OVERVIEW OF THE UNITED STATES' OPPOSITION TO THE INTERNATIONAL CRIMINAL COURT

Brief Overview of U.S. Position toward the ICC

United States President Bill Clinton signed the Rome Statute of the International Criminal Court ('Rome Statute') on December 31 December 2000, the last day that the Rome Statute was open for signature. Shortly after the Bush Administration entered office and just before the 1 July 2002 entry into force of the Rome Statute, US President George W. Bush "nullified" the Clinton signature on 6 May 2002, alleging that the United States would no longer be involved in the International Criminal Court (ICC) process and that it did not consider itself as having any legal obligations under the treaty. The legality of such an "nullification" is unclear and the subject of debate by international legal scholars. Since 2002, the Bush Administration has undertaken a policy of active opposition to the Court through a global campaign to obtain immunity from ICC jurisdiction through a multi-pronged approach.

Bilateral Immunity Agreements (BIA)

As part of its efforts, the Bush Administration has been approaching countries around the world seeking to secure Bilateral Immunity Agreements (BIAs) which aim to exclude a broad scope of "American personnel" from the jurisdiction of the ICC, including current or former US military and government employees (which includes non-national contractors). Purportedly based on Article 98 of the Rome Statute, these BIAs are viewed by many governmental, legal and non-governmental experts as being contrary to international law and the Rome Statute. The BIAs, which in some cases are reciprocal, do not include an obligation for the US to have to subject suspected American personnel to investigation and/or prosecution within the United States.

Furthermore, the United States has gone so far as to suspend military assistance (see American Servicemembers' Protection Act below) to those States Parties which do not sign these agreements, amounting to arm-twisting and bullying of economically vulnerable States that support the ICC. In 2004, this bullying was ratcheted up to go beyond the loss of military aid and included threats of lost Economic Support Fund aid (see Nethercutt below) from the United Sates for those countries that failed to sign a BIA.

While 100 governments have reportedly signed BIAs, less than 30% of these agreements have been ratified by Parliament or signed as an executive agreement. In addition, many legal experts argue that the 18 executive agreements which have "secured" BIAs for the United States in certain countries are actually unconstitutional and require the approval of Parliament, and are thus not valid agreements. About two-thirds of 100 States Parties to the International Criminal Court have actively resisted signing BIAs – despite large economic penalties imposed by the US – and 54 countries continue to publicly refuse to sign. In addition, several intergovernmental bodies have publicly opposed these agreements and have encouraged other states to resist signing such agreements and continue to uphold the integrity of the Rome Statute.

For more information on BIAs, please visit http://www.iccnow.org/documents/USandICC/BIAs.html.

American Servicemembers' Protection Act (ASPA)

Adopted by the US Congress in August 2002, the American Servicemembers' Protection Act (ASPA), also labeled the "Hague Invasion Act", contains provisions restricting US cooperation with the ICC; making US support of UN peacekeeping missions largely contingent on achieving impunity for *all* US personnel; and even granting the President permission to use "any means necessary" to free US citizens and allies from ICC custody in The Hague.

In particular, Section 2007 prohibits US military assistance to States Parties to the ICC unless the receiving country has signed a BIA. Officials in the Bush Administration have used this provision to warn countries that they could lose all US military assistance if they fail to sign. To date, millions of dollars in military aid have been lost by countries that have refused to sign a BIA.

For more information on ASPA, please visit http://www.iccnow.org/documents/USandICC/ASPA.html.

The Nethercutt Amendment

In November 2004, Congress adopted the Nethercutt Amendment as part of the US Foreign Appropriations Bill which was then signed into law by President Bush on 8 December 2004. This legislation is far more wide-reaching than ASPA and authorizes the loss of Economic Support Funds to countries, including many key US allies, that have not signed a BIA. Aid threatened under the Nethercutt Amendment includes funds for international security and counter-terrorism efforts, peace process programs, anti-drug trafficking initiatives, truth and reconciliation commissions, wheelchair distribution; human rights programs; economic and democratic development; and HIV/Aids education, among others. This legislation was re-adopted by the US Congress in November 2005.

For more information on Nethercutt, please visit http://www.iccnow.org/documents/USandICC/ASPA.html.

ICC Immunity in Security Council Peacekeeping Resolutions (SC 1422/1487)

As part of the US campaign to get blanket immunity for US peacekeepers, the US advocated for Security Council Resolution 1422 in July 2002, which granted immunity to personnel from ICC non-States Parties involved in UN-established or UN-authorized missions for a renewable twelve-month period. The US obtained Resolution 1422 after threatening to veto the renewal of a peacekeeping operation in Bosnia-Herzegovina unless it obtained such immunity and despite strongly voiced opposition by many UN Member States. In June 2003, Resolution 1422 came up for renewal in the Security Council and was again met with opposition during an open debate. While the resolution was renewed (as Resolution 1487), France, Germany, and Syria abstained, representing a significant shift since the Resolution's unanimous adoption the previous year. Despite US efforts to renew this resolution again in 2004, the US was forced to withdraw the resolution after realizing that it would not garner enough votes for its passage.

For more information on Security Council Resolutions 1422/1487, please visit
http://www.iccnow.org/documents/declarationsresolutions/UN1422_2004.html.

Some Resources on the United States' Opposition to the ICC

- American NGO Coalition for the ICC (AMICC): www.amicc.org
- Citizens for Global Solutions / Washington Working Group for the ICC (WICC): http://www.globalsolutions.org/programs/law_justice/icc/icc_home.html
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