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# ***Bilateral Immunity Agreements<sup>1</sup>***

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## **Introduction**

The establishment of the International Criminal Court (ICC) last year represented a profound step forward for international justice. The Court's infrastructure is currently being developed in The Hague, states parties elected the Court's first 18 judges in February, and these judges were officially sworn-in to duty on March 11 in The Hague. The Court's prosecutor was elected in April and will commence official duties in June: in short, the ICC is poised to commence business.

Against this progress, the United States' long-standing opposition to the ICC has intensified since mid-2002. The Bush administration has engaged in a widespread campaign to undermine and marginalize the ICC to prevent it from becoming an effective instrument of justice. After "unsigned" the Rome Statute, the Bush administration threatened the future of United Nations peacekeeping operations and negotiated a Security Council resolution that provides a limited, one year exemption for citizens of non-state parties to the Rome Statute – this includes U.S. personnel – participating in UN peacekeeping missions or UN authorized operations. Following this abuse of the Security Council, the Bush administration launched a worldwide campaign to negotiate bilateral immunity agreements that would exempt U.S. nationals from ICC jurisdiction.

The bilateral agreements sought by Washington would require states to send an American national requested by the ICC back to the U.S. instead of surrendering him/her to the ICC. Importantly, Washington's agreement would remove the ICC's oversight function, which is the fundamental principle underpinning the Rome Statute and is critical to close the door on impunity.

Human Rights Watch urges your government not to sign such a bilateral immunity agreement with the United States. We believe the agreements that Washington has pressed are contrary to the spirit and letter of the ICC Treaty. If your government does decide to enter into negotiations with the United States, we urge you to formulate a negotiating position that is fully consistent with the Treaty so as not to facilitate impunity. Human Rights Watch has built upon the "guiding principles" adopted by EU Member States on September 30, 2002 to achieve this (*see ANNEX 2*). These should constitute minimum benchmarks for negotiations with the Bush administration.

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<sup>1</sup> This document provides a summary of the bilateral negotiations occurring around the world as part of U.S. efforts to undermine the ICC. **Note:** The document is only a summary. The status of bilateral negotiations around the world is rapidly changing so this document requires continuous updating.

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Washington embarked on a worldwide campaign to obtain bilateral agreements more than a year ago. This campaign has involved bilateral and multi-lateral pressure on governments around the world. Human Rights Watch provides this global chart for three main reasons:

- (1) To highlight that while the number of signatures is growing, many states continue to resist pressure to sign the agreements. Even among those that have signed, most of these agreements have not been ratified and so are not even in force. Many may never be ratified
- (2) More importantly, to show that a great number of states have refused to sign the U.S. proposed agreement, to date, including all members of the European Union (EU). Your government can join them.
- (3) To bring some transparency to an otherwise secretive process and to encourage states to exchange information among themselves. By understanding that numerous states have resisted intensive U.S. pressure, and learning how they have responded to Washington, states will be better positioned to uphold their obligations in the Rome Statute.

Human Rights Watch presents this information in a series of charts that track the situation in individual countries. A brief analysis of issues raised in negotiations precedes these tables.

The U.S. standard agreement is at ANNEX 1. **It is important to note that the standard form extends beyond U.S. military personnel to all U.S. nationals even if they are not in another state's territory on an official mission. The U.S. is still pushing this version of the agreement – seeking blanket immunity – even after the EU rejected blanket immunity on September 30 when it adopted its “guiding principles.”**

### General Notes

#### (i) Responding to U.S. pressure

- The United States has accounted widespread opposition:
  - **Many states are refusing to sign any agreement proposed by Washington on the basis that they do not want to undermine the ICC Treaty, they do not want to legitimize immunity, and they do not want to create a two-tiered system of justice: one for U.S. citizens; and one for the rest of the world's citizens.**
  - Only a handful of states have signed. Many of them, including Romania and East Timor, have indicated that the government will further study the signed agreement before submitting it to their national parliaments for review. In light of the controversy surrounding Romania's signature, the parliamentary ratification process has seemingly stalled. The government has stated that it wants to amend the agreement so that it conforms to the EU “guiding principles.” The implications of the EU's “guiding principles” are discussed in section (ii) below.
  - **For non-state parties:** it would be premature to sign bilateral agreements with the U.S. now. Both Japan and the Republic of Korea apparently told Washington that its proposed agreement would not be considered until after they ratify the Rome Statute. (Of course, now that the Republic of Korea has ratified it is believed to be subject to resumed U.S. pressure.)

- **The Rome Statute provisions do not allow the U.S. to obtain the exemptions it is seeking.** The relevant provision, article 98, tracks the terminology used in Status of Forces Agreements. The language is very strict—it applies only to military personnel and other closely aligned civilian personnel “serving” on a state’s territory on an official mission. Article 98 is also firmly grounded in the ICC’s ability to take jurisdiction of a case should it find that an investigation or prosecution was not conducted in good faith. The objective of article 98 was never to protect American mercenaries or any U.S. citizen simply present in a state’s territory.
- **States parties and signatories of the Rome Statute are legally required to ensure that these basic and important aspects of the Rome Statute are not violated:** states parties by virtue of their legal obligations in the Rome Statute to cooperate with the ICC; signatories of the Rome Statute by virtue of their legal obligations under the Vienna Convention on the Law of Treaties to “refrain from acts which would defeat the object and purpose” of the Rome Statute. In addition, states that have begun to enact laws implementing the ICC, and states where international conventions are automatically incorporated into domestic law upon ratification, would violate their own domestic legislation by signing an impunity agreement with the United States.
- **Signing an agreement could have significant legal ramifications for a state’s many extradition agreements.** Extradition treaties normally include re-extradition clauses whereby an extraditing state – i.e. Country X – retains the right to agree to the re-extradition of that person to another state or international tribunal. If Country X signed a bilateral agreement it would forfeit this right to the United States. Renegotiations to many extradition agreements may therefore be required to reflect the operation of the bilateral agreement. This is a technical, but significant, point. There is real potential that a Country X-U.S. bilateral immunity agreement would require subsequent amendment to many of Country X’s extradition treaties.
- **Signing an agreement would undermine the effectiveness and credibility of the ICC.** The widespread exemption of a certain class of persons – U.S. nationals – from the jurisdiction of the Court would cause a serious breach in the regime of international criminal responsibility envisioned by the Rome Statute. The exemption could also serve as a dangerous precedent to encourage other states to seek similar immunity for their citizens.
- **Any reference to the prohibition on military assistance contained in the *American Servicemembers’ Protection Act (ASPA)* by U.S. officials (and we believe this may be occurring) is in fact a weak threat, because the President may waive the prohibition at any time for reasons of “national interest.”** (ASPA already contains explicit exemptions for NATO members and other strategic allies, which makes it a law specifically targeting smaller countries.) Moreover, at a time when the U.S. is trying to rally global support for its war on terrorism, it will be unwilling to jeopardize its military relationships around the world.

The relevant provision of ASPA is section 2007. It reads:

**Section 2007: Prohibition of United States Military Assistance to Parties to the International Criminal Court.**

- (a) PROHIBITION OF MILITARY ASSISTANCE – Subject to subsections (b) and (c), and effective 1 year after the date on which the Rome Statute enters into force pursuant to Article 126 of the Rome Statute [i.e. 1 July 2003], no United States military assistance may be provided to the government of a country that is a party to the International Criminal Court.
- (b) NATIONAL INTEREST WAIVER – **The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that it is important to the national interest of the United States to waive such prohibition.**

- (c) ARTICLE 98 WAIVER – The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that such country has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel in such country.
- (d) EXEMPTION – The prohibition of subsection (a) shall not apply to the government of –
  - (1) a NATO member country;
  - (2) a major non-NATO ally (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand); or
  - (3) Taiwan.

**NOTE about (b):** The Bush administration insisted that Congress insert subsection (b) – the “national interest” waiver – into the ASPA. It operates independently from subsection (c), which relates to the bilateral immunity agreements. States should therefore refer to subsection (b) and request that President Bush exercise the national interest waiver that his administration specifically lobbied the Congress to provide without requiring a bilateral agreement of any kind.

