

# LAW AND CONTEMPORARY PROBLEMS

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Volume 64

Winter 2001

Number 1

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## FOREWORD

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On December 31, 2000, the United States signed the Rome Statute for an International Criminal Court (the “ICC”). The signature was the most recent step in a process that has been marked by controversy both within the U.S. government and between the United States and other states.

The United States’ signature came only hours before the deadline, set by the terms of the treaty, after which states could no longer sign without ratifying. The signature thus marked a significant juncture in the relationship between the United States and the ICC.

Yet the dispute between the United States and the ICC is not resolved; and the nature of the long-term relationship remains uncertain. In his statement authorizing the U.S. signature of the ICC treaty, President Clinton stated:

In signing, however, we are not abandoning our concerns about significant flaws in the treaty. In particular, we are concerned that when the court comes into existence, it will not only exercise authority over personnel of states that have ratified the treaty, but also claim jurisdiction over personnel of states that have not. . . .

Court jurisdiction over U.S. personnel should come only with U.S. ratification of the treaty. The United States should have the chance to observe and assess the functioning of the Court, over time, before choosing to become subject to its jurisdiction. Given these concerns, I will not, and do not recommend that my successor submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied.<sup>1</sup>

Even as the United States was signing the treaty, Senator Jesse Helms, Chair of the Senate Foreign Relations Committee, and Tom DeLay, House Majority Whip, were announcing their intentions to give high priority to passing legisla-

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1. Associated Press, *Clinton’s Words: “The Right Action”*, N.Y. TIMES, Jan. 1, 2001, at A6 (reprinting the text of President Clinton’s statement authorizing U.S. signature of the ICC Treaty).

tion that would position the U.S. as an active opponent of the court.

Much is at stake in the relationship between the United States and the ICC. Proponents of the court believe that the ICC has great potential to render justice in cases of genocide, war crimes, and crimes against humanity, and to deter the future perpetration of those crimes. Skeptics question that potential and also question the wisdom of placing the power to adjudicate highly politically charged cases into the hands of an international tribunal. In addition to the question of the wisdom of establishing an international jurisdiction for this purpose, there is the issue, reflected in President Clinton's remarks, of who holds the power to decide whether any particular state's nationals will be subject to that jurisdiction. The ICC treaty, by its terms, would give the court jurisdiction over nationals of party and non-party states alike. The United States has objected, and continues to object, that such a jurisdictional structure is in fundamental violation of international law.

A group of scholars, diplomats, and policymakers met at Duke University School of Law in April of 1999 to discuss the relationship between the United States and the ICC. The conference, entitled "The United States and the International Criminal Court: Which Way from Here?," was jointly sponsored by the Duke Center on Law, Ethics, and National Security and the Smith Richardson Foundation. The present symposium represents the products of those discussions. While developments in the relationship between the United States and the ICC have continued since the time of the Duke conference, the fundamental issues, addressed in the following pages, remain essentially unchanged. Indeed, the fact of U.S. signature ensures that the United States will remain engaged in negotiations concerning these issues and the overall direction of the court in the months and years ahead.