

*United States Mission to the United Nations*

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*Explanation of Position by Eric Rosand, Legal Advisor, on the Adoption of Resolution concerning the Report of the International Criminal Court, in the Sixth Committee, November 19, 2004*

For reasons well known to this body, the United States cannot and does not join consensus on this resolution embracing the International Criminal Court (ICC). Our opposition to the Rome Statute remains clear and unchanged.

First, the United States remains deeply concerned about the danger of politically motivated prosecutions. Nothing about the structure of the ICC provides solace that the ICC will avoid political trials.

Second, as we have persistently noted --not only before this body but also in other UN fora -- the ICC has serious problems in the related areas of jurisdiction and due process. The ICC is an institution of unchecked power. The Court's authority is not constrained by adequate checks or balances. For example, the treaty creates a self-initiating prosecutor, answerable to no State or institution other than two judges on a three-judge panel of the Court itself. Final judgments are exempt from any clemency review by a political authority. The United States does not accept the jurisdiction of the ICC.

Finally, as we have noted consistently, the Rome Statute provides insufficient opportunity for Security Council oversight. Indeed, the Rome Statute suggests that the Assembly of States Parties is competent to define aggressions, even though this is a matter left to the Security Council by the UN Charter.

For all these reasons, among others, the United States cannot support the ICC.

Also, as we noted on September 13 when the 58th UN General Assembly adopted its resolution on "Cooperation between the United Nations and the International Criminal Court" (A/RES/58/318), we again underscore that the ICC is an independent body and not a part of the United Nations system and remind Member States that the ICC has separate states parties. The Relationship Agreement approved by General Assembly resolution does not bind states not party to the Rome Statute to financial implications of the ICC's activities and requires full reimbursement of all expenses incurred by the United Nations.

Our inability to join the ICC stems from our commitment to the rule of law, not our opposition to it. The United States remains committed to international accountability for war crimes, genocide, and crimes against humanity.

We are disappointed at the failure of the Security Council to renew a resolution requesting the ICC not to commence or proceed with the investigation or prosecution of personnel from non-parties to the Rome Statute with respect to acts or omissions connected with their participation in UN missions. The absence of successors to Security Council Resolutions 1422 and 1487 reflects the demise of a compromise that respected the strongly held views of those who support the ICC and the equally strongly held views of those who do not.

One way we are addressing this issue, is through agreements recognized by Article 98 of the Rome Statute. To date, we have signed agreements with 96 nations that ensure against U.S. citizens and

military personnel being surrendered to the ICC. We highlight these agreements to demonstrate our resolve to protect U.S. persons from the ICC's jurisdiction, and the growing consensus that Article 98 Agreements are an important mechanism to protect states not parties to the Rome Statute from the ICC 's claims of jurisdiction. Indeed, just as many nations --97 including the United States --have signed Article 98 agreements as have taken the final step to join the ICC.

While we continue to respect the right of States to become parties to the Rome Statute, at the same time, we continue to ask that our decision not to be a party also be respected.