



**INTERVIEW WITH US AMBASSADOR-AT-LARGE FOR WAR CRIMES ISSUES STEPHEN J. RAPP
BY AMICC CONVENER JOHN WASHBURN FOR HUMAN RIGHTS DAY, DECEMBER 10, 2010:
TRANSCRIPT EXCERPTS RELATED TO US APPROACH TOWARD THE INTERNATIONAL CRIMINAL COURT**

On December 7, 2010 AMICC Convener John Washburn invited US Ambassador-at-Large for War Crimes Issues Stephen J. Rapp for a conversation in AMICC's offices at the headquarters of the United Nations Association of the USA in New York. The video of the interview is available in nine separate parts on AMICC's blog at <http://amicc.blogspot.com/2010/12/watch-breaking-news-amicc-gets.html>. Excerpts related to the US approach toward the ICC, including the development of the US policy toward the ICC, are transcribed below.

Part V

(Available at <http://www.youtube.com/watch?v=5mplUbDpdys>, from 5:26)

JOHN WASHBURN: Well, speaking of the Assembly of States Parties, the meetings of the Assembly of States Parties is where the United States, thanks to your leadership and Harold Koh, have resumed their place in this very important part of the international campaign for transitional and international justice. I know you've said that you've been very pleased about the warmth of the reception that you've had by other countries in these meetings, and I think that we saw again today that you had a strong, very positive reaction to your presence and your speaking.¹ As you know, we have a large civil society presence at these meetings, the international NGO Coalition for the International Criminal Court of which my domestic coalition is a national network. And this is the time when I get asked questions by people from overseas about what the US is doing, why it's doing it and so forth. One of the questions I get is, people say that, well we noticed at the very beginning that the Obama administration had it in mind to have a formal policy on the ICC and now we hear that that is not going to happen, and why is that?

STEPHEN RAPP: Well, I mean, I don't, clearly we got involved in reviewing our approach to the ICC, and that resulted in this taking up a position to which we're entitled as observer participating in the ASP. This is sort of the third – two sessions of the eighth ASP, one in The Hague ...

Part VI

(Available at <http://www.youtube.com/watch?v=pKNVNILuKAM>)

STEPHEN RAPP: ... last November and in New York in March and then of course the Review Conference in Kampala and here, so this is really sort of our fourth participation. In all of our statements, you know, we're making clear what our positions are, how we're looking to work with the Prosecutor to assist him in the situations that he has, you know, stating our strong commitment to cooperation with the Court both by parties and non-parties, the critical importance of achieving these arrests, and, you know, our willingness to use diplomatic and political efforts to help that happen, and then to emphasize in particular our commitment to focus on this victim protection issue which is something we believe in very strongly, and programs to protect human rights defenders and others, people that are advocates and sometimes witnesses to human rights violations generally, not just IHL, or international humanitarian law, advocates, and working to protect those

¹ http://www.amicc.org/docs/ASP_Rapp_Statement_12072010.pdf





individuals, sometimes to relocate them if they are under severe physical threat. And so we want to, you know, work to sort of expand our sort of focus to work with the ICC. And so we're announcing what we're doing. The question of, you know, the United States moving forward closer than that, a decision has been made on that issue. The United States is very slow to ratify international conventions.

JOHN WASHBURN: Our process is excruciating.

STEPHEN RAPP: Just excruciating. Getting even conventions that appear almost non-controversial on their face, to schedule a time in the Senate to get a two-thirds vote given the divisive politics on some of these issues is very difficult. But it's historic. But I mean, you know, Woodrow Wilson went to Paris in 1919, convinced the other great powers to mind the League of Nations and then brought it back and couldn't get the US Senate to approve it. The Genocide Convention took 40 years to ratify. There are other human rights conventions that are relatively non-controversial where the United States is one of maybe only two countries in the world that hasn't ratified them. Now that in part represents the kind of American attitude that I think – there's the constitutional two-thirds which is difficult – but there's also a belief coming, I think, from the United States' experience that's really disentangled from any sort of colonial tie, you know, after, you know, 1783 a belief that, you know, we knew how to do it in our own system, we've got the Bill of Rights, we've got a system of laws, we can do it ourselves.

