#### Resolved: The United States ought to become party to the Rome Statute of the International Criminal Court.

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## Topic

#### Resolved: The United States ought to become party to the Rome Statute of the International Criminal Court.

In order to understand this topic there are a few key concepts to understand beforehand. First, the Rome Statute of the International Criminal Court is a document that details how the International Criminal Court itself will/does function. For conceptual purposes, you can think of it like the constitution of the ICC (International Criminal Court). This document is free to read online and I suggest you take a look through it. Many of the cards in this file were cut directly from the document.

To become party to the International Criminal Court means to ratify it and become bound by its rules. Currently 124 nations have signed on and become party to the ICC. Notably, though, the US, China, and Russia all have not become party to it. There are a number of reasons for this, but many people suspect these strong nations don’t want to give up any power to an international organizations or complicate their military movements through regions. Until a state becomes party to the ICC it is illegal for them to be tried under its rules.

The ICC has jurisdiction over four main areas of crime: genocide, crimes against humanity, war crimes, and crimes of aggression. Each area has multiple potential violations underneath, spanning to implicate a lot of content. For the most part, the ICC draws from the Geneva Conventions in terms of what it makes illegal, but it does include some more stipulations outside the Geneva Convention.

**Aff Strategy**

The affirmative I have structured in this file uses Human Rights for a value and Kant’s Categorical Imperative as a criterion. The whole benefit of the ICC is that it’s designed to protect human rights internationally no matter what actor is abusing them. We use Kant’s Categorical Imperative because a deontological mechanism allows us to skirt a lot of neg arguments about the solvency of the ICC. You’ll find there are tons of good arguments about how the ICC has been ineffective. It’s important to become party to it anyways because 1) we align ourselves with human rights and 2) the US joining can increase the efficacy of the organization substantially. By using a deontological framework we can avoid this issue through stating it’s about a stance of supporting human rights.

The first contention focuses specifically on torture practices the US currently supports. If we were to become party to the ICC then we wouldn’t be able to carry out these methods of interrogation because we’d quickly be tried and likely found guilty of torture. The contention focuses on proving two arguments. First, torture is ineffective. This is very useful if you’re competing against a utilitarian value because an ineffective structure holds no utilitarian value. Second, torture is immoral. This focuses on the grotesque details and methods of torture and the ways in which they violate a person’s basic human rights. This second argument is very persuasive and you should use it frequently when comparing your impacts to the impacts of the negative. If you’re thinking that the US doesn’t torture people you should do some reading on Guantanamo Bay and CIA interrogation techniques.

**Neg Strategy**

The negative I have structured in this file uses utilitarianism as a value and national sovereignty as a criterion. The ICC works because it sets a system of overarching laws which override the laws of nations that have become party to it. In addition, there are some documented cases of the ICC applying its laws to countries that have not become party to it, therefore violating their national sovereignty without consent.

The first contention is designed to prove the ICC is ineffective. With utilitarianism as a value, the benefit of this is obvious. If the ICC doesn’t do any good then there is no benefit to becoming party to it. Especially if it’s unable to enforce its laws on us. The second contention makes the case that the ICC is a huge threat to national sovereignty. It first proves the ICC has too much power of partied nations, second makes the case that without checks and balances their power will grow, and third concludes that they have, can, and will violate the national sovereignty of nations both party and not party to itself.

The benefits of national sovereignty as outlined in this file are twofold. The piece of evidence you use to introduce national sovereignty explains how national sovereignty is a necessary pre-requisite to world peace. When nations feel their sovereignty is threatened they lash out and wars are started. This meshes will with your utilitarian value for obvious reasons. The second benefit in the back files is that national sovereignty is key to rights, and specifically explains how the ICC undermines a nation’s ability to provide its citizens with certain rights. This is a good answer to affirmatives like the one I have included which use human rights as their value.

## Further Readings

#### Brief History of US antagonisms of the ICC under the Bush Administration

<https://www.hrw.org/news/2009/08/02/united-states-and-international-criminal-court-bush-administrations-approach-and-way>

#### Common arguments and oppositions to the ICC

http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court

#### The Rome Statute of the International Criminal Court (The official document)

<https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf>

#### Full book that makes the case for US support of the ICC

<https://books.google.com/books?id=S_E3B1eQqnYC&pg=PP7&lpg=PP7&dq=protection+against+genocide+mission+impossible&source=bl&ots=GHCsJ61zVY&sig=mz8WBuxf_0lUpEwQRgRxFqIk-VY&hl=en&sa=X&ved=0ahUKEwjZ7qC-hOfNAhUJwGMKHcg0DY4Q6AEILDAD#v=onepage&q=protection%20against%20genocide%20mission%20impossible&f=false>

#### John Stuart Mill’s primary writing on utilitarianism

<http://www.earlymoderntexts.com/assets/pdfs/mill1863.pdf>

#### Immanuel Kant’s primary writing on the categorical imperative

http://www.earlymoderntexts.com/assets/pdfs/kant1785.pdf

## AFF

## 1AC

#### Value: Human Rights

**In a world of increasing globalization and high priority issues like national security, it is more imperative than ever to protect basic human rights, as they can quickly be viewed as less import when compared with these threats. However, to allow exception in the protection of one human right justifies exception in all protection of human rights.**

**Stanford Encyclopedia of Philosophy** Nov 8, **2014** <http://plato.stanford.edu/entries/rights-human/> **explains**

(4) Human rights have high-priority. Maurice Cranston held that human rights are matters of “paramount importance” and their violation “a grave affront to justice” (Cranston 1967). If human rights did not have high priority they would not have the ability to compete with other powerful considerations such as national stability and security, individual and national self-determination, and national and global prosperity. High priority does not mean, however, that human rights are absolute. As James Griffin says, human rights should be understood as “resistant to trade-offs, but not too resistant” (Griffin 2008). Further, there seems to be priority variation within human rights. For example, when the right to life conflicts with the right to privacy, the latter will generally be outweighed.

