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The Responsibility to Protect and the International Criminal Court: America's New Priorities

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The Responsibility to Protect and the International Criminal Court: America's New Priorities

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Responsibility to Protect

Center for International Human Rights, Northwestern University School of Law

The Center for International Human Rights (CIHR) at Northwestern University School of Law's Bluhm Legal Clinic focuses on reaching and addressing emerging human rights norms and related issues as well as providing valuable clinical experiences for students interested in the protection of human rights on a global scale. CIHR sponsors events throughout the year in issues and litigation concerning international human rights and criminal law. It focuses much of its work on the Responsibility to Protect doctrine, corporate human rights responsibility, the jurisprudence of the international criminal tribunals, Alien Tort Statute litigation, death penalty cases, truth and reconciliation commissions, and issues related to the forthcoming review conference of the International Criminal Court. For further information about the please contact Ms. Catherine Peterson at the Center for International Human Rights, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, Illinois 60611. The CIHR's website can be accessed at www.law.northwestern.edu/humanrights/.

The Responsibility to Protect (R2P) Coalition is a non-partisan, non-profit grassroots organization. The mission of the R2P Coalition is to convenience the American people and its leaders to embrace the norm of the responsibility to protect as a domestic and foreign policy priority; to convince the United States that it must demonstrate its commitment to effectively upholding global human rights by joining the International Criminal Court; and to convince civil society leaders that the United Nations and the International Criminal Court must be empowered with a legitimate and effective deterrent and enforcement mechanism to arrest indictees of atrocity crimes. The Coalition is comprised of a core group of prominent academic, legal, and religious organizations that provides guidance and oversight on how to best achieve R2P-appropriate action. For further information, please contact the R2P Coalition at 611 Enterprise Drive, Oak Brook, IL 60523 or visit www.r2pcoalition.org.

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Summary

The December 2007 conference on "The Responsibility to Protect and the International Criminal Court: America's New Priorities" was the most in-depth discussion to date on how the Responsibility to Protect Doctrine (R2P) can be advanced with greater American participation in the International Criminal Court (ICC). Much attention has been paid to advancing the diplomatic, economic and military aspects of R2P, but this conference was the first of its kind to consider the judicial element of the Responsibility to Protect doctrine. The conference also focused discussion on the development of an international framework to empower the International Criminal Court with a mechanism to enforce its judgments – an International Marshals Service. This is a capacity that the Court currently lacks and that gap in enforcement has greatly strained the ability of the Court to achieve custody of indicted fugitives, particularly where States fail to cooperate with the Court's requests.

As the international community is witnessing around the world, and particularly in parts of Africa, Asia and Latin America, atrocity crimes of the most conscious-shocking nature are being committed with impunity, despite the constant pledge resounding in many nations' capitals of "never again" allowing such situations to occur. R2P is a new and emerging framework grounded in the rule of law that aims to protect populations from genocide, crimes against humanity and war crimes. Conferees agreed that a discussion was needed on how to devise useful and pragmatic strategies on what steps the United States could take domestically, and with other international institutions, to implement R2P judicially. Conferees felt that a nexus exists linking the R2P with the ICC through the moral commitment guiding both to address and ultimately eradicate situations of atrocity crimes.

Conferees also felt that justice and peace were complementary, and that a comprehensive peace process must strike the right balance of meeting the highest standards of international legal norms and procedures while also maintaining respect for the cultural and political sensitivities of the societies affected. Accordingly, the ICC falls within this comprehensive legal approach, and conferees agreed it is time to broaden domestic awareness in and support for greater American involvement in the Court. Specifically, conferees strongly felt that common American misperceptions - particularly among officials at the Department of Defense and members of Congress - about the Court must be corrected.

Select key findings and recommendations summarized in subsequent sections of this report are listed below:

Political Issues on ICC and R2P

- There is clear need for serious research and thoughtful policy analysis for government officials, academics, civil society, and others concerned with advancing the issues of R2P and the ICC, as well as broad community dialogue and engagement.

- An information campaign is needed to build broad-based American support for the greater participation in the international judicial intervention aspects of R2P, and specifically in the ICC, that must address a wide variety of political, legal and attitudinal issues. When crafting the campaign message, advocates must capitalize on the dynamic of "change" taking place in the current U.S. political environment by communicating that R2P and the ICC are wholesale changes in the standard policies and practices of protecting innocent civilians and preventing atrocities from occurring.

- The United States should seek to identify measures it can responsible take to prevent the commission of atrocity crimes against civilian populations. These steps include, as part of such an effort, the ratification of or accession to, implementation of, and compliance with relevant international legal instruments.

- The U.S. should engage in the anticipated 2010 Review Conference of the Rome Statute, and in particular it must participate in the Special Working Group on the Crime of Aggression.

Addressing Military Concerns

- A strategy must be undertaken to better educate the military community to understand that the Court can assist the United States in addressing strategic national interests and meeting U.S. military goals.

- An education campaign must focus initially on high-level commanders. Education strategies must focus on providing a better understanding of what are the real vulnerabilities that the military might face in being brought before the Court and how compliance with U.S. laws may address their concerns about being subject to international courts such as the ICC.

- The United States should evaluate the secondary effects of U.S. non-party status and the continuing pursuit of Article 98(2) agreements world-wide in order to identify adverse ramifications in areas vital to U.S. national interests and in America's ability to conduct military operations.

Creating an ICC Enforcement Mechanism

- In creating an international framework akin to an International Marshals Service, a number of key factors in the development of such an enforcement mechanism for the Court must be considered. These include 1) state responsibility principles to arrest and handover; 2) entities that can effect an arrest; and 3) challenges ahead (cost vs. benefits, political will, state consent, intelligence sharing, non-permissive environments and U.S. engagement).

- Of the variety of compliance mechanisms considered during the conference, participants recommended a specialized international task force focused on the problem of enforcement for the ICC. This task force would be a *group* of either *standing* or *ad hoc* character, composed of military and law enforcement personnel from States, with perhaps either a U.N. or ICC affiliation. The task force would trade expertise on strategies for arrests and explore which governments or alliances or organizations might have an interest in effectuating arrests without having to commit in advance to arresting any particular indicted fugitive.

