

# AMICC

## AMICC Response to the US Administration International Criminal Court Policy

### **I. US SIGNATURE NULLIFICATION**

The results of the Bush Administration's policy review of the United States position on the International Criminal Court (ICC or Court) were announced by Under Secretary Marc Grossman at the Center for Strategic and International Studies on May 6, 2002. As expected, the Administration took the unprecedented act of nullifying its signature on the Rome Statute for the ICC by informing the Secretary General that that the US recognizes no obligations toward the Statute and would like its intention not to become a party reflected in the UN depository's status list.<sup>1</sup> The US believes that with this action it has relieved itself of any responsibility not to defeat the object and purpose of the treaty and has made unmistakably clear its intention not to ratify the Rome Statute.<sup>2</sup> The UN Secretariat has said that as treaty depository, it takes no position on the effect of the nullification. It has emphasized that, under its view of international law, it is up to the States Parties to the Rome Statute themselves to determine the consequences of the US action, especially whether or to what extent the declaration of nullification relieves the US of the obligation accepted by its signature not to actively defeat the object and purpose of the treaty.

### **II. US POLICY OF ACTIVE HOSTILITY AGAINST THE ICC**

All indications since the announcement demonstrate that despite the Administration's stated intention to "respect the right of other states to be part of the ICC,"<sup>3</sup> it plans to weaken the effectiveness of the Court whenever possible. Thus, immediately after announcing its new policy, the Administration informed all governments at the highest levels that it "will regard as illegitimate any attempt by the court or state parties to the treaty to assert the ICC's jurisdiction over American citizens."<sup>4</sup> Even more menacing was its threat to hold peacekeeping hostage until it obtained a Security Council resolution providing blanket immunity for peacekeepers from arrest, detention, or prosecution by the ICC. There is no question that the US has the right and duty to protect its personnel on missions overseas from frivolous complaints. However, language currently used in UN Status of Mission and Troop Contribution Agreements already ensures that neither troop receiving states nor the UN are capable of taking jurisdiction over qualifying US peacekeepers for any purpose other than to turn them over to the US authorities.

Furthermore, the principle of complementarity in the ICC Statute removes any doubt that under virtually any and all circumstances the US can guarantee its exclusive right to investigate, and if warranted, try US citizens accused of committing atrocities abroad. These existing protections place checks on the power of the ICC but do not undermine the rule of law by providing immunity for an entire category of persons in direct contravention the universally recognized Nuremberg principle of individual criminal accountability. A Security Council resolution that

permanently carves out a status exception to the jurisdiction of the ICC is objectionable legally and morally, and this US initiative is rightly being perceived around the world as merely the beginning of a US campaign to actively undermine the Rome Statute.

### **III. US JUSTIFICATIONS FOR HOSTILITY TOWARD THE ICC**

The Administration's recent public statements about the ICC recycle many of the misstatements and misperceptions about the Court that have been used to discredit it in the past, but also emphasize a few new points. The Administration identifies seven main reasons why the ICC does not advance the cause of justice and is not in the US national interest. These include claims that the ICC is an institution of "unchecked power," dilutes and usurps the authority of the UN Security Council, threatens US sovereignty, interferes with states' ability to use force in self-defense or for humanitarian purposes, prevents US cooperation with its allies due to the risk of political prosecutions, and inhibits justice by interfering with alternative justice mechanisms such as truth commissions. Finally, the Administration counterbalances its rejection of the ICC with policy justifications favoring the promotion of domestic and, as a last resort, ad hoc international proceedings to address atrocity crimes.