#### Criterion: Kant’s Categorical Imperative

**In order to ensure human rights we cannot adopt a traditional utilitarian lens, as larger objects like national security will always attempt to outweigh the intrinsic value of the individual. The only way to ensure basic human dignity is through Kant’s Categorical Imperative**

**DR. DAVE YOUNT** **at** **MESA COMMUNITY COLLEGE April 21st, 2015** **Explains**

http://www.saylor.org/site/wp-content/uploads/2012/02/BUS205-11.3.2-Immanuel-Kants-Ethical-Theory.pdf

I. IMMANUEL KANT (1724-1804) A. THE CATEGORICAL IMPERATIVE: The categorical imperative is the way in which you determine what your duties are, what you should and should not do. It is categorical, because it applies (or is intended to apply) to everyone, without any exceptions, and it is an imperative, since it is a command. So it is a command that applies consistently, to everyone. You might think of the Ten Commandments here, as the kind of thing that he is referring to. There are two formulations (for our purposes - there are actually six in his whole book, Grounding for the Metaphysics of Morals): 1. First Formulation: "Act only on that maxim through which you can at the same time will that it should become a universal law."1 Maxim = a description of action in imperative form. E.g., “Help this person in dire need,” “Don’t lie,” “Don’t steal,” “Steal when you feel like it,” “Kill others when you’re frustrated,” are maxims. NOTE: The categorical imperative will make it that you cannot universalize – make it a universal moral law that applies to everyone including you – to kill others when you’re frustrated. So some of these maxims will “pass” this formulation of the categorical imperative, and some will not. We will cover this in more detail as we continue. 2. Second Formulation: "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."2 Some explanation of the second formulation: a. People (rational beings) are “ends in themselves”; non-rational beings (non-human animals) and anything else (chairs, dirt) are things. There are three reasons why we are ends in themselves, according to Kant: (1) People have practical reason (= ability to think about and choose which actions we would like to do, what goals we have, and so on). (2) People have autonomy (Greek: auto-nomos – law unto ourselves) – we create laws for ourselves – we determine our ends through practical reason. Autonomy is roughly equivalent to free will. (3) We human beings have intrinsic value, not mere instrumental value. We are like unique Ming vases, works of art that must be respected. We always have intrinsic value, we may have instrumental value as well (that is, we may be able to help others and get something b. What actions fail Kant’s test? Those actions that treat people solely as a means. E.g., treating a person solely as an instrument to obtain something for yourself. Slave trades, rape, industrialists (e.g., sweatshops), lies to further yourself. c. What actions pass Kant’s test and are therefore morally permissible? Actions that will routinely pass the test of universalizability: treating people as ends in themselves or both as means and as ends. Treating people only as an end: Treating them with respect, but not necessarily getting any huge benefit from it. EX: not punching students on your way to class. Treating people both as a means and an end: EX: My teaching you - I receive money, you receive an understanding about philosophy and maybe a degree, so we’re each treating other as a means; but, we are treating each other with respect while doing this, so we’re also treating each other as an end. d. Respect for Rational Beings: Every person, by virtue of his/her humanity (i.e., rational nature) has an inherent dignity. From this, we need to respect ourselves and others too. If we all did this, we'd have what Kant calls a “Kingdom of Ends”.

### Contention 1: Torture

#### SUBPOINT A): Torture is inevitable in the Status Quo

**The US has demonstrated at multiple occasions that it’s willing to torture whenever national security threats flare up. We currently isolate these tactics in our offshore detention center Guantanamo Bay. As long as this remains open the US will have a legal avenue to torture for information. Obama won’t shut down Guantanamo Bay and even if he did the next president would reverse it.**

**Jack** **Goldsmith** article “Why Obama Hasn’t Closed Guantanamo Bay—and Probably Never Will” *Jack Goldsmith is* ***a Harvard Law School professor and a senior fellow at the Hoover Institution****. He was an assistant attorney general in the administration of George W. Bush.* <http://time.com/4178779/obama-close-guantanamo-bay/> 1/13/**2016 Explains**

But the President said nothing about how he intends to shut down the prison. His administration has promised Congress a concrete plan to do so for a long time. “I have asked for six and a half years for this administration to come forward with a plan — a plan that we could implement and close Guantanamo,” said Senator John McCain in November. The Pentagon pledged that it would finally reveal its plan the week McCain made this statement, but nothing came. McDonough again promised a plan last week, which is why many people expected more detail from the President in his address. The reason the President has not yet proposed a plan for closing the Guantanamo Bay detention facility, and the reason he said so little about it in his self-consciously upbeat address, is that he lacks a plausible path to doing so. Closing Guantanamo would require the President to find a home for the approximately 100 detainees still there. Even if the President can transfer the less dangerous detainees to other countries under somewhat lenient congressional rules, he faces an absolute ban on bringing the other fifty or so more dangerous ones to the United States. Congress could in theory lift the ban and appropriate the money needed to retrofit a high-security prison in the United States. The chances of this happening before the President leaves office are zero, no matter what the President proposes. The President’s other option is to defy the transfer ban, as his former attorneys advised. But their argument is weak. “There’s very little to be said for” the argument, according to Marty Lederman, Obama’s former Deputy Assistant Attorney General in the Justice Department Office of Legal Counsel, the Office that will advise the President on the legality of any such move. Lederman notes that a constitutional override argument “would present the same dangers, and threaten to establish the same troubling precedents, as when President Bush claimed the constitutional authority to disregard laws” related to national security — an authority, of course, that President Obama once vehemently disclaimed. Even if the President accepts the constitutional argument, he still faces obstacles. He has only a year to find and prepare a U.S. prison to house the detainees. This is not a long time, especially since Congress has barred him from spending funds to do so, which presents additional legal challenges. The President can power through all of these obstacles if he is determined and acts fast. With the swirl of his pen he could simply order subordinates today to begin the process of transferring the detainees to the United States in defiance of laws he has complied with for years. It is unclear whether a court would adjudicate such a brazen move, and even if it did, any judicial ruling would come too late to prevent it. And yet despite McDonough’s insistence that the President is “going to do it,” he likely won’t. The President wants to close the Guantanamo Bay facility before leaving office to fulfill his first-week pledge and enhance his legacy, which he is thinking about a lot these days. Presidential legacies are difficult to assess because they “depend on the climate in which historians render their verdicts,” noted Arthur Schlesinger, Jr. But it is hard to see how closing Guantanamo unilaterally will burnish President Obama’s legacy in the short run or the long run. Support for closing Guantanamo peaked in President’s Obama’s first year, and most Americans now oppose transferring the dangerous detainees to the United States. A provocative defiance of a law that embodies the popular will on an issue of national security by a late-term President whose seriousness in that context has been questioned lately would be unpopular and controversial. Congress would go ballistic. The issue would not go away in the next administration, as Republicans and many Democrats would try to reverse the President’s move. President Obama would thus be doing his successor no favors. He or she, and the presidency, would suffer dealing with the fallout. Candidate Clinton might be hurt by the fallout sooner if the President puts in motion the Guantanamo closure before the election, which he almost certainly will need to do.

