DAVID SCHEFFER, U.S. AMBASSADOR-AT-LARGE FOR WAR CRIMES ISSUES, ON-THE-RECORD BRIEFING AT THE FOREIGN PRESS CENTER

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SILVER: Good afternoon, ladies and gentlemen. My name is Charles Silver. I'm the director of the Washington Foreign Press Center. And it's my very great pleasure to welcome Ambassador David Scheffer here this afternoon.

Mr Scheffer is the ambassador-at-large for war crimes issues, and is also currently senior adviser to the secretary of state. Ambassador Scheffer will begin by making some brief opening remarks, and then we'll go into questions and answers. Thank you.

SCHEFFER: Thank you very much, Charles. First, my apologies for the 15 minute delay here, the cab finally stopped halfway here and we walked the rest of the way because of the gridlock in the traffic. So, we simply had great difficulty moving a few blocks in Washington today. But that's for good reason.

Let me just say that I appreciate this opportunity to come and talk with you about the outcome of the Rome conference on the establishment of a permanent international criminal court.

As is well known by now, the United States in the end was not in a position to support the outcome of the Rome conference. Our position in the end was stated for very good reasons, and we can get into some of that through your questions.

I do want to say that it was a deeply disappointing outcome for the United States in Rome. The president, for several years now, has advocated the establishment of an appropriate international criminal court that could investigate and prosecute the perpetrators of mass crimes in the character of genocide, crimes against humanity, and war crimes.

Both as ambassador to the United Nations and now as secretary of state, Secretary Albright has been a champion within our own government and with other governments on issues of international justice, a very strong supporter in both the establishment and the operation of the two ad hoc war crimes tribunals, and a very strong supporter of U.S. participation in the talks that culminated in Rome for the UN diplomatic conference there this summer.

We achieved, actually, many of our objectives in the statute of the court and we worked very hard at that. And we were very gratified that many of those objectives, in fact, were achieved. I think the treaty is stronger because of U.S. participation in the negotiations. It's a more credible treaty because of that U.S. participation.

But in the end, there were a few very fundamental issues which either have to be accommodated within the treaty text or they present very severe difficulties for the United States government. And that is exactly what happened. Those accommodations were not achieved in the negotiations, and therefore we were not in a position to support the text as it came out of Rome.

That's disappointing. It's not the end of the world. There's obviously a period of time now before entry into force of this treaty that will offer various opportunities for dealing with the outcome of the Rome conference, and we'll certainly be exploring those.

So with that, let me just finally sort of wrap up the introductory comments by saying that the U.S. government's resolve to continue to lead in the field of international justice is undiminished.

There's a tremendous amount of work out there to be done for crimes in our own time. Those crimes that stretch back to the Cambodian crimes against humanity and genocide of the late 1970s all the way through the 1990s, where we've seen one atrocity after another occur.

The permanent court will have absolutely nothing to do with that criminal activity. It's jurisdiction will only be prospective from the date of entry into force. So therefore the needs are very clear as to what needs to be done in real time now with respect to bringing perpetrators of these crimes to justice.

And our government will continue to work those issues extremely hard with other governments, with the United Nations, with law enforcement officials around the world. And we'll continue that with all due vigor and determination. So with that, let me open it up, Charles, and I'd be happy to take your questions.

SILVER: Let me remind everybody, please wait for the microphone and identify yourself.

QUESTION: (OFF-MIKE) I know that the United States asked for a vote on the proposal, on the consent of exercising jurisdiction (OFF- MIKE), is that right?

SCHEFFER: Yes, but of course there's more to it than simply the word consent. But, yes.

QUESTION: And did that then lead to the overall vote on the treaty?

SCHEFFER: Yes, what happened was that there no votes in the Rome conference and no one expected there to be any votes. And no one actually wanted there to be votes until the final day. Because you continue to strive in these negotiations for compromise and consensus up to the very last moment. Because that's everyone's desire is not to have to go to vote.

We spent an enormous amount of energy and work, including with the German delegation, up to the final hours -- final hour of the conference, to try to seek those compromise and consensus positions that would avoid the necessity of calling for a vote.

