

AMICC

COMPARISON OF THE BUSH AND KERRY ADMINISTRATION POSITIONS ON THE INTERNATIONAL CRIMINAL COURT

“We will take the actions necessary to ensure that our efforts to meet our global security commitments and protect Americans are not impaired by the potential for investigations, inquiry, or prosecution by the International Criminal Court (ICC), whose jurisdiction does not extend to Americans and which we do not accept.”

- *George Bush, National Security Strategy, September 17, 2002*

“[T]he ICC is an organization that runs contrary to fundamental American precepts and basic Constitutional principles of popular sovereignty, checks and balances, and national independence... We will not join the ICC, and we will continue to press for Article 98 agreements.”

- *John Bolton, Under Secretary for Arms Control and International Security and Head of the Bush administration's ICC team, remarks at the American Enterprise Institute, November 3, 2003*

"We hail the actions of President Bush and the Republican Congress to ensure that our nation's efforts to meet our global security commitments and protect Americans are not impaired by the potential for investigations, inquiry, or prosecution by the International Criminal Court, whose jurisdiction we do not accept as extending to Americans. We support full implementation of the American Servicemembers Protection Act, whose provisions are intended to ensure and enhance the protection of U.S. personnel and officials."

- *2004 Republican Platform*

“Throughout the years of negotiations on the ICC, the United States has secured significant safeguards to ensure that American soldiers are not subjected to politically-motivated actions by the Court.... By signing the Treaty we enable the U.S. to continue to play a pivotal role in shaping the ICC — ensuring that those safeguards operate effectively and that the Court serves its intended purpose of prosecuting crimes against humanity... We firmly believe that if the U.S. becomes increasingly isolated, our soldiers will face greater, not less, risk... We believe the U.S. will be in a far better position to protect the rights of its citizens if the Court must answer to the United States, as its most important member, for its actions.”

- *Letter from 18 senators, including John Kerry, to President Clinton urging him to sign the Rome Statute, December 21, 2000*

“I support U.S. participation in the International Criminal Court, but also believe that U.S. officials, including soldiers, should be provided some protection from politically motivated prosecutions.”

- *John Kerry, Peace Action Candidate Questionnaire response, Spring 2004*

“[National Security Advisor to the Kerry Campaign Rand] Beers said in response to a question at the panel that the Kerry campaign has not taken a position on the court but would consider some adjustment in policy related to it: ‘I think we would look very seriously about removing the requirement for assistance, U.S. assistance, to require other countries to sign a pledge not to prosecute U.S. citizens in an International Criminal Court.’”

- *“Advisers Say Kerry Foreign Policy Would Embrace ‘Internationalism,’” Radio Free Europe article on the Democratic National Convention, July 29, 2004*

U.S. ADMINISTRATION OPPOSITION TO THE ICC

Although the United States was instrumental in assisting in the development of the jurisprudence for the International Criminal Court (ICC), making extensive contributions to the ICC Statute, both Bush and Kerry have reservations against U.S. ratification of the ICC Statute. Despite their similar reluctance to bind the U.S. to the Court, the Bush and Kerry approaches towards the Court differ. Whereas the Bush administration has primarily taken an ideological stance against the ICC, viewing it as a threat to U.S. sovereignty, with the hostility extending to limit the participation of other

801 Second Ave., 2nd Fl. New York, NY 10017-4706
Tel 212-907-1317/1374 • Fax 212-682-9185 • Web www.amicc.org
E-mail jwashburn@unausa.org or wpunyasena@unausa.org

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sovereign nations in the ICC, the Kerry campaign has only raised concern that American servicemembers and officials may fall within the ICC's jurisdiction.

BUSH ADMINISTRATION POLICY TOWARD THE ICC

- Fundamentally opposed to the ICC due to ideological opposition to an international court that the U.S. doesn't completely control, and sees the ICC as a threat to U.S. sovereignty.
- Withdrew the U.S. from all ICC negotiations after taking office, and **nullified** the Clinton administration signature on the Rome statute on May 6, 2002.
- Refuses to participate in the Assembly of States Parties as an observer state, unlike nearly every other major non-state party, including Japan, China, Russia, and Israel.
- Signed into law the **American Servicemembers Protection Act (ASPA)**, which purports to prevent the U.S. from cooperating with the ICC, authorizes the U.S. to use all necessary means to free U.S. personnel detained by the Court, mandates the withdrawal of military training and assistance from countries that join the ICC, and requires the U.S. to withdraw from major peacekeeping operations unless U.S. personnel receive immunity from the ICC. The President can waive these provisions on basis of "national interest."
- Campaigning since 2002 to pressure states to either conclude **bilateral immunity agreements (BIAs)**, to prevent the surrender or U.S. nationals to the Court, or face cessation of U.S. funded military aid under the ASPA. 81 such BIAs have been concluded to date, 37 by States Parties to the Rome Statute and 44 by non-state parties. 15 states have gone on to ratify their BIAs, and an additional 11 BIAs have been signed by states as executive agreements, while the remaining 55 BIAs are not binding on signatories.
- Using the BIA campaign as a sustained effort to prevent further signatures to the Rome Statute by non-state parties and further ratifications of the Rome Statute by States Parties, by pressuring countries to agree to such terms in BIAs.
- **Suspended financial military assistance** to over 35 countries that had refused to sign BIAs, and in some instances, threatened to cut off other non-military forms of assistance. On July 1, 2004, the administration ordered removal of nine Americans servicemembers from peacekeeping missions in Ethiopia and Eritrea and in Kosovo.
- Used the U.S. position on the Security Council to undermine the ICC by carving out jurisdictional exceptions for peacekeepers and challenging the inclusion of all constructive references to the Court in Security Council resolutions. In 2004, when it became apparent that Security Council abstentions would prevent the success of its campaign, the U.S. was forced to cease its efforts.

KERRY CAMPAIGN POLICY TOWARD THE ICC

- Calls for cooperation with and participation in the Court, and closer cooperation by the U.S. with its allies, but seeks greater protections for U.S. servicemembers abroad.
- Signed letter from 18 U.S. Senators to President Clinton in December 2000, urging him to sign the Rome Statute.
- Would remove the current requirement that countries sign BIAs or else face suspension of military assistance from the U.S.
- Voted in the Senate for the ASPA, but also voted for the **Dodd Amendment** to the ASPA, which preserves the right of the U.S. to “[render] assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic, Osama bin Laden, other members of Al Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.”

Researched and drafted by Shannon Frank