

## STATEMENTS REGARDING US-ICC COOPERATION

August 2, 2002

Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

Section 2015, American Servicemembers' Protection Act of 2002  
<http://www.state.gov/t/pm/rls/othr/misc/23425.htm>

March 31, 2005

Recognizing that non-parties have no obligation under the Rome Statute, the resolution [1593] recognizes and accepts that the ability of some States to cooperate with the ICC investigation will be restricted in connection with applicable domestic law. For the United States, we are restricted by United States statutes that reflect deep concerns about the Court from providing assistance and support to the ICC.

Anne Wood Patterson, US Deputy Permanent Representative to the UN  
United Nations Security Council, 5158th meeting  
<http://www.un.org/Depts/dhl/resguide/scact2005.htm>

July 9, 2005

[T]he ICC process, as you know, is an independent UN process, with the prosecutors. While my country will cooperate as others will with that process, that's a process that has its own course. We believe that there should be accountability for criminal actions taken that rise up to the level of the ICC's jurisdiction.

Robert B. Zoellick, US Deputy Secretary of State  
Press Conference in Khartoum, Sudan  
<http://2001-2009.state.gov/s/d/former/zoellick/rem/49349.htm>

November 1, 2005

Deputy Secretary Zoellick has made very clear that if we were asked by the ICC for our help, we would try to make sure that this gets pursued fully. To use his words, because we don't want to see impunity for any of these actors. So they haven't asked, but if they did, we stand ready to assist.

Jendayi E. Frazer, US Assistant Secretary of State for African Affairs  
House Subcommittee on Africa, Global Human Rights and International Operations  
International Relations Committee  
<http://www.internationalrelations.house.gov/archives/109/24374.pdf>





November 4, 2005

*Question:* And the other question is like to what extent is the U.S. giving support to the process that might actually end in prosecuting war criminals in the ICC? I mean, I know we've said that, you know, this can happen but what -- how much support?

*Assistant Secretary Frazer:* They haven't asked us. They haven't asked us for support. What the Deputy Secretary has said is that we obviously want people to held accountable for – and if asked, we would look at ways in which we could assist to make sure that people were held accountable. But as far as I know, we haven't had any concrete requests from the ICC at this point.

Briefing on Deputy Secretary Zoellick's Travel to Sudan and Kenya  
<http://2001-2009.state.gov/p/af/rls/rm/2005/56518.htm>

December 22, 2005

*Jerry Fowler:* Obviously, it is well known that the United States government has not been supportive of the International Criminal Court, although it did allow this referral to Darfur to happen. What kind of relations had you had with them on the Darfur investigation? Have you requested assistance? Have you gotten assistance?

*Luis Moreno-Ocampo:* No, no. We did not request in any nature. In fact, in the Security Council meeting they informed us that they are not ready to cooperate. In any case, we are not requesting any cooperation that would be a problem for the United States. We respect the state decision, we respect those that are willing to cooperate and those that have a different point of view. It is a national decision.

Interview with ICC Prosecutor Luis Moreno-Ocampo, United States Holocaust Memorial Museum  
<http://blogs.ushmm.org/index.php/COC2/9/>

April 13, 2006

Please see the sanctions point within a broader context. I didn't mention, but there's a separate process under the International Criminal Court, which is also related to accountability. But as you know, as you probably know, that's an autonomous process. The United States accepted that process and indeed, under our domestic law, if they ask for information and help, we try to provide that help.

[...]

The International Criminal Court, as I mentioned, the International Criminal Court is autonomous. I don't know the state of its investigation. But we will fully cooperate with it and pursue those actions as related to the genocide in Darfur.

Robert B. Zoellick, US Deputy Secretary of State  
The Brookings Institution, Washington, D.C.  
<http://2001-2009.state.gov/s/d/former/zoellick/rem/2006/64622.htm>

June 14, 2006

[W]e do acknowledge that [the ICC] has a role to play in the overall system of international justice.

Interview with US Department of State Legal Adviser John B. Bellinger III, The Wall Street Journal  
<http://www.amicc.org/docs/6-14-06WallStreetJournal.pdf>





September 8, 2006

In the case of Sudan, where we would have also preferred justice for the genocide that occurred there to be done locally, there was not a local option that could ultimately be worked out quickly. So we supported the use of the ICC for the trials for those responsible for atrocities in Darfur. We worked on UN Security Council Resolution 1593 and did not block it despite our concerns about the ICC.

