



CHRONOLOGY OF US OPPOSITION TO THE INTERNATIONAL CRIMINAL COURT: FROM 'SIGNATURE SUSPENSION' TO IMMUNITY AGREEMENTS TO DARFUR

This fact sheet details the United States government's opposition to the International Criminal Court (ICC) under the Bush Administration and early indications of an evolving policy under the Obama Administration. The Bush Administration's primary concern and fear was that the ICC would be used as a forum for politically motivated prosecutions of Americans, especially servicemembers. It also regarded as a serious assault on American sovereignty the Court's ability to try Americans even while the United States is not a party to the ICC's Rome Statute.

In response to these concerns, the United States under President Bush took the steps listed here. Although the US had signed the Rome Statute under the Clinton Administration, the Bush Administration suspended the signature by submitting a note to UN Secretary-General Kofi Annan on May 6, 2002. This is, however, a step that the Obama Administration or another future administration could reverse with another note.

Following the formal US disengagement from the Court, the US conducted a calculated campaign to undermine the Court despite its repeated declarations that it would respect the Court and the countries that support it. This campaign included the enactment of legislation such as the American Servicemembers' Protection Act (ASPA), the Nethercutt Amendment, and the formation of bilateral immunity agreements (BIAs) with other countries.

During the second Bush term, however, the US antagonism to the ICC started to wane. In March 2005, rather than veto a Security Council resolution to refer the situation of Darfur, Sudan to the ICC, the US abstained, seriously undercutting US arguments against the Court. Following the referral, the Bush Administration stated that it would support the ICC on the Darfur investigation, and considered an information request in July 2008. The US Congress amended ASPA to eliminate both types of ICC-related sanctions on nations refusing to enter into BIAs and did not renew the Nethercutt provision for Fiscal Year 2009. In addition, key political leaders of both major political parties continue to express their support for the ICC.

- **September 24-October 5, 2001:** Diplomatic representatives of the Bush Administration participate in Eighth Session of Preparatory Commission for the International Criminal Court, making a final intervention on the crime of aggression on September 26. It is the last time that the US sends a delegation to official ICC meetings as an observer, which had been a consistent practice under the Clinton Administration.
- **May 6, 2002:** Under Secretary of State for Arms Control and International Security John Bolton sends a letter to United Nations Secretary General Kofi Annan announcing the US decision to suspend its signature of the Rome Statute, thereby making it clear that the US does not intend to support the ICC
- **July 12, 2002:** The UN Security Council unanimously passes Resolution 1422 and expresses its intention to renew it annually. The resolution requests that "...if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, [the ICC] shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise."