#### **1. "Unchecked Power" of the ICC**

In his remarks, Under Secretary Grossman said that, "in the rush to create a powerful and independent court in Rome, there was a refusal to constrain the Court's powers in any meaningful way." To the contrary, there were four years of intense ICC negotiations that preceded the Rome diplomatic conference at which the Statute was adopted. The United States participated fully, constructively, and aggressively in all these negotiations. At Rome, other countries made many concessions to the US that limit ICC jurisdiction.<sup>5</sup> This bald assertion also disregards the numerous limits in the Rome Statute on the Court's jurisdiction and the oversight authority of the Assembly of States Parties. Furthermore, it ignores the fact that the Court is not an integrated entity with a single mind and purpose, but consists of four independent organs deliberately designed in the Statute to have contrasting and sometimes competing institutional functions and objectives.

The "proper checks and balances" that he says were unreasonably excluded from the final draft of the Rome Statute included US demands for exclusive UN Security Council authority to decide whether or not the Court could take up a case and, when that proposal failed, a request for a broad exemption for US servicepersons and officials. Instead of violating the Nuremberg principle of individual criminal accountability by allowing *de facto* exemptions from the Court for the five permanent Security Council members, or a *de jure* exemption for the US, the negotiating states adopted numerous other safeguards that both limit the power of the ICC and maintain its equal treatment of all parties.

#### *Limited Jurisdiction*

The ICC Statute limits the Court's jurisdiction over persons to the two most traditional bases: crimes occurring on the territory of a state party or by an accused who is the national of a state

party.<sup>6</sup> Only if the Security Council refers a case under its UN Charter Chapter VII enforcement authority can the Court admit a case even though no state has accepted the Court's jurisdiction.

Moreover, the ICC will have very limited subject matter jurisdiction to try individuals accused of the most serious crimes condemned by all nations: humanity, genocide, and war crimes. Its jurisdiction is limited to "the most serious crimes of concern to the international community as a whole."<sup>7</sup> This high legal threshold necessitates that the criminal act must have occurred on a large scale, must shock the conscience of humanity, and must, in general, be the result of deliberate plans or policies by a nation or organization.<sup>8</sup> Thus, the Court does not have jurisdiction over all war crimes, only the worst.<sup>9</sup>

Perhaps the most significant limitation on the Court's jurisdiction is that it is a court of last resort. This is because the principle of complementarity in the Statute ensures that no case can be admitted unless a state with jurisdiction is either unable or unwilling to act.<sup>10</sup> As a result, the Court is obliged to defer to national proceedings – whether or not they lead to prosecution – except when it can be shown that the state in question is incapable of acting, has no independent judicial system, or has invoked complementarity in bad faith.

### *Checks and Balances*

The Rome Statute further limits the Court's reach by giving power to restrain the ability of the Court to act to each Court organ; the accused and his or her state of nationality; and the Court's governing body, the Assembly of States Parties.

First, it is important to remember that ICC is not monolithic, but has four independent organs whose purposes and priorities are designed to check and balance each other. For example, the Prosecutor's office has no authority to decide on its own to pursue a case. While the Prosecutor can undertake a preliminary review or assessment of available information on his or her own initiative, he or she cannot begin a formal field investigation without the approval of the Pre-Trial Chamber.<sup>11</sup> Furthermore, the judges and Prosecutor are responsible for overseeing each other's impartiality whenever it might reasonably be doubted on any ground.<sup>12</sup> The need for disqualification can be raised at any time by a person being investigated, or in the case of a judge, the Prosecutor. A majority of the judges can decide whether or not to disqualify a judge, and the Appeals chamber can decide whether or not to disqualify the Prosecutor.<sup>13</sup> Current initiatives by bar associations worldwide to create a strong defense bar and code of conduct will establish an additional independent body that will place checks on the discretion of the Court's organs.

