



2223 Massachusetts Avenue, NW
Washington, DC 20008-2864
(202) 939-6000 • Fax: (202) 797-7133
www.asil.org

For Release: February 2, 2009
Contact: Sheila Ward

+1.202.939.6018 desk
+1.202.309.0510 cell
sward@asil.org

ASIL TASK FORCE ISSUES RECOMMENDATIONS

ON U.S. POLICY TOWARD THE INTERNATIONAL CRIMINAL COURT

WASHINGTON, DC – The American Society of International Law’s (ASIL) Task Force on U.S. Policy Toward the International Criminal Court (ICC) today issued a statement recommending that the President announce a policy of positive engagement with the Court. The Task Force, created last summer, is chaired by former Legal Advisor to the State Department and Deputy Secretary of Defense **William H. Taft, IV**, and former U.S. federal appellate and International Criminal Tribunal for the Former Yugoslavia (ICTY) Judge **Patricia M. Wald**. Other members of the Task Force are former Congressman **Mickey Edwards**, Vanderbilt Law School Professor **Michael A. Newton**, former U.S. Supreme Court Justice **Sandra Day O’Connor**, former International Court of Justice President **Stephen M. Schwebel**, former Deputy Prosecutor of the ICTY **David Tolbert**, and Johns Hopkins School for Advanced International Studies Professor **Ruth Wedgwood**. The group’s statement follows.

ASIL Task Force on U.S. Policy Toward the International Criminal Court

Statement of Policy Recommendations

-MORE-

In August 2008, the American Society of International Law established a Task Force to evaluate and reconsider U.S. policy toward the International Criminal Court. The eight-member Task Force has met five times and received written and oral briefings from more than a dozen experts who presented varied perspectives. These experts have served with the U.S. Government (including the military), the International Criminal Court, U.S. allies, and civil society. The Task Force has reviewed U.S. policy, from the negotiating history of the Rome Statute through to the present, as well as the performance of the Court. It has also studied the complex legal issues presented in this area. The Task Force is preparing a report containing detailed findings and recommendations for release at the ASIL Annual Meeting in late March. Pending completion of that report, the Task Force has agreed upon the following recommendations.

The ASIL Task Force on U.S. Policy Toward the International Criminal Court takes note of the desirable evolution in the de facto policy of the United States toward the Court in the last few years. In light of the Court's record over the past seven years and its involvement in compelling situations—such as Darfur, Uganda, and the Democratic Republic of Congo—that are of great concern to the United States, there is an auspicious opportunity to put U.S. relations with the Court on an articulated course of positive engagement. The Task Force recommends that the President take prompt steps to announce a policy of positive engagement with the Court, including:

- *a stated policy of the U.S. Government's intention, notwithstanding its prior letter of May 6, 2002 to the U.N. Secretary General, to support the object and purpose of the Rome Statute of the Court;*

- *examination of methods by which the United States can support important criminal investigations of the Court, including cooperation on the arrest of fugitive defendants, the provision of diplomatic support, and the sharing of information, as well as ways in which it can cooperate with the Court in the prevention and deterrence of genocide, war crimes, and crimes against humanity;*
- *examination of U.S. policy concerning the scope, applicability, and implementation of “Article 98 Agreements” concerning the protections afforded to U.S. personnel and others in the territory of States that have joined the Court;*
- *U.S. participation as an observer in the Assembly of States Parties to the Rome Statute, including the Special Working Group on the Crime of Aggression and the 2010 Review Conference of the Rome Statute;*
- *the issuance of any presidential waivers in the interests of the United States that address restrictions on assistance to and cooperation with the Court contained in the American Service-members’ Protection Act of 2002 (ASPA) and advice to the Congress on the need for further amendments of ASPA;*
- *identification of a high-ranking official to serve as the focal point within the executive branch to coordinate U.S. cooperation with the Court and monitor ICC performance in order to inform the further development of U.S. policy in this area;*
- *U.S. development assistance focused on rule-of-law capacity building, including that which enables countries to exercise their complementary jurisdiction to the Court effectively;*
- *support for the continued development of contacts between the various branches of the U.S. Government and the Court;*

- *support for the legislative agenda detailed below; and*
- *an inter-agency policy review to re-examine, in light of the Court's further performance and the outcome of the 2010 Review Conference, whether the United States should become a party to the Rome Statute with any appropriate understandings and declarations as other States Parties have done.*

The Task Force further recommends that Congress pursue a legislative agenda on the Court that includes:

- *amendment of the American Service-members' Protection Act and other applicable laws to the extent necessary to enhance flexibility in the U.S. Government's engagement with the Court and allies that are State Parties to the Rome Statute;*
- *consideration of amendment to U.S. law to permit full domestic U.S. prosecution of crimes within the jurisdiction of the Court so as to ensure the primacy of U.S. jurisdiction over the Court's jurisdiction under the complementarity regime; and*
- *hearings to review and monitor Court performance in order to identify means by which the United States can support the Court consistent with the interests of the United States and the international community and to re-examine whether the U.S. should become a party to the Rome Statute with any appropriate understandings and declarations as other States Parties have done.*

Commenting on the Task Force's recommendations, ASIL President Lucy Reed said, "The Society is very pleased to be able to bring such a diverse and expert group together on the subject of the United States' relationship with the ICC. With the new administration just getting started, the timing for this group and its mission to re-

examine our country's relationship with the Court and the Rome Statute could not be better."

The Task Force is scheduled to issue a full report that elaborates on and gives justification for its findings just prior to the Society's 103rd Annual Meeting, March 25-28, 2009, in Washington, DC.

ASIL is a nonprofit, nonpartisan, educational membership organization. It was founded in 1906, chartered by the U.S. Congress in 1950, and has held Category II Consultative Status to the Economic and Social Council of the United Nations since 1993. ASIL's mission is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. The Society's 4,000 members (from nearly 100 countries) comprise attorneys, academics, corporate counsel, judges, representatives of governments and nongovernmental organizations, international civil servants, students, and others interested in international law.

ASIL does not generally take positions on substantive issues, including the ones addressed by this Task Force on U.S. Policy Toward the International Criminal Court. The Society's convening of the Task Force is funded by grants from the John D. and Catherine T. MacArthur Foundation and the Planethood Foundation. The findings and views expressed by the group members are their own and do not necessarily reflect the views of the Society's members. For more information about ASIL, visit www.asil.org.