- **July 23-24, 2002:** The American Servicemembers' Protection Act (ASPA) is passed by both houses of Congress as an amendment to the Supplemental Appropriations Act of 2002, HR 4775. It threatens to cut International Military Education and Training (IMET) and Foreign Military Funds (FMF) aid to nations unwilling to enter into a BIA, subject to waiver by the president. It also includes a second-degree amendment (S.AMDT.3787) by Senator Christopher Dodd (D-CT) incorporated into the text of ASPA: "Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity." President George W. Bush signs HR 4775 into law on August 2, 2002.
- **September 30, 2002:** The Council of the European Union states that the US non-surrender agreement does not fall under Article 98 of the Rome Statute and, as proposed, would be illegal for States Parties to the ICC to sign. It further adopts "guiding principles" that require any related agreement to (1) include appropriate operative provisions ensuring that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity, (2) cover only persons who are not nationals of an ICC State Party, and (3) cover only persons present on the territory of a requested State because they have been sent on official business by a sending state that is party to the agreement.
- **July 1, 2003:** President Bush announces a suspension in military aid to 35 States Parties to the ICC. Waivers for the ASPA prohibition on US military assistance are provided to ICC States Parties that have concluded, or are in the process of concluding, BIA agreements.
- **August 26, 2003:** The US refuses to join a UN Security Council resolution protecting humanitarian aid workers — even after the bombing in Baghdad that killed 22 UN workers — because it refers to the fact that the ICC has explicitly criminalized attacks against aid workers as war crimes. The version that passes, Resolution 1502, instead refers indirectly to "existing prohibitions under international law."
- **November 21, 2003:** President Bush partially waives military assistance cuts to Bulgaria, Estonia, Latvia, Lithuania, Slovakia, and Slovenia for certain specific projects the President has decided are needed to support the integration of these countries into NATO, or to support Operation "Enduring Freedom" or Operation "Iraqi Freedom". This action is an attempt to preempt a bipartisan congressional effort to exempt NATO accession countries contributing troops to Iraq and Afghanistan from ASPA cuts. It is the first time waivers are granted to countries that refuse to sign a BIA.
- **July 1, 2004:** Resolution 1487 expires after US requests for renewal and a US proposal to amend the Resolution to extend for a final 12-month period. The US announces the withdrawal of 7 personnel from the UN peacekeeping Mission in Ethiopia and Eritrea and 2 personnel from the UN peacekeeping Mission in Kosovo because the countries involved have not signed BIAs.
- **December 7, 2004:** President Bush signs the omnibus appropriations bill containing the controversial Nethercutt Amendment (HR 4818). The revised language of the amendment allows presidential exemptions for NATO, MNNA (major non-NATO allies), and Millennium Fund countries. The Nethercutt Amendment differs from ASPA by adding Economic Support Fund (ESF) aid cuts to ASPA cuts in military aid. It does not have an equivalent to the Dodd Amendment in ASPA.





- **March 2005:** The US begins to see the adverse effects of the ASPA legislation and the BIA campaign. The Department of Defense voices concerns that ASPA has reduced foreign troop training opportunities and hurt the government's ability to fight terrorism abroad. General Bantz J. Craddock of the US Southern Command states that 11 of the 22 countries affected by sanctions under ASPA are from Latin America, thus "hampering the engagement and professional contact that is an essential element of our regional security cooperation strategy. [...] Extra-hemispheric actors are filling in the void left by restricted US military engagement with partner nations."
- **March 31, 2005:** The Security Council votes to refer the situation of Darfur, Sudan to the ICC. Resolution 1593 passes 11-0, with four members abstaining: the United States, Algeria, Brazil and China. The US states that it did not veto the referral due to the need for the international community to work together in order to end the impunity in Sudan. The resolution provides for the protection of US nationals from investigation or prosecution and states that the UN will bear none of the costs associated with the referral.
- **April 2005:** "The Darfur Accountability Act" (S. 495) is introduced by Senators Corzine (D-NJ) and Brownback (R-KS). The Act calls for steps to be taken within the Security Council "to ensure prompt prosecution and adjudication of those named by the UN Commission in a competent international court of justice." Representatives Payne (D-NJ) and Tancredo (R-CO) introduce the House version of the Act (HR 1424) in May. The Act passes in the Senate as part of the supplemental appropriations bill. Due to pressure from the White House, it is stripped from the final bill.
- **May 27, 2005:** US Deputy Secretary of State Robert Zoellick issues remarks on Darfur during a briefing on Sudan. He states that the role of the ICC in Sudan sends "a signal about accountability" and is "a useful deterrence against others and allows us to emphasize a tool about the need to stop violence."
- **September 2005:** UN member states meet at a World Summit on the UN's 60th anniversary to discuss reform and the most important issues before it. Under the leadership of new US Ambassador to the UN John Bolton, the US threatens to break consensus on the adoption of a resolution on the outcome of the Summit unless all references to the ICC are deleted from sections covering the struggle against impunity and for accountability in committing atrocities. Since other countries felt that consensus was essential for a document signed by heads of state and government, but refused to have its discussion of responsibility for atrocities omit the ICC, the result was a resolution without any reference to impunity and accountability.
- **October 30, 2005:** Mexico becomes the 100th nation to ratify the Rome Statute. It rejects a BIA with the United States. At this point, the US has withheld \$3.6 million, which would facilitate Mexico's anti-terror and anti-narcotics training and help to provide anti-terror equipment.
- **November 1, 2005:** Jendayi Frazer, US Assistant Secretary of State for African Affairs, tells the House International Relations Committee that if the ICC requires assistance in Darfur, the US stands ready to assist: "Ambassador Zoellick ... has made very clear that if we were asked by the ICC for our help, we would try to make sure that this gets pursued fully. To use his words, because we don't want to see impunity for any of these actors ... we stand ready to assist."