The ability of one Court organ to act alone is also constrained by the Statute's regional representation requirements. For example, there is little likelihood that the judges themselves would band together to influence proceedings for political purposes since they must be elected by a two-thirds majority of the Assembly and no two judges may be nationals of the same state.<sup>14</sup> Even if a trial chamber (made up of three judges from three different countries) acted inappropriately, the appeals chamber (made up of five judges from five additional countries) could overturn its decision. Similarly, the Prosecutor and Deputy Prosecutor must be elected by

an absolute majority of Assembly members and must be of different nationalities from one another.<sup>15</sup>

Moreover, the Statute provides ample opportunity for both an accused and the state of nationality to themselves rein in the Court by giving them the ability to stop a case from proceeding. For example, the Prosecutor must immediately notify the state of nationality about an impending investigation,<sup>16</sup> and both the state and the accused can challenge the ICC's jurisdiction and the admissibility of the crime.<sup>17</sup> The state can also decide to conduct its own investigation and ask the Prosecutor's office to defer its investigation in accordance with the complementarity principle.<sup>18</sup>

Finally, the Assembly of States Parties has ultimate oversight authority over the Court. For example, if a judge, the Prosecutor, or the Registrar acts prejudicially, the Assembly can remove him or her.<sup>19</sup> The Assembly, not the Court itself, is ultimately responsible for managing the administration of the Court, deciding what measures to take when a State Party fails to cooperate with the Court, and controlling the budget of the Court.<sup>20</sup>

## **2. The ICC and the UN Charter**

Grossman argues that the ICC violates the UN Charter by diluting and undermining UN Security Council responsibility for the maintenance of peace and security. He especially emphasizes that the Security Council was not given absolute authority to stop the Prosecutor from proceeding with a case, and that the Statute includes the crime of aggression in the Court's jurisdiction.

First, the Security Council and the ICC have two entirely different functions that in no way conflict. The responsibility of the Security Council to maintain peace and security is a political, not a judicial role. Conversely, the ICC has no authority to judge either the political nature of an act or the motives of a state in any particular situation. It only may indict and try individuals accused of committing a crime included in its Statute. For crimes against humanity and genocide, it is not even necessary that the acts have occurred during an armed conflict, and thus they need not be associated with a threat to international peace and security. Moreover, and significantly, the Statute authorizes the Security Council to act under Chapter VII of the UN Charter to suspend proceedings on a case or situation annually and to renew this resolution indefinitely if it perceives a conflict between the work of the Court and the maintenance of peace and security.<sup>21</sup> This is exactly the power to check the Prosecutor that the US claims is missing from the Rome Statute.

Second, although opponents of the Court, including Grossman, often say that the Prosecutor has the authority to investigate and try persons for the as-yet-undefined crime of aggression, this is absolutely false. Until aggression is defined by agreement of the Assembly of States Parties (which under the terms of the Statute cannot occur for at least seven years), no persons will be investigated or tried for this crime.<sup>22</sup> Furthermore, the ICC Statute says explicitly that any definition must be consistent with the requirements of the UN Charter.<sup>23</sup> There are currently widely differing opinions about how the crime should be defined and the conditions under which the Court should exercise jurisdiction over it. This includes disagreement as to whether the Security Council's "primary responsibility" for the maintenance of international peace and

security<sup>24</sup> necessarily means that this authority is exclusive. This complex and controversial question will be debated for years to come. If the US wants to direct this debate, it must remain involved in it through participating in the Assembly of States Parties.

### **3. The ICC and US Sovereignty**

Grossman, like many others, argues that the Court's very existence threatens US sovereignty. To the contrary, the Court is the outgrowth of the hard work and strength of purpose of approximately 150 sovereign states, including the United States, to build an institution that can try persons accused of the most serious crimes imaginable when states lack the ability or will to do so themselves. Largely because of the detailed work of the expert US team that helped draft the Court's Statute, and the texts of the Elements of Crimes and the Rules of Procedure and Evidence, the crimes that the Court can try and the ways it can obtain jurisdiction are firmly rooted in and clearly express customary international and treaty law and practice in terms that the United States has long recognized and followed.

