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1. **The Federal News Service, Inc.**
White House Regular Briefing
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<http://www.whitehouse.gov/news/releases/2005/04/20050401-8.html>

[.]Q. Last night the Security Council of the United Nations decided to hand over the dossier of Darfur and possible war crimes there to the International Criminal Court in The Hague. And the U.S. didn't prevent that to happen. Does that mean that you see this International Criminal Court now in a more positive light?

MR. MCCLELLAN: No. I mean, in terms of our view of the International Criminal Court has not changed, nor has our view that those who are responsible for atrocities in Darfur need to be held accountable. We strongly support holding individuals who are responsible for the atrocities that have taken place accountable for their actions. And we have worked very closely with other members of the Security Council on these efforts. There are three resolutions that we've moved forward on. One was the peacekeeping operation to enforce the North-South agreement. The other was to move forward on sanctions to hold people responsible for the violence -- the continued violence in the region as well. And then this one that passed last night. And the reason we didn't stand in the way of that resolution was for two reasons. One, we believe strongly that people need to be held accountable for the atrocities committed. Two, it provides protections for Americans in that resolution. And that's why we did not stand in the way of that resolution passing.

Q. So you think that in that concrete case, the International Criminal Court can play a positive role?

MR. MCCLELLAN: I'm sorry?

Q. Does that mean that in your view, the International Criminal Court can play a positive role in this case of Darfur?

MR. MCCLELLAN: Well, it's important that those who are responsible for atrocities be held accountable. We've made that very clear. We've expressed our concerns about the International Criminal Court in how it could be used for political prosecutions. That view remains the same. But this resolution included some protections that addressed our concerns, and so that's why we supported it. [.]

2. Federal News Service

April 1, 2005

US State Department Regular

State Department Spokesperson Richard Boucher

[.]Q. Can we go to Sudan for sec?

MR. BOUCHER: Sure.

Q. And I think this is where George wants to go.

Q. No.

Q. No? (Laughter.)

Can you explain why it is that the U.S. government believes that citizens of Sudan, which signed the Rome Statute but has not ratified it and, therefore, is not a state party to it, should be subject to its jurisdiction when the crux of the American argument is that U.S. citizens should not be subject to its jurisdiction because the United States is not a state party to it.

MR. BOUCHER: You might understand that -- I think this is the third time you've asked this question today, and so my answer might be similar to the answer that previous officials, including the secretary of State, have given to you to this question.

The United States believes very firmly in accountability for the crimes that have been committed in Sudan. We thought it was very important that the U.N. Security Council take action. As you know, we have explored, along with some of the Africans who supported the idea of an African-led tribunal that could do that, but all of us keeping to the fundamental point that it's vital to ensure accountability.

This is a Security Council action. This is an action where the Security Council has determined that crimes that have been committed need to be prosecuted, and the Security Council has determined what the appropriate forum is for those prosecutions. To that extent, it's similar to some of the other decisions that the Security Council has made, it's just in a different court.

Second of all, I think the circumstances in Sudan, Darfur in particular, have been extraordinary and need to be addressed. Other states that are not party to this, including the United States, have appropriate judicial and legal vehicles to address crimes that might have occurred. The United States itself is in the process of prosecuting crimes or allegations against Americans who might have committed abuses in Iraq. And we're demonstrating, I think, to the world now that we do follow up on our own on those things. No such mechanism exists in Sudan. We explored whether a mechanism like that could be established in Africa. There wasn't sufficient support for that. And there is a mechanism that many members supported in terms of doing that before the International Criminal Court. And so we abstained, because we think it's very important that these crimes are prosecuted.

Q Did the Security Council stay within the rules when it did what it did last night? In other words, there's a treaty here -- I don't think the Security Council has the power to go beyond what the treaty says. Was there an overreach by the council in this regard?

MR. BOUCHER: I think, first of all, that would have to be a question the treaty would have to -- treaty members, parties, would have to try to answer, if there is any legal question. I have not seen one raised. Certainly, the nine members of the council, I think it is, who are parties to the treaty didn't think so.

