

Remarks for PGA Session

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Jeffrey Jamison

Tokyo American Center, U.S. Embassy

Thank you for your introduction. I appreciate the opportunity to sit on this panel. When Sen. Inuzuka called me with his request – it's been less than 72 hours since we spoke – I was quite reluctant to accept. Especially when he noted that all or most of you were members of parliament, a group of people known for their ability and willingness to speak freely.

I come from the world of diplomacy, a different culture. Not only do we develop the habit of being very careful about our words, we are also under the constraint of being agents or representatives of governments back home.

I also come to the questions under discussion today without training or experience in the legal field, whether local, national or international. As is the case in the United States with our own legislators, I am guessing that many or even most of you have studied law – at university, or law school, perhaps even abroad as well – or have been trained to practice law. I have some familiarity with the issues from a diplomatic perspective, but little expertise in legal and technical aspects of the Rome Statute. Again, I come from a different culture.

I also represent a government that has chosen not to participate in the ICC, and I assume that many of you come from countries that are party to, or are preparing to become party to, the Rome Statute, and the fact that you are here suggests that you personally are interested in your countries' participation in the ICC. Another difference between us.

But in Japan, there is a wonderful institution called a benkyokai. There are probably hundreds of them here in Tokyo, groups that meet regularly to study a particular issue or policy area, that often invite outsiders to share information and opinions. So I approach this discussion as a very large benkyokai, and I am looking forward to the learning experience. Perhaps I would prefer to have that experience sitting out there, but nevertheless I appreciate the invitation to sit in this chair.

Most of you are familiar, I am sure, with the U.S. objections and reservations concerning the ICC, so I will not take too much time to list them today. In summary, I think, you can group our reservations into the following general issues:

- As a basic principle, the United States strongly objects to the ICC's claims to jurisdiction over the nationals, including government officials, of states not party to the Rome Statute.
- Lack of UNSC oversight of the ICC is another major problem area for us. In the past, the decision to establish an ad hoc international criminal tribunal has always been preceded by

extensive political debate in the UNSC.

- The lack of oversight and sufficient safeguards included in the Rome Statute open the possibility to meritless, politically motivated investigations and prosecutions. We believe our citizens are especially vulnerable to politically motivated actions because of the U.S. role in global politics.
- Finally, we are concerned that ICC prosecutors, with the approval of two judges out of a three-judge panel, have the power to disregard the verdicts of national courts and to initiate investigations aimed at prosecution, essentially overruling our own judicial system.

Now, you can ask your U.S. counterparts in the Senate and House of Representatives, and you will find a variety of opinions: some will share these concerns, some might be unpersuaded – either by all or some of these arguments – some might actually be more strongly opposed to ICC than the previous or current administration. As for yourselves, you are free to make up your own minds about the ICC, but it is not my purpose today to persuade you on the positives or negatives of the ICC. The topic of this session, as I understand it, is a review of the progress and the direction of the court over the last few years.

In that context, while we have decided not to join the ICC and while we have taken actions to safeguard U.S. personnel from what we see as the flawed mechanisms of the court, we have not stood in the way of other countries joining the court, nor have we impeded the court's proceedings. Indeed, our policy is to respect the decision of other nations to join the ICC; we simply ask that other nations respect our decision not to join. Our abstention on UNSCR 1593, which referred the Darfur situation to the ICC, is evidence of our desire to see justice done – and a reflection of the urgent need to try multiple approaches to this pressing problem.

I would also like to note that U.S. has made significant contributions to the operations of other international tribunals, going back to the post-WWII tribunals. In the cases of the ICTY and the Rwanda Court, we have provided input into such matters as rules of evidence and other rules of procedure, as well as a substantial amount of funding. These Courts, unlike the ICC, were mandated by the UN Security Council and are designed to address specific situations.

In some respects, our bilateral relations have been guided by our concerns regarding the ICC. Hence, I want to draw your attention to recent changes in the legal prohibitions to the provision of certain forms of military assistance. As you may know, the American Servicemembers' Protection Act of 2002, prohibits the provision of certain forms of military assistance, including Foreign Military Financing (FMF) and Excess Defense Articles (EDA), to countries that are parties to the Rome Statute, and which are not NATO member countries, major non-NATO allies, or to Taiwan. The President may waive this prohibition with respect to a country that has entered into an Article 98 agreement with the United States or where he determines it is important to the national interest of the United States to do so. This provision recognizes the need for balance in light of important bilateral relationships despite our strong concerns with the ICC.