Like any other treaty, the ICC Statute does not claim to bind in any way countries that have not ratified it, nor does it have that effect. The Court will not have jurisdiction over states or governments, but only over persons. States have no obligation to cooperate with the Court unless they have chosen to exercise their sovereignty by ratifying the Statute or by accepting its jurisdiction over a particular crime. Thus, until the US chooses to ratify the Statute, the Court will not be able to reach or prosecute US citizens who remain in the United States, and the US will have no obligation to make them available to the Court. The only exception to this would arise if the Security Council referred a case to the Court. However, this could happen only with the consent of the United States, since it has a veto in the Security Council.

Grossman, however, argues that the power of the Court to detain and try Americans under certain circumstances is in itself a violation US sovereignty. It is universally accepted, including by the US, that all states have the right to legislate and enforce the law in their own territory, including the ability to try foreigners who commit crimes within their territory or to extradite accused criminals to third states when they are found in their territory. This inherent right of states has long been recognized to be in conformity with the US Constitution. It is incontestable that if an American goes to France and commits a crime, France can try him or her under French law and procedure. Once the ICC is up and running, in the case of serious atrocities, France will merely have the additional option of allowing the ICC to try that person instead of trying him or her itself. As a party to the Court's Statute, France now shares its jurisdictional authority with the ICC. A sweeping rejection of this right is in fact an attack on the sovereignty of other states.

It is important to note that US law enforcement officials themselves regularly act on this right. For example, Zacarias Moussaoui, a French citizen, has been accused of conspiring to plan the September 11<sup>th</sup> attacks in the US. He is now awaiting trial in Virginia. The crime of which he is accused occurred in the US, so even though he is a French national, France has not questioned the authority of the US to try him. ICC jurisdiction over US citizens is based entirely on this long-established fundamental principle and practice of international law. The Court will have no more or less authority to try US citizens than individual states do currently.

The US not only recognizes the right of states to transfer their jurisdiction to international courts, but also it has been instrumental in creating such courts and in encouraging states to cede jurisdiction to them. For example, the US has participated in the international criminal tribunals for Yugoslavia and Rwanda (ICTY and ICTR) – both of which could try US citizens – and urged others to participate without sovereignty concerns arising.<sup>25</sup>

#### **4. ICC and the Right of States to Use Force to Protect Moral and Security Interests**

Grossman says that that because the ICC prosecutor and judges will second-guess the policy decisions of states without their consent, the existence of the Court will have a chilling effect on their willingness to use force either in self-defense or in humanitarian operations. As discussed above, the Court has no authority to make judgments about state security decisions or policies. The Court will investigate state policies only to ascertain whether they directed the commission of a crime within the Court's jurisdiction. Furthermore, the Court cannot examine the legality of a leader's decision to use force – whether to act in self-defense in accordance with the UN Charter or to undertake a humanitarian intervention – until the crime of aggression is defined.<sup>26</sup>

Beyond the Court's current lack of jurisdiction to judge whether an individual's responsibility for an act of force qualifies as a crime of aggression, it is inconceivable that political leaders would be hesitant to act self-defense because of the existence of the ICC. If a state believes that it is in danger, it will always do everything it can to protect itself. Moreover, if a state is defending another state against attack or undertaking a humanitarian intervention to protect a vulnerable population, it can protect its leaders from accusations of aggression by securing the consent of the state in danger, or of the Security Council in accordance with the requirements the UN Charter.

#### **5. Political Pressures on the Court**

Grossman repeats the often-raised fear that the Court will be politically motivated against US leaders and servicemembers. Again, it is important to bear in mind the very limited jurisdiction of the Court, including the very few crimes it can investigate and the extremely high threshold that must be met before the Court can take up a case. The Court will have jurisdiction over the worst kinds of leaders who conspire with deliberate intent to commit atrocities, not over military persons who make mistakes during combat.

One of the most important safeguards against politically motivated prosecutions is the centrality of the principle of complementarity to the Court's functioning. As discussed above, this means that the ICC must defer to domestic investigations and courts whenever a state has a functioning legal system and acts in good faith. Thus the US, even as a non-party state, has the right to take over any investigation of US nationals and remove it from the Court's jurisdiction.

