

FAQs About: The International Criminal Court

1. Why won't the United States become a party to the International Criminal Court treaty?

The U.S. is a strong advocate for bringing those who commit war crimes and crimes against humanity to justice. The U.S. participated fully in the negotiation of the International Criminal Court (ICC) treaty and worked hard for the creation of a standing court which would improve the world's response to these terrible crimes. But U.S. concerns about important details regarding the jurisdiction and procedures of the court were ignored. In the end we regretted that we were unable to join in becoming a party.

The most significant problems the U.S. has with the treaty are:

- It lacks adequate checks and balances on the powers of the ICC prosecutor and judges;
- it dilutes the UN Security Council's authority over international criminal prosecutions;
- it lacks an effective mechanism to prevent politically motivated prosecutions of American service members and officials.¹

2. Isn't the United States asserting a double standard on war crimes- one for itself, and one for the rest of the world?

You have to keep in mind that the U.S. is the most active nation in the world in terms of deploying its military forces in order to contribute to the security of other countries. There are over 200,000 U.S. service personnel currently outside the U.S. So unlike most other countries, how the ICC will function is of more than academic interest to us. Our forces are more exposed to risk of an unfair trial than the forces of other nations.²

We hold our troops to the same international standard of behavior during armed conflict that we expect from others. For example, during the Vietnam War we tried dozens of U.S. soldiers and Marines for war crimes, and are prosecuting some today after the recent war in Iraq.

U.S. forces fighting during the NATO bombing campaign in Kosovo were subject to the jurisdiction of the international war crimes tribunal established by the Security Council for that region. The U.S. is also a party to the 1949 Geneva Conventions, which authorizes any nation which is party to the Conventions to try anyone accused of a war

¹ Department of Defense, "Secretary Rumsfeld Statement on the ICC Treaty", May 6, 2002.

² Department of Defense, "Background Briefing on the Possible Effects of the International Criminal Court on U.S. Military Personnel", DoD News Briefing, July 2, 2002.

crime listed as a "grave breaches" in the Conventions regardless of nationality of the accused or victim or the location of the alleged offense.³

In sum, we do not hold others up to different standard from the one we use ourselves. But we are not prepared to subject our forces to the jurisdiction of a court vulnerable to abuse.

3. How can the U.S. insist that my country grant Americans immunity from the jurisdiction of the ICC?

Our request for immunity is really very minimal. We just want our basic sovereignty respected. International law has always recognized that only those sovereign countries which choose to become a party to an international agreement are bound by that agreement. The ICC treaty says differently- that a person can still be tried by the ICC even if his or her nation is not a party to the agreement. We are not trying to impose our will on anybody. We just don't want anybody imposing this treaty on us. We have no objection to having the treaty function with regard to those countries which are party to it.

4. What is the purpose of the "Article 98" agreements the U.S. has signed with other nations?

The name "Article 98" agreement refers to article 98 of the ICC treaty. This article prohibits the ICC from requesting surrender of a suspect from a nation party to the ICC treaty if that nation is under an international legal obligation not to turn over the suspect.

The agreements essentially say that the other government will not turn over to the ICC any American accused of a war crime, crime against humanity or genocide.

Some nations have sought, and received, a reciprocal assurance that the U.S. will not turn over to the ICC any of their citizens accused of a war crime, crime against humanity or genocide.

92 nations are now party to the ICC treaty. Over 80 nations have signed Article 98 agreements with the U.S. About half of these nations are party to the ICC.

³ 1949 Geneva Conventions, Land Wounded & Sick- art. 49, Sea Wounded & Sick- art. 50, Prisoners of War- art. 129, Civilians- art. 146.