

AMICC

Comparison of the Clinton and Bush Administration Positions on the International Criminal Court

“In signing (the Rome Statute)...we are not abandoning our concerns about significant flaws in the Treaty...The U.S. should have the chance to observe and assess the functioning of the court, over time, before choosing to become under its jurisdiction. I will not, and do not recommend that my successor, submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied.”

- *Former President Bill Clinton in his statement upon signing the Rome Statute, December 31, 2000*

“We should isolate and ignore the ICC. Specifically, I propose for United States policy—I have got a title for it...I call it the Three Noes: no financial support, directly or indirectly; no collaboration; and no further negotiations with other governments to improve the Statute...This approach is likely to maximize the chances that the ICC will wither and collapse, which should be our objective.”

- *John Bolton, currently Undersecretary for Arms Control and International Security and head of the administration's ICC team, remarks made to the Senate Foreign Relations Committee, July 23, 1998.*

U.S. Administration Opposition to the ICC

Although the United States participated in the advancement of international criminal law from the Nuremberg trials to the ad hoc tribunals for Rwanda and the former Yugoslavia, neither the Bush nor the Clinton administrations have supported U.S. ratification of the International Criminal Court's Rome Statute. Despite their similar reluctance to bind the U.S. to the ICC, their respective approaches towards the Court have been vastly different. Whereas the Clinton administration participated fully in all negotiating sessions in an effort to retain U.S. influence over the process, the Bush administration is not participating in any way in the formation of the Court and is doing everything possible to destroy it before it begins investigating its first case.

Clinton Administration Policy Toward the ICC

- Supported the creation of the ICC in principle.
- Conditioned U.S. ratification of the Rome Statute on special concessions and protective measures for U.S. nationals.
- After failing to secure immunity for U.S. nationals, made an unsuccessful attempt to limit the jurisdiction of the Court to cases that had been referred to it by the Security Council, and therefore to interpose the U.S. veto power as a check on the Court's power.
- Voted against the adoption of the Rome Statute in Rome on July 18, 1998, but continued to participate fully in all subsequent negotiations.
- Signed the Rome Statute on December 31, 2000, but said that it would not recommend that its successor send it to the Senate because of “significant flaws.”

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- Said that “[s]ignature will enhance our ability to further protect U.S. officials from unfounded charges and to achieve the human rights and accountability objectives of the ICC. In fact, in negotiations following the Rome Conference, we have worked effectively to develop procedures that limit the likelihood of politicized prosecutions. For example, U.S. civilian and military negotiators helped to ensure greater precision in the definitions of crimes within the Court’s jurisdiction.”

Bush Administration Policy Toward the ICC

- Strongly hostile to the Court due to ideological opposition to an international court that the U.S. doesn’t completely control.
- Withdrew the U.S. from all ICC negotiations after April 1, 2001.
- 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 every other major non-state party, including Japan, China, Russia and Israel.
- Signed into law the American Servicemembers Protection Act (ASPA), which, subject to broad presidential waiver authority, 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 (except major allies) that join the ICC, and requires the U.S. to withdraw from major peacekeeping operations unless U.S. personnel receive immunity from the ICC.
- Conducting a vigorous campaign to pressure states to conclude bilateral agreements preventing the surrender of U.S. nationals to the Court or face the cessation of U.S. funded military aid under the ASPA, as well as unrelated funding. Affected states include NATO accession countries, members of the “coalition of the willing” in Iraq, countries that provide peacekeepers to help maintain regional security in Africa, and countries that are key partners in the fight against global terrorism and drug trafficking.
- Using the U.S. position on the Security Council to undermine the ICC by, on the one hand, carving out jurisdictional exceptions for peacekeepers and, on the other hand, challenging the inclusion of all constructive references to the Court. For example, even after the UN bombing in Baghdad, refused to allow language recognizing the ICC’s criminalization of attacks against humanitarian aid workers as war crimes to be included in a resolution on that topic.
- Refuses to join any consensus resolution in the U.N. General Assembly recognizing the existence of the ICC.