With respect to atrocity crimes, America's future relationship with the world needs to be guided by the principles of prevention, cooperation, multilateralism, burden sharing, fighting impunity, respect for the rule of law, and the use of military force only as a last resort. This report summarizes the strategy discussed by the conferees and lists recommendations for how the United States can advance the judicial aspects of the Responsibility to Protect Doctrine, re-engage with the International Criminal Court, and conceptualize an enforcement mechanism for the Court.

Introduction

Over the course of the past five years, the international community has adopted, with varying degrees, two related means for responding to and preventing the atrocity crimes of genocide, crimes against humanity, war crimes and ethnic cleansing. The first is the "Responsibility to Protect Doctrine" (R2P), which the U.N. General Assembly adopted - with U.S. endorsement - in September 2005. R2P mandates effective responses to widespread assaults on civilian populations at the national level first but, if necessary, through collective international action. Many focused on R2P implementation have sought to apply the doctrine in country specific cases and have considered a range of political, economic, diplomatic, and military intervention options. What has been absent from these debates, however, is any serious discussion on the judicial arm of R2P, i.e., when an international judicial response can either support or replace military options.

In order to move away from ad hoc, unilateral, and politically-driven military and diplomatic interventions to an enduring and legitimate judicial deterrence and enforcement, policy makers and others considering R2P-appropriate actions for atrocity crimes should look to solutions within the international criminal justice system. More specifically, R2P supporters should seek, when appropriate, to imbed the R2P doctrine in the global judicial path being forged by the International Criminal Court (ICC), a fresh hallmark in international relations for responding to and preventing future deadly conflicts. R2P and the ICC are both guided by the same moral commitment to address and ultimately end atrocity crimes, and that moral commitment is the nexus that should underpin advocating necessary changes in the national discourse of U.S. foreign policy.

The next American presidential administration which begins work in 2009 provides an opportunity to reaffirm key priorities for America: justice, the rule of law, human rights, and the end of the most heinous crimes known to humankind. The groundwork has been laid already. In September 2005, the United States joined consensus on the U.N. General Assembly's adoption of the World Summit Outcome Document, which articulated R2P. Shortly thereafter, in Security Council Resolution 1674 of April 26, 2006, which focused on the protection of civilian populations, U.S. officials endorsed reference to the R2P provisions of the World Summit Outcome Document as critical to that objective. Until 2001, the United States had a relatively positive history of involvement with the ICC. Throughout the U.N. negotiations on the Court that formally began in 1995 and culminated with the Rome Statute on the ICC in July 1998, the United States strongly supported the establishment of a permanent international criminal tribunal that would bring to justice those responsible for the commission of atrocity crimes. Though the

United States opposed the final draft of the Rome Statute due to certain issues not being properly addressed in that draft, during 1999 and 2000 the United States actively participated in further negotiations and joined consensus on the Rules of Procedure and Evidence and on the Elements of Crimes adopted in June 2000. On December 31, 2000, the United States signed the Rome Statute of the ICC. But the Bush Administration determined that it would not support the Court and on May 6, 2002, President George W. Bush took the unprecedented step of denying the enforceability of the U.S. signature on the Rome Statute.

Nonetheless, there are alternative views that American engagement with the Court remains important for the long-term success of the Court and for the achievement of U.S. foreign policy objectives. On December 5-7, 2007, the Center for International Human Rights at Northwestern University School of Law and the Responsibility to Protect Coalition convened a conference, entitled *The Responsibility to Protect and the International Criminal Court: America's New Priorities*, with those aims in mind.

Fifty-five leading experts from the ICC, the International Criminal Tribunal for the Former Yugoslavia, academia, nongovernmental organizations, the military, religious communities, and the federal court system attended the conference. Keynote addresses were delivered by *Samantha Power*, Harvard University's Anna Lindh Professor of Practice of Global Leadership and Public Policy, *Luis Moreno-Ocampo*, chief prosecutor for the International Criminal Court, *John Prendergast*, director of the ENOUGH Project, *Prince Zeid Ra'ad Zeid Al-Hussein*, Jordan's Ambassador to the United States and the former President of the Assembly of States Parties of the ICC, and *U.S. Army General Wesley Clark (ret.)*, former NATO Supreme Allied Commander.

The goal of the conference was to formulate recommendations on how the United States should take steps domestically and with other governments and international institutions to advance the R2P principle through the work of the ICC. Within this framework, the conference focused on three issues:

1. *The Political Strategy for American Cooperation/Participation re ICC*
2. *The Military Strategy for American Cooperation/Participation re ICC*
3. *The Political and Military Strategy for Development of an International Marshals Service*

This report is the outcome of the conference. It lays out specific recommendations on how to raise awareness on the international justice elements of R2P, develop constructive support for U.S. participation in the ICC, and lay the foundations for an institutional enforcement mechanism for the Court.

I. Background - Laying the Foundations for Ending Atrocity Crimes

1.1 The Responsibility to Protect Doctrine – From Emerging Norm to Implementation

In September 2000, the Government of Canada created the International Commission on Intervention and State Sovereignty (the "Commission") to undertake the two-fold task of reconciling the international community's responsibility to address massive violations of human rights with the need to ensure respect for the sovereign rights of nations. Triggered by the failures to intervene in Rwanda and Srebrenica and in the wake of the atrocities of Somalia, Bosnia, Burundi and Kosovo, the purpose of the report was to attempt to end the deadlock between those in favor of and those opposed to so-called "humanitarian interventions". The Commission, led by Gareth Evans, former Foreign Minister of Australia, and Mohamed Sahnoun, Special Advisor to the UN Secretary-General, issued its groundbreaking report in December 2001.

Focusing on the *right of humanitarian intervention*, it examined when, if ever, it is appropriate for states to defy the long-standing concept of state sovereignty and take coercive action against another state for the purpose of protecting populations at risk. The Commission concluded that when a group (or groups) of people is suffering from egregious acts of violence resulting from internal war, insurgency, repression or state failure, and the state where these crimes are taking place is unable or unwilling to act to prevent or protect its peoples, the international community has a moral duty to intervene to avert or halt these atrocities from occurring, including the use of force.