John B. Bellinger III, US Department of State Legal Adviser  
29th Round Table on Current Problems of International Humanitarian Law, San Remo, Italy  
<http://geneva.usmission.gov/Press2006/0908BellingerSanRemo.html>

December 18, 2006

*Wasil Faisal Ali Taha:* The U.S. has always been a staunch opponent of the ICC and has fiercely tried to block the referral of the Darfur case to the ICC but after a shift in policy they decided to abstain from voting to enable the resolution to be adopted. However recently there has been mounting signs of the U.S. warming up to the ICC, most notably in urging the Ugandan government to execute the arrest warrants against LRA leaders. Also some U.S. lawmakers have been calling on the Bush Administration to assist the ICC in its Darfur investigations. Did the US offer to share some intelligence information or satellite images on the Darfur conflict with the ICC?

*Luis Moreno-Ocampo:* No; it's even illegal for the U.S. to come into contact with the ICC.

Interview with ICC Prosecutor Luis Moreno-Ocampo, Sudan Tribune  
<http://www.sudantribune.com/spip.php?article19321>

December 21, 2006

*Jerry Fowler:* When I spoke to you last year, I understood you to say that you had not requested assistance from the United States government in terms of intelligence and information. Has that changed?

*Luis Moreno-Ocampo:* No.

*Jerry Fowler:* So, you have not requested assisted from them, and presumably then, have not gotten assistance?

*Luis Moreno-Ocampo:* No.

Interview with ICC Prosecutor Luis Moreno-Ocampo, United States Holocaust Memorial Museum  
<http://blogs.ushmm.org/index.php/COC2/294/>

December 27, 2006

At least as a matter of policy, not only do we not oppose the ICC's investigation and prosecutions in Sudan but we support its investigation and prosecution of those atrocities.

Interview with US Department of State Legal Adviser John B. Bellinger III, Associated Press  
[http://www.iht.com/articles/ap/2006/12/28/america/NA\\_GEN\\_US\\_International\\_Criminal\\_Court.php](http://www.iht.com/articles/ap/2006/12/28/america/NA_GEN_US_International_Criminal_Court.php)

February 5, 2007

During today's hearing, we will explore using the law to impose criminal and civil sanctions on individuals who are guilty of genocide. We will discuss the status of the International Criminal Court's Darfur investigation, and whether the federal government is doing everything it can to facilitate that investigation.

Senator Richard J. Durbin (D-Ill.), Chairman  
Senate Subcommittee on Human Rights and the Law hearing on "Genocide and the Rule of Law"  
[http://judiciary.senate.gov/hearings/testimony.cfm?id=2521&wit\\_id=747](http://judiciary.senate.gov/hearings/testimony.cfm?id=2521&wit_id=747)



June 6, 2007

Moreover, over the past couple of years we have worked hard to demonstrate that we share the main goals and values of the Court. We did not oppose the Security Council's referral of the Darfur situation to the ICC, and have expressed our willingness to consider assisting the ICC Prosecutor's Darfur work should we receive an appropriate request. We supported the use of ICC facilities for the trial of Charles Taylor, which began this week here in The Hague. These steps reflect our desire to find practical ways to work with ICC supporters to advance our shared goals of promoting international criminal justice. We believe it important that ICC supporters take a similarly practical approach in working with us on these issues, one that reflects respect for our decision not to become a party to the Rome Statute. It is in our common interest to find a *modus vivendi* on the ICC based on mutual respect for the positions of both sides.

John B. Bellinger III, US Department of State Legal Adviser  
The Atlantic Commission, The Hague, The Netherlands  
<http://2001-2009.state.gov/s/l/rls/86123.htm>

April 25, 2008

Now that the United States accepted the decision of the UN Security Council to refer the Darfur situation to the ICC, we want to see the ICC's work succeed. We have said that we would be prepared to consider an appropriate request from the ICC for assistance in its Darfur work consistent with applicable U.S. law. This is not to say that responding to such a request would be straightforward or easy. There are restrictions in U.S. law on assistance to the ICC, including under the American Servicemembers' Protection Act. Caution would also be necessary given that the ICC's procedures for cooperation and the protections they provide for the interests of cooperating states are new and untested. But Darfur is nonetheless a good example of an area where, with respect and goodwill on all sides, there may be opportunities for constructive cooperation.