#### SUBPOINT B) There is no justification for torture

**Kant’s Categorical Imperative asks us to imagine the universality of our morals, IE to imagine if everyone did what we did. A world where everyone tortures for information is clearly undesirable, especially when that torture is both grotesque and ineffective**

**RUPERT** **STONE** ON **5/8/16** “SCIENCE SHOWS THAT TORTURE DOESN’T WORK AND IS COUNTERPRODUCTIVE” <http://www.newsweek.com/2016/05/20/science-shows-torture-doesnt-work-456854.html> **Explains**

In early 2003, Glenn Carle, an interrogator with the CIA, arrived at a secret detention facility overseas to question a recently captured Al-Qaeda suspect. The jail, whose location remains classified, was cold and dark—so dark Carle could not see his own hands—and music blared loudly all around. Inside the cell, a man lay shivering under a flimsy blanket; Carle called to him, and he looked up slowly, weary and confused, when Carle entered. When questioned, the man could manage only a rambling, incoherent reply. “He was a wreck,” Carle says.The man’s dilapidated state of mind was the result of a systematic program of torture inflicted on terrorism suspects by the CIA after 9/11. Nudity, extreme temperatures, sleep and sensory deprivation, dietary manipulation, waterboarding and other “enhanced interrogation techniques” were meant to break down detainees’ resistance to interrogation. The stress and disorientation induced by these methods, it was believed, would force them to cooperate and release whatever precious information they were hiding. But according to Carle, this theory is wrong.“Information obtained under duress is suspect and polluted from the start and harder to verify,” he says His views have been vindicated by the Senate Select Committee on Intelligence, which concluded in the executive summary of its 6,000-page study of the CIA program, released in December 2014, that the agency’s harsh methods failed to glean any intelligence not available through softer tactics. However, the CIA has disputed the Senate’s findings, and Republican presidential candidate Donald Trump has vowed to reinstate torture if elected. Trump has been particularly raucous in his support for brutal interrogation, urging that Salah Abdeslam, apprehended as a suspect in the November 2015 attacks in Paris, be waterboarded.Disorientation impairs memoryMeanwhile, compelling scientific evidence is emerging that torture and coercion are, at best, ineffective means of gathering intelligence. Worse, as Shane O’Mara, a professor of experimental brain research at Trinity College Dublin, wrote in a recent book, Why Torture Doesn’t Work: The Neuroscience of Interrogation, torture can produce false information by harming those areas of the brain associated with memory. O’Mara marshals a large amount of scientific literature to make his point. In one important experiment from 2006, psychiatrist Charles Morgan and colleagues subjected a group of special operations soldiers to prisoner-of-war conditions (including food and sleep deprivation and temperature extremes).These soldiers were highly trained and physically fit, and, unlike most detainees, they were motivated to cooperate. But even they exhibited a remarkable deterioration in memory as a result of these stressful conditions. According to Carle, enhanced interrogation techniques have similar effects. “It is obvious that sleep deprivation and temperature extremes disorient the detainee—they are designed to do so,” he says.“If one is disoriented, virtually by definition one’s memory is impaired. It is simply shocking one could be so stupid as to argue the opposite.”Waterboarding was the CIA’s most notorious interrogation technique. In this procedure, a prisoner is strapped to a board, his face covered with a cloth. Water is gradually poured over the cloth until it fills the prisoner’s mouth and nasal cavity, preventing him from breathing. As he suffocates, panic and terror take hold, and it is assumed the prisoner will “talk” and tell the truth to be allowed to breathe.Like other enhanced measures, waterboarding cannot be tested in a laboratory for ethical reasons, but there is a sizable amount of relevant scientific literature on it. As O’Mara shows in his book, studies of the “diving reflex” (a set of physiological responses that occur when mammals, including humans, are submerged in water) have demonstrated that immersion in cold water moves brain activity away from areas supporting memory to those “principally concerned with survival,” such as the brainstem and amygdala, which regulate fear, pain and stress. By occluding the airways, waterboarding starves people of air, and there is a “huge literature” showing that lack of oxygen (hypoxia) harms cognition, O’Mara tells Newsweek. He highlights one recent study, which found that hypoxia “severely impairs” a person’s cognitive abilities. Furthermore, waterboarding causes carbon dioxide to accumulate in the body (hypercapnia), which induces fear and panic. In this situation, the ability to think and recall information will be “markedly reduced,” he says.Despite the abundance of evidence relevant to torture, O’Mara is the first brain scientist to write such a book. “I’ve genuinely been surprised by the silence,” he says. O’Mara and his colleagues at Trinity College Dublin are completing a research project that examines the effects of water immersion and breath-holding on memory. Participants are asked to lie down with a wet cloth over their face and hold their breath while their physiology is monitored; then they are asked to recall bits of previously learned information. The study is in its third round of experiments and must still undergo peer review, but the results so far seem to indicate that the process impairs memory. Indeed, the Navy’s Survival, Evasion, Resistance and Escape school used to subject U.S. soldiers to waterboarding as part of their resistance training (it stopped in 2007), and former instructor Malcolm Nance says the procedure does not elicit reliable information. It does, on the other hand, generate false confessions. “The captive will say absolutely anything and agree to anything to make the torture stop,” says Nance. Most of those subjected to waterboarding, he says, confess as a result—and their distress is so intense, they do not even remember confessing. In a recent BBC documentary, for which Nance served as a consultant, a volunteer underwent waterboarding and confessed to “being born a bunny rabbit.” He had no recollection of making such an admission. Depriving detainees of sleep is also unlikely to help those trying to gather intelligence. A study published in Proceedings of the National Academy of Sciences earlier this year examined the effects of sleep deprivation on false confessions. Over 80 student volunteers were asked to complete a number of computer-based tasks. Beforehand, they were told that pressing the "escape" key on their computers would damage essential data. Having completed the tasks, the volunteers were then divided into two groups: One was allowed to sleep all night; the other had to stay awake. The following day, the students in both groups were asked to sign a statement admitting they had pressed the "escape" key during the tasks. Sleep-deprived participants were 4.5 times more likely to sign the false confession. “This is a dramatic increase,” says Elizabeth Loftus, a professor of cognitive science and law at the University of California, Irvine, and one of the study’s authors. “It should alert people to the potential for false confessions” in cases of sleep deprivation. This is especially pertinent to the U.S. criminal justice system, Loftus says, where sleep deprivation is common and false confessions have featured in a disturbing number of wrongful convictions.The caveat, says Kimberly Fenn, who runs the Sleep and Learning Lab at Michigan State University and was one of Loftus’s co-authors, is that their study does not ask participants to confess to an actual crime, so rates of false confession connected to sleep deprivation might be lower in the real world. Still, the work adds to a growing body of scientific literature suggesting sleep deprivation is not an effective interrogation technique. “Performance in a wide range of cognitive functions, including the ability to retrieve information from long-term memory, is impaired under sleep deprivation,” says Fenn.An earlier project by the same team found that sleep loss could even lead to the formation of false memories. Sleeplessness can also induce psychosis—the Senate report describes a sleep-deprived detainee who experienced intense hallucinations, for example. Tony Camerino, a former senior interrogator with a special operations task force, saw sleep-deprived prisoners frequently during his time in Iraq in 2006. Sleep deprivation “absolutely” harms memory, he says, and “leads to inaccurate information.”President Barack Obama officially stopped the CIA interrogation techniques by executive order in 2009, although the program had effectively ended before then. And a new law enacted last year requires all interrogations to comply with standards set down in the Army Field Manual, which prohibits waterboarding, prolonged sleep deprivation and other enhanced interrogation techniques. In an emailed statement, CIA spokesman Dean Boyd tells Newsweek, “It is CIA Director Brennan’s resolute intention to ensure that Agency officers scrupulously adhere to these directives, which the Director fully supports.” This unusually firm posture comes weeks after John Brennan told NBC that he would not obey orders to use waterboarding again and signals a newly defiant rejection of torture from the agency.But, while enhanced interrogation is now banned, some coercive methods remain available. The manual contains a controversial appendix, which could allow for some coercive tactics, such as isolation or partial sleep and sensory deprivation. For example, it permits interrogators to restrict detainees to four hours of sleep every 24 hours over an indefinite period. And, according to Fenn and O’Mara, research indicates that partial sleep deprivation like this could be just as harmful as complete sleep loss. The appendix might be rescinded, though, as a new law mandates a thorough review of the manual, which is now underway and expected to be completed in a few years. The Department of Defense did not respond to Newsweek’s request for comment.