There is no way to prove in advance that despite the matrix of checks and balances in the ICC Statute,<sup>27</sup> in practice the Court will not become enmeshed in any worst case scenario that can be concocted. Nevertheless, the following political realities ensure that attempts to misuse the Court for political purposes would fail, even in the unlikely event that they were tried. First, parties to the ICC are overwhelmingly countries upholding the rule of law, including our EU and NATO

allies. No enemies of the US have joined, and it is extremely unlikely that they will in the future, because joining the Court would give it automatic jurisdiction over crimes committed on their territories or by their citizens. For example, if Iraq joined the ICC, the Court would then be able to prosecute Saddam Hussein if he continued in his genocide of the Kurds. Second, even if countries joined the Court hoping to use it politically, they would not be able to do so because each state has only one vote in the Assembly of State Parties.<sup>28</sup> The Assembly's decisions, depending on the topic, require at least a simple majority<sup>29</sup> — many more than a state with a blatantly political agenda would be able to muster. Finally, the Statute's regional representation requirements will ensure that the Court's organs are removed from political pressures.

Ultimately, if a misuse of power occurs and remains unchecked, the ICC will lose its greatest asset: its reputation for impartiality. As a new international court the ICC will lack any independent means by which to coerce State compliance with its orders. Without an independent police force, the success of the Court will depend almost entirely on the willingness of its member states to cooperate. As a result, the Court's only source of power will be the moral authority it accumulates as it matures into a respected institution. Only if states believe that the ICC is acting legitimately will they heed its decisions. The ICC could not long survive as a rogue court.

## **6. ICC and International Justice Efforts**

Some US policy makers are arguing that the ICC will harm efforts to promote international justice by encouraging despots to cling to power, and by impeding domestic reconciliation processes such as amnesties and truth commissions. However, the ICC Statute does not prohibit any of these alternative mechanisms or even address them. Moreover, there is an enormous difference between the kinds of arch criminals whose guilt is so great that there is no question of a legitimate amnesty, and large numbers of lower level participants that no judicial system can competently or efficiently process. The prosecution of the worst kind of leaders in national courts, or failing that by the ICC, will in the long term promote respect for rule of law and national reconciliation.<sup>30</sup>

Furthermore, it is extremely improbable that a dictator would refuse to give up power merely because of an ICC indictment.<sup>31</sup> First, if despots have been in power for some time, it is unlikely that their countries will have ratified the ICC Statute, so none of the crimes they have committed within their states' territory could even be addressed by the ICC. Nor could a new government granting an amnesty be required to cooperate with the Court and surrender an accused. Should the new government ratify, the Court would only have jurisdiction over crimes committed after the ratification. And if a situation were to arise in which an indictment would be a threat to the maintenance of peace, the Security Council could always request a deferral of any ICC investigation or prosecution.<sup>32</sup>

It is conceivable that if a dictator would only agree to step down with a grant of amnesty, the Court could find that the state was "unwilling or unable" to prosecute that leader. However, the Court's fundamental obligation to respect and complement national criminal justice makes it much more likely that the Court would decide that a national amnesty law was a legitimate legal proceeding to which it must defer. The probability of this outcome is further supported by the

Prosecutor's obligation when deciding whether or not to initiate an investigation to examine whether "[t]aking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice."<sup>33</sup> Because the Court is conceptualized and structured as a court of last resort, there is no reason for the ICC not to respect a genuinely negotiated amnesty for truth or peace.

## **7. US Preference for Domestic Criminal Accountability**

The Administration is saying that it will devote resources to ensuring that other countries national courts are capable of investigating and prosecuting atrocity crimes. To justify its intentions, it makes the excellent argument that domestic prosecutions support the growth of rule-of-law. The ICC is completely in accord with this philosophy, which is why it is a court of last resort. Significantly, through the process of implementing the ICC Statute, countries are strengthening their ability to prosecute these crimes. The existence of the ICC will also help strengthen the will to prosecute domestically, because if states do not act themselves, the ICC will act for them.