We have -- I mean, it was important to us in this resolution to achieve two things and that we did achieve. One was accountability for the crimes, and two was protection for Americans, who are not party to the treaty. The fact that this was done -- and I think you'll see this in the explanation of vote we gave at the U.N. and other statements that we have made -- the fact that this was done by the Security Council is important to us, but nonetheless we still have our fundamental objections to the Rome Statute of the International Criminal Court, and therefore we wanted to build in certain protections. Those are built in for nationals of states not party. The resolution also recognizes that absent the consent of a state involved or a Security Council referral, that persons of states not party to the Rome Statute should not be subject to ICC jurisdiction.

The resolution also takes note of Article 98 agreements within the scope of the Rome Treaty. As you know, we signed a number of those, I think over a hundred or -- 99, I'm sorry, Article 98 agreements the United States has already entered into.

Q. (Off mike.)

MR. BOUCHER: No.

The other thing that's recognized is that none of the expenses incurred in the referral on the prosecution will be borne by the U.N. members but rather they'll be borne by parties to the Rome Statute. So in that way it protects, I think, our position on the Rome Statute of the International Criminal Court, but fundamentally what it achieves is something very, very important to all of us, and that is it achieves accountability for the crimes of Darfur.

Q. If I may follow up, you note that the resolution states that states that are not party must give their consent. Therefore, if Sudan does not give its consent -- and I believe it has not yet -- no Sudanese citizen could be tried, and therefore there would be no accountability for Sudanese citizens. So why --

MR. BOUCHER: Well, I --

Q. May I finish my question?

MR. BOUCHER: It's based on a false premise.

Q. Oh. How?

MR. BOUCHER: I can stop you there. I just said, absent consent or referral by the Security Council. In this case we have referral by the Security Council.

Q. Excuse me. But to go to the rest of the question -- and forgive me for that error -- why should not Sudan continue to argue what is essentially your position, that because they're not a state party, their citizens shouldn't be subject?

MR. BOUCHER: Because first of all, Sudan doesn't have a mechanism to show that there can and will be accountability for these crimes. And second of all, because the international

community has looked at this situation and decided that this is the appropriate way to ensure prosecution of some horrible abuses and crimes, crimes that we have called genocide.

Q. But Richard, doesn't this set precedent for the future, in that any country that is not a party to the ICC at some point may be referred by the Security Council to the ICC, and there are certain -- plenty of countries in the world that don't have the internal mechanisms to deal with such an issue, like Zimbabwe, for example, or there are several others that I could name?

MR. BOUCHER: As I said, the resolution itself recognizes that absent consent from the state or referral from the Security Council, that parties-- persons from states that are not a party won't be subject to this. But under those circumstances, they could be. So it's -- yeah, it establishes a practice. As I think many of you know, one of our fundamental problems the United States has had -- going back to the previous administration, I would add -- with the Rome Statute has been the lack of Security Council oversight to begin with.

Q. And just one more. Do you have reason to believe that Americans could be accused of involvement in crimes in Darfur, which is why you wanted to have this protection --

MR. BOUCHER: No, absolutely not. I think if you go back to Security Council resolutions -- if I remember correctly, I think Liberia might have been the first, but there have been several Security Council resolutions that one way or the other have dealt with this kind of protection. It's been fundamental to the United States to achieve that when we deploy people overseas. But that in no way implies that we think Americans are committing crimes. And if they did, of course, they would be subject to American prosecution.

3. US Fed News

April 1, 2005

International Community Must Act on Darfur, Say Secretary Rice

Relevant transcript excerpts from Rice's briefing follow press release

The U.S. Department of State's International Information Programs issued the following press release:

Calling the situation in Sudan an "extraordinary circumstance," Secretary of State Condoleezza Rice explained April 1 the United States' decision to abstain rather than veto a U.N. Security Council resolution passed on March 31 that refers cases of war crimes in the Darfur region of Sudan to the International Criminal Court (ICC).