- **November 8, 2005:** US Deputy Secretary of State Robert Zoellick comments on the situation in Sudan on his way to Kenya to meet with officials to promote security in Darfur. He states that ICC Prosecutor Luis Moreno Ocampo will try to focus on major targets in his investigations and recognizes that for the process of accountability to take hold, Sudanese action must be taken. Zoellick will encourage the Sudanese government to begin their own investigations and adjudications of crimes to develop a climate of accountability and build confidence in the peace process.
- **November 14, 2005:** The Nethercutt Amendment to the Fiscal Year 2006 (FY 2006) Foreign Operations spending bill is renewed, continuing the United States' policy to withhold economic assistance from nations that refuse to sign BIAs. The amendment jeopardizes \$326.6 million in US economic assistance to 12 nations.
- **February 6, 2006:** In the 2006 Quadrennial Defense Review Report, the US Department of Defense states that it will “[c]onsider whether the restrictions on the American Service Members Protection Act (ASPA) on IMET [International Military Education and Training] and other foreign assistance programs pertaining to security and the war on terror necessitate adjustment as we continue to advance the aims of the ASPA.”
- **March 10, 2006:** US Secretary of State Condoleezza Rice acknowledges that the military aid cuts to Latin American countries provided for in ASPA are “sort of the same as shooting ourselves in the foot.”
- **June 14, 2006:** US Department of State Legal Adviser John B. Bellinger III acknowledges in a *Wall Street Journal* interview that the ICC “has a role to play in the overall system of international justice.”
- **June 20, 2006:** US Assistant Secretary of State for African Affairs Jendayi Frazer states at a press roundtable in Entebbe, Uganda that “the ICC indictment [of Joseph Kony] is extremely important, and it is part of the process of accountability and ending impunity.”
- **July 28, 2006:** Representative Eliot L. Engel (D-NY) introduces HR 5995 to “repeal the prohibitions on U.S. assistance to countries that are parties to the International Criminal Court.” The enactment of this bill is not pursued further in the 109th Congress.
- **August 29, 2006:** An updated Congressional Research Service Report for Congress entitled *U.S. Policy Regarding the International Criminal Court* notes that “A recent determination by the ICC’s Chief Prosecutor seems to demonstrate a reluctance to launch an investigation against the United States based on allegations regarding its conduct in Iraq.”
- **September 8, 2006:** US Department of State Legal Adviser John B. Bellinger III explains the current US approach to the Court at the 29th Round Table on Current Problems of International Humanitarian Law in San Remo, Italy, stating that “But even with respect to the ICC, we have been pragmatic. Our concerns about the ICC are well known and don’t need to be rehashed here. Obviously we share the goals of the International Criminal Court for international criminal justice and accountability. We have concern only about how the Rome statute was ultimately set up.”