However, as history shows, domestic courts are frequently unable to tackle these types of crimes. Often atrocities arise out of the disintegration of states and the institutions of law and order. It is disingenuous of the US to pretend that it is going to become broadly involved in nation building and to promptly assist all the states that lack functioning courts to prosecute accused arch-criminals. Furthermore, even states that are technically able to try offenders themselves might prefer to avoid domestic turmoil by sending them to an international court. Nor is the creation of more ad hoc tribunals an acceptable alternative. The Security Council clearly has "tribunal fatigue" – a reality that impelled the creation of the ICC. Neither the Security Council's permanent members, nor the other UN members, will want to create costly new courts to compete with the ICC. Finally, not every situation involving serious crimes is a Chapter VII breach of peace and security authorizing Security Council action.

## **8. The ICC and the US National Interest**

Underlying the outcome of the US policy review is the belief that the US can better protect its sovereignty by attacking or ignoring the Court rather than by observing or joining it. The reality is that there is no question that the Court will have the right to try US citizens in certain circumstances, even though they are extremely unlikely to occur. Anti-ICC law and policies can prevent US cooperation with the Court, but it cannot prevent action by the ICC.

The only way the US can protect its interests at the Court is by continuing to actively participate in its preparatory negotiations and in the Assembly of States Parties so as to shape a strong and fair institution that will protect US interests. The US can have this kind of positive influence, as is shown by its past work on the Court. Throughout its strenuous participation in all the years of ICC negotiations, the US made extensive contributions to the Court's present form. These include provisions giving strong deference to national courts, the inclusion of almost all of the US Bill of Rights, and definitions of crimes in complete conformity with the US Uniform Code of Military Justice. If the US continues to work actively with the Court as an observer, player and referee, it will have the position and authority to guard itself against perceived threats. This

will be impossible if it undermines its influence and credibility through active hostility or arbitrary refusals to cooperate with the ICC.

By joining the Court, the US would also be able to take advantage of the many advantages written into the treaty for state parties. For example, parties to the Court can choose not to accept the Court's jurisdiction over war crimes for seven years.<sup>34</sup> By invoking this provision, the US could see how the Court handles such cases from the beginning and the United States could withdraw from the Statute if the Court exceeds its authority by engaging in political prosecutions.<sup>35</sup> As a party, the US could also protect its nationals from prosecution for the crime of aggression or any other new crimes added to the Statute if it found the definitions unacceptable.<sup>36</sup>

Again, the only effective way for the United States to protect national interests affected by the ICC is to work closely and constructively with it and to ratify the Rome Statute as soon as possible. "Separation" from the ICC and the work to shape it will forfeit all influence on the future form of the Court.

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<sup>1</sup> The Administration's action took the form of a letter from Under Secretary of State for Arms Control and International Security John Bolton to the UN Secretary General, as depository of the Rome Treaty. The US signature remains, but a footnote has been added next to the United States in the list of signatories that includes the text of the Administration letter.  
<<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>>.

<sup>2</sup> Although no formal procedure exists for nullifying a treaty signature, most experts consider the steps taken by the Administration to be in compliance with Article 18 of the Vienna Convention on the Law of Treaties, of which the US is a signatory:

A State is obligated to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty...until it shall have made its intention clear not to become a party to the treaty.

It should be noted, however, that it was legally unnecessary for the US to take this action. As a signatory, the US government was in no way obligated to cooperate with the ICC and the only responsibility it incurred was not to actively defeat the object and purpose of the treaty. Because the US has always supported the basic principle that those who commit atrocity crimes should be held accountable internationally, its signature did not create a legal conflict with the US decision not to become a state party. However, supporters of the nullification argue that there was a conflict in principle if not in law, citing comment (d) to section 312 of the Restatement of the Law Third Foreign Relations Law of the United States, which provides: "signature [of a treaty] . . . has no binding effect but is deemed to represent political approval and at least a moral obligation to seek ratification."