The responsibility and action envisioned in the Commission's report is three-part: the *responsibility to prevent* mass atrocities from occurring; the *responsibility to react* once atrocities occur; and the *responsibility to rebuild* in the aftermath of atrocities. On the issue of military intervention, the report requires the international community first to use coercive measures short of military intervention, including diplomacy and targeted economic and military sanctions. However, if those efforts fail to halt the atrocities, the report then outlines six criteria for military intervention only in "extreme and exceptional cases" by defining guidelines such as just cause, evidence, right intention, last resort, proportional means and reasonable prospects of success.

As an international policy agenda item, the "responsibility to protect" doctrine received renewed emphasis in 2004 when the U.N. Secretary-General Kofi Annan created the *High-Level Panel on Threats, Challenges, and Change* to identify major threats facing the international community in the broad field of peace and security and to generate new ideas about policies and institutions aimed at preventing or

confronting these challenges. The work product of those year-long deliberations, a report entitled *A More Secure World: Our Shared Responsibility*, provided a new assessment of the obstacles for peaceful interstate relations and made concrete recommendations if these obstacles are to be met effectively through collective action.

In September 2005, the doctrine was once again strengthened, this time with the support of the international community. At the 60th session of the U.N. General Assembly gathering, 191 U.N. Member State governments joined consensus on a resolution (the World Summit Outcome Document) supporting the Responsibility to Protect Doctrine. This resolution laid the foundations for a new global moral compact between every State and every population on Earth. As adopted, atrocity crimes are considered a universal concern and therefore are the responsibility of each State towards its own population and of the international community acting through the Security Council. R2P has two broad implications for the international system. First, in the context of atrocity crimes, the focus is no longer on States' sovereign rights, but also on their responsibilities. Second, States have responsibilities not only with regard to other States but also towards populations, including the civilian populations of other States.

Building upon the momentum of the World Outcome Summit endorsement, the U.N. Security Council affirmed R2P in Resolution 1674 (April 28, 2006), which focuses on the protection of civilians in armed conflicts. It was the first instance in which the Security Council endorsed R2P, a step that has a major significance since it is the global body with the primary responsibility for dealing with threats to international peace and security, including atrocity crimes. Although the scope of the Security Council resolution is not meant to focus specifically on the responsibility to protect, Resolution 1674 requires specific steps to be taken by States and the international community in order to protect civilians. These include:

- To end impunity and prosecute those responsible for atrocity crimes;
- To ensure that the mandates of peacekeeping, political and peace building missions include *where appropriate and on a case-by-case basis*, provisions regarding the protection of civilians and clear guidelines on what missions can do to achieve this goal.

1.2 The International Criminal Court – The World's First Permanent Criminal Tribunal

As World War II came to a close, the Allied Powers established the International Military Tribunal at Nuremberg (1945) and the International Military Tribunal for the Far East (1946) to try Nazi and Japanese war criminals for crimes against peace, war crimes, and crimes against humanity. From

these two milestones in international justice have come further manifestations of an emerging trend in international criminal law. In 1993 and 1994, the Security Council established two *ad hoc* tribunals – the International Criminal Tribunals for the former Yugoslavia and Rwanda. The international community regarded the Yugoslav and Rwandan conflicts as threats to international peace and security, and the tribunals, in turn, were regarded as a means of rendering justice and enhancing the peace by identifying those specific individuals responsible for war crimes

Indeed the two *ad hoc* tribunals have greatly helped define a new era of international justice and the rule of law, but because these courts are *ad hoc* instances of international justice, there is little interest in regarding them as the ideal type for a global criminal justice system. The international judicial movement will fail to be meaningful if it continues to be centered on *ad hoc* means of reacting to new waves of atrocity crimes. Since the wheel is reinvented anew with each recognized atrocity situation, investigations become enormously costly, and the expense that the international community must bear in the creation and operation of these one-off tribunals tends to weaken the political will required to mandate them.

In response to these and other criticisms, a permanent institution has been established that can move beyond the challenges of the ad hoc international justice system to create the only lasting international court capable of trying individuals accused of genocide, war crimes, and crimes against humanity when there is no other recourse for justice. Established in 2002, the ICC is a permanent tribunal created to prosecute perpetrators of atrocity crimes. The ICC became operational on July 1, 2002, the date its founding treaty, the Rome Statute, entered into force with more than 60 ratifying States Parties. As of November 2007, 105 nations were members of the ICC; an additional 41 countries signed but have not yet ratified the Rome Statute. As the new guardian of international humanitarian and criminal law, the ICC aims to end impunity for atrocity crimes.

II. Building Political Support for the International Criminal Court

2.1 Understanding the Common Threads of R2P and the ICC

The Responsibility to Protect Doctrine is a moral and ethical imperative that seeks to end atrocity crimes. While R2P offers a full range of measures for dealing with crimes against humanity, war crimes, and genocide, there has been no significant policy discussion on the punishment and accountability aspects of R2P. The doctrine significantly changed expectations at all levels about what is and is not acceptable conduct by States, and yet it is important to recognize that justice and the rule of law are significant components of the R2P matrix.

The United States should strengthen its relationship with international and hybrid criminal justice institutions so that it can cooperate quickly and effectively with courts and tribunals in preventing mass atrocities. In particular, the ICC merits greater support from the United States if R2P is to be constructively advanced by the U.S. Government. International consensus for the ICC is still growing, and the R2P concept can help build this consensus. As R2P is a mechanism concerned with prevention, protection, and rebuilding in situations of wide-spread atrocities, so too is the ICC focused on deterrence, hostility, cessation, and reconciliation in those same kinds of situations. Furthermore, R2P's requirement to defer first to State sovereignty and then act if and when that State fails to demonstrate good faith in ending the violence, is also a critical element of the Rome Statute. By signing the ICC's founding Rome Statute, a State agrees to the principle of complementarity, in which the ICC assumes jurisdiction over a case only when the State is unwilling or unable genuinely to carry out the investigation or prosecution.