- **September 10, 2006:** Senator John McCain and former Senator Bob Dole write in the *Washington Post* of the worsening crisis in Darfur and called on the US government to support international intervention and urged the US to remind the Government of Sudan “that the International Criminal Court has jurisdiction to prosecute war crimes in Darfur and that Sudanese leaders will be held personally accountable for attacks on civilians.” This is the strongest signal yet that key US leaders have accepted the existence of the ICC, have a basic understanding of its functions, and are willing to see it prosecute high officials in office.
- **September 30, 2006:** The US Congress approves the John Warner National Defense Appropriations Act for Fiscal Year 2007, including an amendment striking International Military Education and Training (IMET) sanctions from ASPA. Both Foreign Military Funds (FMF) restrictions under ASPA and Economic Support Funds (ESF) barred by the Nethercutt Amendment remain in place. President Bush signs the bill into law on October 17, 2006.
- **October 2, 2006:** President Bush directs the Secretary of State to waive IMET prohibitions provided for in ASPA with respect to 21 nations which have not signed BIAs. This waiver parallels the IMET amendment to the Defense Appropriations Act approved on September 30.
- **November 7, 2006:** Senator Patrick Leahy (D-VT) tells the *Washington Post* that “The ICC has refuted its critics, who confidently and wrongly predicted that it would be politicized and manipulated by our enemies to prosecute U.S. soldiers”.
- **November 28, 2006:** President Bush directs the Secretary of State to waive ESF restrictions with respect to 14 nations unwilling to sign BIAs for FY 2006 provided for in the Nethercutt Amendment..
- **December 27, 2006:** US Department of State Legal Adviser John B. Bellinger III tells the *Associated Press*, “At least as a matter of policy, not only do we not oppose the ICC’s investigation and prosecutions in Sudan but we support its investigation and prosecution of those atrocities”.
- **February 5, 2007:** Senator Benjamin L. Cardin (D-MD) states at a Senate Judiciary Subcommittee on Human Rights and the Law hearing on genocide and the rule of law, “I believe that ... the work of the new International Criminal Court (ICC), is critical to deterring future war crimes and forms a key component of the international community’s response to conflict and post-conflict situations.”
- **February 15, 2007:** Congress passes an omnibus “Revised Continuing Appropriations Resolution, 2007”, Public Law 110-5, in place of its usual separate appropriations acts, which does not include the Nethercutt provision. It is unclear, however, whether a future foreign operations appropriations bill will revive the limits on Economic Support Funds to nations unwilling to sign BIAs.
- **April 19, 2007:** Montenegro signs a BIA with the US.
- **May 2, 2007:** White House Press Secretary Tony Snow tells reporters regarding the ICC’s arrest warrants for Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of the Sudan (and current Minister of State for Humanitarian Affairs), and Ali Muhammad Ali Abd-Al-Rahman (also known as Ali Kushayb), a Militia/Janjaweed leader, “We very strongly support accountability for those who





are responsible for Darfur, and we expect the government of Sudan to comply with the obligations under United Nations Security 1593 to cooperate with the ICC.”

- **June 6, 2007:** US Department of State Legal Adviser John B. Bellinger III, in remarks to the Atlantic Commission in The Hague, The Netherlands, states, “Moreover, over the past couple of years we have worked hard to demonstrate that we share the main goals and values of the Court. We did not oppose the Security Council’s referral of the Darfur situation to the ICC, and have expressed our willingness to consider assisting the ICC Prosecutor’s Darfur work should we receive an appropriate request. We supported the use of ICC facilities for the trial of Charles Taylor, which began this week here in The Hague. These steps reflect our desire to find practical ways to work with ICC supporters to advance our shared goals of promoting international criminal justice. We believe it important that ICC supporters take a similarly practical approach in working with us on these issues, one that reflects respect for our decision not to become a party to the Rome Statute. It is in our common interest to find a *modus vivendi* on the ICC based on mutual respect for the positions of both sides.”
- **June 21, 2007:** Representative Eliot L. Engel (D-NY) introduces HR 2804 “To repeal the prohibitions on United States assistance to countries that are parties to the International Criminal Court.” The bill is referred to the Committee on Foreign Affairs. The proposed bill would eliminate all restrictions on Economic Support Funds (ESF) and Foreign Military Funds (FMF) aid to nations refusing to sign BIAs. Representative Engel introduced a similar bill, HR 5995, in the 109th Congress on June 26, 2006.
- **August 31, 2007:** President Bush directs the Secretary of State to waive prohibitions provided for in ASPA with respect to Montenegro. While not mentioned by name, this waiver most likely applies to Foreign Military Funds (FMF) since prohibitions on International Military Education and Training (IMET) funds were repealed by the 2007 Defense Appropriations bill, signed into law on October 17, 2007. (President Bush issued similar waivers with respect to the Comoros and Saint Kitts and Nevis in November 2006.)
- **September 5, 2007:** US Assistant Secretary of State for African Affairs Jendayi Frazer tells journalists in Kampala, Uganda, in relation to the ICC arrest warrants issued for Lord’s Resistance Army (LRA) leaders that “there needs to be some type of accountability – credible accountability which may include going through a national justice system to satisfy the ICC.”
- **October 29, 2007:** The US House of Representatives passes resolution HR 726, drawing attention to the crisis in Darfur, in particular crimes of rape and sexual violence, noting key provisions of the Rome Statute, and calling on the government of Sudan to enforce the arrest warrants issued by the ICC for Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Raham.
- **November 27, 2007:** US Deputy Permanent Representative to the UN Alejandro D. Wolff disassociates the US from consensus on the annual UN General Assembly resolution on the ICC and expresses disappointment that the sponsors of the resolution would not include a provision that would recognize that the decision of some states not to become party to the Rome Statute.
- **December 8, 2007:** US Advisor Jeffrey DeLaurentis tells the UN Security Council of US concerns that the Government of Sudan is still not cooperating with the ICC, including the failure to arrest and surrender