(ii) European Union role

**No EU Member has signed a bilateral immunity agreement.**

On September 30, 2002, the EU released its “Draft Council Conclusions on the ICC” rejecting the proposed U.S. agreements. These “guiding principles” are intended to bind EU Members and also EU Candidate states. Human Rights Watch believes that the EU “guiding principles” do not go far enough away from impunity. In letters to Foreign Ministers of each state party and signatory state Human Rights Watch elaborated on the “guiding principles” in a series of recommendations that would close the potential gaps (*see ANNEX 2*). We believe these recommendations should constitute minimum benchmarks in negotiations with Washington.

**Since September 30: The U.S. has conducted further negotiations in the EU. As of January 27, 2003, Washington has had NO success: EU Members have so far refused to deviate from the EU position.**

The EU “guiding principles” are:

1. The agreements should incorporate the principle of “no impunity.” *Human Rights Watch says:* The EU has not defined this condition with sufficient clarity. This principle is open to numerous interpretations.
2. The coverage of the U.S. text is too broad. The agreements should only apply to military personnel, and other key civilians, serving in your state’s territory. It should not extend to all current and former U.S. nationals who happen to be visiting in your state’s territory. *Human Rights Watch says:* This is fundamental.
3. A bilateral agreement could contain a sunset clause. *Human Rights Watch says:* These agreements should not be in perpetuity. Unfortunately, the EU does not specify a time limitation.

4. The immunity provided in the agreements should not be reciprocal (i.e. immunity should extend only to the U.S. nationals and not to nationals of a state party or signatory state).
5. Existing agreements between your government and the United States may mean that a separate bilateral agreement is unnecessary.
6. Any agreement, or amendment to an existing agreement, should be subject to the standard constitutional procedures in each state.

The U.S. effort to obtain these agreements generated a great deal of discussion within the EU. In response, the German government has issued its own legal analysis and elaboration on the EU guiding principles. This analysis explains the German refusal to sign a bilateral agreement with the United States and expands upon the ambiguous elements of the guiding principles. It provides a useful tool for states entering into negotiations with the United States, clearly setting out the obligations of states parties and signatory states under the Rome Statute. **A copy of this analysis can be obtained upon request to a German Embassy. It is also available on the website of the Coalition for an International Criminal Court at: <http://www.iccnw.org/documents/otherissuesimpunityagreem.html>**

(iii) U.S. negotiating strategy

We understand that the Bush Administration may make the following *general* points in bilateral discussions and negotiations:

- Washington says: Article 98 was designed specifically to allow a country like the U.S. to obtain an exemption from ICC jurisdiction.  
**Human Rights Watch says:** This is false. Article 98 was included in the Rome Statute to provide an orderly and rational process for the handling of suspects among states cooperating with the Court. It was not intended to allow a state that has refused to cooperate with the Court to negotiate agreements that secure exemption for its citizens or otherwise undermine the effective functioning of the Court.
- Washington says: The U.S. government respects the decision made by other countries to join the Court and hopes that those countries respect the U.S. decision not to become a party to the ICC; countries can demonstrate their respect for the U.S. position simply by signing a bilateral agreement with the United States.  
**Human Rights Watch says:** The pressure being exerted by Washington to sign these unlawful agreements demonstrates that the U.S. does not respect the Court, a state's decision to join it and the state's legal obligations as a state party or signatory state.
- Washington says: Bilateral agreements are a positive, constructive way of dealing with the U.S. concerns about the ICC.  
**Human Rights Watch says:** Countries should reiterate the numerous safeguards contained in the Rome Statute; these provide the U.S. with a sufficient level of protection.
- Washington says: A new law passed by Congress – the *American Servicemembers' Protection Act (ASPA)* – *obliges* the Bush administration to halt military aid if certain countries refuse to sign a bilateral agreement.<sup>2</sup>  
**Human Rights Watch says:** This is a misrepresentation because the President can waive the prohibition on military assistance to any country on “national interest” grounds, even if no agreement is signed. U.S. Secretary of State Colin Powell referred to this flexibility on August 13, 2002:

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<sup>2</sup> The ASPA exempts the following countries from the prohibition on military assistance: all NATO members, other strong allies (including, Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand), and Taiwan.

You are all aware of what the Congress has said in the law with respect to the potential withholding of military aid, but we're not bludgeoning or threatening any of our friends; we're discussing with them our concerns about the ICC and a way of dealing with those concerns through Article 98. But the Congress, showing its seriousness with respect to this matter, has put into law some elements that are obvious to all, but has also given the President authority to deal with it, to waive it if he thinks it's appropriate.

- Washington says: The U.S. may need to reconsider its involvement in multilateral institutions, such as NATO, unless the U.S. obtained a widespread network of bilateral agreements exempting its military personnel and civilian officials from the ICC's jurisdiction.  
***Human Rights Watch says:*** The enlargement of NATO, for example, has been U.S. policy for a number of years, including under the Bush administration. This policy was further underscored at the November 2002 NATO Summit in Prague where 7 states were accepted into NATO. The U.S. Senate formally approved the NATO accession of these 7 states on May 8, 2003. It seems clear, then, that Washington will not jeopardize NATO enlargement over the ICC.

**Table 1: States that have signed a Bilateral Immunity Agreement with the United States<sup>3</sup>**

<b>States</b>	<b>Signature</b>	<b>Justification for signing</b>	<b>Comments</b>
<b>Romania (State Party - SP)</b>	<i>Reportedly Signed on August 1, 2002.</i>  Agreement is not reciprocal (it only exempts U.S. personnel)	- Romanian ambassador to Washington, said agreement was natural extension of SOFA signed the previous year.	Romania now says that it intends to change the agreement in light of the EU principles before submitting it to the parliament. This has stalled the process because Romania cannot unilaterally amend the agreement. Instead, it must re-open negotiations with the United States. <i>EU Backlash:</i> The EU communicated its regret at Romania's decision; suggested EU candidate countries should follow the EU. - Romania's Foreign Minister regretted not consulting the EU.
<b>Israel (signatory – but “unsigned” the Rome Statute)</b>	<i>Reportedly Signed on August 4, 2002.</i> Unlike Romania, agreement is reciprocal.	- Deputy chief of mission at Israeli Embassy in Washington said Israel shared US concerns, fearing that its troop could be tried for actions taken against Palestinians. - Israeli Foreign Ministry Legal Expert said there was concern with the freedom given to the independent prosecutor.	- To date, Israel is the only country that has signed an agreement while being exempt from the ASPA military assistance prohibition. - Considering enacting a law that would criminalize cooperation with the ICC, including a prohibition on testimony against the state of Israel by Israeli witnesses. - This agreement need not be ratified by Parliament to enter into force.
<b>East Timor (SP)</b>	<i>Reportedly Signed on August 23, 2002.</i> - Reciprocal		- East Timor suggests that the signed agreement is not yet finalized, and must first be considered by the Council of Ministers before going to Parliament for ratification. If ratified by parliament, an amended agreement will then enter into force upon exchange of documents with the U.S.
<b>Tajikistan (SP)</b>	<i>Reportedly Signed on August 27, 2002.</i>		- Details of the agreement are not yet known.
<b>Sierra Leone (SP)</b>	<i>Reportedly Signed on April 1, 2003.</i>  <i>Reportedly Ratified on May 6, 2003.</i>		- The Campaign for Good Governance (CGG), a local human rights group in Freetown, endorsed HRW's view that the BIAs violate the Rome Statute and should not be signed. CGG also called on Sierra Leone's parliament to reject the agreement (Press Release, April 14, 2003). - Unfortunately, and despite substantial civil society protests outside the parliament building, the Sierra Leone parliament became the first to ratify an immunity agreement on May 6, 2003.
<b>Dominican Republic</b>	<i>Reportedly Signed on September 13,</i>		-Reported in <i>Agence France Presse</i> on September 18. -Details of the agreement are not yet known.

<sup>3</sup> Very few of these signed bilateral immunity agreements have actually been ratified, meaning that they are not yet in force. Many of these states may not ratify these agreements at all.