We were very close to it on the Thursday morning of the final week. All permanent members of the security council, including the United Kingdom, were supportive, and the United Kingdom being a leading member of the like-minded group -- the 60 plus countries that were very proactive supportive of a broadly based and very powerful court. The United Kingdom joined with the other permanent members of the security council in supporting a compromise package that they were prepared to have introduced in front of the like-minded group for consideration.

We had hoped that, that compromise package would be satisfactory and would thus enable the permanent members of the security council to be strong backers of the court. Unfortunately, by midnight of Thursday night of the last week, the compromise was rejected, and therefore we were posed by Friday morning of the final week with essentially a take it or leave it document from the chairman

of the conference which did not include the compromise provisions that had been put forward by the P-5.

And that is what required, even after another day of discussions where we sought to reach compromise positions, required us on the Friday evening of the final week to call for a vote on the amendments that we believed were most important to incorporate in the document. We had pared down our amendment request to two amendments that would have been fundamental to the decision of whether or not we could recommend to the U.S. government support for the treaty. And it was incumbent upon us to lodge those amendments. That is our responsibility, and we discharged that responsibility.

Unfortunately, the amendments did not even reach a vote, because we were defeated on a no-action motion lodged by Norway. So we don't have a vote count on our amendments. But we were not able to get an actual vote because we lost the no-action motion. So that's really how it played out in the final days.

QUESTION: In the event that, in the way it played out, it seems to me, and tell me if I'm wrong, that the United States gets the worst of both worlds? You don't get to exercise jurisdiction over our own troops overseas and we don't get the seven year immunity time span that signatories to the treaty do?

SCHEFFER: Well, if we were to sign the treaty, of course, we could get the seven year opt out provision, if we were to become a state party to the treaty.

SCHEFFER: Just as any other party can take advantage of that.

But our position was two fold. One, we did not believe, and continue to strongly not believe, that this court can or should seek to exercise it's jurisdiction over the nationals of governments that have not joined the treaty regime. That's as fundamental issue that we feel strongly about. It's contrary to treaty law, principles, and yet somehow it prevailed in the structure of the court.

We had to pay attention to the non-party status of any government. It simply would have been unrealistic and irresponsible for the United States, and frankly for any other government that has troops committed to international peace keeping -- multi-national enforcement operations, not to be concerned about the exposure of its troops in the event that a government is not able immediately to join the treaty.

And we certainly have no guarantee of when the United States government, even if we got a perfect treaty, would have been in a position to actually fully ratify and join the treaty. That's all problematic. That's speculative.

It would have been irresponsible to have concluded these negotiations with the assumption that the United States would be immediately a full party to the treaty on entry into force of the treaty.

No one can guarantee that. We can't guarantee that. And therefore, we are looking even possibly at a small window where, as a non-state party, we would have been exposed to the jurisdiction of this court. And that is totally unacceptable.

And therefore, we pressed hard for that, but I must say that there was a very large block of countries that appeared determined to expose us to the

jurisdiction of the court even under those circumstances. And that is unfortunate.

At the same time, however, we knew that we had to look at -- and we were determined to try to structure this treaty so that, in fact we could be a very active engine behind this court, a state party to this court, a major driving force behind it. And if that is an objective, then you have to look at what is required in the text of the treaty to facilitate that.

So, that is what lead to the compromise in the final week, where we were prepared to go with a 10-year opt out period, for crimes against humanity, and war crimes at the beginning of the treaty regime. At the end of that 10-year period, a state party would have three choices: one, accept the automatic jurisdiction of the court over all of the crimes that the court has jurisdiction over; two, succeed in amending the statute so that your option to opt out of certain crimes could be extended -- you would need the agreement of the state's parties to achieve that of course; or three, simply immediately withdraw from the treaty if you're not prepared to embrace the entire scope of jurisdiction of the treaty.

That transitional period of 10 years, was critical for the United States. We believe it was critical for other governments as well. In the end there was a seven-year period for war crimes opt out only that was adopted by the conference. This satisfied some governments. It did not satisfy the United States.

So, we were left with an unfortunate consequence. We did not achieve protection within the statute against the universal sweep of the court, even over non-state parties. And we did not achieve the opt-out period of 10 years for two categories of crimes; crimes against humanity and war crimes, which we believed was important as a transitional vehicle -- first of all, to bring more governments into the treaty regime right off the bat, to encourage them to come in, including ourselves -- but only give you 10 years to have that privilege of opt out, and then after the 10-year period you either accept the automatic jurisdiction of the court or you have to withdraw from the treaty.

