

## Information about the US and the ICC

### **BACKGROUND**

The US government was long-time leader in developing the standards of international criminal law now incorporated into the ICC's Rome Statute. It was also an early advocate of establishing international courts -- from Nuremberg to the UN ad hoc tribunals for Yugoslavia and Rwanda to the Special Court of Sierra Leone. As an early supporter of the ICC, it also made extraordinary contributions to the development of its Statute. Significant examples of US leadership and effectiveness at the ICC negotiations include the inclusion in the jurisdiction of the Court of crimes committed during internal armed conflicts, and the drafting of a supplemental code explaining the precise actions and intent that must be proved for each of the crimes in the Statute (and which the Pentagon found to be in complete accord with US military law).

However, from the beginning, the US sought to ensure that it could maintain control over the ICC, initially arguing that the UN Security Council should be able to decide whether or not the Court takes a case, and later insisting on an exemption for US servicepersons and officials. These suggestions were rejected by other nations as violating the Nuremberg principle of individual criminal accountability. Nevertheless, US concerns were addressed through compromise solutions, including basing the court on the principle of complementarity, which means that the US will always have a primary right to investigate, and if warranted, try any US national accused of a crime within the jurisdiction of the Court.

### **US ADMINISTRATION POSITION**

Although the US, along with Iraq, Israel, China, Yemen, Libya, and Qatar, did not join the approximately 140 states in Rome that adopted the ICC Statute by consensus in July 1998, the Clinton administration continued to participate fully in the ongoing negotiations and asked his Ambassador-at-large for War Crimes Issues, David Scheffer, to sign the Statute on December 31, 2000. At the same time, President Clinton recommended that his successor not ratify the treaty, which he called "flawed."

The Bush Administration has continued to insist on full exemption from the International Criminal Court's jurisdiction for officials and agents of the United States and other governments as long as they are not party to the Rome Statute. However, both ratifying and signatory states have emphasized, however, that this demand, which would require the Court to give preferential treatment to some suspects over others, would violate international law, and would delegitimize the Court. At first the Bush administration sent small low-level delegations to the ongoing negotiations, but beginning in 2002 it failed to send any delegation at all. Finally, in May 2002, the administration announced that it would not participate in any activity whatsoever involving the ICC and would not cooperate with the Court once it was established.

### **REACTION IN CONGRESS**

A vocal minority of opponents has dominated the ICC debate in the Congress until recently, but a slowly growing number of proponents have been increasingly heard in 2002. This includes close to half of the Senate that was willing to vote in December 2001 in favor of Senator's

Dodd's amendment calling for a "wait and see" approach to the Court and the May 2002 vote in the House on an anti-ICC amendment offered by Representative Paul, which had 152 representatives voting against it -- up from the 136 who voted against the American Servicemembers' Protection Act (ASPA) a year earlier. The ASPA has been the primary vehicle for opponents, with repeated attempts to attach it to important legislation defeated in 2001 and the first half of 2002.

## **INTERNATIONAL REACTION**

The EU has made the ICC a priority issue and has called repeatedly on Washington to reconsider its position on the Court. These interchanges have made it clear that the ICC is very likely to remain a continuing irritant in EU-US relations. Nations elsewhere also continue to raise the ICC in their bilateral relations with the United States. In all of these discussions other countries point out that the US position is not compatible with the American effort to achieve worldwide cooperation in the effort against terrorism. They also call attention to its inconsistency with the US's worldwide pursuit of the rule of law and the strengthening of judicial systems, as well as with American leadership in seeking accountability for international atrocities through tribunals such as those for Rwanda and Yugoslavia. In the eyes of these countries, the US appears to have turned its back on the lessons of the wars and atrocities of the 20th century, on its own extensive and important substantive contributions to the Rome Statute and on the United Nations.

## **US PUBLIC OPINION**

Opposition to the International Criminal Court in the United States has altered somewhat in focus and approach since the ICC has become an inescapable reality. Since it is no longer possible to urge that the Court be stopped, opposition objectives now range from the official goal of maximum separation and self protection from the Court to proposals in Congress and some sectors of the public to preempt, delegitimize and incapacitate the Court as it begins.

Among the American public, polls show that 66% of respondents support immediate American participation in the Court and ratification of the Rome Statute. AMICC has found a strong public response in various parts of the country to the Court in the establishing of local alliances. As AMICC's membership attests, the ICC cause attracts a wide and diverse variety of organizations that believe that the Court will uniquely serve and promote the individual issues and objectives to which they are committed.