

## *CHRONOLOGY: FROM ‘SIGNATURE SUSPENSION’ TO IMMUNITY AGREEMENTS TO DARFUR*

This fact sheet details the United States government’s opposition to the International Criminal Court (ICC). The government’s primary concern and fear is that the ICC will be used as a forum for politically motivated prosecutions of Americans, especially servicemembers. The US also regards as a serious assault on American sovereignty the Court’s ability to try Americans even while the United States is not a party to the ICC’s Rome Statute.

In response to these concerns, the United States has taken the steps listed here. Although the Clinton Administration US had signed the Rome Statute, the Bush Administration suspended the signature by submitting a letter to Secretary General Kofi Annan on May 6, 2002. This is, however, a step that a future administration could reverse with another note.

Since then, the US has conducted a calculated campaign to undermine the Court despite its repeated declarations that it would respect the Court and the countries that support it. This campaign has included the enactment of legislation such as the American Servicemembers’ Protection Act (ASPA), the Nethercutt Amendment, and the formation of bilateral immunity agreements (BIAs) with other countries. Despite US efforts to amend UN resolutions referencing the ICC, those brought to a vote have all passed with supermajority support.

It appears, however, that the US antagonism to the ICC may be starting to wane. In March 2005, rather than veto a Security Council resolution to refer the situation of Darfur, Sudan to the ICC, the US abstained. The Darfur referral seriously and permanently undercuts US arguments against the Court.

- **May 6, 2002:** Under Secretary of State for Arms Control and International Security John Bolton sends a letter to United Nations Secretary General Kofi Annan announcing the US decision to suspend its signature of the Rome Statute, thereby making it unmistakably clear that the US does not intend to support the International Criminal Court (ICC).
- **July 12, 2002:** The UN Security Council unanimously passes Resolution 1422 and expresses its intention to renew it annually. The resolution requests that “...if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, [the ICC] shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise.”
- **July 23-24, 2002:** The American Servicemembers’ Protection Act (ASPA) is passed by both houses of Congress as an amendment to the Supplemental Appropriations Act of 2002, HR 4775. It also includes a second-degree amendment (S.AMDT.3787) by Senator Christopher Dodd (D-CT) incorporated into the text of ASPA: “Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.” President George W. Bush signs HR 4775 into law on August 2, 2002.





- **September 30, 2002:** The Council of the European Union agrees that the US non-surrender agreement does not fall under Article 98 of the Rome Statute and, as proposed, would be illegal for States Parties to the ICC to sign. It further adopts “guiding principles” that require any related agreement to (1) include appropriate operative provisions ensuring that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity, (2) cover only persons who are not nationals of an ICC State Party, and (3) cover only persons present on the territory of a requested State because they have been sent on official business by a sending state that is party to the agreement.
- **July 1, 2003:** President Bush announces a suspension in military aid to 35 State Parties to the ICC. Waivers for the ASPA prohibition on US military assistance are provided to ICC parties that have concluded, or are in the process of concluding, BIA agreements.
- **August 26, 2003:** The US refuses to join a UN Security Council resolution protecting humanitarian aid workers — even after the bombing in Baghdad that killed 22 UN workers — because it refers to the fact that the ICC has explicitly criminalized attacks against aid workers as war crimes. The version that passes (Resolution 1502) instead refers indirectly to “existing prohibitions under international law.”
- **November 21, 2003:** President Bush partially waives military assistance cuts to Bulgaria, Estonia, Latvia, Lithuania, Slovakia, and Slovenia for certain specific projects the President has decided are needed to support the integration of these countries into NATO, or to support Operation “Enduring Freedom” or Operation “Iraqi Freedom”. This action is an attempt to preempt a bipartisan congressional effort to exempt NATO accession countries contributing troops to Iraq and Afghanistan from ASPA cuts. It is the first time waivers are granted to countries that refuse to sign a BIA.
- **July 1, 2004:** Resolution 1487 expires after US requests for renewal and a US proposal to amend the Resolution to extend for a final 12-month period. The US announces the withdrawal of 7 personnel from the UN peacekeeping Mission in Ethiopia and Eritrea and 2 personnel from the UN peacekeeping Mission in Kosovo because the countries involved have not signed BIAs.
- **December 7, 2004:** President Bush signs the omnibus appropriations bill containing the controversial Nethercutt amendment (HR 4818). The revised language of the amendment allows presidential exemptions for NATO, MNNA (major non-NATO allies), and Millennium Fund countries. The Nethercutt Amendment differs from ASPA by adding economic aid cuts to ASPA cuts in military aid. It does not have an equivalent to the Dodd Amendment in ASPA.
- **March 2005:** The US begins to see the adverse effects of enacting ASPA and BIA legislation. The Department of Defense voices concerns that ASPA has reduced foreign troop training opportunities and hurt the government’s ability to fight terrorism abroad. General Bantz J. Craddock, US Southern Commander, states that 11 of the 22 countries affected by sanctions under ASPA are from Latin America, thus “hampering the engagement and professional contact that is an essential element of our regional security cooperation strategy... extra-hemispheric actors are filling in the void left by restricted US military engagement with partner nations...”