Minister of State for Humanitarian Affairs Ahmad Muhammad Harun and the Janjaweed militia leader Ali Kushayb, and calls on the Sudanese Government to cooperate fully with the ICC as required by Security Council resolution 1593 (2005).

- **December 17, 2007:** The US Congress approves HR 2764, a comprehensive Consolidated Appropriations Act which reinstates the so-called Nethercutt provision cutting off Economic Support Funds (ESF) to nations unwilling to enter into Bilateral Immunity Agreements (BIAs) shielding US nationals from the jurisdiction of the ICC. President Bush signs the bill into law on December 26, 2007. As a result, dozens of US allies may lose millions of dollars in economic assistance and further alienate the US in the world community.
- **January 22, 2008:** The US Congress approves the National Defense Appropriations Act of 2008, HR 4986, eliminating restrictions on Foreign Military Financing (FMF) to nations unwilling to enter into BIAs. President Bush signs the bill into law on January 28, 2008. As a result, no nation will be threatened with the loss of military assistance of any kind – FMF or IMET – for its refusal to shield US nationals from the ICC. The amendment leaves in place provisions which restrict US cooperation to the ICC, subject to the Dodd Amendment, as well as US participation in peacekeeping missions, and authorize military force to free US nationals from the custody of the ICC.
- **February 12, 2008:** US Deputy Permanent Representative to the UN Alejandro D. Wolff, in a Security Council statement on children and armed conflict, states that the US does not agree that the Security Council should have a general policy or practice of referring cases to the ICC.
- **March 26, 2008:** President Bush certifies for the purposes of ASPA that US servicemembers participating in the United Nations-African Union Darfur Mission (UNAMID) are without risk of criminal prosecution by the ICC due to an exemption by Security Council under resolution 1593. The ICC is not bound by this exemption, however, since the powers of the Security Council under Chapter VII of the UN Charter only extend to Members States, not to international organizations.
- **June 5, 2008:** US Permanent Representative to the UN Zalmay Khalilzad, in a Security Council statement in response to the ICC Prosecutor’s seventh report on Darfur, states that the US “strongly believes that those responsible for the acts of genocide, war crimes, and crimes against humanity committed in Darfur must be held accountable and brought to justice” and signals US support for a presidential statement to achieve accountability. According to the New York Times, US Department of State Legal Adviser John B. Bellinger III states that “We accept the reality” of the ICC and that “It is the only game in town for bringing accountability for the atrocities in Darfur.”
- **June 16, 2008:** The US presidency of the UN Security Council issues a Presidential Statement (PRST) adopted by consensus calling on Sudan to cooperate with the ICC, consistent with resolution 1593, including on arrest warrants issued by the Court.
- **June 19, 2008:** The US Presidency of the UN Security Council convenes an open debate on Women, Peace and Security chaired by US Secretary of State Condoleezza Rice in which 27 nations make explicit references to the ICC in their statements. The US introduces Resolution 1820, passed unanimously by the





Security Council, which recalls “the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court”.

