President has announced [waivers](#) for the ASPA prohibition on US military assistance to numerous ICC parties.
- **The US ICC BIA team:** There is a core group within the State Department that has consistently been at the forefront of the US campaign against the ICC. This team has been assembled by John Bolton, the Undersecretary for Arms Control and International Security. It has been used to staff the delegations that negotiate bilateral immunity agreements with state parties to the Rome Statute. From the beginning of the Bush Administration, Mr. Bolton has been given the authority to develop and pursue the US policy of hostility towards the ICC. This reflects a political decision by the Administration to satisfy the demands of an important part of the President's political base. Mr. Bolton represents this

constituency in the Administration. In response to the approach of the July 1st deadline established by the American Servicemembers Protection Act for cutting off military assistance to countries that do not sign the immunity agreements, the US has called on Bolton's team with greater frequency. Notable and senior members include Patricia McInerney and Steven Rademaker, who have served as republican staff members in the Senate Foreign Relations Committee and the House International Relations Committee, respectively. [Attached](#) is a more detailed overview of the team's membership. The exact membership may be larger than this initial list. We will revise it as more information becomes available.

- In response to the **European Union** common policy opposing opposing bilateral immunity agreements (BIAs) and continued difficulties faced by the US in convincing countries to sign on, in June 2003 "[t]he Bush administration charged the European Union with actively undermining US efforts to shield Americans from prosecution by the International Criminal Court and warned that the impact on transatlantic relations will be "very damaging" if the EU does not stop." See [Colum Lynch, Wash. Post](#).
- The **African-Caribbean-Pacific Group of States, Canada, Mexico and Colombia** are refusing to give in to US demands.

In a June 30, 2003 [letter to Secretary Powell](#), Human Rights Watch noted many examples of American diplomats going far beyond the provisions of the American Servicemembers' Protection Act (ASPA) to pressure small countries.

- **Croatia:** US Ambassador Lawrence Rossin recently published an article in Croatia (it is on the US Embassy website) raising questions about the viability of Croatia's accession to NATO if Zagreb does not sign a bilateral immunity agreement.
- **Bahamas:** US Ambassador Richard Blankenship publicly warned that if the Bahamas did not support the US position on the ICC, a significant amount of US aid would be withheld, including aid for paving and lighting an airport runway.
- **The Caribbean Community (CARICOM):** On May 23, it was reported that US Assistant Secretary of State Stephen Rademaker told foreign ministers of the CARICOM that they would lose the benefits of the New Horizons program if they did not sign agreements. The program, originally conceived to provide hurricane relief to countries at risk from tropical storms, now includes rural dentistry and veterinary programs.
- **Comoros:** According to a Comorese diplomat, the United States informed his country that a previously promised USAID project has been relocated to Djibouti following the latter's signing of a bilateral agreement.
- **Niger:** According to a senior Ministry of Foreign Affairs official, the United States threatened to suspend cooperative development projects if Niger does not sign a bilateral agreement.
- **Honduras:** Government officials and legislatures stated that the United States threatened important non-military assistance to Honduras if an agreement was not ratified by July 1.
- **Bosnia:** Before Bosnia's signature and subsequent ratification of an agreement, Bosnian Foreign Minister Mladen Ivanic said that the US message was that it would be "very difficult to continue military and other assistance" if Bosnia did not sign. Bosnia was reported to have been told that the Department of State would review "dispensable programs," including economic aid.

HRW also pointed out cases where U.S. pressure is chilling state interest in ratifying the ICC treaty:

- **The Philippines:** According to Philippine government officials, quoted in the local media, the United States has linked \$30 million in additional military assistance to prevent Manila from ratifying the ICC Treaty.
- **Georgia:** Government sources told HRW that ratification of the ICC Treaty is stalled in the President's office as "a direct consequence of US pressure." Georgia has already signed an immunity agreement.