<b>States</b>	<b>Signature</b>	<b>Justification for signing</b>	<b>Comments</b>
(signatory)	2002.		
<b>Mauritania</b>	<i>Reportedly Signed on September 17, 2002.</i>		-Reported in <i>Agence France Presse</i> on September 18. -Details of the agreement are not yet known.
<b>Uzbekistan (signatory)</b>	<i>Reportedly Signed on September 18, 2002.</i>		-Reported in <i>Agence France Presse</i> on September 18. -Details of the agreement are not yet known.
<b>Marshall Islands (SP)</b>	<i>Reportedly Signed on September 10, 2002.</i>		-Reported in <i>Agence France Presse</i> on September 18. -Details of the agreement are not yet known.
<b>Palau</b>	<i>Reportedly Signed on September 13, 2002.</i>		-Reported in <i>Agence France Presse</i> on September 18. -Details of the agreement are not yet known.
<b>Micronesia</b>	<i>Reportedly Signed on September 24, 2002.</i>		-Details of the agreement are not yet known.
<b>Afghanistan (SP)</b>	<i>Reportedly Signed on September 20, 2002.</i>		-Details of the agreement are not yet known.
<b>Gambia (SP)</b>	<i>Reportedly Signed on October 5, 2002</i>		-Details of the agreement are not yet known.
<b>Honduras (SP)</b>	<i>Reportedly Signed on September 19, 2002.</i>  <i>Reportedly Ratified on May 29, 2003.</i>		-Details of the agreement are not yet known. - After additional US pressure at high levels, President Maduro authorized sending the agreement to Congress for ratification. - The Honduran legislature ratified the agreement on May 29 by a simple majority. Opposition MPs have said they would challenge the constitutionality of the ratification since simple majority, rather than the arguably required supermajority, approved it and because they believe it violates Honduras' obligation under the Rome Statute.
<b>Sri Lanka</b>	<i>Reportedly Signed on November 22, 2002.</i>		-Details of the agreement are not yet known.
<b>El Salvador</b>	<i>Reportedly Signed on October 25, 2002.</i>		- Details of the agreement are not yet known. - El Salvador continues to deny having signed such an agreement.
<b>India</b>	<i>Reportedly Signed on December 26,</i>	India has always rejected a multilateral approach to international justice issues and was one of the	-The agreement is reciprocal. - This agreement need not be ratified by Parliament to enter into

States	Signature	Justification for signing	Comments
	2002.	few states to refuse to sign the ICC treaty.	force.
Nepal	<i>Reportedly Signed on December 31, 2002.</i>		-The agreement is reciprocal.
Djibouti (SP)	<i>Reportedly Signed on January 24, 2003.</i>		-Details of the agreement are not yet known.
Tuvalu	<i>Reportedly Signed on January 30, 2003.</i>		-Details of the agreement are not yet known.
Bahrain (signatory)	<i>Reportedly Signed on February 6, 2003.</i>		-Details of the agreement are not yet known.
Georgia (signatory)	<i>Reportedly Signed on February 10, 2003.</i> -Reciprocal  <i>Reportedly Ratified on May 7, 2003 (Russian news agency Interfax, via BBC, May 7, 2003).</i>		- Reported in <i>Reuters</i> on February 12, 2003. - The US State Department issued its standard justification for entering into a BIA: "These agreements are necessary to protect American citizens from politically motivated prosecutions by a court of which we are not a member. We believe in justice and the rule of law and accountability for war crimes, crimes against humanity and genocide. As a sovereign nation the United States accepts the responsibility to investigate and prosecute its own citizens for such offenses should they occur." ( <i>Reuters</i> , Feb. 12, 2003)
Azerbaijan	<i>Reportedly Signed on February 26, 2003.</i> -Reciprocal		- According to BBC Monitoring International Reports, Azerbaijani envoy to the US and the US Assistant Secretary of State for European and Eurasian Affairs signed the bilateral.
Nauru (SP)	<i>Reportedly Signed on February 26, 2002.</i>		- President Dowiyogo of Nauru signed the agreement in a State Department Treaty Room ceremony (Sources: New Zealand Herald, March 4, 2003; The Weekend Australian, April 5, 2003)

States	Signature	Justification for signing	Comments
Rwanda	<i>Reportedly Signed on March 4, 2003.</i> - Reciprocal		- Reported in Agence France Presse and South African Broadcasting Corporation on March 3 <sup>rd</sup> and 4 <sup>th</sup> , 2003.
Tonga	<i>Reportedly Signed in early April 2003.</i>		- Details of the agreement are not yet known.
Dem. Rep. of Congo (SP)	<i>Reportedly Signed in early April 2003.</i>		- Details of the agreement are not yet known.
Albania (SP)	<i>Signed on May 2, 2003.</i>		- Parliamentary ratification is required once the government conducts a review. - <b>The EU has reacted strongly to this agreement.</b> A spokesperson for the EU's External Relations Commissioner has stated, "We are really just disappointed by this move because we have a common position on the ICC. [...] We very much hope that those who want a closer integration with Europe will share our positions. Albania has not made that choice on this occasion" (AFP, May 8, 2003). - The agreement allegedly does not meet the EU guiding principles, especially with regards to the <b>'scope of persons.'</b> - On June 16, the Foreign Affairs Parliamentary Committee approved the US-Albanian BIA.
Bosnia-Herzegovina (SP)	<i>Signed on May 16, 2003 during the visit of US Deputy Defense Secretary Paul Wolfowitz.</i>  <i>- The House of Representatives approved the agreement on June 16, 2003. The House of Peoples (the upper house) approved the agreement on June 19, effectively ratifying it.</i>	- A Bosnian government official stated, "Bosnia made a decision to support the deal not for financial reasons but rather to retain <b>US political support.</b> " Sarajevo received guarantees that it will enter <b>NATO's Partnership for Peace Programme</b> by the end of the year. (Agence France Press, May 16, 2003) - The Foreign Ministry has forwarded a <b>communiqué</b> to all EU member states, other states with a diplomatic presence in BiH, and all international missions, stating that BiH signed the proposals because they "felt the exceptional need to avoid the direct consequences of the Act on Protection of US Civil Servants 2002, which particularly stems from the SFOR NATO-led Stabilization Force mandate established by the Dayton Agreement." (BBC Monitoring International Reports, May 21, 2003) - The United States reportedly conditioned the	- <b>The U.S. apparently argued that BiH is obligated to sign a BIA under the Dayton Accords. This is a curious argument.</b> The Dayton Accords already provide U.S. personnel with protection from international tribunals, including the ICC. This would seem to reduce any "need" for a separate BIA now. <b>Most of BiH's citizens do not approve of US immunity from ICC jurisdiction</b> (BBC Monitoring International Reports, April 12 <sup>th</sup> , 2003). There was dispute over the <b>scope of persons</b> covered by the agreement both during negotiations and afterwards, with the EU Commission referring to this aspect in its criticisms of the agreement. The Head of the European Commission Delegation to BiH has stated that the agreement "did not fully respect [the EU] directives" (ONASA, May 22, 2003). - The EU External Relations Commissioner, Chris Patten, said that the agreement signed by BiH is only slightly better than Albania's. Patten and the EU President reportedly sent a <b>letter to BiH urging the Government to respect the values and goals of the EU</b> , including its support of the ICC (BBC Monitoring International Reports, May 28, 2003).

States	Signature	Justification for signing	Comments
		release of its \$73 million in assistance on the ratification of the deal. - BiH also ratified for fear of losing vital U.S. political support in its bid to join NATO.	- The House of Representatives (on June 6) and the House of Peoples (on June 19) have both approved the agreement, effectively ratifying it.