As a new and emerging framework in interstate relations, R2P is grounded in the rule of law that builds on the international legal and judicial systems. It is not, however, a legal construct that imposes legal responsibility on States or international organizations that fail to uphold R2P criteria. Rather, it shares with the ICC a moral commitment to ending atrocity crimes.

2.2 Changing U.S. Foreign Policy Perspectives

The American public is justifiably concerned about America's and the international community's continued failure to deal effectively with atrocity situations. Darfur's nightmare and the violence in the Democratic Republic of the Congo, Uganda, and the Central African Republic, continue. Iraq and

Afghanistan remain hostile and complex and U.S. conduct at detention centers in Guantanamo, Iraq, Afghanistan and elsewhere, as well as the conduct of U.S. contractors like Blackwater and DynCorp, all point to the need to re-think U.S. strategies for engaging in and ending wide-scale conflict. With the U.S. presidential elections approaching, America is in a moment of serious political self-reflection. The United States should seek to re-cast its image both at home and abroad in order to distance itself from the perception (however ill conceived) that America is the rudderless (even lawless) super power and begin to conduct itself as the leading global power advancing global interests for the betterment of humankind. This transformation would emphasize cooperation, multilateralism, respect for rule of law, and a concerted effort to join the fight against impunity for atrocity crimes.

In the aftermath of September 11, 2001, America's leaders have seemed determined to wage a war against terrorism that leaves the impression, if not the reality, that the United States is prepared to circumvent international law. A step in the right direction would be to move away from this posture of hostility to international commitments and bring the United States back inside a pragmatic and yet still principled framework of international law.

The United States can be a 'good neighbor' to the Court even if it does not yet become a State Party. At a time when respect in the international community for America is at an all-time low, a positive re-engagement with the Court is a winning proposition for the United States. Through its role on the Security Council, it can refer under U.N. Charter Chapter VII authority the cases that it agrees the ICC should investigate and prosecute, as with the situation in Darfur. The United States also can participate as an observer in the Court's oversight body--the Assembly of States Parties--to influence the Court's development. For example, many conferees strongly believe that America needs to be at the table in some capacity during the discussions on the crime of aggression.

2.3 Advancing a New Foreign Policy Agenda

A majority of the American public believes that the United States should play an active role in addressing international issues through multilateral processes. Moreover, public opinion polls consistently show strong American support for U.S. membership in the ICC. This level of emotional support is broad but passive, and an awareness raising campaign is needed to turn this public opinion into a driving force in the political process. A campaign to build broad-based American support for the greater participation in the international judicial intervention aspects of R2P, and specifically in the ICC, must address a wide variety of political, legal and attitudinal issues. In developing an information campaign strategy, the following factors should be considered:

- It is essential to get the public message right, because the costs of poorly devised and implemented foreign and domestic policies choices will ultimately have to be borne by the American public. The R2P and ICC platform lies on the power of good argument to convince the public that a foreign policy which is right, and which is just, is equally in their personal interest.

- Digital communication services, such as email, blogs, and text messaging, are critical tools for advocacy in the 21st century. In order to respond to these trends, specific measures should be simple even in the face of complexities: for example, "war criminals should be brought to justice" or "justice leads to peace" or "R2P ends atrocity crimes."

- When crafting the campaign message, advocates must capitalize on the dynamic of "change" taking place in the current U.S. political environment by communicating that R2P and the ICC are wholesale changes in the standard policies and practices of protecting innocent civilians and preventing atrocities from occurring. The message needs to illustrate that the new way of thinking means a new way of protecting. The high-level adoption of R2P in the U.N. General Assembly's World Summit Outcome Document in 2005, for instance, was greeted by experts as a "turning point" that removed "some of the classic excuses for doing nothing."

- Public endorsements of R2P and the ICC by key politicians, civil servants, and government officials are a good way to increase visibility and recognition with the American public, especially where the proponents are well-regarded public figures with a clear personal commitment to the norm.

- Getting the public to accept R2P as a principle is one thing; garnering support for a commitment to greater participation in the ICC it is quite another. The message therefore must recognize the strength and the resonance of the key common denominator - it is moral argument for ending atrocity crimes. The message must also clearly convey to the public that adherence to international justice and the rule of law are a critical component of R2P and that the ICC can put those elements of the doctrine into operation.

2.4 Carrying the New Agenda Forward

There is clear need for serious research and thoughtful policy analysis for government officials, academics, civil society and others concerned with advancing the issues of R2P and the ICC, as well as broad community dialogue and engagement. Key U.S. foreign policy stakeholders must be engaged to further an information campaign and help develop strategies to advance R2P and the ICC nationally and internationally. The target audience for such a campaign should be a broad selection of the following audiences:

- *Engaged Organizations:* A coalition of dedicated advocates from civil society, government officials, and international organizations are actively seeking ways to address atrocity crimes, and that developing alliance and intellectual capacity should be a focus on which to build a national policy program that advances R2P and the ICC. A core group of international NGOs in New York

and Washington, D.C.--AMICC, International Crisis Group, Human Rights Watch, Human Rights First, the World Federalist Movement, and the Stimson Center--are working on ICC and R2P-related issue areas. At the domestic level, The R2P Coalition has been working to convince the American people and its leaders to embrace the norm of R2P as a domestic and foreign policy priority. The Global Centre for the Responsibility to Protect was recently created by key supporters from government, NGOs, and academia to ensure that R2P doctrine is understood and put into practice by governments and at the United Nations.

- *Special Task Forces:* The Genocide Prevention Task Force, comprised in part of former top U.S. officials, seeks to develop practical recommendations to enhance the U.S. government's capacity to respond to emerging threats of genocide and mass atrocities.

- *New Allies*: New civil society allies should be enlisted to promote R2P and the ICC, including faith and religious organizations, student groups, labor unions, foreign affairs institutes, journalists, and political party institutes.

