



STATUS OF THE U.S. SIGNATURE OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

The purpose of this paper is to clarify the status of the United States signature of the 1998 Rome Statute of the International Criminal Court (ICC), a treaty signed under President Bill Clinton but later repudiated under President George W. Bush. Under the 1969 Vienna Convention on the Law of Treaties, countries indicate their intention to ratify a treaty by signing it. A treaty is not legally binding until it has been ratified, unless otherwise established. The paper will examine the current and possibly future legal status of the U.S. signature.

The U.S., under President Clinton, signed the Rome Statute on December 31, 2000, the last day it was open for signature. Signing is a first step towards ratification. Signing commits a country to respect a treaty but does not make that country a State Party. For the U.S. to become a party to a treaty by signature and ratification, the president must submit the treaty to the U.S. Senate for advice and consent. The Senate must approve it by a 2/3 majority. The president must then complete the ratification process by depositing the treaty with the United Nations Secretary-General, the treaty depository, thus expressing U.S. consent to be bound by it.

President Clinton signed the Rome Statute in order to be engaged with the Court and influence its evolution. Signing the treaty also served to reaffirm U.S. support for international accountability and for bringing to justice perpetrators of genocide, war crimes and crimes against humanity. President Clinton, however, did not submit the treaty to the Senate for advice and consent to ratify because of continuing concerns about the Court and because he did not want U.S. citizens to be subject to the jurisdiction of the Court. A major concern of the Clinton administration and of the Bush administration today is the fear of politicized prosecutions targeting military personnel and government officials.

On May 6, 2002, the U.S., under President Bush, submitted a note to the UN Secretary-General regarding its signature of the Rome Statute. The note states that “the U.S. does not intend to become a party to the treaty. Accordingly, the U.S. has no legal obligations arising from its signature on December 31, 2000”. In so doing, the U.S. government effectively suspended the U.S. signature and relieved itself of certain legal obligations of treaty signatories not to defeat the object and purpose of the treaty (Vienna Convention, Article 18).

Some have suggested that the U.S. could re-sign the treaty. That idea, however, is legally inaccurate given that the signature has never been physically erased and that the treaty is no longer open for signature. Though the treaty is subject to ratification by signatory States, it is unclear whether or not the U.S. could ratify it without reinstating its signature first through a note to the UN Secretary-General. The U.S. can, however, accede to the treaty without any action on the status of its signature, the legal effect of which is the same as if it ratified the treaty. Accession takes place when a country which did not sign a treaty during the period open for signature later chooses to become a party to the treaty.

A new administration could, if it so chooses, reinstate the legal force of the U.S. signature by submitting a note to the UN Secretary-General, expressing its will to be bound by it. Reinstating the signature would not oblige the U.S. to ratify the treaty at any particular time. It would simply anticipate eventual ratification and, in the meantime, indicate that the U.S. would not defeat the object and purpose of the Rome Statute as required by the Vienna Convention. It would be an opportunity for a new administration to break with the Bush policies on the



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ICC and signal U.S. commitment to international law and accountability. It would also mean that the U.S. would need to avoid any further actions that would undermine the Court.

Reinstating the U.S. signature would not be necessary, however, for the U.S. to be able to participate as an observer in the meetings of the Assembly of States Parties (ASP), the governing body of the ICC. As a signatory of the Final Act of the Rome Conference, a separate document which the U.S. has not repudiated, the U.S. is entitled to participate as an observer in the ASP with all rights except voting. Only countries that have ratified or acceded to the Rome Statute have the right to vote in the ASP.

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