<b>States</b>	<b>Signature</b>	<b>Justification for signing</b>	<b>Comments</b>
<b>Bhutan</b>	<i>Signed on May 2, 2003.</i>		- Details of the agreement are not yet known.
<b>Madagascar (SP)</b>	<i>Reported Signature.</i>		- Details of the agreement are not yet known.
<b>Maldives</b>	<i>Reported Signature.</i>		- Details of the agreement are not yet known.
<b>Philippines (Signatory)</b>	<i>Signed on May 13, 2003.</i>		- Details of the agreement are not yet known. - Foreign Affairs Secretary Blas Ople and US Secretary of State Colin Powell signed an agreement on May 13. Lawmakers and civil society are denouncing the agreement. Representatives are calling for the disclosure of the agreement. (InQ7.com, June 2, 2003) - The Arroyo administration appears to be treating the agreement as an executive agreement. But the BIA amends the controversial 1999 Status of Forces Agreement that regulates visiting U.S. troops in the Philippines. This SOFA was subject to a Senate ratification process. It would seem necessary for the BIA to be subject to a similar Senate ratification process as well.
<b>Bolivia (SP)</b>	<i>Reportedly signed on May 19, 2003.</i>		- Details of the agreement are yet unknown. - The agreement was kept secret for about a month. - Parliamentary ratification is required for the agreement to enter into force.
<b>Nicaragua</b>	<i>Reportedly signed on June 4, 2003.</i>		- The government was criticized for signing the agreement "secretly." The agreement has been widely debated in the media and among legislatures. - Members of Nicaragua's Sandinista Party (FSLN) have publicly denounced the agreement. The ruling party has said it would support ratification. - The National Assembly has shifted the debate from ratifying the BIA to not ratifying the Rome Statute, which allegedly violates Article 43 of the Nicaraguan Constitution prohibiting extradition of nationals to other countries. - The agreement is reciprocal in that neither country can surrender nationals to the ICC without express consent of the other. The scope of persons covered under this agreement is quite wide.
<b>Thailand (Signatory)</b>	<i>Reportedly signed during Prime Minister Thaksin's visit to the United States June 9-11.</i>	- It has been reported that, in return for the BIA, Thailand will be recognized as a major non-NATO ally.	- Details of the agreement are not yet known. - Earlier, the Senate Committee for Foreign Affairs issued a statement expressing concern at the signature and calling for any action to be connected to Parliamentary approval.

States	Signature	Justification for signing	Comments
<b>Philippines (Signatory)</b> (Ratification Issues)	<i>Reportedly signed by Foreign Affairs Secretary Blas Ople and U.S. Secretary of State Colin Powell on May 13, 2003.</i>	- There is an apparent link to \$30 million in aid.	- Details of the agreement are not yet known. - The government is reportedly under intense US pressure not to ratify the Rome Statute. <b>According to media reports, the US has apparently linked \$30 million of US military assistance (for use in the “war against terrorism”) to ratification and a BIA.</b> - Lawmakers and civil society have denounced the agreement and called for its full disclosure, since it was concluded in secret.
<b>Mongolia (SP)</b>	<i>Reportedly signed.</i>		- Details of the agreement are not yet known. The deal remains “secret.”
<b>Egypt (Signatory)</b>	<i>Reportedly signed on March 5, 2003.</i>		- Details of the agreement are not yet known. - Though the agreement was signed in March, it remained secret until leaked to the press in June.
<b>Uganda (SP)</b>	<i>Reportedly signed on June 12, 2003.</i>	- Reportedly signed in exchange for \$200,000 in military aid.	- Details of the agreement are not yet known. - The agreement, which was signed by President Museveni and U.S. Secretary of State Colin Powell, is reciprocal. - Parliamentary ratification is necessary for entry into force.
<b>Togo</b>	<i>Reportedly signed on June 13, 2003.</i>		- Details of the agreement are not yet known.
<b>Gabon (SP)</b>	<i>Reportedly signed.</i>		- Details of the agreement are not yet known.
<b>Ghana (SP)</b>	<i>Reportedly signed.</i>		- Details of the agreement are not yet known.
<b>Tunisia</b>	<i>Reportedly signed.</i>		- Details of the agreement are not yet known.
<b>Seychelles (Signatory)</b>	<i>Reportedly signed.</i>		- Details of the agreement are not yet known.

***Countries that have granted U.S. nationals/soldiers immunity without signing a bilateral immunity agreement:***

<b>South Africa (SP)</b>	<i>Signed an extradition treaty with the U.S. recently.</i>		-The extradition treaty (Article 18) prohibits the RSA from surrendering U.S. military personnel to third states and international tribunals without US consent. It would appear that article 18 has a far narrower sphere of operation than a regular BIA: it would only hamper the South African government’s ability to surrender a US national to the ICC, if that US national was initially extradited by the US to RSA.
<b>Argentina (SP)</b>		- A government official said there was really no way, in Argentina’s current state of affairs, to resist the US—they could only delay.	-U.S. troops serving on Argentine territory have been granted “diplomatic status”; if they commit an ICC crime the Argentine government will not surrender them to the ICC. -Argentina is exempt from the ASPA prohibition on military aid, but Argentina is nevertheless interested in other kinds of aid.

			<p>-On March 6, the Argentine Senate passed a declaration against any agreement with the US to exempt its citizens from the ICC jurisdiction. So, Argentina is only providing some limited guarantee not to surrender U.S. troops to the ICC and is not prepared to extend that protection to <b>ALL</b> U.S. citizens.</p>
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**Table 2: States that have suggested that they will *REFUSE* to sign a Bilateral Immunity Agreement with the United States**

States	Approached by the U.S.?	Response	Comments
Canada	Yes.	<ul style="list-style-type: none"> <li>- Confirmed that Canada will not sign, noted that they already had an agreement covering the conduct of US military personnel on Canadian soil.</li> <li>- U.S. proposal not welcomed by Canada; considered to be “unnecessary” in light of existing Status of Forces Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>- Just before announcing Canada’s rejection of the agreement, <b>the Canadian Foreign Minister attended a meeting of international parliamentarians who plan to establish a global parliamentary network to monitor the ICC.</b></li> <li>- Importantly, Canada assessed its existing agreements with the United States (which was one of the EU “guiding principles”) and concluded that a separate bilateral agreement was not necessary.</li> <li>- Canada could be approached by like-minded states for advice on dealing with the US in negotiations.</li> </ul>
Colombia	Yes.	<ul style="list-style-type: none"> <li>- <b>The Colombian government reportedly decided that in light of existing U.S.-Colombian treaties a new, separate bilateral immunity agreement was not necessary.</b></li> </ul>	<ul style="list-style-type: none"> <li>- The Colombian government withstood high-level U.S. pressure.</li> <li>- The government of Colombia reportedly rejected the idea of signing a new bilateral agreement relating to the ICC. The Colombian government stated that a 1962 technical assistance treaty already established privileges and immunities for persons sent to Colombia by the U.S. government. <b>Colombia was unwilling to extend the immunity to all US citizens as requested by the US.</b></li> <li>-According to Agence France Presse (Feb. 18, 2003), Uribe is entertaining the possibility of reversing former President Pastrana’s decision for the war crimes reservation. Public Defender, Eduardo Cifuentes, introduced the idea after the FARC allegedly bombed a nightclub in Bogotá on February 7<sup>th</sup>, 2003.</li> </ul>

<b>Croatia</b>	Yes.	<p>- Official indications were that it was “highly unlikely” that Croatia would sign; FM said on Aug 14 Croatia would “probably reject” US agreement.</p> <p>- In the face of increasing US pressure, Croatia is considering requesting an exemption. Deputy Premier Granic states that the best solution is “for any kind of decision on our part to be avoided, which is in keeping with the US regulations. [...] this condition cannot be fulfilled” (BBC Monitoring International Reports, May 22, 2003).</p> <p>- Deputy Foreign Minister Simonovic has stated, “Croatia has openly said ‘no’ to the treaty in the way it was presented, but has also said ‘yes’ to further dialogue” (World Markets Analysis, June 13).</p>	<p>- Foreign Minister pointed out the hypocrisy of the US request for immunity: “One can hardly expect us to extradite our people [to the ICTY] and at the same time refuse to extradite citizens of the U.S. or any other country.”</p> <p>- Parliament is to consider an expert legal opinion on Croatia’s competing Rome Statute obligations.</p> <p>- However, Croatia is still vulnerable to US pressure. The US has linked \$19 million (or \$5 million for one year) in assistance for military training and equipment to this agreement. On May 28, the American ambassador to Croatia published an open letter, reminding the country that its military assistance was “significant,” helping to “prepare the Croatian Armed Forces for NATO membership.” This amounts to a veiled threat to NATO membership.</p> <p>- President Mesic recently announced that the threat to aid had been reduced to \$6 million. “I think that the either (the original amount) will be reduced to \$6 million, or that we will receive a presidential decree that will exempt us, or as you said yourself, that we could delay. This does not mean that we will gain time, but that the response is delayed until a solution which is acceptable to all is found” (BBC Monitoring Int’l Reports, June 9).</p> <p>- The Croatian government has responded by stating it would <b>seek an exemption from the anti-ICC law</b> that makes the link between BIAs and military assistance. Croatia has publicly stated that it would not sign a BIA by the July 1 deadline imposed by the U.S. Indeed, government officials have pledged to accord with a common EU position.</p>
<b>Germany</b>	Yes.	<p>- Official position announced on August 15, 2002: Rejected.</p>	<p>- Germany believes the U.S effort to negotiate bilateral agreements is not an innocent request to invoke article 98 of the Rome Statute. They see it as part of an all out attack, aiming to destroy the ICC.</p> <p>- <b>The German government has issued its own legal analysis of the EU Guiding Principles where it explains Germany’s decision and arguments to refuse to sign a bilateral agreement with the US. This analysis can be obtained upon request to a German Embassy.</b></p>
<b>Mexico (non-SP)</b>	Uncertain.	<p>In a speech before the United Nations General Assembly: the agreements attack the text and the core of the Rome Statute. These are a violation of ICC obligations, and of the general principle of individual responsibility. Mexico will not sign any agreement that contravenes the ICC Statute or</p>	<p>- On January 30, 2003, President Vicente Fox reaffirmed Mexico’s position on signing a Bilateral Immunity Agreement with the United States while speaking at Transparency International: “Mexico is not inclined to sign any bilateral agreement with the United States, that will limit the independence of the International Criminal Court.” (Translated from Spanish, <i>La Reforma</i>)</p>