Countries Concluding Bilateral Agreements

Afghanistan % (SP) 9/20/02	Georgia # % (S) 2/10/03	Nepal (N) 12/31/02
Albania # @ (SP) 5/2/03	Ghana # \$ (SP) 5/2/03	Nicaragua # (N) 6/3/03
Antigua and Barbuda \$ (SP) 9/30/03	Guinea (S) 9/03	Nigeria \$ (SP)
Azerbaijan (N) 2/26/03	Guyana (S) 12/13/03	Pakistan (N) 7/21/03
Bahrain (S) 2/6/03	Honduras # % (SP) 9/19/02	Palau (N) 9/13/02
Bangladesh (S) 8/17/03	India # (N) 12/26/02	Panama # % (SP) on or before 6/26/03

Belize% (SP) 12/03	Israel# (S) 8/4/02	Philippines# (S) 5/13/03
Bhutan (N) 5/2/03	Ivory Coast (N) 7/03	Romania* ^ ! (SP) 8/1/02
Bolivia@ (SP) 5/19/03	Kazakhstan (N) 9/22/03	Rwanda (N) 3/4/03
Bosnia and Herzegovina# @ (SP) 5/16/03	Kuwait± (S) 11/20/02	Senegal% (SP) 7/03
Botswana\$ (SP) 6/30/03	Kyrgystan (S) 12/8/03	The Seychelles (S) 6/03
Brunei± (N) ?/?/03	Laos (N) ?/?/03	Sierra Leone# % (SP) 3/31/03
Cambodia (SP) 6/27/03	Liberia (S) 10/8/03	Solomon Islands (S) 9/20/03
Central African Republic (SP) 3/?/04	Macedonia, FRY# % (SP) 6/30/03	Sri Lanka (N) 11/22/02
Chad (S) ?/?/03	Madagascar (S) 5/2/03	Tajikistan# % (SP) 8/27/02
Colombia# \$ (SP) 9/16/03	Malawi\$ (SP) 9/20/03	Thailand (S) 6/3/03
Democratic Republic of the Congo% (SP) 4/2/03	Maldives (N) 5/2/03	Togo (N) 6/13/03
Djibouti^ (SP) 1/24/03	Marshall Islands (SP) 9/10/02	Tonga (N) 4/2/03
Dominican Republic (SP) 9/16/02	Mauritania# (N) 9/17/02	Tunisia± (N) ?/03
East Timor# \$ ^ (SP) 8/26/02	Mauritius* @ (SP) 6/26/03	Turkmenistan (N) ?/?/03
Egypt± (S) 3/5/03	Micronesia (N) 9/24/02	Tuvalu (N) 1/30/03
El Salvador# (N) 10/25/02	Mongolia% (SP)	Uganda\$ (SP) 6/12/03
Fiji% (SP) 11/03	Morocco± (S)	Uzbekistan (S) 9/18/02
Gabon% (SP) 5/2/03	Mozambique (S) 7/14/03	Zambia (SP) 7/1/03
Gambia# % (SP) 10/5/02	Nauru (SP) 2/26/03	

S = signatory / SP = State Party / N = neither

+ **Unconfirmed.**

* *States indicating that these agreements **must be approved at the parliamentary level** before they become binding; other countries may also require parliamentary approval.*

Agreements in force (indicates ratification of BIA or signature of executive agreement)

^ *Countries whose ASPA military aid cut off was waived by President Bush on July 1, 2003 until **November 1, 2003.***

@ *Countries whose ASPA military aid cut off was waived by President Bush on July 1, 2003 until **January 1, 2004.***

% *Countries receiving a **permanent waiver** from President Bush, contingent on the continuation in force of the BIA.*

\$ *Countries for whom **sanctions have been lifted** by President Bush.*




! *Received a **six-month extension** on November 1, 2003.*

Governments publicly indicating that they are unlikely to sign such an agreement include Argentina, Austria, Canada, Croatia, France, Germany, the Netherlands, Norway, Sweden, Switzerland, Trinidad and Tobago and Yugoslavia. It is also noteworthy that [Secretary of State Powell announced an increase in military assistance to Columbia](#) despite his inability to persuade President Uribe to exempt Americans serving in Colombia from the ICC. [Read more.](#)

Presidential Waivers Granted



[Memo for the Secretary of State](#), Certification Concerning US Participation in the United Nations Stabilization Mission in Haiti Consistent with Section 2005 of the American Servicemembers' Protection Act, June 14, 2004.