#### SUBPOINT C) Being Party to the Rome Statute of the International Criminal Court forces the US to indefinitely end torture

**Rome Statute of the International Criminal Court** 16 January **2002** https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\_statute\_english.pdf

Article 7 **Itself** **Explains**

Crimes against humanity 1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; 4 Rome Statute of the International Criminal Court (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. 2. For the purpose of paragraph 1: (a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (b) ‘Extermination’ includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) ‘Deportation or forcible transfer of population’ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; 5 Rome Statute of the International Criminal Court (f) ‘Forced pregnancy’ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) ‘The crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. 3. For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.

**Without a powerful international legal system, the US will always be capable of kick starting terror programs in the dark and not being held liable for those actions. Becoming party to the Rome Statue on the International Criminal Court is the only way to end the vicious process of insecurity and loophole finding that has allowed torture to continue thus far.**

### Contention 2: ICC Credibility

#### SUBPOINT A) ICC Credibility is Low Now

**The ICC is currently suffering low credibility due to a low number of case closures in its history. This causes people to questions its effectiveness and not become party to it. Ultimately, the perception of the ICC’s weakness is what causes its weakness in the first place**

Joshua **Meservey** “Credibility Lost The International Criminal Court's actions in Africa have been self-defeating.” Jan. 2, 20**15** <http://www.usnews.com/opinion/blogs/world-report/2015/01/02/international-criminal-court-hurts-its-own-credibility-in-africa> **Explains**

The International Criminal Court’s highest profile case to date, the indictment of Kenyan President Uhuru Kenyatta for his alleged involvement in Kenya’s 2007 post-election violence, collapsed on Dec. 5 when prosecutors withdrew charges against him, citing a lack of evidence. The withdrawal is the latest blow to a court that has secured only two convictions in its 12 year history. Four of the original six Kenyans indicted in the post-election violence case had their charges dropped or rejected. Sudanese President Omar Bashir, under an arrest warrant since 2009, remains president and even travels internationally, despite court pleas to arrest him.

#### SUBPOINT B) US becoming party would increase ICC credibility and efficacy

**In order to fix the issues and perceptions with the ICC the US must become party to it, reversing the long standing narrative of criticism coming from the Bush Administration. This would lead to a more effective ICC and concurrently less human rights atrocities worldwide.**

Elise **Keppler** is **Senior Counsel in the International Justice Program at Human Rights Watch**. AUGUST 2, **2009** “The United States and the International Criminal Court: The Bush Administration’s Approach and a Way Forward Under the Obama Adm” <https://www.hrw.org/news/2009/08/02/united-states-and-international-criminal-court-bush-administrations-approach-and-way> **Explains**