We felt that was reasonable. The permanent members of the Security Council thought it was reasonable. But it did not -- it did not prevail in the negotiations.

QUESTION: In the coming general assembly in September, I think the treaty will be discussed at the general assembly and adopted and ratified. And now that you are not a party to it, and it should be implemented on all the countries who are not party. So, what is your strategy vis-a-vis this development? What are you going to do? How are you going to confront this?

SCHEFFER: First, I can tell you that it would be bizarre, utterly bizarre consequence for governments to think that this treaty can be adopted and brought into force with the presumption that it will cover governments that have not joined the treaty regime. That is bizarre. That's weird. That is unheard of in treaty law.

So the sooner we start accepting the logic of what we have learned in international law for decades, which is that you don't join treaties and then presume that you can extend that treaty's jurisdiction to all the non-state parties to the treaty regime, I think the better progress we can make to ultimately create a court that the United States is in a position to be a very active member of.

In addition to that, the general assembly, no doubt will address the issue of the international criminal court. But the general assembly will have no authority to approve it or adopt it in the sense of this is a treaty-based regime. It requires individual governments to first sign the treaty, then to bring it back to their domestic jurisdictions and get it ratified, and then to file that ratification with the secretary general.

So, we full expect there will be discussion in the fall session of the general assembly and we will be prepared for that. But the process of signing the treaty and having it adopted and brought into entry, into force, is not a general assembly function. It is rather going to be the responsibility of 60 countries, since 60 governments, to actually make that happen because it's 60 countries that are needed to bring the treaty into force, as ratifying parties.

And that will, no doubt take some period of time, although it will be interesting to see how long it actually takes to actually bring the treaty into force.

QUESTION: (Unintelligible) the general assembly and then it has a sweeping countries who are really accepted it -- 124 in Rome and many of the countries who didn't afford to go to Rome, they will be in New York. So, it's not only 60 countries I think, it's...

SCHEFFER: Well, I think there's a misunderstanding here. It's one thing to express your general support for a treaty.

QUESTION: Yes.

SCHEFFER: And that was clearly done in Rome. It's another thing -- and it's also entirely possible that one could see the general assembly seek to take some action, showing support for the treaty. But beyond that, that doesn't do anything in terms of bringing the treaty into force.

The treaty needs 60 countries to both sign it and -- only 26 have actually signed it to date -- it needs 60 to sign and then those 60 signers of the treaty need to have it ratified through their constitutional procedures back home. And then that has to be deposited with the secretary general. It's a number of 60 governments that are required to bring the treaty into force.

So, it will take some time to get that accomplished. For example, the Law of the Sea Convention, was widely supported by the general assembly after the negotiations ended, but it took many, many years to get the necessary ratifying governments to step forward, deposit their ratifications with the secretary general and actually bring the treaty into force.

SCHEFFER: So, all I'm saying is that there will clearly be some period of time here before the treaty actually enters into force.

QUESTION: What are you going to do in this period of time?

SCHEFFER: What we will doing this period of time is first of all we're currently looking at what our options are. There are no definitive decisions at this stage other than to assure you that the United States is not prepared to sign the treaty in its current form. So any assumption that any government may have that the United States will evolve toward signature of the treaty is a very misplaced assumption.

I think our first order of business is to consider with many other governments what their views are at this stage, whether their intentions are for this treaty to enter into force and for this court to operate without the United States. I think it would be very interesting for us to know whether that's in fact the intent of other governments.

If it is in fact their intent that the United States participate in the work of the court, and be a major supporter of the court, then I think we need to have a lot of consultations with governments about what that really means and what it will entail.

So, those are the kinds of discussions that need to take place now, among governments.

QUESTION: Do you -- even if the United States were to have achieved its desired amendments and goals, do you honestly think the U.S. Senate as presently constituted, would approve such a treaty?

SCHEFFER: Well, let me say that I know from even my hearing last week before the Senate Foreign Relations Committee, that if we were to seek to bring the treaty in its current form before the U.S. Senate, we would meet considerable resistance in the Senate, if we sought to do so. That message was very clear last week.

I don't think we would want to speculate at this time on what would be the consequences if we ultimately brought a treaty to the Senate that had corrections that embodied in it that meet our most fundamental concerns. I think that would engage the Senate in a different discussion than what I experienced last week before the Senate Foreign Relations Committee.