-  [Presidential Determination No. 2004-27](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, April 6, 2004. (Central African Republic and Guinea [permanent].)
-  [Presidential Determination No. 2004-17](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, December 30, 2003. (Belize, Former Yugoslav Republic of Macedonia, Panama, and Fiji [permanent])
-  [Presidential Determination No. 2004-9](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, November 21, 2003. (Bulgaria, Estonia, Latvia, Lithuania, Slovakia, and Slovenia, with respect to military assistance for only certain specific projects the President has decided are needed to support the process of integration of these countries into NATO, or to support Operation "Enduring Freedom" or Operation "Iraqi Freedom.")
-  [Presidential Determination No. 2003-11](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, November 1, 2003. (Angigua and Barbuda, Botswana, East Timor, Ghana, Malawi, Nigeria, and Uganda [permanent]; Romania [six months])
-  [Presidential Determination No. 2004-30](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, October 6, 2003. (Colombia [permanent])
-  [Presidential Determination No. 2003-40](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, September 24, 2003. (Afghanistan, Democratic Republic of the Congo, Georgia, and Honduras [permanent])
-  [Presidential Determination No. 2003-27](#), Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court, July 1, 2003. (Gabon, the Gambia, Mongolia, Senegal, Sierra Leone, and Tajikistan [permanent]; Afghanistan, Djibouti, Democratic Republic of Congo, East Timor, Ghana, Honduras, and Romania [November 1, 2003]; Albania, Bolivia, Bosnia-Herzegovina, Botswana, Former Yugoslav Republic of Macedonia, Mauritius, Nigeria, Panama, and Uganda [January 1, 2004])
-  [World Federalist Association Factsheet: Breakdown of Countries Granted Waivers Compared to Those Concluding BIAs](#)
























Texts of Bilateral Agreements

-  [Text of agreement between the US and Albania](#) (signed May 2, 2003)
-  [Text of agreement between the US and East Timor](#) (signed August 23, 2002)
-  [Text of agreement between the US and India](#) (signed December 26, 2002)
-  [Text of agreement between the US and Nepal](#) (signed December 31, 2002)
-  [Text of agreement between the US and Philippines](#) (signed May 13, 2003)
-  [Text of agreement between the US and Romania](#) (signed August 1, 2002)
-  [Text of agreement between the US and Uganda](#) (signed June 12, 2003)
-  [Text of agreement between the US and Uzbekistan](#) (signed September 18, 2002, entered into force January 7, 2003)
-  [Proposed text of bilateral immunity agreement with the United States](#) (July 2002)

International Reaction

[Click here to read about the international reaction to US efforts to conclude bilateral immunity agreements.](#)