		Mexico's obligations under international law.	
<b>Netherlands</b>	Yes.	<ul style="list-style-type: none"> <li>- Pre-emptively stated that it would refuse to sign such an agreement on July 30, 2002.</li> <li>- Argued that exemptions would undermine the Court's authority.</li> <li>- Has not officially stated that it will not sign bilateral immunity agreements.</li> </ul>	<ul style="list-style-type: none"> <li>- <b>On January 21, 2003, the Minister of Foreign Affairs sent a fact sheet to the Parliament on the "existing treaties relevant for US citizens staying in the Netherlands." This may constitute a substantial reason for not signing an additional bilateral immunity agreement with the US.</b></li> <li>- In light of the Netherlands' strong position and the political fall-out caused by the "Hague Invasion" provision in ASPA, the Bush administration has not exerted considerable pressure on the Dutch government.</li> <li>- The Dutch government has made its position known within the EU and NATO. However, it has not issued any public statement making its position official so far.</li> </ul>
<b>New Zealand</b>	Yes.	<ul style="list-style-type: none"> <li>- No official response as yet, although New Zealand is expected to reject further US requests.</li> </ul>	<ul style="list-style-type: none"> <li>- Is in close contact with Canada on this issue.</li> <li>- As a strong supporter of the ICC, and conspicuous opponent of the US attempts to obtain a Security Council resolution to exempt peacekeepers from ICC jurisdiction, New Zealand is expected to refuse to sign a bilateral agreement. But if it does sign, it should adhere to the EU guidelines.</li> </ul>
<b>Norway</b>	Yes.	<ul style="list-style-type: none"> <li>- Official response announced on August 12, 2002: Rejected.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign Minister said on Aug 12 that Norway will reject a plea from the US; Washington was exaggerating the problems with the ICC and ignoring the many safeguards against abuse.</li> <li>- The Foreign Ministry stated: "We consider the court to be a milestone in international justice, and we will be very reluctant to do anything that would undermine it in any way."</li> </ul>
<b>Switzerland</b>	Yes.	<ul style="list-style-type: none"> <li>- Official response announced on August 13, 2002: Rejected.</li> </ul>	<ul style="list-style-type: none"> <li>- Foreign Minister stated that the U.S. proposal would have undermined the Court's authority and the principle of universal justice.</li> <li>- Switzerland views such agreements as unnecessary in light of the Rome Statute safeguards.</li> <li>- On December 2, 2002, the Swiss National Council and Senate released a statement confirming its stance on BIAs: "[Bilateral] agreements only serve to undermine the authority of the court of law and weaken international efforts for greater respect of human rights. The National Council thus shares the view of the Federal Council that such an agreement between Switzerland and the US is out of the question and calls on the Federal Council to uphold this policy and do its utmost to ensure the integrity of the Rome Statute. The National Council calls on countries that are member or observer States of the Council of Europe to ... refuse to enter into any</li> </ul>

			bilateral immunity agreements.”
<b>Trinidad &amp; Tobago</b>	Yes.	<ul style="list-style-type: none"> <li>- Former President Robinson (the President stepped down on March 17, 2003) issued a strong statement (circulated Aug 27<sup>th</sup>) condemning the U.S. for seeking bilateral impunity agreements.</li> <li>- On May 23, Prime Minister Manning expressed that the government does not have the flexibility to give way to US demands. Asked if the country would not give US citizens immunity, Manning said, “We don’t see how we can” (The Express of Port of Spain, May 23, 2003).</li> </ul>	<ul style="list-style-type: none"> <li>- Former President Robinson said: “Economic and military blackmail must not prevail against progress towards a universal system of justice. The peoples of the world must resist this utterly negative campaign, contrary to the founding principles of the American nation, contrary to the principles of the United Nations...”</li> <li>- <b>However, Trinidad &amp; Tobago is still vulnerable to pressure. The US is applying pressure to all 16 CARICOM members, urging them to endorse US immunity as a group.</b></li> </ul>

**Table 3: States that have been approached but have NOT SIGNED a Bilateral Immunity Agreement with the United States**

**NOTE:** This table only represents some of the states that have been approached by the U.S.; over 100 states have been approached. All countries in this table are states parties unless otherwise specified.

States	US request?	Response	Comments/Strategy
<b>Australia</b>	Yes.	<ul style="list-style-type: none"> <li>- The government is not rushing to conclude an agreement, despite the US being a very good ally with Australia.</li> <li>- The government has said that any agreement will be referred to Parliament for scrutiny.</li> </ul>	<ul style="list-style-type: none"> <li>- Australia is considered to be relatively sympathetic to the US request.</li> <li>- Canada &amp; New Zealand have been requested to pressure Australia into developing a coordinated response (as part of the CANZ group)</li> <li>- The fact that a staunch U.S. ally has not yet signed an agreement may indicate that even Australia considers BIAs to fundamentally contradict Australia’s obligations under the ICC Treaty.</li> </ul>
<b>Austria</b>	Yes.	- Austria wanted a coordinated EU response.	- Since September 30, has reportedly held firmly to the guidelines set by the EU, in its negotiations with US representatives.
<b>Bahamas</b>	Yes.		- The outgoing U.S. ambassador to the Bahamas, Ambassador Richard Blankenship, has urged the Caribbean nation to sign a BIA. The U.S. wants the Bahamas to be the first country in the Caribbean region to sign an agreement.
<b>Belgium</b>	Yes	<ul style="list-style-type: none"> <li>- No official response so far</li> <li>- However, Belgium has suggested to the EU that it will not sign a bilateral immunity agreement with the US.</li> </ul>	- A member of the Belgian Chamber of Representatives asked a written question to Louis Michel, the Foreign Affairs Minister, about the US proposal to sign a bilateral immunity agreement. Louis Michel answered this question during the Foreign Affairs Committee

