

April 16, 2009

The Honorable Hillary Rodham Clinton
U.S. Department of State
2201 C Street NW
Room 7226
Washington, DC 20520

Dear Madam Secretary:

We write to urge that the current review of United States policy on the International Criminal Court [ICC] be completed quickly, and that it lead to three results: US participation in the Court's meetings to complete its formation; extensive and thorough US cooperation with and support to the Court in its prosecutions and trials; and action to declare emphatically that US relations with the Court are in an entirely new era. The historic ICC arrest warrant for Sudanese president Omar al-Bashir makes these steps especially urgent. The United States is now in the odd and unsustainable position of strongly endorsing the most important action that the ICC has ever taken while evading any commitment to support or participate in it as an institution.

Participation would be an active and constructive attendance at the ICC Review Conference in 2010 and at the meetings preparing for it; cooperation and support would be based on a policy statement and on open formal arrangements to implement it; and the emphatic action would be reinstatement of the US signature of the Court's Rome Statute. These three activities are interrelated, mutually reinforcing and offer substantial benefits for American national interests and for the United States' international reputation and ability to influence other countries, all, with a very small investment of time, money and effort. These actions were endorsed by the American Bar in a resolution by its House of Delegates last August, and similar actions were just recommended by a task force of the American Society of International Law.

The United States is entitled to participate as an observer in all intergovernmental meetings of the Court under Article 112 and 123 of the Rome Statute because it signed a document, the Final Act, of the 1998 Rome Conference which established the Court. Observer status confers all the rights and privileges of any other attendee except voting. The Review Conference will examine the performance of the Court and the adequacy of the Rome Statute so far. The conference's mandate calls for amendment into the Rome Statute of the crime of aggression if a definition and

description of the crime and the role of the UN Security Council can be agreed, for possible other amendments, and for consideration of other improvements not requiring amendments. This event offers a unique and important opportunity for the United States to make its concerns and recommendations heard and to have some of them met. Since the Conference will be held in the second quarter of 2010 and preparatory work on Conference generally, and on the crime of aggression in particular, are well underway, there must be an early decision on participation or the opportunity will be lost.

The Obama Administration must also decide soon to take additional, critical steps. The preceding administration deactivated the US signature of the Rome Statute by sending a note to the Secretary-General of the United Nations so declaring. Under Article 18 of the Vienna Convention on the Law of Treaties, another note to the Secretary-General can reactivate the signature. The policy statement would simply formalize and clarify early indications by the present administration that it intends to work with the Court in cases and circumstances that would serve U.S. national interests. Arrangements to carry out the policy would make clear that the policy is serious in the face of continued skepticism, especially in Europe, about American intentions toward the Court. Reactivation of the signature would remove an official and formal declaration of hostility to the Court and thus give further credibility to a new policy of cooperation and support. It would also promote worldwide understanding and acceptance of U.S. participation in the Review Conference proceedings.

The present administration has made clear that the policy review must include, and its outcome be endorsed by, full and thorough consultations with the Department of Defense and the uniformed American military. We understand this intention and its necessity. There are extensive safeguards in the Rome Statute protecting against perversion of the Court to abuse or harass for political purposes American servicemembers and civilian and military officials. We believe that these safeguards have not been effectively, completely and accurately presented to the American armed services or to Department of Defense civilians, as well as to the American people. We would be happy to confer with and support your officials as they prepare to discuss this with their military counterparts.

The ICC expresses and implements fundamental American values and interests about accountability for perpetrators of atrocity crimes and the absolute imperative to hold the most responsible among them accountable. The determination of the Obama administration to serve these values and interests is clearly at work in the support you have articulated for the prosecution of President Bashir. We strongly urge you to lead the United States into a complete, open and dynamic relationship with the Court through the steps that we have recommended in this letter.

Sincerely,

American Humanist Association

American NGO Coalition for the ICC

Amnesty International USA
Center for War/Peace Studies
Church Women United
Citizens for Global Solutions
Council for a Livable World
EarthAction
ENOUGH
Friends Committee on National Legislation
Global Exchange
Human Rights First
International Crisis Group
Maryknoll Office for Global Concerns
National Education Association
Nuclear Age Peace Foundation
Peace Action
The Planethood Foundation
Presbyterian Church (USA), Washington Office
United Church of Christ, Justice and Witness Ministries
Universal Human Rights Network
United Methodist Church, General Board of Church and Society
United Nations Association of the United States of America
Women's International League for Peace and Freedom
World Organization for Human Rights USA

For more information contact Don Kraus, Citizens for Global Solutions at dkraus@globalsolutions.org or 202-330-4103.