John B. Bellinger III, US Department of State Legal Adviser  
Midwest Regional Conference on International Justice, Chicago, Illinois  
<http://2001-2009.state.gov/s/l/rls/104053.htm>

June 5, 2008

The United States strongly believes that those responsible for the acts of genocide, war crimes and crimes against humanity committed in Darfur must be held accountable and be brought to justice. We look forward to continuing to work with other members of the Council on necessary steps, including working with Costa Rica on a draft presidential statement to achieve that important objective.

Zalmay Khalilzad, US Permanent Representative to the UN  
United Nations Security Council, 5905th meeting  
<http://www.un.org/Depts/dhl/resguide/scact2008.htm>

June 6, 2008

We accept the reality [of the ICC]. It is the only game in town for bringing accountability for the atrocities in Darfur.

Interview with US Department of State Legal Adviser John B. Bellinger III, The New York Times  
<http://www.nytimes.com/2008/06/06/world/africa/06nations.html>





July 14, 2008

QUESTION: Can you address the Sudan situation and the ICC? What – I think you mentioned something this morning about looking at your own – that the U.S. is looking at its own laws in relation to this. Can you elaborate a little bit on that?

MR. MCCORMACK: Well, I talked a little bit about the fact that the United States is – has been at the forefront of holding those responsible for genocide accountable, whether that's from the – whether those individuals are from the Government or from rebel groups or other groups.

In terms of the ICC, we are not part of the ICC. We're – we are not the signatories of the Treaty of Rome that created the ICC. In terms of the specific charges that were put before the ICC judges today by the prosecutor, we'll examine them closely to glean any information that we might from those. We are constantly looking at what information we have on our own that might help hold accountable those individuals responsible for genocide or other atrocities.

There have been – there has been a request for information from the ICC and we had pledged that we would look at that request. That request is not related to the request for warrants against President Bashir today.

Yeah.

QUESTION: But you said previously that you didn't know of a request. Now you know of a request, is what you're saying?

MR. MCCORMACK: No. I talked about on Friday the fact that there was a request.

Yes.

QUESTION: A request for what?

MR. MCCORMACK: For information. Information.

QUESTION: No. I don't believe you did.

MR. MCCORMACK: Yes, I did.

QUESTION: This morning you said that you were –

QUESTION: No, this morning you said no.

MR. MCCORMACK: No. I said with respect to President Bashir.

QUESTION: I see. Oh, I see.

MR. MCCORMACK: Yeah.

QUESTION: So what is the request for, then?

MR. MCCORMACK: I'm not going to get into it.

QUESTION: But it's to do with Darfur?

MR. MCCORMACK: Yes.

QUESTION: It's not to do with the LRA or –

MR. MCCORMACK: No.

QUESTION: No?

MR. MCCORMACK: No.

QUESTION: When was that request?

MR. MCCORMACK: I – you know, I don't know. I don't know exactly when it was.

QUESTION: I'm sorry. And what is the position on how to respond to the request?

MR. MCCORMACK: We review each request as it would come in. We made a commitment when this issue came up. And the issue came up in the Security Council debate related to Sudan and whether or not the Security Council would vote in favor of the ICC and ICC prosecutors dealing with this issue, holding to account those responsible for genocide in Sudan. We abstained from that resolution. But we stated at the time that if there





were a request for information from the ICC, that we would consider each of those requests in turn, not necessarily with – trying to signal which way – in which way we would respond. But of course, the basis of a response probably would be what information we had, whether or not there was a match between a request and information we had.

QUESTION: Do you know if there has been a response?

MR. MCCORMACK: No, there has not.

QUESTION: There has not been a response?

MR. MCCORMACK: No.

QUESTION: You mean from the U.S.? The U.S. has not responded yet to the request?

MR. MCCORMACK: Correct. Correct.

QUESTION: My understanding was, Sean, that actually, you guys had made available – after Secretary Powell made the determination or announced the determination that it was a genocide, that you had, in fact, already forwarded on information that led to that determination – I don't know to the ICC, but certainly to the UN.

MR. MCCORMACK: You know, Matt, I can't speak to former Secretary Powell's tenure here.

Yeah.

QUESTION: So the fact that you're considering, you know, this request, does that mean that you're opening the door a little bit to joining the ICC – that you've opened the door?

