

## RESOLUTION 06-07-2007

### DIGEST

#### International Law: Support for International Criminal Court

Calls upon the President and the Congress to enter into the 1998 Rome Statute of the International Criminal Court, to accede to its terms, and pass the appropriate implementing legislation.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found

#### Reasons:

This resolution calls upon the President and the Congress to enter into the 1998 Rome Statute of the International Criminal Court, to accede to its terms, and pass the appropriate implementing legislation. This resolution should be approved in principle because it would return the United States of America to the international community and end the policy of nonacquiescence to international law.

Addressing the Nuremberg war crimes tribunal in his opening statement, Robert Jackson, the Allied prosecutor, remarked that “the complaining party at your bar is Civilization.” Since then, the world’s nations have tried to create international tribunals for the redress of the most heinous crimes against humanity. To that end, the International Criminal Court is designed to provide civilized society with accountability for such serious acts as genocide and other war crimes, but only when national courts are unwilling or not genuinely able to take effective action.

The United States, however, has not participated in the International Criminal Court, despite the fact that often there is no accountability for genocide, crimes against humanity and war crimes. Special courts such as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, or hybrid courts such as those in Sierra Leone and Cambodia, are created infrequently because of the UN Security Council veto that the United States enjoys. Also, creating new courts for each situation is costly. Accordingly, there have been too few prosecutions for these, the most serious of crimes.

This resolution seeks to return the United States to the international community and end the policy of nonacquiescence to international law. More importantly, it would restore some level of accountability for the most serious crimes against humanity.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations calls upon the President to re-sign the 1998 Rome Statute of the International Criminal Court, and to promptly

and without delay submit the treaty for the advice and consent of the Senate, and accede to the treaty with the concurrence of the Senate;

FURTHER RESOLVED, that the Conference of Delegate of California Bar Associations urges the Senate, immediately following the submission to it of the treaty by the President, to promptly and without delay give its advice, consent and concurrence to accession by the United States of America to the 1998 Rome Statute of the International Criminal Court;

FURTHER RESOLVED, that the Conference of Delegates of the California Bar Associations urges the Congress to pass domestic implementing legislation to give full force and effect to the accession to the 1998 Rome Statute of the International Criminal Court, and to repeal any legislation which provides for reduction of funding and/or support for nations which have ratified or acceded to the 1998 Rome Statute of the International Criminal Court, including but not limited to legislation regarding reduction of funding to nations which have not entered into bilateral immunity agreements with the United States of America.

FURTHER RESOLVED, the date on which the nations of the world agreed to create the International Criminal Court is a date which deserves commemorations, and celebration as a step forward for accountability pursuant to the rule of law for those who are accused of these the most serious of crimes against the international community and against humanity, and accordingly the Conference of Delegates of California Bar Associations calls for July 17 of each year to be proclaimed World Day for International Justice.

PROPONENT: Los Angeles County Bar Association

#### STATEMENT OF REASONS

Existing Law: The United States signed the 1998 Rome Treaty of the International Criminal Court (ICC) in 2000, but the signature was later withdrawn and the US is not a party to the treaty. It entered into force July 1, 2002 following ratification/accession by 60 nations. 104 nations are parties to the treaty, including Canada, Mexico, and all but one of the members of NATO other than the United States.

This Resolution: Urges full United States participation with the ICC, including signing and accession to the Rome Treaty. Among the purposes of the ICC are to end the culture of impunity for these most serious crimes, to promote national prosecutions first, to provide a forum for victims of these crimes with a potential for compensation or reparations, and to instill a respect for the rule of law in places where the rule of law has not taken hold.

A permanent court has advantages over establishing new courts each time a new situation arises, and in many cases the politics of the Security Council veto have prevented establishment of ad hoc courts. The ICC is an independent international organization created by treaty, and funded by its members. Assessment on each party is based on the same criteria as dues for the United Nations. For the US, there would be a significant assessment on the US to be part of the ICC.

However, the purpose is so no new ad hoc or special courts will need to be formed. The US has contributed significantly to those efforts. Over time, having a permanent court should be more cost effective than establishing new courts.

The ICC is part of the Nuremberg legacy started by the United States and its allies following World War II, of international standards of justice being applied even to those who have lost a war. The ICC applies procedural protections in many cases higher than those imposed by the United States Constitution, and ensures accountability for individuals accused of crimes, and protections for the rights of the accused.

Because the ICC relies on nations for enforcement, the more nations party to the treaty, the more effective the work of the ICC can be. The United States should support and participate with the ICC as a party, and to do so, should accede to the treaty.

The Problem: In some nations, there is no accountability for genocide, crimes against humanity and war crimes. There is often a culture of impunity. Some governments are unable to effectively investigate or prosecute. Special (International Criminal Tribunal for the Former Yugoslavia-ICTY or International Criminal Tribunal for Rwanda-ICTR) or hybrid (Sierra Leone, Cambodia) courts are created infrequently because of the UN Security Council veto, new courts for each situation are costly, and there have been too few prosecutions for these, the most serious of crimes.

The ICC provides for accountability pursuant to the rule of law for individuals accused of genocide, war crimes and crimes against humanity, but only when national courts are unwilling or not genuinely able to take effective action.

#### **IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule.

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**RESPONSIBLE FLOOR DELEGATE:** Constance Kim

#### **COUNTERARGUMENTS**

#### **ORANGE COUNTY BAR ASSOCIATION**

This resolution is not germane to the Mission, Goals and Organizational Values of the CDCBA. It does not propose any specific state legislation, and the CDCBA would have no means of implementing this resolution. This resolution seeks to urge the President, Senate and Congress to implement and sign the 1998 Rome Statute of International Criminal Court. The CDCBA has

no lobbyist or means of following through with this resolution if passed. The resolution is purely “political” in nature and does not fall within the definition of the mission of the CDCBA. The “mission” of the CDCBA is to “serve justice in California by bringing together attorney volunteers from across the State . . . to seek, debate, and promote creative, non-partisan solutions to law-related issues.” (Emphasis added.) While Orange County recognizes that the new structure of the Conference permits us to debate issues more freely, even the new rules do not go this far.

The only thing that this resolution accomplishes is to make the CDCBA look ineffective, self important, inept, and politically motivated, in contradiction of its stated Mission, Goals, and Organizational Values, which further undermines the true work that many are seeking to accomplish through the CDCBA.

### **RIVERSIDE COUNTY BAR ASSOCIATION**

This resolution would subordinate the sovereignty of our nation to a foreign entity. Although the ICC contains protects some rights, the protected rights are different from those protected by our state and federal constitution and laws. The Congressional Research Service generated a report on August 29, 2006 which outlined concerns with the ICC. <http://www.fas.org/sgp/crs/misc/RL31495.pdf> This Conference should not take a position on this issue unless these issues are addressed in sufficient detail to allow a reasoned decision. In addition, this Conference dilutes its influence when we depart from issues which are of unique concern to the State of California and our profession.