



WASHINGTON WORKING GROUP ON THE ICC

U.S. POLICY ON THE INTERNATIONAL CRIMINAL COURT

Background:

President Clinton signed the Rome Statute of the International Criminal Court (ICC) on December 31, 2000, but the Bush administration has engaged in an active campaign in opposition to the Court.

“Nullification” of Signature:

The Bush Administration “nullified” the U.S. signature of the Rome Statute by sending a letter to U.N. Secretary General Kofi Annan on May 6, 2002, expressing its intention not to be bound by the treaty. This means the U.S. does not consider itself obligated to uphold the spirit of the treaty: ending impunity for the world’s worst crimes.

Security Council Resolution 1422:

The Bush administration vetoed the extension of the Bosnian peacekeeping mission on June 30, 2002, when it could not obtain an exemption from ICC jurisdiction for its officials and personnel involved in U.N. authorized missions. On July 12, 2002, after two weeks of debate and an open meeting at which more than 100 countries expressed their opposition to the U.S. proposal, Security Council members conceded to U.S. demands and adopted Resolution 1422, which provides personnel and officials from non-ICC member states participating in U.N. authorized missions with a one-year exemption from the ICC. Many countries and leading NGOs agreed that this resolution was outside the scope of the Security Council’s authority and not allowed under the Rome Statute.

Security Council Resolution 1487:

On June 12, 2003, the Security Council adopted a resolution renewing impunity for U.N. peacekeepers from ICC jurisdiction for another year. However, France, Germany and Syria abstained, and Kofi Annan joined with more than 70 countries to express their strong disapproval at an open meeting prior to the vote. Concerned about the questionable legality of the resolution and its effect on the integrity of the Security Council, peacekeeping, and the ICC, these countries, including many Security Council members, made clear that this renewal would not be automatic in the coming years. However, the U.S. continues to insist on similar language in individual peacekeeping resolutions, such as the resolution authorizing intervention in Liberia.

Bilateral Immunity Agreements:

The Bush administration has pursued bilateral immunity agreements (so called “Article 98” agreements) with other countries to prevent the surrender of all U.S. citizens and current and former employees of the U.S. government and military (including non-nationals) to the ICC. So far about 63 countries have signed such agreements, 30 of which are ICC Member States, including many small, poor, or conflict-ridden countries that have been threatened with withdrawal of U.S. military assistance. EU countries, Canada, Argentina, and other major U.S. allies have firmly refused to sign these agreements, arguing that to do so would put them in breach of their legal obligations under the Rome Statute.

American Servicemembers’ Protection Act (ASPA):

On August 2, 2002, President Bush signed the American Servicemembers’ Protection Act (ASPA) into law, codifying U.S. opposition to the ICC. Under ASPA, many ICC States Parties had their military assistance suspended as of July 1, 2003. NATO and major non-NATO allies were specifically exempted. Additionally, President Bush issued waivers for 22 countries that are States Parties, receive military assistance, and have signed bilateral immunity agreements. However, this left more than 30 allies that are members of the Court have not signed BIAs without U.S. military assistance, despite the law’s provisions that allow President Bush to issue waivers for national security purposes. Affected countries include Ecuador, South Africa, and six of the countries joining NATO in 2004.