- *Congress:* Advocates must develop outreach strategies at the federal level that raise awareness of the ICC and assist with the process of accession to and domestic implementation of the Rome Statute. Several measures can be advanced with the support of key members of Congress including:

    - Launching a series of hearings in Congress to support measures for a greater understanding of the work and jurisdiction of the Court and participation in the ICC.

    - Adopting a “sense of Congress” resolution that puts the federal legislature behind R2P and the ICC and identifies specific implementation measures.

    - Capitalizing on the progress being made in Congress to modernize the federal criminal code through the enactment of the Genocide Accountability Act of 2007 and with the positive developments of such key legislation as the Child Soldiers Accountability Act and the Trafficking in Persons Accountability Act. Further work is required in this regard to amend Titles 10 and 18 of the U.S. Code so that the full range of crimes against humanity and war crimes can be prosecuted in federal and military courts without any question as to the ability of such courts to exercise complete subject matter jurisdiction over such international crimes.

- *Executive Level:* In order to influence the executive branch, efforts should focus on getting R2P and the ICC into the platforms of presidential candidates in a very general manner. A focused discussion on the issues surrounding greater participation in the ICC could very likely create an opportunity for some candidates to inject popular prejudices and false claims in order to gain power. The better focus would be to talk about accountability, ending atrocity crimes and reestablishing America's moral leadership in the world through multilateral initiatives, beginning with America’s international commitments such as the Rome Statute of the ICC and the Kyoto Protocol (and/or successor treaty).

III. The Military Strategy for Greater U.S. Engagement in the ICC

3.1 Justifying U.S. Participation in the ICC with the Military

American re-engagement with the ICC would have potential implications in a number of areas for the U.S. military. These areas include but are not limited to national security decision making, training, support roles, and rules of engagement. While many officials at the Department of Defense have feared exposing U.S. military personnel and officials to the jurisdiction of the ICC, multiple possible avenues for moving beyond the current thinking within military circles to a more constructive engagement with the ICC exist and should be explored further.

The current U.S. political leadership has been the driving force behind military opposition to the ICC. Building a consensus on ICC-supportive positions within the military will facilitate the process of advancing the merits of ICC-related policies at the federal and executive levels of government. To achieve this consensus, the military community must recognize that the ICC is now a reality and, rather than acting to undermine the work of the ICC, the United States can advance national interests (and the interests of U.S. military personnel) by joining the Court and helping it fulfill its stated purpose - prosecuting individuals who commit the most egregious international crimes. Critics must also realize that under international law, military officials can already be prosecuted by any country, wherever they are captured (unless a Status of Forces Agreement requires or permits U.S. enforcement); thus, the jurisdictional reach of the ICC should appear less foreboding and uniquely omnipotent. Also, under one reading of the Rome Statute there remains the risk that it theoretically would be possible for a U.S. national to be prosecuted before the ICC while the United States is a non-party State to the Rome Statute if he or she is an alleged perpetrator of a crime falling within the jurisdiction of the ICC and such crime occurs on the territory of a State Party to the ICC.

3.2 Defining the Issues – Making the ICC a National Interest Issue

Many within the military community believe that the ICC cannot assist the United States in addressing a strategic military problem or meeting U.S. military goals. Therefore, the most effective way to enhance military confidence in the ICC is by educating troops, military experts, and individuals within the military justice community on what the ICC was established to do and how it works on an operational

level. The ICC's complementarity provisions provide an opportunity for demanding that U.S. authorities - not the ICC- have the opportunity to investigate and prosecute alleged crimes committed by American military personnel. Moreover, by making the necessary changes to U.S. law, America demonstrates to its skeptics that it can and will investigate and prosecute such allegations.

Securing international support is increasingly important for advancing U.S. security interests. America's ability to maintain its place as a credible and effective leader in the 21st century hinges in no small measure on its willingness to lead with and through other nations. Consequently, U.S. military power is more effectively employed when its actions are endorsed as consistent with international norms and when U.S. forces act in coalition and in conjunction with other nations and international institutions. Therefore, it is in this broader context that the current military objections toward the ICC should be reconsidered.

The current Administration's position to require full exemption from the ICC's jurisdiction for officials, agents, and citizens of the United States and of other governments as long as they are not party to the Rome Statute contravenes basic axioms of fairness and reciprocity. The Rome Statute imposes important checks and restrictions on its own behavior. These include the provision of complementarity, which provides for repeated opportunities for the State of primary jurisdiction to preempt and challenge ICC proceedings, and enhanced due process protections for the accused. The most important restraint on the power of the ICC is the principle of reciprocity itself. Any State that joins the ICC, and thereby shapes its direction through the selection of judges and prosecutors, understands that it makes its own citizens and leaders subject to the Court's prosecution. Member States of the ICC understand that unscrupulous procedures which they may tolerate in the treatment of other countries' citizens become precedents that may end up being used against their own citizens.

3.3 Gradually Engaging the Military

As the work of the ICC moves forward and as U.S. armed forces operate in difficult places such as Afghanistan and Iraq where insurgents do not necessarily heed international humanitarian law or the laws of war, the U.S. military must better understand how it can relate to the ICC. Many from the senior leadership and from lower ranks of the military have only a rudimentary understanding of how the ICC is designed to operate. Even within the legal and educational communities, knowledge about the ICC is scant and basic. A gradual engagement program is needed to ensure that concepts of the ICC are being taught and that a general attitudinal comfort with the Court emerges.

The U.S. military is a well-defined, hierarchical structure; decision-making is rigid and leader-oriented. Because most of the major decisions are taken at the highest levels of command and then transmitted down to the lower levels, these leaders must be convinced that participation with the ICC is not anathema to U.S. interests. The arguments that have been previously offered to U.S. military personnel generally have not addressed issues that directly concern military leaders. A clear strategic argument that reduces the fear and anxiety of American military leadership and provides an obvious service internationally is needed. A better understanding must be articulated about the real vulnerabilities that the military might face before the ICC and how compliance with U.S. laws, including the Uniform Code of Military Justice, and conduct consistent with rules of engagement in any particular conflict would address their concerns about being exposed to the jurisdiction of international courts such as the ICC.