The Obama Administration should put the United States back on a solid footing as a promoter of human rights and justice. Of course, ratification of the Rome Treaty, which would allow the United States to fully support and participate in the ICC's work, should remain one of the Administration's major goals. Apart from ratification, however, there are a number of important steps that the Obama Administration should take to develop a more constructive relationship between the U.S. and the Court. These include, but are not limited to:[28] Assisting the court in its cases Effective U.S. assistance and cooperation can play a valuable role in strengthening the Court's work as the ICC seeks to apprehend and prosecute suspects. Specifically, the Obama Administration could provide the ICC with valuable assistance by sharing relevant information and evidence, by facilitating and pressing for the arrest of individuals sought by the court, and by supporting appropriate Security Council resolutions, such as those referring cases to the Court or calling for cooperation with the Court. Participating in the ICC's Assembly of States Parties (ASP) and the ICC's review conference in a genuine and respectful manner ICC states parties meet several times a year at ASP meetings to discuss important matters regarding the ICC. Meetings cover issues such as the Court's budget and strategic plan and a definition for the crime of aggression for possible use by the Court. As such, these meetings provide an opportunity for the U.S. to learn about and exchange views on the Court's work. Contributing to the ICC's Trust Fund for Victims The ICC Trust Fund for Victims is a novel component of international justice that will help ensure that victims receive reparations and other forms of compensation. A significant feature of the fund is that it gives support to projects that benefit communities of victims regardless of whether the ICC issues judgments with respect to these individuals. U.S. contributions to this fund would provide much needed support for these communities. Withdrawing or otherwise rejecting the Bush Administration's purported "unsigning" of the ICC statute and signaling opposition to the remaining provisions of ASPA As stand-out components of the Bush Administration's approach to the ICC, especially during its first term, the Obama Administration should openly disavow the "unsigning" of the Rome Treaty and remaining provisions of ASPA to send an important message that a new era has begun. Implementing these measures would have a range of benefits. It would help restore U.S. standing with friends and allies that make up the vast majority of the court's members. It would ensure a positive U.S. contribution to advancing the world's first permanent international criminal court. It would pave the way for the U.S.-historically an advocate for human rights, the rule of law, and international justice-to become a party to an institution that seeks to promote these ideals. Moreover, given the evolution of the Bush Administration's approach to the ICC in its final years, a more positive approach would not reflect a radical repositioning by the Obama Administration. Constructive engagement with the Court rather would represent a continuation of an ongoing trend. The Obama Administration has indicated that it is reviewing the U.S.'s relationship with the ICC. While this review is pending, the U.S. is losing opportunities to engage positively with the court, such as by attending ASP meetings. The Obama Administration should no longer delay in taking steps to develop a more constructive relationship with the Court. The Administration has much to gain and little to lose by signaling that it is committed to justice, human rights, the rule of law, and respect for other nations dedicated to the same principles.

## Extensions/Answers

### A2 Torture Stopped in the US

#### 1) Even if torture has declined now, this is only temporary. After 9/11 we passed the patriot act which removed virtually all rights for anyone suspected of being a terrorist. It only takes one terror attack to reverse every law Obama has pushed through that limits our ability to torture. The Rome Statute on the International Criminal Court is the only way to ensure we don’t reverse progress against torture

#### 2) Obama has not stopped torture

**Shamus Cook from Global Research, August 14, 2015** article **“**Torture Never Stopped Under Obama”<http://www.globalresearch.ca/torture-never-stopped-under-obama/17204> **Explains**

By this definition the U.S. continues to practice torture. Yes, Obama outlawed some especially shocking forms of torture — water boarding, for example — but other types of torture were not labeled “torture” and thus continue. Surprisingly, this fact was recently discussed at length in The New York Times, under an Op-Ed piece appropriately entitled Torture’s Loopholes. In it, an ex-interrogator explains some of the more glaring examples of how the U.S. currently tortures and argues for the practices to end. In reference to Obama’s vow to end the systematic, obscene torture under Bush, the article states: “…the changes were not as drastic as most Americans think, and elements of our interrogation policy continue to be both inhumane and counterproductive.” The author says bluntly, “If I were to return to one of the war zones today… I would still be allowed to abuse [torture] prisoners.” The article also explains how the U.S. “legally” continues a practice that thousands of people in the U.S. prison system already know to be psychological torture: “…extended solitary confinement is torture, as confirmed by many scientific studies. Even the initial 30 days of isolation could be considered abuse [torture].” Other forms of torture commonly practiced — since they are part of the Military’s updated Field Manual — are “…stress positions [shackling prisoners in painful positions for extended periods of time], putting detainees into close confinement or environmental manipulation [hot or frigid rooms]…” Also mentioned as torture is sleep deprivation, a tactic used in combination with 20-hour interrogation sessions. The author concludes that these practices do “not meet the minimum standard of humane treatment, either in terms of American law or simple human decency.” (January 20, 2010). Unmentioned by the article are other forms of torture institutionalized under the Obama administration. One is “sensory deprivation,” a deeply traumatizing psychological torture described in detail in Naomi Klein’s Shock Doctrine. The new Army Field Manual says that the tactic — though not called “sensory deprivation” — should be used to “prolong the shock of capture,” and should include “goggles or blindfolds and earmuffs” that completely disconnects the senses from the outside world, where the captive is able to experience only the thoughts in their head. Yet another blatant form of torture that Obama refused to stop practicing is “extraordinary rendition,” or what critics call “outsourcing torture.” This is the practice of flying a prisoner to a country where torture is routinely practiced, so that the prisoner can be interrogated. As reported by The New York Times: “The Obama administration will continue the Bush administration’s practice of sending terrorism suspects to third countries for detention and interrogation, but pledges to closely monitor their treatment to ensure that they are not tortured, administration officials said Monday.” (August 24, 2009).

### Torture sucks

#### Torture destroys the soul

Bonnie **Block** January 12th, 20**12** <http://www.commondreams.org/views/2008/01/12/torture-illegal-immoral-and-ineffective> “Torture Is Illegal, Immoral and Ineffective”

Torture "destroys the human soul." It is not mere "mental anguish" or "enhanced interrogation." Experts such as Alfred McCoy from the UW-Madison and Carol Wickersham from Beloit College, as well as those who staff Centers for the Victims of Torture like the one in Minneapolis, all say the effects are deep and permanent and that psychological torture is even more harmful than physical torture.

