

July 10, 2002

Bellingham, Washington 98226

Dear _____:

Thank you for contacting me concerning the proposed International Criminal Court, I appreciate hearing your concerns on this matter and apologize for the delay in my response.

Since the founding of the United Nations, there has been a global effort to create some type of international body capable of representing the international community in bringing to justice those individuals involved in crimes against humanity and genocide. A step in this direction occurred in July 1998, in Rome, when the United Nations General Assembly released a proposal to establish an International Criminal Court (ICC).

The proposed ICC would have jurisdiction over "serious crimes of concern to the international community," such as genocide, crimes against humanity, war crimes and crimes of aggression. The judicial process of the ICC is very similar to the United States' judicial system, including the presumption of innocence, protections against double jeopardy (even if the first trial was a national trial) and against self-incrimination, among others. Furthermore, the prosecution of these crimes, under the ICC, would only be complementary to national criminal jurisdiction; it would not authorize intervention into the internal affairs of any state, and the prosecution of any individual would require the cooperation of his or her own government. President Clinton authorized signing the Rome Statutes in December 2000.

In May 2002, however, the Bush Administration revoked President Clinton's approval of the ICC treaty and announced that the U.S. would not recognize the court's jurisdiction or submit to any of its orders. In addition, the Bush Administration has refused to be bound by the 1969 Vienna Convention on the Law of Treaties, which outlines the obligations of nations to obey other international treaties. Despite the Administration's decision to nullify the U.S. signature to the Rome Statutes, the ICC has obtained the requisite number of ratifications by 60 nations and has effectively begun operation in the Hague as of July 1st, 2002.

As your Senator, I am supportive of multilateral efforts to work with the international community to prosecute those individuals who commit crimes against humanity, genocide and war crimes. Yet, I also feel that it is important that the ICC treaty adequately ensure that the court not be used by adversaries for political purposes to unfairly prosecute U.S. citizens, particularly military personnel. In its present form, the ICC does not seek to unfairly prosecute U.S. citizens, but instead will work to investigate and prosecute those who commit crimes against humanity that countries cannot or will not prosecute the crimes themselves. The U.S. participation in the Court has been supported by numerous political and military agents, including former NATO Supreme Commander, U.S. General Wesley Clark.

I have serious concerns regarding the Bush Administration's move to take a unilateralist approach to foreign policy. In addition, all of Western Europe and virtually every major U.S. ally are strong supporters of the

ICC. Many states that have recently transitioned into democracy, such as South Africa and Argentina, have already ratified the treaty and view the court as an important insurance policy against retrenchment. The United States' decision to oppose the ICC will certainly strain our relationship with these states. As a result, the Administration's decision to turn its back on the ICC may lead our closest allies to conclude and pursue agreements without American participation.

As you may be aware, several pieces of legislation have been introduced with regard to the U.S.'s participation in the International Criminal Court. On December 17, 2001, during the debate on the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act of 2002, H.R. 3338, two amendments addressing the International Criminal Court were introduced. Senator Dodd introduced Senate Amendment 2337, which would provide the President the authority and flexibility necessary to cooperate with foreign tribunals and other international legal entities that may be established for the purpose of bringing war criminals to justice. Despite my support for this amendment, it failed to pass by a vote of 48-51. Senator Helms' amendment, S.A. 2336, however did pass, without my support, by a vote of 78 to 21. S.A. 2336 prohibits the U.S. from providing support or assistance, financially or otherwise to the International Criminal Court or its investigations or activities. H.R. 3338 was signed into law by the President on January 16, 2002.

Should this treaty or related legislation come before the full Senate in the future, I will work with my colleagues to ensure that any agreement to create an effective International Criminal Court will include fair and adequate protections for American citizens. Again, thank you for contacting me and please do not hesitate to do so in the future.

Sincerely,

Maria Cantwell
United States Senator