			session of 12.11.02 where he stated that the official position of the government is that they will not sign any bilateral agreement with the US.
<b>Benin</b>	Yes.	- No official response so far.	- Legal experts at the MFA are preparing a memo to the government. Officials at the office of the President have indicated that Benin is unlikely to sign a bilateral agreement. - <b>Washington continues to apply considerable pressure.</b>
<b>Brazil</b>	Yes.	- The new President, "Lula," has spoken publicly in favor of the ICC.	- The issue was postponed in light of the recent Presidential election. - The new President, Luis Ignacio "Lula" da Silva, assumed office on January 1, 2003. It is not known how the new presidency will assess a U.S. request for immunity, but it is considered unlikely that the new Brazilian government would favor signing an agreement.
<b>Bulgaria</b>	Yes.	- Uncertain. Bulgaria is likely to follow the EU position. The Bulgarian President Purvanov reassured Ambassadors from Norway and Finland that Bulgaria would "adhere to common European position" (BBC Monitoring International Reports, May 12, 2003).	- Bulgaria is a EU candidate (among the 10 most advanced candidates). Bulgaria's NATO accession was approved on Nov 21, 2002 in Prague. The US Senate approved the accession on May 8, 2003. - The EU has warned Bulgaria not to follow the Romanian example. - - <b>Bulgaria is coordinating with its neighbors and with the EU.</b> In early April Bulgaria's Foreign Minister, Solomon Pasi, met with the Bosnian Foreign Minister, Mladen Ivanic, to discuss the US request (ONASA News Agency, April 8, 2003). <b>Bulgaria is seeking advice from the EU on how to best respond to US demands</b> (Financial Times, April 8 <sup>th</sup> , 2003). Foreign Minister Solomon Pasi said he would not allow a decision on the US promoted BIA to go against the common principles of the European Union (BBC Monitoring International Reports, May 11, 2003).
<b>CARICOM region</b>	Yes.		- The US is exerting considerable pressure throughout the CARICOM region, pushing for a group decision to sign bilateral immunity agreements. - At the May meeting of Foreign Ministers of CARICOM, the US Assistant Secretary of State for Arms Control, Mr. Stephen Rademaker, met with the CARICOM Minister as a group (CARICOM communiqué, May 10, 2003). - Observers note that CARICOM's adoption of a communiqué expressing the nations' commitment to the 'integrity and effective functioning' of the court was in essence a denial of Washington's request. - The US immunity request is also due to be discussed at the

			<p>upcoming CARCIOM Heads of State meeting in July.</p> <p>- St. Vincent and the Grenadines' Prime Minister Gonsalves has also indicated that the U.S. is now also using access to the Millennium Challenge Account (MCA) to threaten the Caribbean. These kinds of threats are entirely unfounded because, as we understand it, no Caribbean country would be eligible for the monies, since all CARICOM countries enjoy a per capita income that is too high. This led Prime Minister Gonsalves to note, "what may appear as sticks may really not be anything significant. So, therefore, the discussion should not be on the carrot and sticks but on the merits and demerits of what they are asking (us) to do."</p>
<b>Cambodia</b>	Yes.	- Cambodia said on June 19 that it was ready to sign a BIA. Prime Minister Hun Sen "responded positively" when U.S. Secretary of State Colin Powell made the request, and said he would instruct officials to work with the U.S. experts on terms of the agreement.	- Cambodia is under heavy pressure to sign the agreement and may do so shortly.
<b>Chile (non-SP) (Ratification Issues)</b>	Yes.		- The Chilean national press has reported that continuing US military aid may be contingent on Chile not ratifying the Rome Statute. Both the US and Chilean government have denied this. The Chilean President has repeatedly stated that his government supports ratification.
<b>Comoros</b>			- Comoros was approached on June 13 and given two weeks to sign an agreement.
<b>Denmark</b>	Yes.	- No official response yet.	
<b>Estonia</b>	Yes.  (The US is jointly targeting Estonia, Latvia & Lithuania.)	- Issued a joint press statement with the other 2 Baltic States: will wait for a EU common position. - Estonia explained to the U.S. team that it would strictly follow the EU guiding principles. Although there is no clear 'no' to a BIA, the Estonian response amounts to a de facto rejection.	- Estonia is under intensifying, if indirect, U.S. pressure. - Estonia is a EU candidate (among the 10 most advanced candidates). Estonia's NATO accession was approved on Nov 21, 2002 in Prague. The US Senate approved the accession on May 8, 2003. - The U.S. "immunity team" was in Slovenia on June 2 and we suspect that it continued to Estonia on June 3.
<b>France</b>	Yes.	- No official response yet.	- On Aug 9, 02, during a press conference, the spoke person of the French Foreign Affairs Ministry stated that France considers US argument of possible politically motivated prosecutions of US citizens before the ICC as a groundless argument since there are sufficient guarantees in the Rome Treaty.
<b>Finland</b>	Yes.	- No official response yet.	
<b>Fiji</b>	Yes.	- No official response yet.	- The US is pressuring Fiji to sign a reciprocal agreement in

		- Foreign Minister has said: “We are basically negotiating a bilateral agreement and we are very much aware of our interests in the ICC and we are not going to do anything which will contradict our commitment to the Rome Statute” (BBC Monitoring Asia Pacific, May 23, 2003).	exchange for allowing Fiji nationals to participate in the US peacekeeping mission in Iraq. - According to a radio report, Foreign Minister Kalipate Tavola has stated that the government has rejected the U.S. text as it stands and is now negotiating on its own terms, mainly focusing on a non-reciprocal text. - Certain parliamentary parties are questioning the signing of such an agreement.
<b>Greece</b>	Yes.	- No official response yet.	
<b>Guinea</b>	Yes.	- No official response yet.	- Guinea is reportedly under heavy pressure.
<b>Hungary</b>	Yes.	- No official response yet.	- Hungary is apparently not under intense US pressure at the moment.
<b>Ireland</b>	Yes.	- No official response yet.	
<b>Italy</b>	Yes.		- Italy is considered to be a key EU country subject to strong U.S. pressure. - Since September 30, has reportedly held firmly to the guidelines set by the EU in its negotiations with US representatives.
<b>Japan (non-SP)</b>	Uncertain if official request at this stage.	- The government has stated that it would be premature for Japan to sign such an agreement when still preparing to ratify the Rome Statute.	- Japan insists that it will not consider any bilateral agreement before having ratified the Rome Statute. - Exempt from ASPA military assistance prohibition.
<b>Jordan</b>	Uncertain.		- Is said to be under severe pressure by the US.
<b>Republic of Korea</b>	Yes.	- On 13 November, 2002 Korea ratified the RS, becoming the 84 <sup>th</sup> state party.	- Prior to ratifying on November 13, the RoK adopted Japan’s approach in the face of intense US pressure: negotiations must wait until after ratification occurs. - <b>There is widespread concern about the RoK-U.S. Status of Forces Agreement within the RoK. Earlier this year there were street protests fueled by a belief that the current SOFA undermines national sovereignty – it effectively prevents the RoK from exercising criminal jurisdiction over U.S. personnel serving in Korean territory. Bilateral immunity agreements raise similar national sovereignty issues.</b> - Exempt from ASPA military assistance prohibition.

<b>Kuwait (non-SP)</b>	Yes.	- An unnamed official denies the U.S. State Dept's claim that Kuwait has already agreed to sign an agreement.	- There are ongoing negotiations between Kuwait and the U.S. regarding an agreement.
<b>Kyrgyzstan</b>	Yes.		- Kyrgyz Foreign Minister, Askar Aytmatov, confirmed on April 8 <sup>th</sup> that the country was studying the US's BIA (BBC Monitoring International Reports, April 8, 2003). - The U.S. appeared to have increased the pressure on Kyrgyzstan in late May and June.
<b>Latvia</b>	Yes.	- Issued a joint press statement with the other 2 Baltic States: will wait for a EU common position.	- Latvia is under intensifying U.S. pressure - Latvia's NATO accession was approved on Nov 21, 2002 in Prague. The US Senate approved the accession on May 8, 2003. - The US is increasing pressure on Latvia to sign a BIA. Latvia, an EU candidate, is seeking advice from the EU on how to best respond to US demands (Financial Times, April 8 <sup>th</sup> , 2003). - We suspect that Latvia has also been targeted by the U.S. "immunity team" traveling through the region.
<b>Lithuania (non-SP)</b>	Yes.	- Issued a joint press statement with the other 2 Baltic States: will wait for a EU common position.	- Lithuania is under intensifying U.S. pressure, with US interlocutors apparently successfully extracting a commitment from Lithuania to decide whether to sign a BIA by July 1. This is consistent with the "deadline" that HRW understands US negotiators are imposing in other countries as well. - Lithuania's NATO accession was approved on Nov 21, 2002 in Prague. The US Senate approved the accession on May 8, 2003. - Lithuania officials have been eager for information on bilateral immunity agreements, claiming that the U.S. Ambassador has been raising the issue almost daily.
<b>Luxembourg</b>	Yes.	- No official response yet.	
<b>Macedonia</b>	Yes.	- No official response yet. - The President believes that consultations and a wider public debate are necessary. - The EU Spokesperson for Macedonia has said that "Any bilateral agreement should take the conclusions and these principles [...] into account" (M2 Presswire, May 22, 2003).	- Philip Reeker admitted to ongoing negotiations with Macedonia. He states that Macedonia's NATO and EU aspirations were 'unconnected' to this issue. - The US threatens a loss of military aid of some 10 million dollars a year. - Paul Wolfowitz visited the capital on May 24. - The Foreign Minister has said that the Parliament should be involved in this decision. - On May 20, the Helsinki Committee of Macedonia made an Appeal urging the government to respect its obligations under the Rome Statute and announcing its intention to file a claim before the Macedonian Constitutional Court if Macedonia signs a BIA.
<b>Mali</b>	Yes.	- No final response yet.	- The new government is considered to be supportive of the ICC.