More information is also needed during lower-level troop training. War college curriculums must integrate more detail about the ICC, and larger parts of lectures on the laws of war and international humanitarian law must be devoted to the ICC. To further a military education effort, an 'educational tool kit' should be developed to shape the training that troops receive. Such a tool kit would be offered to Judge Advocate General (JAG) schools, war colleges and officials responsible for training programs in the Department of Defense with the goal of building a broader and uniform understanding of the work of the ICC and its limitations. Individuals within the JAG community, professors, and former officers that have expertise in the ICC should be resources for developing educational materials.

An independent, high-level panel should be established to more fully evaluate the military concerns with the ICC and how the United States should proceed in light of these concerns. This panel should have a mandate to recommend how the United States should relate to the ICC and what role it should play in advancing the work of the Court.

IV. The Political and Military Strategy for Development of an International Marshals Service

4.1 The Problems of Enforcing ICC Judgments

The current ICC investigations underway have highlighted a number of difficulties faced by the Prosecutor, Luis Moreno Ocampo, and his staff. The greatest problem for the ICC currently is how to ensure the arrest and surrender of individuals sought by the Court. The difficulties faced by the Office of the Prosecutor (OTP) are immense and real. OTP staff must arrest criminals in the context of ongoing conflict or seek fugitives who enjoy sanctuary in vast wilderness terrain, enjoy the protection of armies or militias, or are shielded by members of governments complicit in the conflict.

The credibility of international humanitarian law demands that the ICC hold accountable those responsible for committing atrocity crimes. The ICC, as currently conceived, lacks a standing mechanism dedicated to ensuring compliance with its judgments. Rather, it relies on the governments in the countries in which it is investigating to provide for the enforcement assistance it needs, which includes protecting its investigators and witnesses, collecting evidence, and arresting suspects. When State compliance fails, the ICC requires support from the international community and the U.N. Security Council.

As we have witnessed during the ICC investigations in Uganda, the DRC, and the Darfur region of Sudan, states have failed to meet their international obligations to search for and arrest war criminals in the context of crimes within the jurisdiction of the ICC. Some kind of mechanism should be available to facilitate government cooperation to ensure that the ICC can forge ahead in the pursuit of justice. Conferees undertook a serious examination of the issues that would arise in developing such a mechanism. In creating an international framework akin to an International Marshals Service, the following factors were considered:

State Responsibility Principles to Arrest and Handover - Determining procedurally what must be considered for the arrest or surrender of a fugitive does not have to be a complex exercise. Principles of international cooperation in detecting, arresting, extraditing, and punishing of persons guilty of atrocity crimes exist that can aid in understanding the rules and modalities of the arrest and surrender of fugitives. These include the principles defined in the Nuremberg Charter, the Universal Declaration of Human Rights, U.N. Charter, Geneva Conventions, the Rome Statute, and the various *ad hoc* tribunal statutes.

Entities that can effect an arrest - When it comes to wide-spread atrocity crimes, the ICC is virtually the last resource between accountability and impunity. There should be no safe haven for fugitives of justice, especially when those criminals are masterminds of the world's worst crimes. To ensure that the ICC meets its moral duty within the international criminal law system, the complex challenge of enforcing the law can be surmounted. A variety of institutional possibilities currently exist that can serve for determining an appropriate kind of ICC police force or International Marshals Service. These entitles have some level of knowledge and expertise in effecting arrests and apprehending criminals.

On the military front, the international community can look to domestic military and law enforcement forces, regional models like NATO and the African Union, and international operations such as U.N. peacekeeping missions. To gather the necessary political support for a formal means of enforcement, policymakers, advocates, and government officials should aim to consult with members of the U.N. Security Council, the Member States of the ICC, INTERPOL, and regional organizations that have a security mandate or an obvious political interest in the conflict.

Challenges Ahead - To function effectively, international courts such as the ICC, the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and the Special Court for Sierra Leone rely primarily upon States' and other stakeholders' readiness to cooperate. Yet the international community has witnessed States failing to meet their international legal obligations to take the necessary measures to cooperate in the detection, arrest, and extradition of persons suspected of crimes that fall within the jurisdiction of these courts. It is highly likely therefore that the negotiation and approval of potential substantive and procedural mechanisms that might influence States to give effect to their international obligations will also encounter a number of challenges in many State capitals.

The international community increasingly is endorsing the practice of cooperation through incentive, particularly when the benefits of entering or complying with an international agreement have to be weighed against higher perceived costs. Depending upon the institutional arrangement envisioned, States will have to perceive that the *benefits outweigh the costs* and that the option of simply neglecting to enforce the rule of law is not available. To accomplish this goal, the chosen mechanism could create incentives for governments to enforce the rule of law, create political costs for their failure to do so, or minimize the role of political externalities in an enforcement process. Furthermore, an enforcement mechanism must overcome governmental inaction caused by a *lack of political will and resolve*.

Another challenge for the creation of an enforcement mechanism for the ICC concerns the *issue of consent*. In the territory of one State, the general rule is that a second State or entity cannot take enforcement measures, that is, it cannot search for and arrest suspected war criminals, without the consent of the territorial State. The exercise of criminal jurisdiction by one State within the sovereign territory of another State is a highly controversial issue in international law. The arrest and trial of a person suspected of an atrocity crime who is in a State that fails to either prosecute or extradite, therefore, poses especially difficult problems because that State is likely not going to consent to enforcement measures by an international or regional legal body.

Any international police force or marshals service will also have to determine a *process for intelligence sharing* with States involved in the ICC's investigations. In many instances during the course of ICC investigations in Uganda and the DRC, OTP staff have relied on States' cooperation to provide intelligence vital to investigations that ultimately was not forthcoming. Therefore an intensified focus on cooperation for an International Marshals Service in the collection and exchange of information will contribute to the detection, arrest, extradition, trial and punishment of persons guilty of war crimes and crimes against humanity. An enforcement mechanism also will be tasked with providing assistance in *non-permissive environments*, either because the territorial State does not give consent or the Court's investigations will be underway during complex humanitarian emergencies.

