



## FACT SHEET: United States Policy on the International Criminal Court

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### **U.S. DECISION:**

**On May 6, 2002, the U.S. formally notified the United Nations that the U.S. does not intend to become a party to the Rome Statute.**

### BACKGROUND

- In 1998, a UN diplomatic conference in Rome composed of representatives from 160 countries adopted a treaty, known as the “Rome Statute,” to create an International Criminal Court.
- The United States signed the treaty on December 31, 2001. However, at that time, then President Clinton stated the treaty was fundamentally flawed and that he would not forward the treaty to the Senate for advice and consent to ratification. He also recommended that his successor not forward the treaty to the Senate.
- The Rome Statute provides that the treaty will enter into force on the first day of the month after the 60<sup>th</sup> day following the date on which the 60<sup>th</sup> country submits its instrument of ratification to the UN.
- On April 11, 2002, the total number of ratified countries surpassed 60.
- The treaty entered into force on July 1, 2002.

### SIGNIFICANT PROBLEMS WITH THE ICC TREATY

- **Jurisdiction.** The ICC purports to have jurisdiction over certain crimes committed in the territory of a state party, including crimes committed by nationals of a country that is not party to the treaty. Thus the court would have jurisdiction for crimes alleged against U.S. citizens, including U.S. service members, in the territory of a party to the treaty (Article 12), despite the fact that the U.S. declined to be a party.
- **New crimes.** A state party to the treaty can avoid prosecution of certain crimes, thereby exempting its nationals from the ICC’s jurisdiction for these crimes. A non-party cannot

elect such exemptions in the case of amendments (Article 121). The U.S. finds this to be unacceptable.

- **Aggression.** The crime of “aggression” is included within the court’s jurisdiction, but has not been defined. The parties to the treaty will amend it to define this crime and specify the conditions under which the Court has jurisdiction over this crime (Article 5). Only parties to the treaty can be exempted from the jurisdiction of the Court for the crime of aggression per Article 121. In addition, many states advocate conditions for the exercise of jurisdiction by the ICC that could bring the court into conflict with the UN Security Council and the UN Charter.
- **Prosecutor.** The prosecutor can proceed with an investigation on his or her own initiative with the agreement of two judges of a three-judge panel (Article 15). This could lead to politically motivated prosecution, to which the U.S. strongly objects.
- **Accountability.** The prosecutor is not responsible to an elected body or to the UN Security Council, and the Court lacks judicial review. The structure of the Court fails to account for sufficient checks and balances, which the U.S. considers fundamental to the pursuit of justice.
- **Reservations.** In a serious departure from accepted practice, the treaty does not permit states to take reservations (Article 120).
- **Lack of Review.** The ICC is required to defer to the national prosecution unless the court finds that the state is unwilling or unable to carry out the investigation or prosecution (Article 17). However, by leaving the decision over the “willingness” of a state ultimately to the ICC, the treaty would allow the ICC to review and possibly reject a sovereign state’s decision not to prosecute or a sovereign state’s court decision not to convict in specific cases.

## ALTERNATIVE MECHANISMS

- The U.S. continues to be a forceful advocate for accountability for perpetrators of war crimes, genocide, and crimes against humanity.
- The U.S. is confident that there are more suitable alternatives to the ICC in the field of International Justice.
- Alternative mechanisms include:
  - Domestic Accountability: Encourage states to create credible justice institutions in their own state rather than abdicating responsibility to an international body.
  - Where domestic legal institutions are lacking, but domestic will is present, the international community must be prepared to assist in creating the capacity for the sovereign state to address the violations. This includes political, financial, legal, and logistical support.
  - Where domestic will is non-existent, the international community can intervene through the UN Security Council, consistent with the UN Charter. Ad hoc international

mechanisms may be created under the auspices of the UN Security Council, as was done to establish the international tribunals for the former Yugoslavia and Rwanda. Additionally, hybrid courts consisting of international participants and the affected state's participants can be authorized, such as in the case of Sierra Leone.

## SUMMARY

- The U.S. is emphatically committed to international accountability for war crimes, genocide and crimes against humanity.
- The United States strongly opposes the ICC treaty because it is seriously flawed.
- The United States is currently and will continue to work together with other nations to avoid any disruptions that might be caused by the treaty.
- Other mechanisms either already exist or may be established to ensure international accountability for war crimes, genocide, and crimes against humanity. The most fundamental mechanism is domestic state accountability. In the absence of state accountability, the international community must act or assist the state, or in the most dire of circumstances, the UN Security Council may be required to establish situation-specific mechanisms to ensure justice.
- This is consistent with the UN Charter, which has been accepted by virtually all nations.