		- The MFA has advised AGAINST signing a bilateral agreement, explaining that such an agreement is contrary to Mali's obligations under the Rome statute and undermines the independence of the ICC.	- But government officials and NGO activists are expressing concerns about the tactics used by the US, including a promise of a generous loan made by the US at the very time Mali is considering its response to US proposal of an impunity agreement.
Malta	Yes		- The US is increasing pressure on Malta to sign a BIA. Malta, an EU candidate, is seeking advice from the EU on how to best respond to US demands. The country may be denied "lucrative repair contracts from US ships" if it refuses to sign (Financial Times, April 8 <sup>th</sup> , 2003).
Niger	Yes.	- No official response yet.	- Niger is under intense pressure from the U.S.
Poland	Yes.		- Poland is under intense pressure from the U.S.
Portugal	Yes.	- No official response yet.	- The Foreign Affairs Minister, Mr. Martins da Cruz, had to account for the EU Guiding Principles during a discussion with the Foreign Affairs Committee and the Constitutional Affairs Committee of the Portuguese Parliament on Oct 18, 02. The minister said that the Portuguese government had not reached a decision yet but will deal with the matter with 'extreme precaution' and will request a legal advice from the 'Procurador General da republica'. - After the Consultative Committee of the Attorney General rejected the US's proposed BIA, the Foreign Affairs Ministry decided to hold off on signing the agreement (BBC Monitoring International Reports, April 12, 2003).
Peru	Yes.	- In responding to a question from a parliamentarian, the Foreign Minister stated that Peru would not sign an agreement that violates its obligations under the Rome Statute.	- The U.S. is reportedly threatening to remove trade preferences if Peru does not sign "extradition agreements," by way of conditions for participation in 2 trade agreements, the Andean Trade Preference Act and the Andean Trade Promotion and Drug Eradication Act.
Serbia & Montenegro	Yes.	- No official response yet. - Government officials have indicated that a coordinated response developed with European partners is desired. - Government officials have suggested that they consider the U.S. position to be hypocritical. - Under renewed US pressure, the Foreign Ministry is currently working on a draft response and may sign a time -limited BIA.	- <b>Despite resistance to an agreement, Serbia &amp; Montenegro is vulnerable to U.S. pressure. Prior to the late PM Djindjic's assassination Serbia was under renewed pressure from Washington, which reportedly threatened to suspend some types of military aid unless a bilateral agreement is signed.</b> - The late Serbian Prime Minister said a decision should be discussed with Yugoslavia's European partners to avoid each country resolving the issue bilaterally in isolation. - Following Djindjic's assassination the status of BIA negotiations in Belgrade is unclear. - The Yugoslav President said that signing such an agreement would undermine the international legal order, and the legal order in the

			<p>countries that had ratified the Rome Statute.</p> <ul style="list-style-type: none"> <li>- Nevertheless, the country is under renewed pressure, with a link to \$110 million in aid. It was thought that Serbia and Montenegro would wait to make a decision until June 15, when Colin Powell was supposed to inform the Congress on whether this aid should be certified and whether the budget assistance should be approved. The country also awaits the June 21 EU-Balkan summit in Salonica.</li> </ul>
<b>Slovakia</b>	Yes.	<ul style="list-style-type: none"> <li>- The government deferred consideration of its response until after September elections.</li> </ul>	<ul style="list-style-type: none"> <li>- Slovakia is a EU candidate (among the 10 most advanced candidates).</li> <li>- Slovakia's NATO accession was approved on Nov 21, 2002 in Prague. The US Senate approved the accession on May 8, 2003.</li> <li>- <b>Negotiations have resumed with Washington. Slovakia is believed to be under pressure, with the US invoking a July 1 "deadline".</b></li> </ul>
<b>Slovenia</b>	Yes.	<ul style="list-style-type: none"> <li>- Following the meeting with the U.S. "immunity delegation," the Ministry of Foreign Affairs indicated that Slovenia would follow the E.U. Guiding Principles. The United States indicated it would continue lobbying Slovenian authorities.</li> <li>- Since then, Slovenian Prime Minister Rop told a newsconference, "We will not sign the deal on non-extradition of U.S. citizens to the ICC" and added that Slovenia would follow the EU's policy (Agence France Press, June 13).</li> </ul>	<ul style="list-style-type: none"> <li>- Slovenia is a EU candidate (among the 10 most advanced candidates).</li> <li>- Slovenia's NATO accession was approved on Nov 21, 2002 in Prague. The US Senate approved the accession on May 8, 2003.</li> <li>- Federal Ombudsman has publicly advocated that the U.S. proposal should be rejected.</li> <li>- <b>Negotiations have resumed.</b></li> <li>- On June 2, a U.S. "immunity delegation" descended on Slovenia.</li> </ul>
<b>Spain</b>	Yes.		<ul style="list-style-type: none"> <li>- Spain is considered to be relatively sympathetic to the US request.</li> <li>- Yet, there may be some opposition within the Spanish congress to a bilateral agreement with the U.S.</li> <li>- Since September 30, Spain has reportedly held firmly to the guidelines set by the EU, in its negotiations with US representatives.</li> </ul>
<b>Sweden</b>	Yes.	<ul style="list-style-type: none"> <li>- No official response.</li> <li>- Sweden has suggested that it will not sign an agreement with the US</li> </ul>	
<b>Ukraine (non-SP)</b>	Yes.	<ul style="list-style-type: none"> <li>- Reportedly under consideration</li> </ul>	
<b>United Kingdom</b>	Yes.	<ul style="list-style-type: none"> <li>- No official response as yet.</li> </ul>	<ul style="list-style-type: none"> <li>- Likely to adopt a similar role as it did during the UNSC negotiations.</li> <li>- Instrumental in weakening the EU's Sep 30 Guiding Principles to allow EU states to negotiate agreements individually.</li> </ul>

<b>Uruguay</b>	Yes.		- Members of Congress have introduced a resolution to urge the executive branch <i>not</i> to sign any agreements with the US that might limit the ICC's jurisdiction.
<b>Zambia (SP)</b>	Yes.		- Zambia has reportedly experienced much pressure to sign a BIA.

**ANNEX I: U.S. Government Article 98 proposal sent to governments (this is the reciprocal version as signed by East Timor):**

- A. Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,
- B. Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,
- C. Considering that the Government of the United States of America has expressed its intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by its officials, employees, military personnel, or other nationals,
- D. Bearing in mind Article 98 of the Rome Statute,
- E. Hereby agree as follows:
  - 1. For purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.
  - 2. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party,
    - (a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or
    - (b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.
  - 3. When the United States extradites, surrenders, or otherwise transfers a person of the other Party to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the expressed consent of the Government of X.
  - 4. When the Government of X extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of X will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the expressed consent of the Government of the United States.
  - 5. This Agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. It will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

**ANNEX 2: Human Rights Watch letter to Foreign Ministers recommending strategies for responding to US requests for ICC immunity (March 28, 2003):**

Dear Foreign Minister:

With the election of the Court's 18 judges and the informal consensus selection of the Prosecutor, Human Rights Watch believes the establishment of the International Criminal Court (ICC) is proceeding well. At the same time, we are increasingly disturbed by the intensifying efforts of the United States Government to weaken the Court. We are writing to share our assessment of developments on both fronts.

... *[section on judicial elections]* ...

**The Bush Administration's Anti-ICC Campaign: Bilateral Immunity Agreements**

Since the judicial elections, Human Rights Watch has received many reports of increasing United States pressure on states to sign a bilateral immunity agreement (BIA).