4.2 Schemes for ICC Enforcement

The International Criminal Court has been operational for nearly five years and its practice already testifies to the limitations it faces because it lacks a mechanism that will induce compliance. A variety of compliance mechanisms were considered during this conference. Conferees discussed what the implications would be if the status quo remained, if the capacity to arrest was enforced under U.N. Security Council Chapter VII authority; if a regional alliance or organization like NATO or the African Union would provide a feasible solution, or if a purely international marshals service, functioning in the same capacity as the U.S. Marshals Service, would most effectively serve the ICC. Also under consideration was a permanent or *ad hoc* task force expertise on a range of technical, procedural and legal matters that would to provide assets necessary to intervene and deal with situation, permissively or non-permissively. Finally, the group identified and discussed other possible mechanisms such as reward systems, sealed indictments, and States that would commit in advance to an enforcement regime.

Of the several options discussed, the group recommended further work on establishing a special task force that would address the arrest issue for the ICC. The task force would be a *multinational committee of experts* that is either *standing* or *ad hoc*, composed of military and law enforcement personnel from States, perhaps confined to Member States of ICC but perhaps open to non-party States as well. The task force would trade expertise on means of arrest and explore which State(s) might have the interest, capability, and political will to assist in effectuating arrest of particular indicted fugitives in accordance with the procedures established by the task force.

V. Next Steps and Conclusion

Several steps, which have been outlined in this report, still need to be taken to complete the strategy for engaging the American public, its leadership, and U.S. military personnel on R2P and the ICC. Specific tasks for refining the strategy include:

Political Issues on ICC and R2P

- Develop serious research and thoughtful policy analysis for government officials, academics, civil society, and others concerned with advancing the issues of R2P and the ICC, and engage in broad community dialogue.

- Design an advocacy campaign to build broad-based American support for greater participation in the international judicial intervention aspects of R2P, and specifically in the ICC. The message needs to illustrate that the new way of thinking means a new way of protecting.

- Identify the measures needed within the United States to prevent the commission of atrocity crimes against civilian populations. These measures include determining ratification, implementation, and compliance with relevant international legal instruments, including the Rome Statute.

- Advocate that the United States in some way must participate in the anticipated 2010 Review Conference of the Rome Statute, and in particular in the Special Working Group on the Crime of Aggression.

Addressing Military Concerns

- Develop a gradual engagement program with U.S. military personnel to ensure that ICC concepts are understood.

- Focus education strategies initially on high-level commanders. These strategies must provide a better understanding of what are the real vulnerabilities that the military might face in being brought before the ICC and how compliance with U.S. laws may address their concerns about being subject to international courts such as the ICC.

- Evaluate the secondary effects of U.S. non-party status and any sustained push for Article 98(2) agreements world-wide and identify adverse ramifications in areas vital to U.S. national interests and in America's ability to conduct military operations.

Creating an ICC Enforcement Mechanism

- Consider the following aspects in the development of an international framework akin to an International Marshals Service: 1) State responsibility principles to arrest and handover; 2)

entities that can effect an arrest; and 3) challenges ahead (cost vs. benefits, political will, State consent, intelligence sharing, non-permissive environments and U.S. engagement).

- The recommended approach for the problem of enforcement for the ICC is a specialized international task force either *standing* or *ad hoc*, composed of military and law enforcement personnel from States, including those party to the Rome Statute and perhaps non-party States. The task force would trade expertise on arrest means and explore which State(s) might have the interest, capability, and political will to assist in effectuating arrest of particular indicted fugitives in accordance with the procedures established by the task force.

The December 2007 conference on *The Responsibility to Protect and the International Criminal Court: America's New Priorities* focused on how R2P can be advanced with greater American participation in the ICC. The conference also examined the development of an international framework to empower the ICC with a mechanism to enforce its judgments, namely an International Marshals Service or a special task force serving the similar objective of achieving arrest of indicted fugitives of the ICC. The conference achieved its objectives in addressing these issues. Its most visible contribution lies in this report: a strategy for engaging the America public, its leadership, and the military community on the criticality of the ICC in the overall R2P challenge, and how to begin to devise an enforcement mechanism for the ICC. The emerging strategy needs to be completed and refined, building on past successful outreach efforts, so that current efforts to bring the ICC into American public, political, and military discourse are further strengthened. The conferees "activated" the judicial arm of R2P with pragmatic and effective proposals for U.S. engagement with the ICC, but much more work is required to realize this initial achievement. Conferees expressed the hope that they could be reconvened for future meetings to continue the effort. The Center for International Human Rights at Northwestern University School of Law and the Responsibility to Protect Coalition intend to follow through with further working sessions.

Appendices:

1. Conference Agenda.
2. Conference Participants.
3. U.N. General Assembly World Outcome Document (2005), pars. 138 and 139.
4. U.N. Security Council Resolution 1674 (2006).
5. List of States Parties to the Rome Statute of the ICC and of Non-Party Signatories as of March 2008.

Appendix 1

Conference Agenda

"The Responsibility to Protect and the International Criminal Court: America's New Priorities"

5-7 December 2007
Northwestern University School of Law

Wednesday evening, December 5, 2007
Dinner Session (by invitation only)
6:00 to 9:00 p.m.
Park Hyatt Hotel

Introductory remarks by Richard Cooper, Convenor of The Responsibility to Protect Coalition and Amb. David Scheffer, Professor of Law and Director of the International Center for Human Rights at Northwestern University School of Law.

Keynote Address by Samantha Power, author of *A Problem from Hell: America and the Age of Genocide* and the Anna Lindh Professor of Practice of Global Leadership and Public Policy, Harvard University's Carr Center for Human Rights Policy.

Thursday morning, December 6, 2007
Opening Remarks by John Prendergast
Vice Chairman, Enough Project

Session 1: *Recent Developments of the Responsibility to Protect (R2P) and the International Criminal Court (ICC)*
8:30 to 10:00 a.m.

Purpose: Discussion will focus on both the global application of R2P and ICC and their status in U.S. politics as well as on the linkage between R2P and the ICC.