### ICC is effective

#### ICC effectively deters human rights abuses

Kevin **Burke** “The Deterrent Effect of the International Criminal Court” **March 2, 2015** http://globalsolutions.org/blog/2015/03/Deterrent-Effect-International-Criminal-Court

With respect to prosecutorial deterrence, a recent study shows that as states ratify the Rome Statute, hostilities in civil wars tend to pause. Additionally, another (early draft) study shows that as ICC prosecution in a state is threatened, violence against civilians decreases. And the ICC has add-on effects: once an ICC investigation starts, domestic prosecutions of lower-level officials are more likely with the international spotlight backing up the domestic legal system. Research on social deterrence is still developing, but already it has promising indications. One researcher notes a “Lubanga syndrome,” so named for Thomas Lubanga, the first convicted war criminal at the ICC – she found anecdotal evidence of a fear of arrest among his fellow compatriots in the Congolese military. The draft study in which social deterrence has been examined relative to prosecutorial deterrence shows it to be at least as effective as prosecutorial deterrence, though much work remains to be done. It is worth noting that this study shows that government actors are more deterred by ICC involvement than non-state rebel groups, but at least there is still a deterrent effect.

## NEG

## 1NC

#### Value: Utilitarianism

**Utilitarianism is the only moral decision calculus for policy decisions, as the consequences of your actions almost exclusively effect agents outside of yourself. Thus we must be utilitarian in order to provide the maximum potential agency of external actors that we effect.**

Jonathan **Bennett** April 20**08** “Utilitarianism John Stuart Mill” <http://www.earlymoderntexts.com/assets/pdfs/mill1863.pdf> **Explains**

The doctrine that the basis of morals is utility, or the greatest happiness principle, holds that actions are right in proportion as they tend to promote happiness, wrong in proportion as they tend to produce the reverse of happiness. By ‘happiness’ is meant pleasure and the absence of pain; by ‘unhappiness’ is meant pain and the lack of pleasure. To give a clear view of the moral standard set up by the theory, much more needs to be said, especially about what things the doctrine includes in the ideas of pain and pleasure, and to what extent it leaves this as an open question. But these supplementary explanations don’t affect the theory of life on which this theory of morality is based—namely the thesis that

#### Criterion: National Sovereignty

**National Sovereignty is necessary in order to maintain international peace, as well guarantee nations an ability to provide their citizens with expected rights.**

Jeremy **Rabkin**, **professor of government, Cornell University** “NATIONAL SOVEREIGNTY: WHY IT IS WORTH DEFENDING” **2000** <http://www.law2.byu.edu/wfpc/forum/2000/Rabkin.pdf> **Explains**

Sovereignty is a way of agreeing to disagree. Of course, war has continued. But the worst conflicts of the twentieth century have been launched by aggressive powers which had no regard for sovereignty. No law, by itself, can deal with outlaws—that will always require force. The point of constructing international law on the basis of respect for sovereignty is to limit occasions for war, to limit misunderstandings and avoidable tensions that may lead to war. All of this is simply common sense, but many people now think the world has passed beyond such common sense. The British government thought itself entitled to seize the former dictator of Chile, Augusto Pinochet, in the summer of 1998 for abuses committed by Pinochet’s internationally recognized government in Chile, on Chilean soil, against Chilean citizens. The British courts ultimately determined that it would be legally proper to extradite Pinochet to Spain, where he was wanted by a magistrate seeking to hold him accountable for these past abuses. It was held to be irrelevant that the democratic government of Chile, itself, did not want Pinochet to be tried, and certainly not by a foreign court. British courts held that any country may impose criminal liability on officials of another country for severe human rights abuses, and this liability may extend to former heads of state or even—on the House of Lords’ reading of international law—to current heads of state. Everyone understood that Chile could not declare war on Britain or Spain for this affront to its sovereignty. Does everyone understand which countries would use warlike measures to resist such affronts to their sovereignty? In the United States, the FBI has already warned former American officials about traveling to certain countries in Europe lest they be there held for trial in the manner of Pinochet. Would the United States use force to rescue Henry Kissinger from a country that seized him for such a trial? Maybe not—but maybe it would. Arab advocacy groups have already urged that certain Israeli officials be held for trial in third countries. Would Israel use force to liberate a captured Israeli official? Maybe not—but maybe it would. Other states might unleash terrorist campaigns in reprisal for the holding of one of their own government leaders. It is all too easy to imagine how such maneuvers could lead to real war. There is certainly a compelling moral argument for outside intervention when a government is committing mass murder. The sad fact is that no government did intervene to stop mass murder in Cambodia during the 1970s or in Rwanda in the 1990s. What should be done about such cases deserves serious debate. But these cases are, and should be, very rare. For anything less than mass murder, outside intervention by force carries very serious costs, not least because outside powers will have mixed motives and may not be very careful what they do in third countries when they claim to be acting on higher motives. We will not secure a more peaceful world if outside powers think they have the right to intervene in any country which is badly or unfairly governed. We certainly will generate risks of misunderstanding when we don’t agree about the rules or standards for such interventions—and there seems no prospect that we will agree on such rules or standards. In the meantime, respect for territorial sovereignty is a relatively easy rule that can avoid much unnecessary conflict.

### Contention 1: ICC is ineffective

#### SUBPOINT A) ICC has never fully completed a case and lacks any effective enforcement mechanism

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court> **Explains**

As an institution, the ICC has performed little, if any, better than the ad hoc tribunals that it was created to replace. Like the Rwandan and Yugoslavian tribunals, the ICC is slow to act. The ICC prosecutor took six months to open an investigation in Uganda, two months with the DRC, over a year with Darfur, and nearly two years with the Central African Republic. It has yet to conclude a full trial cycle more than seven years after being created. Moreover, like the ad hoc tribunals, the ICC can investigate and prosecute crimes only after the fact. The alleged deterrent effect of a standing international criminal court has not ended atrocities in the DRC, Uganda, the Central African Republic, or Darfur, where cases are ongoing. Nor has it deterred atrocities by Burma against its own people, crimes committed during Russia's 2008 invasion of Georgia (an ICC party), ICC party Venezuela's support of leftist guerillas in Colombia, or any of a number of other situations around the world where war crimes or crimes against humanity may be occurring. Another problem is that the ICC lacks a mechanism to enforce its rulings and is, therefore, entirely dependent on governments to arrest and transfer perpetrators to the court. However, such arrests can have significant diplomatic consequences, which can greatly inhibit the efficacy of the court in pursuing its warrants and prosecuting outstanding cases. The most prominent example is Sudanese President Bashir's willingness to travel to other countries on official visits--thus far only to non-ICC states-- despite the ICC arrest warrant. This flaw was also present with the ICTY and the ICTR, although they could at least rely on a Security Council resolution mandating international cooperation in enforcing their arrest warrants. In contrast, the Nuremburg and Tokyo tribunals were established where the authority of the judicial proceedings could rely on Allied occupation forces to search out, arrest, and detain the accused.

