



# The Association of the Bar of the City of New York

OFFICE OF THE PRESIDENT

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**PRESIDENT**  
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Hon. George W. Bush  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

Today the world celebrates an event of utmost historic significance: the deposit of the sixtieth ratification of the Rome Statute of the International Criminal Court ("ICC"), which triggers the entry into force of the Rome Statute on July 1, 2002. For those that treasure the rule of law, today's event represents a major achievement and the realization of decades of effort. This would not have been possible without the leadership and vision of the United States, was instrumental in creating the Nuremberg, Tokyo, Yugoslavia, Rwanda, as well as other ad hoc international criminal tribunals. In contrast to this legacy, the US now stands in opposition to the ICC. We urge you to reconsider the U. S. position and restore this nation's position of preeminence in the international rule of law.

As a long time supporter of the ICC, the Association of the Bar of the City of New York regards the establishment of a permanent international criminal tribunal as a most important development in the realm of human rights and international justice. As a mechanism to prosecute and punish those who commit the most serious human rights crimes, the ICC will affirm the rule of law, promote lasting peace and security in destabilized regions, and act as a deterrent to would-be tyrants.

The ICC is designed to be a fair, independent judicial body that respects the highest standards of justice. Indeed, the Rome Statute contains extensive due process guarantees, equivalent in protection to those contained in the Bill of Rights. Many of these provisions were secured through the efforts of American negotiators. The ICC will have jurisdiction over only the most serious crimes of concern to the international community -- genocide, war crimes and crimes against humanity. Moreover, the exercise of this jurisdiction is limited by real safeguards that restrict the ICC from engaging in frivolous or politically motivated prosecutions. For example, pursuant to the principle of complementarity, the ICC can exercise jurisdiction only if a national court is unable or unwilling to prosecute. Thus, *bona fide*

investigations by a national government will prevent the ICC from proceeding -- even if national authorities decline to prosecute. Contrary to the claims of some critics of the ICC, the U.S. can thus avoid unwarranted ICC prosecutions of its nationals by exercising jurisdiction itself.

The United States has long championed the enhancement of international law and justice and the protection of human rights. Our nation should maintain this proud tradition by ratifying the Rome Statute, signed by the United States on December 31, 2000. We urge you to submit the treaty to the Senate for ratification and follow the requisite channels for ensuring that the United States becomes a State Party to the ICC.

Lack of U. S. support for the ICC would forego the opportunity to have a continuing voice in the court's operation. It would also weaken U. S. international standing, at the very time we need international cooperation for the war against terrorism. Deterring and punishing genocide, crimes against humanity, war crimes and aggression goes hand-in-hand with fighting terrorism.

We also urge the United States not to "unsign" the Rome Statute, which reportedly is under consideration. As a signatory, the U.S. may be able to express its concerns. Withdrawing the signature will be perceived as a retreat from our historic position as a champion of principles of international justice. Moreover, as no country has ever unsigned an international treaty to our knowledge, unsigned the Rome Statute creates a dangerous and unnecessary precedent. The U.S. should remain actively engaged with the ICC process, even if the U. S. government is not prepared at this time to ratify.

The ICC will become become a reality this year -- even without the United States. We urge the US government to join with its closest friends and allies and support this landmark advance for international law.

Thank you.

Yours sincerely,

Evan A. Davis