

02/23/2002

**NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
BOARD RESOLUTION CALLING FOR UNITED STATES
RATIFICATION OF AND PARTICIPATION IN
THE INTERNATIONAL CRIMINAL COURT
AND FOR CREATION OF INDEPENDENT DEFENSE FUNCTION THEREIN**

RESOLVED

The National Association of Criminal Defense Lawyers (NACDL) supports the formation of the permanent International Criminal Court (ICC) and urges the United States to immediately ratify the Rome Statute of the International Criminal Court.

COMMENT: The United States signed the Rome Statute, which was the implementing legislation for the ICC, on December 31, 2000, but it has made no effort to begin the process of ratifying it. The participation of the United States diplomatic team was extremely important, however, during the drafting of the Rome Statute, in 1998. This participation led to the inclusion of a variety of due process safeguards that will be crucial to the fair and impartial operation of this new judicial forum. In fact, the structure of a trial before the ICC will be primarily that found in an adversary system. The Rome Statute guarantees the presumption of innocence of the accused, the right to counsel of choice, the right to assignment of counsel for indigent defendants and the right to remain silent without adverse inference. The Statute also provides that the burden of proof always rests with the prosecution and the prosecution must prove guilt beyond a reasonable doubt. Procedural safeguards are also in place. The Statute guarantees the right to examination of witnesses by counsel, the right of discovery, a preclusion of trials in absentia and the right to appeal. The maximum sentence will be life imprisonment for crimes of "extreme gravity" but no death penalty will be possible. Ratification by 60 countries will bring the Rome Statute into effect. As of this date, the United Nations has received 52 of the required ratifications and the remaining ratifications are expected shortly. The ICC will begin functioning and investigating cases as early as the spring of 2003. The ICC represents an historic opportunity for the countries of the world to unite in an effort to define and deal with allegations of crimes with enormous human impact. The United States and its allies should be a party to the ICC.

FURTHER RESOLVED

The NACDL supports international efforts to create an independent defense bar, especially those promoted by our partner, the International Criminal Defence Attorneys Association (ICDAA), that will help ensure that individuals charged with crimes before the ICC are represented by the highest quality advocates with access to resources equivalent to those of the prosecuting authority.

COMMENT: The only crimes over which the ICC has jurisdiction are (1) genocide, (2) war crimes, and (3) crimes against humanity. The criminal acts with which individuals will be charged in the ICC are, by definition, the most heinous crimes that will have

taken place in disparate locations throughout the world. Sensational press, world opinion and the resources of governments all will be allied against the interests of those charged with these crimes. The lawyers representing those charged with such crimes must be sufficiently supported to permit the adversarial process to be evenly balanced. To date, the individuals and organizations charged with establishing the mechanisms and structure of the ICC have focused nearly exclusively on the prosecution and judicial pillars of the Court while the defense pillar has been overlooked. History will measure the legitimacy of the ICC by the degree to which the rights and interests of those accused of crimes are protected. The NACDL, along with its partner, the International Criminal Defence Attorneys Association (ICDAA), is committed to fostering recognition of the importance of the defense pillar and to the implementation of safeguards and procedures which will assure that those charged with crimes before the ICC have an independent, fairly funded and supported defense.

FURTHER RESOLVED

The NACDL supports the efforts of the Coalition for an International Criminal Court (CICC), the American Non-Governmental Organizations Coalition for the ICC (AMICC) and the Washington Working Group on the ICC (WICC) and will become a member of the International Coalition and of AMICC and WICC in order to participate in the process of establishing a strong defense pillar in the ICC.

COMMENT: The purpose of the CICC is to advocate for the creation of an effective, just and independent International Criminal Court. The CICC brings together a broad-based network of over 1,000 Non-Governmental Organizations (NGO's), international law experts and other civil society groups. AMICC and WICC work with the CICC within the United States. The multi-track approach of the International Coalition involves: promoting education and awareness of the ICC and the Rome Statute at the national, regional and global level; supporting the successful completion of the mandate of the Preparatory Commission and facilitating NGO involvement in the process; promoting the universal acceptance and ratification of the Rome Statute, including the adoption of comprehensive national implementing legislation following ratification; and expanding and strengthening the Coalition's global network. AMICC and WICC work nationwide and in Washington, respectively, for the U.S. government's strong immediate support for the ICC and rapid ratification of the Rome Statute. NACDL's membership in both the International and U.S. Coalitions will permit us to participate as delegates in the Preparatory Commissions in New York City in April 9-18 and July 1-12, 2002. These PrepComs will create the framework of the ICC, including issues that are vital to the defense.

PASSED BY UNANIMOUS VOTE FEBRUARY 23, 2002
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