#### SUBPOINT B) The ICC is bogged down by politics – Palestine Proves

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court> **Explains**

Palestinian lawyers maintain that the Palestinian National Authority can request ICC jurisdiction as the de facto sovereign even though it is not an internationally recognized state. By countenancing Palestine's claims, the ICC prosecutor has enabled pressure to be applied to Israel over alleged war crimes, while ignoring Hamas's incitement of the military action and its commission of war crimes against Israeli civilians. Furthermore, by seemingly recognizing Palestine as a sovereign entity, the prosecutor's action has arguably created a pathway for Palestinian statehood without first reaching a comprehensive peace deal with Israel. This determination is an inherently political issue beyond the ICC's authority, yet the prosecutor has yet to reject the possibility that the ICC may open a case on the situation.

### Contention 2: The ICC is a threat to National Sovereignty

#### SUBPOINT A) The ICC has too much power

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court> **Explains**

The ability both to interpret the law and effectively to force member states to adopt its view gives the ICC unprecedented power. For the first time, a permanent international institution is entitled to determine the legal obligations of states and their individual citizens and to criminally punish those individual citizens--even if its understanding of the law radically differs from the relevant state's position. Moreover, the ICC's judges are not otherwise subject to the supervision or control of the states parties, except in matters of personal corruption. Thus, when the ICC determines what international law requires in any of its areas of competence, this is arguably the final word.

#### SUBPOINT B) The ICC has no checks and balances so this power will continue to grow

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court> **Explains**

The ICC's Unchecked Power. The U.S. system of government is based on the principle that power must be checked by other power or it will be abused and misused. With this in mind, the Founding Fathers divided the national government into three branches, giving each the means to influence and restrain excesses of the other branches. For instance, Congress confirms and can impeach federal judges and has the sole authority to authorize spending, the President nominates judges and can veto legislation, and the courts can nullify laws passed by Congress and overturn presidential actions if it judges them unconstitutional. The ICC lacks robust checks on its authority, despite strong efforts by U.S. delegates to insert them during the treaty negotiations. The court is an independent treaty body. In theory, the states that have ratified the Rome Statute and accepted the court's authority control the ICC. In practice, the role of the Assembly of State Parties is limited. The judges themselves settle any dispute over the court's "judicial functions." The prosecutor can initiate an investigation on his own authority, and the ICC judges determine whether the investigation may proceed. The U.N. Security Council can delay an investigation for a year--a delay that can be renewed--but it cannot stop an investigation. As Grossman noted: Under the UN Charter, the UN Security Council has primary responsibility for maintaining international peace and security. But the Rome Treaty removes this existing system of checks and balances, and places enormous unchecked power in the hands of the ICC prosecutor and judges. The treaty created a self-initiating prosecutor, answerable to no state or institution other than the Court itself.[59]

#### SUBPOINT C) Therefore, the ICC is a huge threat to national sovereignty

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court> **Explains**

A Threat to National Sovereignty. A bedrock principle of the international system is that treaties and the judgments and decisions of treaty organizations cannot be imposed on states without their consent. In certain circumstances, the ICC claims the authority to detain and try U.S. military personnel, U.S. officials, and other U.S. nationals even though the U.S. has not ratified the Rome Statute and has declared that it does not consider itself bound by its signature on the treaty. As Grossman noted, "While sovereign nations have the authority to try non-citizens who have committed crimes against their citizens or in their territory, the United States has never recognized the right of an international organization to do so absent consent or a U.N. Security Council mandate."[61] As such, the Rome Statute violates international law as it has been traditionally understood by empowering the ICC to prosecute and punish the nationals of countries that are not party to it. In fact, Article 34 of the Vienna Convention on the Law of Treaties unequivocally states: "A treaty does not create either obligations or rights for a third State without its consent."[62] Protestations by ICC proponents that the court would seek such prosecutions only if a country is unwilling or unable to prosecute those accused of crimes within the court's jurisdiction--the principle of complementarity--are insufficient to alleviate sovereignty concerns. As Casey and Rivkin note: [C]omplementarity applies only if the state in question handles the particular case at issue in a manner consistent with the ICC's understanding of the applicable legal norms. If the court concludes that a state has been unwilling or unable to prosecute one of its citizens or government officials because it does not consider the questioned conduct unlawful, based on its own interpretation of the relevant international legal requirements, the court can proceed with an investigation.[63] For example, the Obama Administration recently declared that no employee of the Central Intelligence Agency (CIA) who engaged in the use of "enhanced interrogation techniques" on detainees would be criminally prosecuted.[64] That decision was presumably the result of an analysis of U.S. law, legal advice provided to the CIA by Justice Department lawyers, and the particular actions of the interrogators. Yet if the U.S. were a party to the Rome Statute, the Administration's announced decision not to prosecute would fulfill a prerequisite for possible prosecution by the ICC under the principle of complementarity. That is, because the U.S. has no plans to prosecute its operatives for acts that many in the international community consider torture, the ICC prosecutor would be empowered (and possibly compelled) to pursue charges against the interrogators.