During a joint press conference with Hungarian Foreign Minister Ferenc Somogyi at the State Department, Rice - responding to an observation that neither the United States nor Sudan are parties to the treaty that created the ICC - said "it is important to uphold the principle that non-parties to a treaty are indeed non-parties to a treaty. But the international community has to act on Darfur."

"It is a humanitarian crisis, it is a moral crisis, and it is a crisis that is extraordinary in its scope and in its potential for even greater damage to those populations," Rice said.

"There are clearly crimes against humanity being committed in Sudan and there are people who have to be held accountable for those crimes," she said.

The United States had pressed for Darfur war crimes cases to be referred to an African Union (AU) court that would use the facilities of the International Criminal Tribunal for Rwanda. However, acting U.S. Representative to the United Nations Anne Patterson said March 31 that

the United States did not veto the U.N. resolution because the measure will help promote accountability "and because the resolution provides protection from investigation or prosecution for U.S. nationals and members of the armed forces of non-state parties."

Rice said her discussion with Somogyi focused on Ukraine, Iraq, Afghanistan and the Balkans. She said Hungary has played an important role in Iraq as "a strong supporter of Iraq's efforts to move toward democracy, a strong supporter of the coalition there, and I think will continue to be."

She expressed appreciation for Hungary's "active and special role in helping others" in Ukraine, the Balkans, Iraq and Afghanistan.

Somogyi said he told Rice about Hungary's decision to establish an international center for democracy that would offer assistance and training to democratizing countries. He also reiterated Hungary's commitment to be a reliable partner and a predictable ally.

Rice also reflected on Pope John Paul II's legacy, citing him as a figure with "unparalleled impact through his great moral authority, through his willingness to speak out for people in need, through his willingness to speak out for freedom."

U.S. DEPARTMENT OF STATE

Office of the Spokesman

April 1, 2005

REMARKS- Secretary of State Condoleezza Rice

[..] QUESTION: Dr. Rice, why should citizens of Sudan, which I believe is not a signatory to the Rome statute, be subject to the jurisdiction of the ICC [International Criminal Court], when you argue that American citizens should not be subject to it precisely because the United States is not party to the treaty?

SECRETARY RICE: Well, we do believe that as a matter of principle it is important to uphold the principle that non-parties to a treaty are indeed non-parties to a treaty. Sudan is an extraordinary circumstance. I believe that it was Secretary Powell who talked about the fact that we believe a genocide is being committed in Sudan. Whatever you want to call it, there are clearly crimes against humanity being committed in Sudan and there are people who have to be held accountable for those crimes.

I would note that this comes through Security Council resolution, which does give some protection, I think, to non-parties to the treaty. But Sudan is an extraordinary circumstance. I would like to just note that we have also achieved for - through the Security Council the passage of a peacekeeping resolution so that we can get peacekeepers on the ground to reinforce the North-South agreement that was concluded at Naivasha and we believe that that North-South agreement will be an important part of helping to resolve the Darfur difficulty.

It is also the case that we have a sanctions resolution that has just passed and we will be able to employ those tools. But the international community has to act on Darfur. It has to act with great speed. It is a humanitarian crisis, it is a moral crisis, and it is a crisis that is extraordinary in its scope and in its potential for even greater damage to those populations. So I think this is a different situation, frankly.

4. Congressional Quarterly

April 1, 2005

Nicholas Burns, Under Secretary of State for Political Affairs

Under Secretary of State Burns Holds a News Briefing on Sudan

[.]BURNS: Thank you very much. Nice to be with you. So I want to talk to you about Sudan in general, about the UN Security Council resolutions, the three but also the one that was passed last night specifically -- and then happy to take any questions.

First let me say that the Secretary, since she took office, has devoted a lot of time to the question of Sudan because of the multiple layers of interest that we have there: first in helping to solidify the North-South peace agreement of January 9th; second, also and very importantly, to try to work with the rest of the international community to address the horrific situation in Darfur, the human rights violations there and the desperate nature of the situation that many people find themselves in there; and also to try to make sure that the United Nations and the international community are doing what they can to redress these problems.