I think it's incumbent upon us to always keep the Senate's views very much in the forefront of our minds, because after all for us to be a credible negotiating party in these treaty negotiations, we have -- we know that we have a certain procedure in the United States for negotiating, signing, and ratifying treaties. And the U.S. Senate is a key part of the third leg of that endeavor, the ratification part.

We cannot credibly go in and negotiate treaties if we are certain that if we negotiate a particular outcome and support a particular outcome, the Senate then is vigorously opposed to that outcome even before we've presented the treaty to them. I think we have to be very cognizant of what those views are.

And I think other governments have been very aware of this, obviously -- probably even more aware than they would have wished to have been at times about the system of government that we operate under here.

But you know, I firmly believe that the U.S. Senate from all of my dealings with that body, is firmly committed to the pursuit of international justice. And our duty in the executive branch is to present them with proposals where their approval is needed, whether it be ratification of a treaty, or appropriations for support of ad hoc tribunals or otherwise, with realistic proposals, that result in a joint effort of the executive or legislative branches for the pursuit of international justice.

And this is not the end of this story. We will have to see where we take this in the coming months, in terms of further steps.

Another question? Yes.

QUESTION: (Unintelligible) with other country. What kind of confirmation do you have with other countries? And which country, with which country -- are you talking about?

SCHEFFER: How many years back do you want to go?

LAUGHTER

QUESTION: My question is (Unintelligible) to achieve your goal through (Unintelligible) this idea. What do you, don't join this treaty?

SCHEFFER: If we do not seek corrections in the treaty, what happens if we don't join the treaty?

Well, first let me say that I have spoken with a very wide range of governments. If one goes back to where this all started in 1995, we could put on that list almost every country that has participated in these negotiations since 1995 at the U.N.

I have traveled the world many times to many capitals, to discuss these issues, as recently as May. Prior to the June conference, I was in Asia discussing this with many Asian governments. So there's been no shortage of meetings and consultations.

While I was in Rome I was meeting every day with governments across the board, on a bilateral basis and group sessions, et cetera. And I honestly don't now of any government that spent more time meeting with other governments than did the United States.

The difficulty the United States often find itself in is that there are many governments that believe they should meet many, many times with the United States, during a conference, and then if they don't hold those -- that series of meetings, then they're disappointed. And all I can say is we tried our very best in Rome to meet as many times as we could with as many governments. And we did so in many different ways.

I will say this about the Japanese government. The Japanese government was represented by Ambassador Owada who is your permanent representative to the United Nations. He did a superb job. We consulted with him extremely closely. He held himself out as an interlocutor between ourselves and many other governments that had quite divergent views from the U.S. view of the court. And all I an do is -- I think Japan can be extremely proud of the role that their ambassador took at the Rome talks, very proud. He was a leader.

Now the second part of your question was where do we go from here. I would truly hope that the developments of the next months, and even the next year or so, will point in the direction of correction of this document before it enters into force.

If that doesn't occur, then I see very, very little likelihood of any serious consideration in Washington of U.S. signature of the treaty -- very little likelihood of any serious consideration of signature of the treaty if those

corrective actions are not taken. We certainly have no plans at this time to sign the treaty in its current form.

I would also think that one of the consequences for the international court, if it is established without U.S. participation, is that you will find lacking what we have been trying to do -- and I think to some considerable success in the last few years -- in our support for the ad hoc tribunals on the former Yugoslavia and Rwanda.

The United States has the ability, as do other governments, to bring its diplomatic clout to bear, to facilitate the cooperation of states with these judicial institutions and we do it every single day. It's one of the reasons my office and my position exist. And it works.

I would hope that we're not in a situation when the permanent court is established, where the United States is not in a position to do that, to facilitate the work of such a court. I would hope that we would be in such a position.

The other danger is you know, if we don't see a positive evolution in this issue over the next year or so, there may be a real consequence in terms of how the U.S. Congress may view these issues and I would hope that, that would not be a consequence of this.

So I think that a lot is at stake here. A lot is at stake in terms of how the United States can use its diplomacy, can use its resources, because we would like to continue to participate as a leader in international justice.

