

# The United States Shows its Hand

Some see a blink, most see an ultimatum.

The United States delegation pledged to recommend that the U.S. government ratify the treaty setting up an international criminal court—but only if the Rome conference agrees to an American package that would, in the view of many, result in a weak and passive court with a very limited mandate.

The U.S. vision of the court's jurisdiction was outlined in a statement to the conference by David Scheffer, head of the U.S. delegation. As expected, it would allow the court to prosecute only the most widespread and heinous acts, and require the consent of the U.S. before Americans are prosecuted.

Scheffer also expressed support for a series of provisions that would allow states to delay and even to reject the admissibility of a case, and a prosecutor who would have to wait for cases to be referred by governments or the UN Security Council.

The nearest thing to a concession appears to be a willingness to discuss a proposal that would limit the ability of the UN Security Council to withhold cases from the court that it is examining. At the other extreme, observers expressed surprise and shock that the U.S. would allow states parties to opt-in to the jurisdiction of the court over crimes against humanity and war crimes. This would effectively allow the U.S. to pick and choose the cases on which the court could act.

Taken together with the

other concessions that the United States has either won or are still under discussion, this evidently amounts to a package that the Administration feels it could put to the U.S. Senate.

David Scheffer, head of the U.S. delegation, told the conference today that time was now very short, and the need for a court was great. "If the approaches I have discussed emerge as an acceptable package for the statute, then the United States delegation could seriously consider 'favourably recommending to the United States government that it sign the ICC treaty at an appropriate time in the future.'"

The nongovernmental reaction to Scheffer's speech was swift and loud. At a press conference, officials from five leading human rights groups roundly condemned the U.S. for a lack of flexibility and promised to oppose the U.S. as energetically as possible.

A statement by the New York-based Lawyers Committee for Human Rights described the U.S. statement as a "step backwards" and warned that the U.S. risked being left behind by the conference. "President Clinton has called for the creation of this court numerous times," said Jelena Pejic, from the Committee. "Now that it is crunch time, his government is among the biggest obstacles to achieving that goal."

If there was a surprise in Scheffer's statement, it was his announcement that the Clinton Administration is prepared to recommend signa-

ture of the ICC treaty this early in the conference. This may represent something of a gamble. Since the Republican-controlled Congress has given no sign that it would accept any kind of a court no matter how restrictive. The spokesman for Senator Jesse Helms visited the conference and showed little enthusiasm for the proceedings. With the U.S. owing over a billion dollars to the UN system, the Senate Foreign Relations Committee seems even less likely to release funds for a criminal court.

On the other hand, the Clinton Administration is desperate not to be sidelined and appear to oppose the Court outright. Scheffer's remarks are seen as an attempt to seize the initiative, and appeal directly to governments that feel that a weak court with the United States will be better than a strong court without U.S. participation.

Throughout his remarks, Scheffer stressed the importance of bringing in as many governments as possible. At one point he warned that "limited participation" would result in an "ineffective court." This will resonate with the French, who agree with the Americans on state consent and are said to be desperate to bring the United States in at almost any cost. It may also appeal to the Scandinavian delegations which seem increasingly alarmed at the prospect of a U.S. boycott.

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