MR. MCCORMACK: Not at all.

QUESTION: Oh, okay.

MR. MCCORMACK: Not at all.

QUESTION: Just thought I'd check.

MR. MCCORMACK: No. I mean, what it is, it's a fulfillment of our obligations as we see them.

QUESTION: And you received that request when?

MR. MCCORMACK: I don't know exactly when it was. It was recently.

QUESTION: What obligations are those?

QUESTION: Recently as in?

MR. MCCORMACK: As I've stated before, that if there were a request from the ICC for information, that we would consider it.

QUESTION: Just to flip around, have you asked the ICC for more information about the Bashir case?

MR. MCCORMACK: Well, we, of course, have access to what has been publicly released in terms of the request by the prosecutor to the ICC judges. I don't believe we have anything beyond that.

QUESTION: But you haven't – could you just check whether your – whether the legal counsel's office is asking for more specific details?

MR. MCCORMACK: I'll ask, but I don't expect that we are.

QUESTION: Because if they're asking you, it would stand to reason that you'd ask them?

MR. MCCORMACK: Well, it would stand to reason that the prosecutor would probably put his best case forward.

US Department of State Daily Press Briefing by Spokesman Sean McCormack

<http://2001-2009.state.gov/r/pa/prs/dpb/2008/july/106986.htm>





December 21, 2008

The United States has, by the way, imposed unilateral sanctions in Sudan. We have been the country that's been the most active in resisting calls to interfere with the international criminal court investigation of the leadership there, despite the fact that we're not members of the international court.

Interview with US Secretary of State Condoleezza Rice, NBC's Meet the Press  
<http://www.cqpolitics.com/wmspage.cfm?parm1=5&docID=news-000003000033>

February 5, 2009

We support the ICC in its pursuit of those who've perpetrated war crimes. We see no reason to support deferral [of the indictment of President Al-Bashir] at this time.

Ben Chang, Spokesman for National Security Adviser James L. Jones  
<http://washingtontimes.com/news/2009/feb/05/obama-backs-indictment-of-sudan-leader/>

February 9, 2009

It is our view that we support the ICC investigation and the prosecution of war crimes in Sudan, and we see no reason for an Article 16 deferral.

Susan E. Rice, US Permanent Representative to the UN  
<http://www.washingtonpost.com/wp-dyn/content/article/2009/02/08/AR2009020802191.html>

October 2, 2009

QUESTION: Yeah. So why is the ICC not the – why is that not the right venue for this kind of thing to be done? And are you at all – you, meaning the United States – at all hamstrung by your non-membership in the ICC, at least in terms of influence?

AMBASSADOR RAPP: We are beginning – certainly, in the second term of President Bush, the United States began to take, I think, an approach of greater cooperation with the ICC. As you recall, we didn't oppose the referral of the Darfur situation. And both the last administration and this have said that the Darfur situation to the ICC have opposed any effort to defer the prosecutor's investigation and indictment there that does involve allegations of sexual violence against individuals in Darfur. We'll see in the future, whether it's possible, as we develop our policy, that we can work constructively with the ICC on cases in other places where it has jurisdiction.

[...]

QUESTION: You mentioned Sudan and Darfur, but didn't the Bush Administration also cooperate with the ICC and the LRA?

AMBASSADOR RAPP: Well, obviously the situation – as you know, the American law, the American Servicemen's [Service-Members] Protection Act, permits cooperation with the ICC in cases involving the specific individuals – there are, of course, people listed there like Milosevic and Usama bin Ladin – but anyone that's been alleged to have committed war crimes, crimes against humanity and genocide, and it is possible for us to collaborate in those cases.

I can't speak to exactly what the Bush Administration did in regard to the LRA, the Kony case. But I do know that, obviously, when we're talking about the people that have been indicted by the ICC in Uganda, the LRA, and we're talking about those that – indicted in the DRC, we want to see those people brought to justice, and we want to see a fair trial. But we want to see, if they're guilty of these defenses, that they're imprisoned. And





so it's very much our policy that the ICC succeed in those cases. To the extent of how much we can cooperate to bring that about, that's the matter that's presently under review.

Special Briefing by Ambassador-at-Large for Global Women's Issues Melanne Verveer and

Ambassador-at-Large for War Crimes Issues Stephen Rapp

<http://www.state.gov/s/gwi/rls/rem/2009/130211.htm>

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