

**Statement of Senator Patrick Leahy
On
The International Criminal Court
May 5, 2003**

Mr. Leahy. Mr. President, over the past few months the International Criminal Court (ICC) has taken important steps towards becoming an effective forum to hold accountable those accused of war crimes, genocide, and crimes against humanity. By all accounts, the countries participating in these negotiations did an excellent job of selecting qualified jurists and, perhaps most importantly, a responsible and experienced prosecutor.

But an important voice is missing from these negotiations. That voice is the United States, a country which was founded on the principles of the rule of law, human rights, and democratic freedoms.

Perhaps more than at any other time, the past few months have highlighted the folly of the Bush Administration's policy towards the ICC.

The whole world wants the United States to be involved with the development of this institution. Yet, instead of seizing this opportunity to shape the Court in our interests, we are one of the only democracies sitting on the sidelines - joined by some of the world's worst human rights offenders. It is an embarrassment, and contrary to the arguments of those who oppose the Court, it is self-defeating.

Instead of making sure that the ICC will function the way we want it to, this Administration withdrew our signature from the Rome Treaty and supported legislation, the American Service Members Protection Act, openly hostile to the ICC.

Instead of working to influence the selection of judges, prosecutors, and other ICC officials, our negotiators are not even sitting at the table.

Has the Administration taken this position because they believe engagement is not a viable strategy to promote U.S. interests in international negotiations?

Clearly not. One need only look at their position on military training assistance to the Indonesian Armed Forces. Despite the fact that the Indonesian military is a corrupt, brutal institution that has been implicated in the deaths of American citizens, the State Department says that U.S. aid to this institution "provides a vehicle for the United States to impart our ideas about civil-military relations to foreign military audiences, and to promote military reform."

I don't favor training the Indonesian military unless they show they want to reform. Then we can and should help them.

But the ICC is an institution designed to punish the world's worst criminals. The Administration refuses to engage with the ICC, but it will engage with the Indonesian

military. If anything, it should be the other way around. We should be working to shape the ICC, an imperfect but potentially valuable institution, to promote U.S. interests, while distancing ourselves from institutions that are corrupt, abusive and incapable of reform.

The Administration points to efforts to combat international terrorism as the reason that it wants to restore military training for Indonesia. The same can be said for the ICC. The Court could become an important forum to try dictators or others involved in atrocities -- providing an important tool to deter acts of international terrorism.

Another explanation for the Administration's policy might be that the United States simply got nowhere during previous negotiating sessions and further engagement simply will not yield results.

In fact, during the negotiations on the Rome Treaty, the U.S. delegation worked to ensure that the Court will serve our national interests by being a strong, effective institution. They succeeded in inserting a number of important safeguards, including provisions to deter frivolous prosecutions.

Like any international agreement, the U.S. did not get 100 percent of what we wanted in the negotiations. However, that is why the U.S. should remain involved with the Court. As the distinguished senior Senator from Pennsylvania, Senator SPECTER, has said, U.S. policy toward the International Criminal Court should be one of "aggressive engagement."

Instead, the Bush Administration has done is taken its bat and ball and walked off the field. While this might make those opposed to the Court feel better, the fact of the matter is that the ICC is a reality - even the Bush Administration acknowledges this. It is rapidly becoming operational and will have jurisdiction over offenses committed on the territory of state parties, even if those offenses are committed by the citizens of non-party states.

Mr. President, Bush Administration officials have said over and over that the power of the prosecutor is one of the main reasons that they oppose the ICC. In March, the *New York Times* reported that, because of the historic role that the United States has played in international justice, many nations sought to appoint an American as Chief Prosecutor to the Court.

I can think of few measures that would have been more effective in accomplishing the Administration's stated goal of guarding against political prosecutions of American soldiers than having an American citizen serve as Chief Prosecutor. However, the *New York Times* article went on to point out that the Administration's policy of being openly hostile towards the ICC was precluding an American from being appointed to this critical position.

Ultimately, an Argentine was selected as the prosecutor. While this prosecutor appears to be a very capable, distinguished individual, one gets the sense that if U.S. policy towards the ICC had been less hostile, an American would now occupy that position.

The U.S. need not be estranged from the ICC. Our closest allies, almost all of whom are strong supporters of the Court, have made it clear that with or without U.S. ratification of the Rome Treaty they would welcome our involvement in guiding its development.

As a signatory to the final document of the Rome Conference we had the right to participate in all of the various preparatory meetings leading up to the creation of the Court. Despite its concerns about the Court - or rather, because of them - it is bewildering that the Bush Administration chose to not even send U.S. representatives to participate in the final negotiations.

Instead of supporting frivolous legislation that declares war on The Hague and would cut off military assistance to a number of key friends and allies, this Administration should reconsider its position on the ICC.

By sitting on the sidelines, the United States is losing out on its ability to influence the structure and culture of this important new institution. Each time we refuse to join another treaty or international organization, which has become a pattern of this Administration, we erode our international leadership.

I urge the Administration to re-engage in a discussion with the Congress, and with our allies, of how the United States can once again play a constructive, leadership role in ensuring that the International Criminal Court effectively carries out its historic mandate.