Official US Statements

-  [Adam Ereli, Deputy Spokesman, Department of State Daily Press Briefing, November 3, 2003](#), answering a question as to whether national interest waivers will be granted for countries contributing to the Iraq war or war on terror.
-  [John R. Bolton, Under Secretary for Arms Control and International Security](#), Remarks at the American Enterprise Institute, "American Justice and the International Criminal Court," November 3, 2003
-  [Suspension of Military Assistance to Colombia \(Taken Question\), Office of the Spokesman, September 30, 2003](#)
-  [Lincoln P. Bloomfield, Jr., Assistant Secretary for Political-Military Affairs, Remarks to the Parliamentarians for Global Action](#), Consultative Assembly of Parliamentarians for the ICC and the Rule of Law United Nations, New York, September 12, 2003
-  [Secretary Rumsfeld Is Interviewed on TV Caracol in Bogota, Columbia, as Released by the Department of Defense](#), August 19, 2003, discussing BIAs and Colombia
-  [Remarks of Lincoln Bloomfield, Assistant Secretary for Political-Military Affairs](#) (reporting to John Bolton), July 17, 2003, explaining the US approach to the ICC and BIAs.
-  [Excerpt from Interview with Secretary Powell by the South African Broadcasting Corp., July 10, 2003.](#)
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, July 3, 2003](#), reacting reports of suspension of military aid.
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, July 2, 2003](#), reacting reports of suspension of military aid.
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, July 1, 2003](#), reacting reports of suspension of military aid.
-  [Ari Fleischer, Spokesman, White House Daily Press Briefing, July 1, 2003](#), reacting to reports that 50 countries had been declared ineligible for military aid.
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, June 30, 2003](#), reacting to question about approach of July 1 ASPA funding cut-off deadline.
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, June 12, 2003](#), reacting to question about approach of July 1 ASPA funding cut-off deadline
-  [Philip Reeker, Deputy Spokesman, Department of State Daily Press Briefing, June 10, 2003](#), reacting to question about reported warning given to EU not to "interfere" in BIA negotiations.
-  [Excerpt from Press Conference with Secretary of State Colin Powell, Bogotá, Colombia, December 4, 2002](#), explaining Colombia's rejection of the US-proposed bilateral immunity agreement.
-  [News Briefing by Ari Fleischer, White House Press Secretary, October 10, 2002](#), explaining US dissatisfaction with EU guidelines for Article 98(2) agreements.
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, October 1, 2002](#), reacting to announcement of EU guidelines for Article 98(2) agreements.
-  [President Bush on bilateral immunity agreements, September 30, 2002](#), remarks prior to discussions with president Alvaro Uribe of Colombia and an exchange with reporters
-  [Press briefing with Pierre-Richard Prosper, U.S. Ambassador-at Large for War Crimes Issues, on progress with bilateral immunity agreements \(London, UK\), September 24, 2002](#)
-  [Federal News Service, State Department Regular Briefing with Philip Reeker, Deputy Department Spokesman, August 12-13, 2002](#)
-  [U.S. and Romania Sign Article 98 Agreement, Press Statement, Philip T. Reeker, Deputy Spokesman, August 1, 2002](#)
-  [Richard Boucher, Spokesman, Department of State Daily Press Briefing, July 25, 2002](#), discussing ongoing US negotiation of bilateral immunity agreements
-  [Secretary of Defense Rumsfeld, Defense Department Operational Update Briefing June 26, 2002](#), discussing US desire to use the Security Council to obtain exemptions for its servicemembers, US pursuit of bilateral immunity agreements, and implying that the Court may somehow be used by terrorists against the US

Legal and Policy Analysis

 [World Federalist Association Factsheet: Effects of the Article 98 Campaign](#), December 2003

 [World Federalist Association Factsheet: Breakdown of Countries](#), September 23, 2003

[CICC documents](#)

 [Joint Opinion, In the Matter of the Statute of the International Criminal Court and in the Matter of Bilateral Agreements Sought by the United States Under Article 98\(2\) of the Statute](#), James Crawford SC, Philippe Sands QC, Ralph Wilde, June 2003

 [Fédération Internationale des Liges des Droits de L'Homme \(FIDH\), No to American Exceptionalism — Under Cover of the War Against Terrorism, a Destructive US Offensive Against the ICC, December 2002](#), an authoritative view of the campaign from the European perspective.

 [Amnesty International, International Criminal Court: The need for the European Union to take more effective steps to prevent members from signing US impunity agreements, October 10, 2002](#)

 [Coalition for the International Criminal Court \(CICC\) Secretariat, Bilateral agreements proposed by US government \(a legal analysis\), August 23, 2002](#)

 [Amnesty International, International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes, August 2002](#)

 [HRW, "United States Efforts to Undermine the International Criminal Court": Article 98 Agreements, August 2, 2002](#)

 [HRW, "United States Efforts to Undermine the International Criminal Court": Article 98\(2\) Agreements, July 9, 2002](#)