The agreements sought by Washington would require a state to send any U.S. national back to the United States instead of surrendering him/her to the Court. These agreements effectively amend the ICC Treaty. A basic objective of the Rome Statute is to allow the Court to step in and investigate or prosecute if states prove "unwilling or unable" to conduct good faith prosecutions. Because Washington's immunity proposals undercut this fundamental purpose, they distort Article 98 and are contrary to the spirit and letter of the Rome Statute. Signing such an agreement would put a State Party in breach of its obligations under the Treaty.

To date, only a small number of states have signed BIAs – current figures suggest 24 – with the large majority of these being non-States Parties. Most of these agreements have not progressed through the necessary ratification process in national parliaments and are not yet in force. Some of them may never be ratified.

Human Rights Watch urges States Parties to reject Washington's "unlawful contracts." In addition to amending the ICC Treaty, these agreements would weaken international treaty law and create a two-tiered system of justice: one for nationals of the United States and the other for the citizens of the rest of the world.

**Human Rights Watch's Recommendations**

Human Rights Watch has canvassed officials from numerous governments pressured by U.S. diplomats. On the basis of these discussions we offer the following general observations about the tactics U.S. representatives have used:

\* They make blunt threats to suspend military, economic and other forms of assistance if a bilateral agreement is not signed.

\*These threats vary from one country to another. In one state they threatened to end assistance to upgrade the country's principal airport, while in another they threatened to review and eliminate all "dispensable programs."

\*We know U.S. diplomats have created a climate of urgency by citing a July 1, 2003 deadline.

Human Rights Watch wants to stress the uncertainty of the July 1 "deadline." Often without saying so explicitly, U.S. diplomats are utilizing a provision of the American Servicemembers' Protection Act (ASPA) to raise the pressure. The ASPA is a piece of anti-ICC legislation adopted by the U.S. Congress in 2002. Section 2007 of the ASPA does, in fact, prohibit military aid to certain states (NATO members and certain others exempted) that have not signed a BIA by July 1, 2003. However, the July 1 "deadline" can be waived because the ASPA gives the Bush Administration the authority to ignore this provision. If the President finds that U.S. "national interests" merit continuation, the "deadline" drops away. In fact, it was the Bush Administration that insisted the law include this waiver. In the context of its worldwide campaign against terrorism, the President did not want to be forced to suspend military assistance because a state had not signed a BIA.

We urge all States Parties being pressured with a "July 1 deadline" to make the point to their American interlocutors that continued U.S. military assistance is indeed in U.S. national interests. We recommend you press the Bush Administration to use its authority to waive the prohibition of military assistance without requiring a BIA. With its concerns about terrorism, Washington is not really inclined to weaken military ties with ICC States Parties around the world.

At a minimum, we believe it is important to delay negotiations until after July 1. It will then be clearer that the U.S. strategy is mainly based on bluff and intimidation. A number of states have told us about their approach to discussions with the U.S. Ambassadors. Some have cited the importance of conducting a review of the legality of the proposed agreements in conjunction with pre-existing obligations to the Rome Statute and/or to extradition agreements. Other officials, from states where such agreements would require parliamentary approval, have cited the need for careful legislative oversight and, where appropriate, upcoming parliamentary elections.

From our talks with States Parties (principally from the Western group) that have publicly refused to sign a BIAs, we know they are glad to offer assistance and encouragement through their embassies in your capital. However, to trigger their assistance these States Parties need your government to make the initial contact. Human Rights Watch urges you to initiate discussion with them. We will be glad to provide the names of specific governments interested in such bilateral contacts.

If your government is pressured to enter into negotiations, we urge you to formulate a non-negotiable bottom line position that is fully consistent with the Statute. In an earlier letter to States Parties, Human Rights Watch elaborated upon the "guiding principles" adopted by European Union Member States on September 30, 2002, as a response to Washington's pressure. The recommendations in that letter should constitute minimum benchmarks for negotiations with the Bush administration.

By isolating states in bilateral negotiations, the Bush Administration is able to maximize its superior bargaining power. Human Rights Watch therefore encourages your government to share information about BIA negotiation with reliable neighboring states. By exchanging "intelligence"

about what other states have heard and done to resist intensive U.S. pressure, your government will be much better positioned to uphold its obligations under the ICC Treaty.

## **Conclusion**

The International Criminal Court has the potential to be the most important multilateral rule of law mechanism created in decades. The election of the eighteen judges and the informal consensus selection of the Prosecutor represent important progress in establishing the Court. In addition, the quality of these men and women constitute a powerful refutation of the propaganda coming from some in the Bush Administration about the Court. We urge you to work with many other States Parties to re-affirm your support for the Court. We urge your government to resist the ill-conceived and illogical efforts to undermine it. Now is the time to defend this multilateral institution from a unilateralist vendetta. The ICC reflects the hopes of millions worldwide for justice as well as the commitment to the rule of law.

Human Rights Watch is glad to be of assistance in furthering those goals. We look forward to working with your government towards these ends.

Sincerely,

Richard Dicker  
Director, International Justice Program

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### ***Annex B from letter above: Six non-negotiable benchmarks for states engaging U.S. interlocutors in BIA negotiations***

Human Rights Watch presents these benchmarks so that if your government does enter into discussions with the United States, it formulates a negotiating position that is fully consistent with the ICC Treaty.

(1) The extremely broad scope of persons covered in the U.S. text creates a significant legal problem. Article 98(2) stipulates that only persons who are “sent” can fall under an immunity agreement. But the U.S. text extends immunity to all U.S. “persons,” defined as “current or former Government officials, employees (including contractors), or military personnel or nationals of one Party” – in other words, *all* U.S. citizens. Such a scope makes the proposal inconsistent with Article 98(2) of the Rome Statute. As a minimum, the text should be changed to conform to the language of Status of Forces Agreements (SOFA), and the plain language of Article 98(2) of the ICC Treaty. Therefore, the agreements should apply only to military personnel, and other closely associated civilian personnel, serving on the territory of Country X. The exemption should not extend to ALL U.S. nationals. The European Union rejected the U.S. sponsored agreements, quoting the overly broad scope of the U.S. text as a major factor in their decision not to sign.

- (2) Any BIA should incorporate the principle of “no impunity.” This requires a number of specific, legally binding commitments.
- (a) First, an express clause should be inserted that commits the United States to investigate and, where appropriate, prosecute its nationals accused of committing ICC crimes. Such a clause could read: “The U.S. authorities will submit the case without undue delay to the competent national authorities for the purposes of investigation, and if the evidence warrants, prosecution. Those authorities shall take their decision in the same manner as in the case of any other offense of a grave nature under national law.”
  - (b) Second, to ensure that the United States is capable of prosecuting all ICC Treaty crimes, an express clause should be inserted requiring the U.S. government to update federal laws to ensure that U.S. national courts can exercise jurisdiction over all such crimes. Currently, the U.S. courts do not have the necessary statutory authority to prosecute all of these crimes in domestic courts. The Bush administration has promised to seek legislation creating the necessary authority, but this promise must be enforced; without U.S. domestic jurisdiction, pledges of national prosecutions remain empty. Any bilateral agreement should be contingent on U.S. law reform.
  - (c) Third, and most important, the ICC’s fundamental role of overseeing national pledges of prosecution must be preserved. That is the essence of the ICC – its key innovation over the unverified national pledges of prosecution of the past. An express clause should be inserted saying: “If, after a person has been returned to the United States under this agreement, and the Court then issues a new surrender request - or re-issues a previous request - for that person on the basis that a case involving that person is admissible under Article 17 of the Statute, the United States must surrender that person directly to the Court or return that person to Country X.”
- (3) Any agreement should have a finite duration – a “sunset” clause. Three years appears a reasonable limit.
- (4) The immunity provided in the agreements cannot be reciprocal (i.e., immunity should extend only to the U.S. nationals and not to nationals of a state party or signatory state).
- (5) All existing relevant agreements should be assessed before signing any bilateral agreement. It may be that an existing SOFA already provides U.S. military personnel – that is, “sent” persons – with the protection desired by the Bush administration. In that case, a separate BIA would be unnecessary. Negotiations with the Bush administration should not focus on a separate bilateral agreement in isolation.
- (6) National parliaments should be involved in scrutinizing any agreement entered into by your government, even if your constitution does not strictly require parliamentary ratification. Parliamentary scrutiny will promote transparency and provide a forum for public debate about the merits of any agreement.