



***QUESTIONS & ANSWERS ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT:
A SELF-EXECUTING TREATY UNDER US LAW?***

The United States has specific and complex processes for ratification which in some important ways are different from those common in other countries. Among these, the requirement of “self-execution” of a treaty is a potential serious obstacle to US ratification and implementation of the Rome Statute of the International Criminal Court. Here are answers to common questions about self-execution.

What is the concept of a self-executing treaty?

In US law, a treaty is self-executing when it can come into effect and be implemented immediately upon ratification. Accordingly, to enter into force in the US a newly ratified treaty must either be declared by the President, the Senate or a court to be self-executing, or be implemented by new legislation. If none of this happens, the treaty has no effect in the US.

Why worry about self-execution?

Opponents of the Court and the Statute could claim that it is not self-executing and use this as a strong argument against ratification of the Statute as a treaty that might never come into force, or as a way to delay US implementation of it indefinitely after ratification.

What is the procedure leading to ratification in the US?

The formal steps to ratification are that the President sends the treaty to the Senate; the Senate refers the treaty to its Foreign Relations Committee; after consideration the Committee sends it to the full Senate with a recommendation that it declare that it advises in favor of and consents to ratification; the Senate approves and sends such a declaration to the President by the constitutionally required two-thirds vote; and the President or someone on his behalf sends a ratification document to the entity administering the treaty. The complexity and political difficulty of obtaining Senate advice and consent, combined with the requirement of a two-thirds vote, mean that ratification of the Rome Statute will take time and must be preceded by confidence-building through long development of a substantial US relationship with the Court and of wide American participation in its activities.

How is the issue of self execution handled in this procedure?

The Senate Foreign Relations Committee has decided that it would like to avoid the uncertainties that doubt about self-execution can create. It is especially sensitive about the possibility that a ratified treaty may nevertheless not be in effect for a long time and over the inconsistencies in US court decisions. It therefore has begun to ask for and usually obtains statements on self-execution in presidential letters transmitting treaties to the Committee. The Committee now frequently makes similar statements also in its own recommendations to the full Senate.

How would a court come to make a decision about self-execution?

There might be a lawsuit to make the US government or another party carry out the provisions of a treaty. The defendant(s) would argue that the treaty was not in effect because it was not self-executing. If the president, the Senate or both have declared that a treaty is self-executing, US courts usually accept these statements as disposing of the issue, except when there is a question of the constitutionality of the treaty. In cases where there





have been no statements by the President and the Senate, US court decisions on self-execution are often complex and unpredictable.

How can we make sure that the Rome Statute is recognized as self-executing when the US ratifies it?

Supporters of the Court must work to make sure that the presidential transmission letter and the Senate Foreign Relations recommendation both declare that the Rome Statute will be self-executing in the US as soon as it is ratified. Achieving this will require three difficult actions by American supporters of the Court. They will have to work to make the US/ICC relationship ever closer, broader and more intense, induce the administration to adopt a formal policy containing a commitment to eventual ratification and do the research, analysis and advocacy that will persuade the executive and congress that new laws to implement the Statute will not be necessary.

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