So over the last two weeks, we sponsored two of the three resolutions that the Security Council has passed in the last week. First was the resolution sponsored by the United States that calls for the United Nations to introduce a 10,000-person peacekeeping force to help consolidate the North-South peace agreement, which we also hope will have a positive impact on the situation in Darfur.

Second was a sanctions resolution passed three days ago by the Security Council, also presented by the United States, that would provide for targeted sanctions on travel and assets for those officials and individuals who are complicit in the atrocities there and in contributing to the general problems in Sudan.

Third was the French resolution that was voted upon at, I think, 10:30 last evening that provides for the International Criminal Court to be the court that can try those people accused of atrocities and war crimes in Sudan.

I want to talk about that just for a moment. This was a difficult decision for us, for obvious reasons, because of our longstanding position on the International Criminal Court. And our position on that Court has not changed as a result of this action. But the Secretary felt very strongly, as did many others in the Administration, that we had to join the international community in a serious effort to see that justice was done in Sudan and that it was very important that the international community speak with one voice on this issue of justice to see if it's possible that together we can make sure that those guilty of war crimes and atrocities are brought to justice, they're held accountable and that they are tried before a competent international court and, if they are convicted by that court, serve long sentences.

That was the objective here, and by working with the members of the Security Council, really over several weeks, over the last several weeks, well preceding the negotiations that led to last night's vote, the United States played, I think, the critical role with our abstention on this resolution in not exercising the veto that we could have exercised as a Permanent Member to allow this to go forward. And it's our very strong hope, it's the Secretary's very strong hope, that the international community now has in place a process by which people guilty of war crimes and atrocities can be judged, that there are now sanctions that can be targeted at individuals, and we think that those -- the threat of those sanctions and the passage of that resolution, as well as last evening's, has sent a very clear and strong and unmistakable signal to those responsible, the parties responsible, that will hopefully motivate better behavior and an improvement in the human rights situation in Sudan itself.

This is part of a larger focus, as I've said, that we've had on Sudan. Bob Zoellick, our Deputy Secretary, at a press conference in Copenhagen earlier today mentioned that he's going to be representing the United States at the Sudan donors conference in Oslo, in Norway, on April 11th and 12th -- the Secretary has asked him to represent the United States Government -- and that he may visit Darfur after -- and Khartoum after that conference.

I think that demonstrates that over the last two months the Secretary has been able to shine a very bright light on Sudan and that we're doing things both in what we're going to do at the donors conference, the onsite visits, but more particularly these three resolutions, two of which we, of course, prepared and voted for and one in which we abstained and allowed it go forward.

Now, in taking the action that we did, it was a very difficult decision for our government. We made sure that we protected the interests of American citizens and of our government vis-a-vis the International Criminal Court itself. As I said, we have not changed our position towards the Court. We don't believe that that Court should have jurisdiction over the nationals and officials of states that are not party to the Rome statute that created the Court.

And in negotiating as we did, as the Secretary did, the language of the French resolution last evening on which we abstained, I think we achieved actually precedent-setting assurances. We received assurances that clearly acknowledge the concerns of states that are not party to the Rome statute, like the United States, that recognizes that people from those countries, i.e., the United States, should not be subject to the ICC jurisdiction without our consent or without referral to the Security Council.

And it represents a broader exemption for American citizens than we had previously been able to achieve. All nationals of the United States are covered by this, so any American -- a private American associated with a nongovernmental organization, an American working for the United Nations, any American official on the ground, any American outside, of course, currently or former, currently serving officials or formerly serving officials -- are now covered by the exemption in the language in the resolution last evening. That is very important for us because our government and Secretary Rice have not changed our view of the ICC. We're not party to it, we're not going to be party to it, and we operate under one general principle: that if a country decides not to join a treaty, it should not be subject to the requirements of that treaty. And in negotiating the language that we did last evening, we have been assured that all of our interests are protected.