<sup>3</sup> Department of Defense "Secretary Rumsfeld Statement on the ICC Treaty" FDCH Federal Department and Agency Documents (May 6, 2002).

<sup>4</sup> Department of Defense "Secretary Rumsfeld Statement on the ICC Treaty" FDCH Federal Department and Agency Documents (May 6, 2002); DEMARCHE ON THE US GOVERNMENT POLICY ON THE INTERNATIONAL CRIMINAL COURT FROM SECRETARY OF STATE TO AMBASSADORS (May 6, 2002) on file with author.

<sup>5</sup> For example, they agreed not to give the Court "passive personality" jurisdiction, which would have expanded the Court's jurisdiction to include cases when the victim of an atrocity was the national of a state party.

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<sup>6</sup> *Id.* Art. 12(2). A non-party state can also consent to the Court’s jurisdiction over entire situations occurring in its territory under limited circumstances. *Id.* Art. 12(3), Rules of Procedure and Evidence Rule 44(2).

<sup>7</sup> *Id.* Preamble, Art. 5(1).

<sup>8</sup> “Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. *Id.* Art. 30(1).

<sup>9</sup> “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.” *Id.* Art. 8(1).

<sup>10</sup> *Id.* Art. 17.

<sup>11</sup> *Id.* Art. 15(3).

<sup>12</sup> *Id.* Arts 41(2)(a), 42(7).

<sup>13</sup> *Id.* Arts. 41(2)(c), 42(8).

<sup>14</sup> *Id.* Art. 36(7).

<sup>15</sup> *Id.* Art. 42(2).

<sup>16</sup> *Id.* Art. 18(1).

<sup>17</sup> *Id.* Art. 19.

<sup>18</sup> *Id.* Art. 18(2).

<sup>19</sup> *Id.* Art. 46.

<sup>20</sup> *Id.* Art. 112.

<sup>21</sup> *Id.* Art. 16.

<sup>22</sup> *Id.* Arts. 5(2), 121, 123.

<sup>23</sup> *Id.* Art. 5(2).

<sup>24</sup> UN Charter Art. 24(1).

<sup>25</sup> *See, e.g.*, *Ntakirutimana v. Reno*, 184 F.3d 419 (1999), in which extradition of a Rwandan citizen to the ICTR was allowed even in the absence of an extradition treaty.

<sup>26</sup> *See* discussion in § II.2, *above*.

<sup>27</sup> *See* II.1, *above*.

<sup>28</sup> *Id.* Art. 112(7).

<sup>29</sup> *Id.* Art. 112(7). Decisions on substantive matters require a two-thirds majority.

<sup>30</sup> For the perspective of a country that has searched long for a workable peace, see the remarks of Sierra Leone at the UN 6<sup>th</sup> Committee, Nov. 12, 2001: “While it was clear that the ICC would not have jurisdiction over crimes committed in Sierra Leone, the negotiations for its establishment created greater awareness in the international community with respect to the principles of international criminal justice and the significant role that accountability can play in the consolidation of peace and reconciliation. That awareness, we believe, has motivated the current negotiations for establishment of a Special Court for Sierra Leone.”

<sup>31</sup> Ironically, this is the argument opponents often use to disparage the usefulness of the Court.

<sup>32</sup> ICC Statute Art. 16.

<sup>33</sup> *Id.* Art. 53(1)(c), 2(c). The Pre-Trial chamber reviews this decision.

<sup>34</sup> *Id.* Art. 124.

<sup>35</sup> *Id.* Art. 127.

<sup>36</sup> *Id.* Art. 121(5).