## Extensions

### Sovereignty

#### Sovereignty K2 rights

Jeremy **Rabkin**, **professor of government, Cornell University** “NATIONAL SOVEREIGNTY: WHY IT IS WORTH DEFENDING” **2000** http://www.law2.byu.edu/wfpc/forum/2000/Rabkin.pdf

Rights have most value when they are recognized by law—by real law which can be successfully invoked in courts. Soft law secures only soft rights. International conventions, purporting to guarantee basic rights, have been signed by some of the most repressive regimes in the world— and then readily disregarded. But in the meantime, soft law can undermine respect for real rights and real law. In the first place, international law becomes an excuse for governments to get around the limits in their own constitutions. In Australia, for example, the constitution divides power between the federal government and the states. The federal government has responsibility for implementing international treaties, while the states retain responsibility for ordinary governmental concerns, such as defining and enforcing criminal law. In 1995, the UN’s human rights com- mittee declared that the law against homosexual practices in Tasmania (one of Australia’s states) was in violation of the Covenant on Civil and Political Rights (though that 1966 treaty says nothing at all about sexual morals or sexual freedom). The Australian federal government seized the occasion to impose federal legislation, overruling the law of Tasmania, although everyone agreed that the federal government would not have had jurisdiction over this subject if not for the UN’s interpretation of an international treaty. In similar ways, the Australian federal government has extended its authority over labor regulation—otherwise reserved to state governments under the Australian constitution—by invoking recommendations of the International Labor Organization, another UN body. Many people may regard such practices as expanding rights rather than contracting them. But what they do, in fact, is to twist and distort domestic constitutions. Down the road, this can undermine guarantees for individual rights in domestic constitutions. The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), for example, holds that governments must assure the “elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education” (Art. 10(c)). This seems to imply that government must control the texts used in all schools, even private schools, if they do not follow feminist notions about family life. Many countries have constitutional guarantees of free speech which might seem to limit the reach of government in such efforts. But will international standards trump domestic constitutions in this area? We don’t know, but it is reasonable to worry about tendencies in this direction. In the United States, the Supreme Court has said that the Bill of Rights in the U.S. Constitution must take precedence over any treaty obligations (Reid v. Covert 1957). But on the face of it, the treaty establishing the new International Criminal Court seems to violate the Bill of Rights, since (among other things) it does not provide for trial by jury as guaranteed in the 7th Amendment. Many American legal scholars insist this is no problem, however, because the Bill of Rights applies only to trials conducted by the U.S. government itself and the International Criminal Court will, after all, be international.

### ICC Fails

#### ICC lacks safeguards to political manipulation, has too much power, and violates national sovereignty.

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court>

Among other concerns, past U.S. Administrations concluded that the Rome Statute created a seriously flawed institution that lacks prudent safeguards against political manipulation, possesses sweeping authority without accountability to the U.N. Security Council, and violates national sovereignty by claiming jurisdiction over the nationals and military personnel of non-party states in some circumstances. These concerns led President Bill Clinton to urge President George W. Bush not to submit the treaty to the Senate for advice and consent necessary for ratification.[1] After extensive efforts to change the statute to address key U.S. concerns failed, President Bush felt it necessary to "un-sign" the Rome Statute by formally notifying the U.N. Secretary-General that the U.S. did not intend to ratify the treaty and was no longer bound under international law to avoid actions that would run counter to the intent and purpose of the treaty. Subsequently, the U.S. took a number of steps to protect its military personnel, officials, and nationals from ICC claims of jurisdiction.

#### ICC Fails Uganda Example

By Brett D. **Schaefer** **and** Steven **Groves** August 18, **2009** article “The U.S. Should Not Join the International Criminal Court” (*Brett is an Expert on United Nations, Human Rights Council, Arms Control and Nonproliferation, Democracy and Human Rights, International Conflicts, Foreign Aid and Development, Africa, Sovereignty, Farm Bill | Steven is an Expert on Democracy and Human Rights, United Nations, Human Rights Council, Sovereignty)* <http://www.heritage.org/research/reports/2009/08/the-us-should-not-join-the-international-criminal-court>

Uganda. In December 2003, President of Uganda Yoweri Museveni referred to the prosecutor crimes against humanity allegedly committed by the Lord's Resistance Army (LRA) rebel group against the population of northern Uganda.[19] The prosecutor announced his determination that there was a "reasonable basis to open an investigation into the situation" in July 2004.[20] Arrest warrants have been issued against five members of the Lord's Resistance Army, including LRA leader Joseph Kony.[21] No arrests have been made, and all suspects remain at large except for one who is dead. The LRA has refused to engage in peace talks or ceasefire negotiations until the ICC arrest warrant for Kony is withdrawn.[22]

## Dual Use

### Cards from the Rome Statute of the ICC

#### No Torture

**Rome Statute of the International Criminal Court** 16 January 20**02** https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\_statute\_english.pdf

Article 7

Crimes against humanity 1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; 4 Rome Statute of the International Criminal Court (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. 2. For the purpose of paragraph 1: (a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (b) ‘Extermination’ includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) ‘Deportation or forcible transfer of population’ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; 5 Rome Statute of the International Criminal Court (f) ‘Forced pregnancy’ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) ‘The crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. 3. For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.

#### No Deportation

**Rome Statute of the International Criminal Court** 16 January 20**02** https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\_statute\_english.pdf

Article 7

Crimes against humanity 1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; 4 Rome Statute of the International Criminal Court (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. 2. For the purpose of paragraph 1: (a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (b) ‘Extermination’ includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) ‘Deportation or forcible transfer of population’ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; 5 Rome Statute of the International Criminal Court (f) ‘Forced pregnancy’ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) ‘The crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. 3. For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.

#### Transphobic language link

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#### No Retroactive Punishments

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Article 24

Non-retroactivity ratione personae 1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute. 2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply

#### No Punishment if under 18

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Article 26

Exclusion of jurisdiction over persons under eighteen The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

#### War Crimes Means no attacking Humanitarian Operations

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Article 8 War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, ‘war crimes’ means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; 6 Rome Statute of the International Criminal Court (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages. (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; 7 Rome Statute of the International Criminal Court (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war; (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons; (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; 8 Rome Statute of the International Criminal Court (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations; (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

#### No Drone Strikes Maybe?

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(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; 7 Rome Statute of the International Criminal Court (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war; (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons; (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; 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#### No Poison Gasses or Other Poisons

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