SCHEFFER: But it has to be international justice that does not ignore our responsibilities for international peace and security. In the end, it's those countries that can make the greatest contribution to international peace and security, which can also make the major contribution to international justice. Last question.

QUESTION: (OFF-MIKE) to these questions, at the time of state department briefings Mr. Rubin said if the United States could not change the text of the treaty (unintelligible) at the same time the U.S. will actively oppose the treaty put into force. And what is the meaning of "actively oppose"? Do you mean that try to prevent the ratification by the other countries? And the final question is, after the -- last year I think, the (unintelligible) treaty was then (unintelligible) the United States could not change (unintelligible). And this is the second time that most of the international community find that the United States failed to join to the train (ph), and what does it mean in the (unintelligible) foreign policy?

SHEFFER: First, let me say that when a decision needs to be made about what constitutes "actively oppose", we will make that decision. I think -- I would hope that we can see developments in the next year or so that would not lead us to have to reach that decision.

It's premature right now to speculate on what "actively oppose" means. We can all guess at what it may mean, whether it be in terms of ratification or in terms of the actual operation of the court once it's established. But I think it would just be premature right now to try to set forth what that might mean, because frankly I would hope that we don't have to reach that point. We really shouldn't have to reach that point.

In terms of U.S. diplomacy writ large after the land mines and international criminal court negotiations, let me just say that in this post-Cold War era, we have some very difficult and complex issues. And there are special responsibilities that certain countries take upon themselves.

The United States continues to have a significant responsibility for international peace and security. We're the country that is often called upon to execute a security council mandate, to come to the assistance of alliance partners, to take multinational military action that is sometimes very unpopular posed by several governments, and yet we're being asked by other governments to take that action. And the examples are many that I can list going from security council mandate all the way down to unilateral actions that nonetheless governments desire our military to take.

And we have to be extremely careful that when we enter into these negotiating fora that we always keep in mind those responsibilities. That not only the United States but, quite frankly, other countries take on too. And I think it's unfortunate that there were developments in Rome whereby those responsibilities of the United States tended to be diminished in the thinking of those who were trying to put the international criminal court together.

One thing that I've found very surprising, and at times even distressing, during the Roman talks, was the casualness with which representatives of other governments, as well as the nongovernmental organizations and even the media, would approach me with the statement that there is no plausible scenario whereby the U.S. military could ever be brought before the international criminal court because of all these various safeguards. And the discord is really aimed not at the United States but at others.

Now I would say I certainly believe it should be a court that is aimed at the perpetrators of mass crimes, and we like to think in the United States we're not perpetrators of mass crimes. But we can't work off of mere assumptions that things won't happen. We have to see a document that provides us with the assurance that this court will not be a politically motivated court -- will not be one that can be used by a rogue state against the United States, and yet create the bizarre consequence that our soldiers in multinational peacekeeping operations on the soil of a rogue state could be prosecuted. But the perpetrator of the mass crimes on the territory of that rogue state himself could not be prosecuted because of the way the treaty is structured. That's just bizarre. It's a bizarre structure of jurisdiction.

And I just hope that in the future what really is a fair assessment of responsibilities of governments in the international system can be taken into account in this treaty. It's really not that difficult to fix this treaty. It's not that difficult. From a conceptual point of view, it's not that difficult.

But I think it's going to require governments to recognize that when it comes to international peace and security and those responsibilities that there are circumstances that have to be taken into account. There's a reality that has to be taken into account. And I hope that can be achieved.

SILVER: Do you have time for one last?

SCHEFFER: Sure.

SILVER: Okay, this is the last one. I've said that before, and I meant.

QUESTION: Going back to an earlier statement of yours, you said there will be real consequences (OFF-MIKE) congressional attitudes as a result of this, I think I know what you mean but are you suggesting that in the future, if this situation should continue that congress would, in effect, prevent the U.S. government from entering into peacekeeping activities because of the risk?

SCHEFFER: I don't want to presume what congress will do or not do. All I would do is point you to the statement of Chairman Helms at my hearing last week, where he in fact listed some of the things that were on his mind. And I think we have to take note of that. So I would simply point you to that transcript of Senator Helms' statement last Thursday in the senate foreign relations committee. And he certainly spoke to this issue about what could be the consequences.

SILVER: Well, with that I would like to thank Ambassador Scheffer, and I'd like to thank you, ladies and gentlemen.