

## **Excerpt: Position on International Criminal Court Clarified**

State Department Spokesman Richard Boucher briefed.

*Following is an excerpt from the State Department's noon briefing transcript:*

### **State Department Regular Briefing**

**Briefer: Richard Boucher, Department Spokesman**

**State Department Briefing Room**

**Washington, D.C.**

**Tuesday, January 2, 2001 1:10 P.M.**

**Boucher:** But I just want to talk a little bit about the signature of the International Criminal Court documents on Sunday that Ambassador Scheffer, our Ambassador-at-Large for War Crimes, carried out. And the President, of course, issued a statement on the subject.

The Secretary, as I think you all know, has worked very long and hard on this issue ever since her time at the United Nations. She believes very strongly in accountability for crimes, has talked about it and pressed it in many fora, many ways, many times. She has described this as an essential process of turning collective responsibility into individual accountability. This has been the case with the specific war crimes tribunals that have been set up for Rwanda, for Yugoslavia, for other places. And it is also a step forward in this process for the United States to sign the agreement on the International Criminal Court.

The Secretary has made this an issue of her consultations with other foreign ministers, especially in recent months in her consultations at the United Nations, at the APEC meeting and elsewhere, to try to clarify for the United States questions of jurisdiction and more precision in the definitions of the crimes so that the United States could be party to this treaty, so that we could sign.

As the President said in his statement, this process has brought us forward but it hasn't brought us to the point where he would seek ratification. We have now, by signing it, put the United States in a position to influence the further evolution of the treaty. But the President made quite clear, and the Secretary agrees, that they should not seek ratification until the US concerns are further satisfied.

And, finally, I would like to note in this context the extraordinary work that Ambassador Scheffer, our Ambassador-at-Large for War Crimes Issues, has done over the past several years in bringing us to the point where the treaty is clarified so that we can sign. Maybe not clarified enough so that we could seek ratification, but he has done an extraordinary job and the Secretary values his contribution in that regard very highly.

So with those two discussions, I would be glad to take your questions on these or other matters.

**Q:** Is it realistic to expect these concerns to be satisfied? It took the President to the very last minute. Obviously, the concerns weighed on him. And of course we all know basically what they are, that it will become a political institution to crucify, or to at least hold up for ridicule or worse, leaders who are politically unpopular, which of course the UN does regularly?

**Boucher:** Well, let me take the opportunity to say a number of things. First, this is not a UN court. This is not part of the UN system. This is an independent judicial body. It is a treaty-based independent court. The United Nations serves as a depository for the Rome Treaty, as it does for many treaties, and possibly there may be discussions in the future. But this is an independent body. It is not a UN court and we would not want it to be seen that way. We don't see it that way, and it's not.

Second of all, we have succeeded in clarifying and getting more precise definitions of the crimes, doing a variety of things during this process over the time that we have been considering this, and we felt that that was to the point where we could sign. Is it realistic to think that we might clarify and be able to identify or satisfy our concerns so that someday the United States might ratify? We think, first of all, we are better off trying to get that from within by signing and putting ourselves in a position to influence it. So if we are to get to that point, we are only going to get there if we're in it and in a position to influence. And that is what the President's action has done.

Second of all, it may take some time. It could take years to get to that point, but we do think it is worthwhile for the United States to be there and to have our interests represented. And I think the President also said in his statement that he would expect that there would be some time the United States would want to see how it operates. So once it's finally ratified -- by 60 countries, I think it is -- to come into effect, the United States in any case would want to see how this actually operates before any future American leaders made a decision on seeking ratification.

**Q:** One question on each thing, on the ICC first. So it's your opinion that the very vehement objections to signing this treaty from Senator Helms and others are kind of short-sighted?

**Boucher:** Did I say that?

**Q:** I'm asking you, is it your opinion --

**Boucher:** Let me talk about the --

**Q:** Senator Helms called this an international kangaroo court. He said it should never have been signed in the first place. But regardless, I mean, I don't think they care whether you're not going to seek their approval of it any time in the near future; they don't even want the US to be signed onto it?

**Boucher:** Certainly, we share many of the concerns that are expressed by people in Congress, and we do not wish this to turn into some device that could be used against US leaders or US soldiers or US military people who are acting within the authority of the US Government. And we think that we have clarified things in that direction, and that more needs to be done. So certainly those fundamental concerns are shared.