- **March 31, 2005:** The Security Council votes to refer the situation of Darfur, Sudan to the ICC. Resolution 1593 passes 11-0, with four members abstaining: the United States, Algeria, Brazil and China. The US states that it did not veto the referral due to the need of the international community to work together in order to end the impunity in Sudan. The Resolution provides for the protection of US nationals from investigation or prosecution and states that the UN will bear none of the costs associated with the referral.
- **April 2005:** “The Darfur Accountability Act” (S. 495) is introduced by Senators Corzine (D-NJ) and Brownback (R-KS). The Act calls for steps to be taken within the Security Council “to ensure prompt prosecution and adjudication of those named by the UN Commission in a competent international court of justice.” Representatives Payne (D-NJ) and Tancredo (R-CO) introduce the House version of the Act (HR 1424) in May. The Act passes in the Senate as part of the supplemental appropriations bill. Due to pressure from the White House, it is stripped from the final bill.
- **May 27, 2005:** US Deputy Secretary of State Robert Zoellick issues remarks on Darfur during a briefing on Sudan. He states that the role of the ICC in Sudan sends “a signal about accountability” and is “a useful deterrence against others and allows us to emphasize a tool about the need to stop violence.”
- **September 2005:** UN member states meet in a World Summit on its 60<sup>th</sup> anniversary to discuss reform of the United Nations and the most important issues before it. Under the leadership of new US Ambassador to the UN John Bolton, the US threatens to break consensus on the adoption of a resolution on the outcome of the Summit unless all references to the ICC are deleted from sections covering the struggle against impunity and for accountability in committing atrocities. Since other countries felt that consensus was essential for a document signed by heads of state and government, but refused to have its discussion of responsibility for atrocities omit the ICC, the result was a resolution without any reference to impunity and accountability.
- **October 30, 2005:** Mexico becomes the 100<sup>th</sup> nation to ratify the Rome Statute. It rejects a BIA with the United States. At this point, the US has withheld \$3.6 million, which would facilitate Mexico’s anti-terror and anti-narcotics training and help to provide anti-terror equipment.
- **November 1, 2005:** Jendayi Frazer, US Assistant Secretary of State for African Affairs, tells the House International Relations Committee that if the ICC requires assistance in Darfur, the US stands ready to assist: “Ambassador Zoellick... has made very clear that if we were asked by the ICC for our help, we would try to make sure that this gets pursued fully. To use his words, because we don’t want to see impunity for any of these actors... we stand ready to assist.”
- **November 8, 2005:** US Deputy Secretary of State Robert Zoellick comments on the situation in Sudan on his way to Kenya to meet with officials to promote security in Darfur. He states that ICC Prosecutor Luis Moreno Ocampo will try to focus on major targets in his investigations and recognizes that for the process of accountability to take hold, Sudanese action must be taken. Zoellick will encourage the Sudanese government to begin their own investigations and adjudications of crimes to develop a climate of accountability and build confidence in the peace process.
- **November 14, 2005:** The Nethercutt Amendment to the Fiscal Year 2006 (FY 2006) Foreign Operations spending bill is renewed continuing the United States’ policy to withhold economic assistance from nations





that refuse to sign BIAs. The amendment jeopardizes \$326.6 million in US economic assistance to 12 nations.

- **February 6, 2006:** In the 2006 Quadrennial Defense Review Report, the US Department of Defense states that it will “[c]onsider whether the restrictions on the American Service Members Protection Act (ASPA) on IMET and other foreign assistance programs pertaining to security and the war on terror necessitate adjustment as we continue to advance the aims of the ASPA.”
- **March 10, 2006:** US Secretary of State Condoleezza Rice acknowledges that the military aid cuts to Latin American countries provided for in ASPA is “sort of the same as shooting ourselves in the foot”.
- **June 14, 2006:** US Department of State Legal Adviser John B. Bellinger III acknowledges in a *Wall Street Journal* interview that the ICC “has a role to play in the overall system of international justice.”
- **July 28, 2006:** Rep. Eliot L. Engel, Democrat of New York, introduces a bill (HR 5995) to “repeal the prohibitions on U.S. assistance to countries that are parties to the International Criminal Court.” The enactment of this bill is not pursued further in the 109th Congress.
- **September 8, 2006:** US Department of State Legal Adviser John B. Bellinger III explains the current US approach to the Court at the 29th Round Table on Current Problems of International Humanitarian Law in San Remo, Italy, stating that “But even with respect to the ICC, we have been pragmatic. Our concerns about the ICC are well known and don’t need to be rehashed here. Obviously we share the goals of the International Criminal Court for international criminal justice and accountability. We have concern only about how the Rome statute was ultimately set up.”
- **September 10, 2006:** Senator John McCain and former Senator Bob Dole write in the *Washington Post* of the worsening crisis in Darfur and called on the US government to support international intervention and urged the US to remind the Government of Sudan “that the International Criminal Court has jurisdiction to prosecute war crimes in Darfur and that Sudanese leaders will be held personally accountable for attacks on civilians.” This is the strongest signal yet that key US leaders have accepted the existence of the ICC, have a basic understanding of its functions, and are willing to see it prosecute high officials in office.
- **September 30, 2006:** The US Congress approves the John Warner National Defense Appropriations Act for Fiscal Year 2007, including an amendment striking IMET sanctions from ASPA. Both Foreign Military Funds (FMF) restrictions under ASPA and Economic Support Funds (ESF) barred by the Nethercutt Amendment remain in place. President Bush signs the bill into law on October 17, 2006.
- **October 2, 2006:** President Bush directs the Secretary of State to waive IMET prohibitions provided for in ASPA with respect to 21 nations which have not signed BIAs. This waiver parallels the IMET amendment to the Defense Appropriations Act approved on September 30.

*For more information on the ICC and the US position on the Court, visit AMICC, the American NGO Coalition for the International Criminal Court, at [www.amicc.org](http://www.amicc.org).*

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