

“Sudan; Washington Softens Stance On ICC,” Institute for War and Peace Reporting, 7 March 2007

”While the US will not let the Hague war crimes court prosecute Americans, it is more positive about plans to charge Sudanese leaders.

A warm front may be descending on wintry Washington - and it has little to do with the approaching spring. The United States' position on the International Criminal Court, ICC, seems to be softening, even though some American think-tanks say it is still only a half-hearted shift.

... concerns over the Darfur conflict in western Sudan seem to be prompting a change in US policy.

"I think it's fair to say that at some level it has already changed," said Raj Purohit, a senior fellow at Citizens for Global Solutions. His Washington-based organisation promotes American cooperation with international institutions in order to respond better to global threats.

"The fact that the Bush administration allowed the United Nations Security Council to refer the conflict in Darfur to the ICC was probably the single biggest change," he said.

The Security Council passed Resolution 1593 on Darfur in March 2005. The US government abstained from the vote, but which nevertheless gave tacit approval to ICC prosecutions in relation to Darfur. As well as referring the situation in Darfur to the ICC, Resolution 1593 required the government of Sudan to cooperate with the court.

... While Anne Woods Patterson, the acting US ambassador to the UN in 2005, was particularly opposed to the court exercising jurisdiction over nationals, including government officials, of states not party to the Rome Statute, the American position has since been fine-tuned.

Although the Americans believed a hybrid ad hoc tribunal based in Africa would be a better mechanism to bring to justice human rights violators in Sudan, and Darfur in particular, Patterson conceded that it was important that the international community work together to end "the climate of impunity" in that country.

Thus, Washington gave the ICC a tacit green light to proceed with investigations against Sudan, one of a handful of states - including the US itself - that have not ratified the court's founding statute.

Because Security Council Resolution 1593 was modified to mollify Washington by providing protection from investigation or prosecution for American nationals and members of the armed forces of non-state parties, Ambassador Woods Patterson said her government was amenable to the UN decision to refer the Darfur/Sudan situation to the ICC.

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In Washington, State Department spokesman Sean McCormick said, "We fully support bringing to justice those responsible for crimes and atrocities that have occurred in Darfur. We are at a point in the process now where we could call upon the Sudanese government to cooperate fully with the ICC."

Victoria Holt of Washington's Henry L. Stimson Centre, a private research institute on international relations, told IWPR that American opposition to the ICC goes back to fractious political debates held in the Nineties. At that time, said Holt, the ICC failed to convey its key message to the US military, which received much of its information on the court from public rather than insider sources.

It was also at this time that the European Union made too much public criticism of the US position, according to Lincoln Bloomfield, president of Palmer Coates, a Washington-based consulting firm.

Bloomfield said the US concession on the Darfur case being referred to the ICC under the authority of the Security Council should perhaps have persuaded Europeans to lift their opposition to the Article 98 draft agreements under which other states would not send Americans to the Hague court.

"We have discussed it [the Article 98 proposal] with many European countries, a number of whom are privately willing to sign them," said Bloomfield.

Bloomfield was formerly the assistant secretary of state for political and military affairs under former Secretary of State Powell, and also the principal deputy assistant for international security affairs in the Office of the Secretary of Defence during the administration of former president Ronald Reagan.

Purohit said the reason why President Clinton never ratified the Rome Treaty was probably that he felt could not win enough support to do so during his final days in office. The idea of the court enjoyed wide American public support, but "a narrow wedge of people who are ideologically opposed to it" coloured the debate during Clinton's administration and have continued to do so, he said.

The US position began to warm two years ago with the UN Security Council decision on Darfur, and additional signs of a thaw have emerged over the last few months.

"We've also seen the administration as more willing to waive threats against some countries which may be under threat of losing aid because of their support of the ICC," said Purohit. "It doesn't completely get their [US] policy to where we'd like it to be but at least it's a sense that they're putting pragmatism and relationships with countries in Africa and Latin America, for instance, before this ideological hatred of the court."

"We're hearing from senior US military officials in Latin America and in Africa who are saying. 'Look, we the United States are losing strategic influence to China in both continents, and in our own hemisphere to Venezuela as well, because we're really cutting off our nose to spite our face.'"

The Henry L. Stimson Centre documented similar concerns in a report entitled "On Trial: the US Military and the International Criminal Court", published in March 2006. The centre surveyed the views of senior military figures about the ICC, including whether they believed signing up to the court could affect plans for US military operations. Among these interviewees, the centre found a group which felt the US needed a better relationship with the court to avoid tensions which would hurt American hopes of working with other nations.

"That doesn't mean join it, but it means let's sort this out," commented Holt.

"A subset of those interviewed actually argued that the US had had a black eye, particularly over Iraq but also Afghanistan, and that the US could restore some of its standing in the world by working better to support the court in the future - sort of a strategic argument to stand up for the rule of law broadly and human rights."

Researchers discovered, she said, that not many policymakers had given the ICC serious thought, but those who had felt the system would treat Americans unfairly.

However, military experts who had participated in negotiations on the Rome Statute thought otherwise. Holt said this group argued that since American troops accused of crimes automatically faced prosecution under their own military justice system, and since there was "almost nothing" in the ICC's mandate that was not already covered by that system, there was little real prospect of a Hague prosecution of a US serviceman.

...Purohit believes Americans need to be "a bit more grown up about it", and refrain from punishing those countries that wish to support the ICC. More specifically, he recommended that the American government must hand over information about ICC cases in Darfur, the Democratic Republic of the Congo and Uganda that may help the prosecution.

But even more pressing is the need for the US to learn to speak with one voice on the ICC. Purohit noted that on the one hand, Americans describe the crimes in Darfur as genocide, yet on the other, they allow the head of Sudanese intelligence, Salih Gosh to visit CIA headquarters in Langley to discuss information that Sudan has allegedly collected about al-Qaeda.

Salih Gosh is "the guy who's really been the architect of the Darfur massacres", said Purohit's view, adding, "It's not in the US national interest to be dealing with individuals like that."

Fawzia Sheikh, a former foreign correspondent in Uganda, writes on African issues in the

United States for the IWPR Africa Report.”