



### Fact Sheet

Office of War Crimes Issues  
Washington, DC  
May 6, 2002

## The International Criminal Court

### U.S. Decision

- On May 6th, 2002, the U.S. formally [notified](#) the United Nations that the U.S. does not intend to become a party to the Rome statute.

### Background

- In 1998, a UN diplomatic conference in Rome comprised of representatives from 160 countries adopted a treaty, known as the "Rome Statute," to create an international criminal court.
- Although the United States remains a leader in its dedication to ensuring that perpetrators of war crimes are brought to justice, the U.S. voted against the adoption of the Rome statute because it was seriously flawed.
- The United States signed the treaty on December 31, 2000. At that time, then-President Clinton stated the treaty was fundamentally flawed and that he would not forward the treaty to the Senate for advice and consent to ratification. He also recommended that his successor not forward the treaty to the Senate.
- The Rome statute provides that it will enter into force on the first day of the month after the 60th day following the date on which the 60th country submits its instrument of ratification to the UN.
- On April 11, 2002, the total number of ratified countries surpassed 60.
- The treaty will enter into force on July 1, 2002.

### Significant Problems With The ICC Treaty

- Jurisdiction. The ICC purports to have jurisdiction over certain crimes committed in the territory of a state party, including by nationals of a non-party. Thus the court would have jurisdiction for enumerated crimes alleged against U.S. nationals, including U.S. service members, in the territory of a party (Article 12), even though the U.S. is not a party.
- New crimes. A state party to the treaty can "opt out" of crimes added by amendment to the statute, thereby exempting its nationals from the ICC's jurisdiction for these crimes. A non-party cannot opt out (Article 121). This is unacceptable.
- Aggression. The crime of aggression is included within the court's jurisdiction, but has not been defined. The parties to the treaty will amend it to define this crime and specify the conditions for exercise of jurisdiction over it (Article 5). Only parties to the treaty can opt out of the jurisdiction of the court over the crime of aggression per Article 121. In addition, many states advocate conditions for the exercise of jurisdiction by the ICC that could bring the court into conflict with the Security Council and the UN charter.
- Prosecutor. The prosecutor can proceed with an investigation on his or her own initiative with the agreement of two judges of a three judge panel (Article 15). This could lead to politically motivated prosecutions.
  - The prosecutor is not responsible to an elected body or to the UN Security Council, and the court lacks fundamental checks and balances.

- Reservations. In a serious departure from common practice, the treaty does not permit states to take reservations. (Article 120)
- Complementarity. The ICC is required to defer to the national prosecution unless the court finds that the state is unwilling or unable to carry out the investigation or prosecution (Article 17). However, by leaving this decision ultimately to the ICC, the treaty would allow the ICC to review and possibly reject a sovereign state's decisions not to prosecute or a sovereign state's court decisions not to convict in specific cases.

### **Alternate Mechanisms**

- The U.S. continues to be a forceful advocate for accountability for perpetrators of war crimes, genocide and crimes against humanity.
- The U.S. is confident that there are more suitable alternatives to the ICC.
- Alternate Mechanisms include:
  - Domestic Accountability. Encourage states to pursue credible justice at home rather than abdicating responsibility to an international body.
  - Where domestic legal institutions are lacking but domestic will is present, the international community must be prepared to assist in creating the capacity to address the violations. This includes political, financial, legal, and logistical support.
  - Where domestic will is non-existent, the international community can intervene through the UN Security Council, consistent with the UN charter. Ad hoc international mechanisms may be created under the auspices of the UN Security Council, as was done to establish the international tribunals for the former Yugoslavia and Rwanda. Or, hybrid courts consisting of international participants and the affected state participants can be authorized, such as in the case of Sierra Leone.

### **Summary**

- The U.S. is emphatically committed to international accountability for war crimes, genocide, and crimes against humanity.
- The United States strongly opposes the ICC treaty because it is seriously flawed.
- The United States will work together with other nations to avoid any disruptions that might be caused by the treaty.
- Other mechanisms either already exist or may be established to ensure international accountability for war crimes, genocide, and crimes against humanity. The most fundamental mechanism is domestic state accountability. In the absence of state accountability, the international community must act to assist the state, or in the most dire of circumstances, the UNSC may be required to establish situation-specific mechanisms to ensure justice.
- This is consistent with the UN charter, which has been accepted by virtually all nations.

[End]