Last point I'd make. I think that what the Secretary has been able to achieve here is indicative of the improved working relations that we have under her tenure with Europe in general and with other members of the Security Council. I think you all know she's been to Europe twice since she became Secretary of State: the first was a trip to a number of NATO allied countries as well as to NATO and the European Union itself; the second was with the President.

And she engaged in very intensive telephone diplomacy over the last couple of week and more intensively over the last couple of days with a number of the ministers whose countries are represented on the Security Council. We went through volumes of language trying to figure out a way that we could reach an abstention, trying to figure out an ironclad assurance that our nationals would be protected from prosecution by the International Criminal Court, and those negotiations went to the very final hour of last evening when she made the decision that we would abstain.

And I think it's the quality of the relations that she's been able to build with some of the individual ministers, and also I think just the improvement in the environment in the transatlantic relationship because a number of these European countries are critical actors in the Security Council that enabled us to get the agreement that we did.

So those are the points I wanted to make. I'm happy to respond to your questions.

George.

QUESTION: Pierre Prosper said not long ago that the ICC is in no position to take on Sudan because, if it did so, it would burst at the seams -- those are his words -- because of existing commitments. What do you have to say about that?

BURNS: You know, we faced -- we had to face a hard choice over the last couple of weeks. I mean, this is not a new issue, as you know, George. There were a variety of options put on the table at the United Nations to determine which institution would be best placed to be the court that would try those guilty, those allegedly guilty of war crimes. There was a proposal by African countries to have an African court. There was a proposal by members of the ICC, and I believe that at least nine of the current members of the Security Council are also signatories of the ICC, to use the ICC, designate the ICC as the court. There was a hybrid proposal in which we were interested that would have created perhaps a new institution that could have been inspired by the African idea and associated perhaps with the United Nations.

And we went to the last mile in discussing all those options and we might have -- we would have preferred, in an ideal world -- perhaps with the hybrid solution. But at the end of the day the proposal, the only proposal on the table, was the International Criminal Court and so the United States was faced with a decision of how to protect our interests in not allowing the Court to intrude on American citizens but also to get at the larger issue of justice in Sudan. And the Secretary and many others in the Administration, throughout the Administration, felt it was very important that we participate in speaking with one voice in the international community to try to achieve justice in Sudan. I think we have managed to do that and at the same time protect the interests that we have in keeping the United States and American citizens separate from the International Criminal Court.

QUESTION: Secretary Burns, dumb question. Sudan is a party to this, and what confidence do we have that Sudan will allow its nationals to be brought before the ICC?

BURNS: Well, I think now that is the next pertinent question. It's now going to be up to the Security Council, and we're a Permanent Member, in working with the Sudanese Government to make sure that they listen to the three resolutions that have been passed in the last week. There's going to be a peacekeeping force that should help them implement the North-South peace agreement. There are sanctions that are available now to the United Nations that could be targeted at members of the government, at other parties to the Sudan conflict, should they not meet their commitments. And there's now a possibility, there's a mechanism to try people that might be brought before that Court. That's a very strong and powerful message that the United Nations has sent, and the United States has been at the forefront of that and we're going to watching and working...

QUESTION: Are they are signatory...

BURNS: ... very carefully with them...

QUESTION: Are they a signatory of the ICC?

BURNS: We're going to be working very carefully with them over the next couple of weeks to see that they listen to these three resolutions and that in particular -- I'll address your question -- in particular that they now respect the fact that there's a court available to try people for atrocities and war crimes.

And that's the next step in diplomacy -- is to have talks with the parties to the conflict, not just the government but other people in Sudan that will be part of what we do in our day-to-day diplomacy over the next week or so. It's certainly going to be part of what Deputy Secretary Zoellick is going

to be doing both at the donors conference -- and there will be Sudanese officials there -- as well as at a possible trip to Darfur.