JOHN WASHBURN: No foreign entanglements.

STEPHEN RAPP: No foreign entanglements. And to say that, you know, that somebody else should make the decision for us is something that Americans, you know, are unlikely to get involved with. Now, that said, we enter into trade agreements, or the World Trade Organization can decide we're wrong on this or that, or, you know. We do enter into kind of situations where things can be enforced against us, and we're going to do that because it's in our interests. But it's always a hard sell in the US. And so, you know, but in terms of how we proceed with the ICC, I mean, there is the obviously the kind of engagement we're talking about but there's also, you know, our commitment to complementarity, not just in terms of going to the Democratic Republic of the Congo and helping with theirs, I mean our commitment, and the commitment of the Obama administration, is, in terms of our policies and approaches, is to make sure that we are responsible for ourselves and that we're in complementarity. In other words, if Americans are committing war crimes or crimes against humanity, we'll prosecute them ourselves. And we'll never get calls from the international prosecutor to say, you're not doing a genuine investigation. That's not to say you can, in any of these situations, there can always be problems of proof, you can have a difficult time showing who's responsible, there can be ambiguities as to how the law reads, et cetera. The point is that our principle is that we have to do a genuine investigation in our system. And we do have a record in America of having prosecutions that came out of the US federal justice system, you know, that prosecutes without fear or favor. Chairmen of the Senate Appropriations Committee, the House Ways and Means Committee have been prosecuted. You know, the president of the United States was, you know, pursued by an independent prosecutor in the '70s and went to the Supreme Court and won nine to zero against him and he had to leave office. That's the kind of independence we think we have. Difficult, always, to prosecute your own, but I think our commitment is to do it ourselves so that we are effectively in complementarity even when we're not in the Court. And then work with the Court in these cases and in the cases the Court has taken – DRC, Uganda, Darfur and CAR – you know these are cases in which individuals





have been targeted for mass violence that cried out for justice, you know the hard cases of sort of ambiguous – the shell was pointed here and landed over there, accidentally – no, these were cases in which the intention was to kill civilians so these are appropriate cases and we want justice done.

JOHN WASHBURN: Absolutely. Well, you’ve talked a little bit about the relationship, and when you talk with ICC people, and with some of my colleagues who are in The Hague and are very close observers of the ICC, they’re impressed with the relationship that’s developing between the United States and the Court. It’s quite transparent, obviously there’s some kinds of information that you’re sharing with the Prosecutor, that the Prosecutor himself wishes not to disclose, but we have the sense that you’re building, bit by bit, an ever-stronger, broader, deeper, more productive and collaborative, and supportive ...

Part VII

(Available at <http://www.youtube.com/watch?v=35OwoGCjEug>)

JOHN WASHBURN: ... relationship with the Court. Are there things that you would like people in the United States to understand about this relationship, where you’re going with it, or what it should tell us about what the Court is like, what it should do for our comfort level about the Court? I’m thinking about Americans, for example, who at least have a high passive support for the Court, and of course you always have to think about Congress in relation to something like this.

STEPHEN RAPP: Right, right, we want to, you know, do what we can, but consistent with our law to help the Court succeed in these situations that it’s taken on that clearly, as I said, cry out for justice. It is important to understand that we do have laws in the United States that are still on the books. There’s a 2001 law that says the United States can’t directly fund anything ICC. There’s the 2002 law, the American Service-members’ Protection Act, by its title is focusing on the concern in the Bush administration that Americans who might be called on to protect people from atrocity or terror might end up, you know, being prosecuted, as I said, the situation where there’s a warlord who kills 20,000 people, and we come in to stop him, and a shell goes astray, 20 people are killed. The concern was, well, the Prosecutor says “I’ll be evenhanded, I’ll prosecute the warlord and then I’ll prosecute the American colonel that was in charge of the unit that launched that mistaken shell.” Of course that wouldn’t be a very strong case because it wouldn’t be an intentional attack et cetera. But there was that concern that there our people could, by someone who wants to score points, and say I’ve got American in the slammer. You know, come after us. So that was the concern that that responded to so that’s why that law was called the American Service-members’ Protection Act. And it did prohibit, by its explicit terms, a variety of kinds of assistance to the ICC – responding to mutual legal assistance requests, allowing investigators to conduct investigations on American soil – a number of things that were some waivers that the president could use. But it did include an important amendment by Senator Dodd, now the outgoing senator from Connecticut whose father was the senator before him but before he was senator was essentially the deputy to Robert Jackson, Justice Jackson, who prosecuted Nuremberg, was the most effective –

