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Salt Lake city, Utah

Dear

Thank you very much for your comments on the proposed International Criminal Court (ICC). I apologize for the delay of my response.

Although the Clinton Administration signed onto the treaty for the ICC days before leaving the office, such a treaty must be submitted by the President to the Senate in order to be binding to the United States. If the treaty were ever to come before the Senate, I would oppose its ratification.

In recent years, Congress has stated its disapproval of an ICC on several occasions. In H.R. 4328 (the Omnibus Appropriations Bill for Fiscal Year 1999, section 502; Public Law 105-277), Congress asserted that "the United States shall not become a party to any new international criminal tribunal, nor give legal effect to the jurisdiction of such a tribunal over any matter ... except pursuant to 1) a treaty made Under Article II, section 2, clause 2 of the Constitution of the United States on or after the date of enactment of this Act; or 2) any statute enacted by Congress on or after the date of enactment of this Act." Additionally, the Senate prohibited any financial assistance or any extradition to an ICC in over 30 pieces of legislation related to legal assistance or extradition treaties. I have supported all of these prohibitions.

I oppose the ICC for a number of reasons. First of all, there are inconsistencies in the definitions of some of the crimes. All of us should be opposed to genocide, and the United States demonstrated that by ratifying the Genocide Convention. But, I am very concerned that some definitions of other crimes in the Rome Statute could be applied to U.S. military forces undertaking legitimate actions pursuing our national security. When the U.S. Senate ratified the Genocide Convention in 1986, we specifically added an understanding protecting against misinterpretations of their duties in the service. The Rome Statute creating the ICC would not allow for the Senate to add reservations, which is a common clarification practice in ratifying treaties.

Second, I am greatly concerned about the politicization of the ICC's prosecutor - who would be subject to no constraining authority, not even the U.N. Security Council, where the U.S. could protect

itself with a veto. The politicization of this post could, theoretically, allow for future indictments against, not only U.S. military personnel, but also against U.S. policy makers, even presidential advisors. Such a possibility results from an open-ended conception of the supranational jurisdictional body of the ICC.

Finally, and most importantly, there are significant issues regarding the constitutionality of the ICC. The Constitution is the supreme law of our land, and I have spent my career in Congress protecting it. Under the current concept for the ICC, a U.S. citizen can be tried outside the U.S., not before a jury, and without the full legal protections under the Bill of Rights. Further, I believe this treaty could not pass constitutional muster, because the courts have ruled that individual constitutional rights such as granted by the Fourth Amendment cannot be abridged by the federal treaty-making powers.

The argument that the idea of the ICC - a permanent supranational court - derives from the tradition of the Nuremberg trials is very misleading. Those trials, formally known as the International Military Tribunal at Nuremberg, along with the International Military Tribunal for the Far East (dealing with Japan) did very important work bringing to justice some of the major perpetrators of World War II and the atrocities committed during those years. But these courts were ad hoc, that is, designed with specific parameters on territory, time period, and events. I would have supported those ad hoc institutions, as I have supported the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. But these tribunals, limited in time and scope, are radically different from an ill-defined, permanent, judicial authority that could possibly conflict with our sovereignty and Constitution.

Again, I appreciate your views about this international issue.

Sincerely,

A handwritten signature in black ink that reads "Orrin Hatch". The signature is written in a cursive, flowing style. The first letter "O" is large and loops around the word "Orrin".

Orrin G. Hatch United
States Senator

OGH:cac