Now, we are also in touch today from the State Department with the Sudanese leadership to walk through the meaning of these three resolutions, and particularly last night's, and we are urging the Sudanese Government to take these very seriously and now to begin to cooperate.

QUESTION: You still didn't answer my question. Are they a signatory of the treaty and thus subject to the ICC in any form or fashion?

BURNS: Sudan is going to have to listen to the United Nations...

QUESTION: They're not a signatory, which means that they're in the same position that the United States is. I mean, your position is that a country that doesn't sign a treaty is not supposed to be subject to it. So if that's our -- if what's good for the goose is good for the gander.

BURNS: And now the United States has clearly spoken through our abstention in sending a direct signal to the Sudanese Government that because of the extraordinary nature of what is happening in Sudan and what has been happening over many years, they need to cooperate with the ICC, with the United Nations, and they should listen to the message that's been given in a fairly dramatic way by these three resolutions.

QUESTION: To ask Barbara's question another way, you described the ICC as a competent international court, which I think is probably the nicest thing I've ever heard an American official say about the ICC. If it is a competent international court to address the atrocities in Sudan, which is not a signatory, why is it not a competent international court to address issues perhaps with regard to Americans?

BURNS: We believe that every country has to make a decision about which treaties they sign, which organizations they belong to, which treaties their citizens should be subject to. We have a consensus in this Administration and in the country that we're not going to be party to the ICC; that is, nothing has changed in our position because of this abstention. We worked out guarantees to protect American citizens that go beyond anything we've ever had before, and that was a compelling factor in the decision to abstain on the resolution. If we had not been able to achieve those guarantees of protection, we would not have abstained; we would have vetoed the resolution. But we have a dual interest here: first is to see if the United States can take part in the international effort to seek justice in Sudan; the second is to protect our position on the ICC. And that hasn't changed at all.

Now, on the question of Sudan, let me give you the same answer I just gave to the last question. It's an extraordinary situation. The country has been fractured by a civil war. There is a peace agreement and Secretary Powell, of course, is one of the observers to that agreement. He attended the January 9th ceremony. We have an obligation to see if we can make that peace agreement work. It's their responsibility, but we'll use our influence to do so.

And there's a larger question of human rights violations in Darfur, and all of you are very well aware of that. And so we've made the choice to participate in the international effort to be effective in Sudan. That has no bearing on our own position on the International Criminal Court.

I would just say that Sudan finds itself as a state in a position where the entire international community now has spoken with one voice on several aspects of what they have to deal with, and the sanctions resolution, which we sponsored, in particular, is a very powerful signal to the leaders of the country but also to the parties of the conflict that they have to recognize that the international community is watching. And we felt it was important to go that extra mile.

QUESTION: Presumably, these people that are going to be tried are for past crimes as well as future crimes, and you've already implicated the government as being at least indirectly responsible for some of the crimes that are happening there. So do you really think that the Sudanese Government is going to put its own officials that might have been involved up for trying (inaudible)?

BURNS: Well, first of all, it's not going to be up to the United States Government to make that determination. It's going to be up to the ICC to make that determination and the UN Security Council is going to have a watching role and a watching brief -- actually over all three of these developments: the peacekeeping force, of course, which has been authorized; the sanctions, which can be implemented if the UN so determines; and now the accountability resolution. And so I think that it'll be interesting to see what happens over the next couple of weeks. We hope there's going to be a beneficial impact on the attitude of the parties to the conflict.

I don't want to focus just on the government, of course, because there are many parties to this conflict and all of them are accountable for what has happened there.

QUESTION: Did Secretary Rice discuss this with the President -- the abstention decision?

BURNS: There was a full discussion of this in the Administration, a full discussion at all levels of the Administration throughout the week. And Secretary Rice, of course, is acting on behalf of the President, as she always does, in instructing...

QUESTION: And she specifically...

BURNS: ... instructing our Ambassador to the United Nations. And I don't want to go into the ins and outs, inside baseball of who said what to whom in the Administration, but this decision is fully supported throughout the Administration. I can tell you that.

Thank you.