JOHN WASHBURN: That’s been important to the senator all his life.

STEPHEN RAPP: – most effective members of the American prosecut–, one of the most effective members of the American prosecution, a real experienced courtroom advocate, cross-examiner. Very proud of what he did





there, and his son is very proud of it. And Senator Dodd affixed an amendment that said, “Nothing herein shall prohibit US assistance in a case involving a non-citizen, such as Osama bin Laden, Saddam Hussein, Slobodan Milošević, or –

JOHN WASHBURN: Idi Amin.

STEPHEN RAPP: – or others who are alleged to be responsible for genocide, war crimes and crimes against humanity.” So that particular provision, at least dealing with cases – not just general Court support but cases – gives us some flexibility to assist the Court when we’ve got sort of serious violations and no real possibility to get out there and help. Now people could say, couldn’t these laws be changed? But, I mean, at this stage, you know, we want to use what’s there, consult closely with Congress, and it’s generally our perception that when we talk about cases, congressmen of both parties are very supportive of justice for Darfur, and very supportive of justice in the case of Joseph Kony –

JOHN WASHBURN: We have this legislation about Uganda.

STEPHEN RAPP: Yeah, right, exactly, which had support coming from, co-sponsored by a progressive democrat and a conservative republican, so it, and when we were – step aside from the ICC, the Special Court for Sierra Leone, my predecessor went to Congress to get a resolution that passed 434-1 calling for the surrender of Charles Taylor. So when you talk about individual cases, saying, do you think we should arrest Kony?” Absolutely. Where should we try him? Well, you know, the ICC’s indicted him – they should do it. And they should succeed, you know, et cetera. And, you know, in the DRC cases, I mean, these warlords, should they be arrested? Should they be tried? Absolutely. You know, Americans are – see the victimization, see the horrendous crime, and they want justice. I think that kind of support, you know, builds, and then if the Court is effective in those cases, I think that builds some confidence. Now at the same time from a purely, you know, by having a good relationship with the Court, if there are issues that are raised about America, you know, we’re in contact with the Court and can respond to them et cetera. So it’s much better, I think, to be engaged than to be disengaged.

JOHN WASHBURN: You have an open channel that can go both ways.

STEPHEN RAPP: Right. And of course I think it’s very valuable in this controversial area of aggression maybe, you know, we were able to go and talk really about two things. One, about supporting the Court on genocide, war crimes and crimes against humanity, and two, indicate that the Court should be cautious about moving forward with aggression before it dealt with being effective on these other crimes and move forward with aggression in a way that recognized that there are situations where force needs to be lawfully used to protect people and we should be very careful to make sure, well, we’re talking about the kinds of things that we prosecuted at Nuremberg called aggressive war, and not with, the Court won’t get involved with prosecuting someone who was involved in humanitarian protection or involved in other action to deal with, you know, terrorist groups that are crossing borders and we follow them into another country in hot pursuit – is this aggression? We don’t want this court to be entangled in that kind of thing.





Part VII

(Available at <http://www.youtube.com/watch?v=bsPPv1-F5HU>)

STEPHEN RAPP: The challenge remains to bring the Joseph Konys, the Harouns, the Bosco Ntagandas to justice. That's the highest priority because that's where the crimes are these days.

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