- **June 23, 2008:** President Bush directs the Secretary of State to waive ESF restrictions with respect to 14 nations unwilling to sign BIAs provided for in the Nethercutt Amendment.
- **July 31, 2008:** The US breaks with consensus and abstains from voting on UN Security Council Resolution 1828 to renew the Darfur peacekeeping force due to a paragraph which alluded to the intention of some Security Council members to consider deferring the prosecution of President Omar Al Bashir of Sudan for atrocities in Darfur, the subject of an application filed by the ICC Prosecutor on July 14, 2008.
- **December 21, 2008:** US Secretary of State Condoleezza Rice states that the US has “been the country that’s been the most active in resisting calls to interfere with the international criminal court investigation of the leadership [in Sudan], despite the fact that we’re not members of the international court.”
- **January 16, 2009:** Four days before leaving office, President Bush issues a final ESF waiver with respect to 16 nations unwilling to sign BIAs provided for in the Nethercutt Amendment to ensure that they did not lose US economic assistance for FY 2008.
- **January 20, 2009:** President Barack Obama takes office following pledges to assist the ICC on Darfur and to consult with legal and military advisers before deciding whether the US would join the ICC.
- **January 2009:** In response to written questions by the Senate Foreign Relations Committee prior to her confirmation on January 23, US Secretary of State Hillary Clinton states that “we will end hostility to towards the ICC, and look for opportunities to encourage effective ICC action in ways that promote US interests by bringing war criminals to justice.”
- **January 29, 2009:** Susan E. Rice, US Ambassador to the UN, signals a shift from the Bush approach to the ICC by raising it in her first appearance in the Security Council, stating that that ICC “looks to become an important and credible instrument for trying to hold accountable the senior leadership responsible for atrocities committed in the Congo, Uganda, and Darfur.”
- **March 11, 2009:** President Obama signs into law the annual omnibus appropriations bill, Public Law No. 111-8, which does not renew the expired “Nethercutt Amendment” which cut off ESF to nations unwilling to enter into Bilateral Immunity Agreements (BIAs).
- **August 6, 2009:** Secretary of State Hillary Rodham Clinton says that it is a “great regret” that the US is not a member of the ICC but said that “we have supported the work of the court and will continue to do so under the Obama Administration.”
- **August 12, 2009:** In a speech at New York University on a new US approach at the UN, US Ambassador to the UN Susan E. Rice states that the US will no longer oppose mentions of the International Criminal Court in UN statements and resolutions.



- **September 30, 2009:** The UN Security Council, under the presidency of the US and chaired by US Secretary of State Hillary Rodham Clinton, adopts resolution 1888 concerning sexual violence in armed conflict. The resolution, drafted by the US, breaks with its practice of opposing references to the ICC in UN resolutions, recalls “the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court...”
- **October 2, 2009:** US Ambassador-at-Large for War Crimes Issues Stephen J. Rapp states that the US policy toward the ICC is under review and that the US is beginning an approach of greater cooperation with the ICC.

By October 2009:

- The Obama Administration has indicated that it will take a new approach to the ICC, including by cooperating with the Court on Darfur, and that it is undertaking a formal policy review of US policy toward the ICC in consultation with legal advisers and military leaders, though the review is unlikely to be complete until early 2010.
- The approximately 103 Bilateral Immunity Agreements (BIAs) concluded by the Bush Administration remain in force, though the related military sanctions have been repealed and the related economic sanctions have expired.

For more information on the ICC and the US position on the Court, visit AMICC, the American NGO Coalition for the International Criminal Court, at www.amicc.org.

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