Second of all, the President made quite clear that there are flaws that need to continue to be addressed and that we are not seeking ratification until those concerns that we have are satisfied. There were, in fact, 18 senators from both parties and 28 representatives who sent letters to the President urging him to sign. So we realize there are different opinions up on the Hill, in addition to the opposition. But, as I said, there are concerns that are well-founded that we share, and we would not think anyone would seek ratification without seeing them clarified.

**Q:** What you do say, then, to people who argue the US should never have signed on in the first place?

**Boucher:** Well, what I've just said: that we think we have to be in a position to influence the outcome; we do have these concerns that are legitimate; and we intend to continue to pursue them before we would expect anyone to seek ratification here.

**Q:** You don't have any concern that this is basically done for show, that it's going to be doomed because the Senate is basically never going to ratify it? And if you look at the --

**Boucher:** Well, I guess I would say that issue will not arise with this Administration, and the future administration will take whatever position it thinks appropriate. These are the thoughts at this stage at this point in time.

**Q:** Can I ask one about Cambodia?

**Boucher:** Sure.

**Q:** What are your concerns about this draft that's been passed? I know that what was passed was a hybrid arrived at only after some last-minute intervention by Senator Kerry, and that the UN wasn't completely satisfied. So what are your concerns now? How would you like to see this thing changed, if at all, by the Cambodian Senate before it goes into effect?

**Boucher:** I think what we look forward to in terms of defining some of the specifics in further detail, or the final consultations between the United Nations and the Cambodian Government, and they need to work out a Memorandum of Understanding between them on how the process is going to work.

The process, as we see it, is designed to get agreement on issues such as the indictment and judgment between the international community and Cambodian officials, and the extraordinary chambers will include international participation by the international

community as judges, prosecutors, investigating judges, administrators, staff and the Cambodian courts to bring these people to justice. So we think the framework is there and the conclusions need to be drawn, the final conclusion of a memorandum between the United Nations and the Government of Cambodia, is where to define further how exactly it will operate.

**Q:** So you don't think that you had wanted, and the UN had wanted, more of an international component to these tribunals or trials? Are you still looking for that? Is that something you would like to see when the MOU is signed -- a greater international participation?

**Boucher:** Well, as I said, what we know about the law -- and we haven't had time to review it completely or closely -- but what we know about it is it does provide for the international participation and the further definition of that participation, and the operating modalities will be between the United Nations and the Government of Cambodia. And that is the next step in the process, to define these things.

**Q:** What is the more "international participation"?

**Boucher:** I've said there is international participation. We haven't had a chance to look at the law in all its detail, but fundamentally that's the right way to go. And there is this opportunity to define it further, which we look forward to.

**Q:** Do you believe the international participants should have veto power over the proceedings?

**Boucher:** Once again, I am not able to go into that much detail at this point because we haven't had a chance to review the law completely or closely. As I said, the process is designed for the international community to participate, to reach agreement with the Cambodian Government on issues of prosecution and investigation. That is the way we think the process ought to work fundamentally. That is the right framework, and it will be defined further as the UN reaches agreement.

**Q:** But if you haven't read it fully, how can you say that it's a positive step forward and welcome it? I don't get it.

**Boucher:** Because we know enough about it to know it's good.. .

... There is one thing I forgot to mention about the International Criminal Court. The one more thing to mention on the International Criminal Court: we worked with Israel in particular, and also with Arab governments and other countries, to achieve a consensus on a point that was of particular concern to Israel, and that was to deal with the customary international law that prevails and the customary international understanding that prevails with regard to certain phrases on the transfer of civilians. That is also an issue -- was an issue -- that we were able to satisfy our concerns and Israel's concerns about before we took this step of deciding to sign.

**Q:** Did you work closely with the Iranians as well?

**Q:** Tomorrow, the followers of Usama bin Laden will be tried in a federal court in New York in connection with the bombings of the US Embassies in Africa. Now, as far as Usama bin Laden is concerned, where he stands, number one? Number two, a hundred witnesses from six countries will be brought for the trial. Now, which are those six countries, you think, where the witness are coming from?

**Boucher:** Let me say two things. As far as the witnesses and the trial and which countries they are coming from, I'm afraid information on the trial has got to come from the court. We are not going to try to do that from here. And, second of all, Usama bin Laden, where he stands? I guess as far as we know, he stands in Afghanistan and he stands as a wanted criminal and we look forward to his being rendered unto justice.

**Q:** Any comments about this trial for tomorrow?

**Boucher:** I mean, obviously, it is very important to us that people that are accused of bombing our embassies be brought to trial and this is a process of justice that we have been extremely involved in. But as the trial begins, I think we prefer to leave it to the courts to carry out appropriate justice.