Break: 10:00 a.m. to 10:15 a.m.

Session 2: *Developing America's Commitment to R2P and the ICC*
10:15 to 12:15 p.m.

Purpose: Discussion will focus on the development of a pathway to cooperation with the ICC, ratification of the Rome Statute, and the creation of an International Marshals Service (IMS).

Thursday Luncheon
12:30 to 2 p.m. (by invitation)

Introduction by Amb. David Scheffer

Keynote Address by HRH Prince Zeid Ra'ad Zeid Al-Hussein, Ambassador of Jordan and Permanent Representative to the United Nations, former President of the Assembly of States Parties to the International Criminal Court

Session 3: Break-Out Working Groups
2:15 to 5:15 p.m. (closed)

Purpose: To develop detailed proposals for advancing American commitments to R2P, the ICC, and an IMS, for presentation at Friday morning's session.

Working Group I: Political Strategy for American Cooperation/Participation re ICC

Working Group II: Military Strategy for American Cooperation/Participation re ICC

Working Group III: Political and Military Strategy for Development of an IMS

Thursday Evening
Dinner Session
6:00 to 9:00 p.m. (by invitation only)
The Swiss Hotel

Introductory remarks by Richard Cooper, Convenor of The Responsibility to Protect Coalition and Amb. David Scheffer

Keynote Address by Retired General Wesley Clark, author of *A Time to Lead: For Duty, Honor and Country*, *Waging Modern War* and *Winning Modern Wars,* former Supreme Allied Commander of NATO and recipient of the Presidential Medal of Freedom

Friday Morning, December 7, 2007
Session 4: Working Group Reports and Discussion
8:30 a.m. to 11:15 a.m.

Reports from Chairperson of each Working Group, following by discussion after each report is orally delivered.

1. Working Group I (8:30 to 9:20)
2. Working Group II (9:20 to 10:10)

Break (10:10 to 10:25)

3. Working Group III (10:25 to 11:15)

Friday Luncheon Buffet
11:30 a.m. to 1:00 p.m.

Appendix 2

Conference Participants

MILITARY

General (Ret.) Wesley Clark
Former NATO Supreme Allied Commander

Eugene R. Fidell
President
National Institute of Military Justice

Adm. (Ret.) Albert Konetzni
President
West Valley Nuclear Services Company

Col. William Lietzau
Director for Judge Advocates
U.S. Marine Corps

Col. (Ret.) Michael Newton
U.S. Army
Professor of the Practice of Law
Vanderbilt University Law School

Commander Glenn Sulmasy
Professor of Law
U. S. Coast Guard Academy
Fellow
Carr Center for Human Rights Policy
Harvard University

Lt. Col. (Ret.) Jeffrey Walker
U.S. Air Force
Managing Partner
BlueLaw LLP

LCDR Andru Wall
U.S. Navy

FOREIGN GOVERNMENT

Prince Zeid Ra'ad Al-Hussein
Ambassador to the United States
The Hashemite Kingdom of Jordan

COURTS

Christine Chung
Former Senior Trial Attorney
International Criminal Court

Hon. Richard D. Cudahy
Senior Judge, 7th Circuit
United States Court of Appeals

Mark Harmon
Senior Trial Attorney
ICTY

Hon. Joan Humphrey Lefkow
Judge, 7th Circuit
United States District Court

Luis Moreno Ocampo
Prosecutor
International Criminal Court (by video)

Hon. Sang-Hyun Song
Judge, Appeals Division
International Criminal Court

Hon. Patricia Wald
Judge (Ret.)
United States Court of Appeals, D.C. Circuit

ACADEMIC

Jose Alvarez
Hamilton Fish Professor of International Law and Diplomacy
Executive Director of the Center on Global Legal Problems
Columbia University School of Law

Bridget Arimond
Clinical Assistant Professor of Law
Center for International Human Rights
Northwestern University School of Law

Barbara Bodine
Diplomat in Residence
Woodrow Wilson School of Public Affairs
Princeton University

Frank Chalk
Professor and Director, Montreal Institute for Genocide and Human Rights Studies
Concordia University

David Crane
Professor of Practice
Syracuse University College of Law

Camille Crittenden
Executive Director of the Human Rights Center, University of California-Berkeley

John Hagan
John D. MacArthur Professor of Sociology and Law
Northwestern University School of Law

David Kaye
Executive Director of the International Human Rights Program
UCLA School of Law

Edward Luck
Professor of Practice in International and Public Affairs
Director of the Center on International Organization, Columbia University

Stephen Sawyer
Clinical Assistant Professor
Center for International Human Rights
Northwestern University School of Law

John McGinnis
Professor of Law
Northwestern University School of Law

Mary Ellen O'Connell
Robert and Marion Short Professor of Law
Notre Dame University Law School

Diane Orentlicher
Professor of Law
Washington College of Law, American University

Jordan Paust
Mike and Teresa Baker Law Center
Professor of International Law
Law Center of the University of Houston

Samantha Power
Anna Lindh Prof. of Practice of Global Leadership & Public Policy
Carr Center for Human Rights Policy
Harvard University

Leila Sadat
Director
Whitney R. Harris World Law Institute
Washington University Law School

Michael P. Scharf
Director
Frederick K. Cox Int.'l Law Center, Case Western Reserve University School of Law

Amb. David Scheffer
Mayer Brown/Robert A. Helman Professor of Law and Director, Center for International Human Rights
Northwestern University School of Law

David Van Zandt
Dean and Professor of Law
Northwestern University School of Law

NGO AND OTHERS

Kelly Dawn Askin
Senior Legal Officer, International Justice
Open Society Justice Initiative

Amb. David E. Birenbaum
Partner
Fried, Frank, Harris, Shriver & Jacobson

Marshall Bouton
President
The Chicago Council on Global Affairs

Rachel Bronson
Vice President, Programs and Studies
Chicago Council on Global Affairs

Nicolas Burniat
Pennoyer Fellow
Human Rights First

Sapna Chhatpar Considine
Program Officer
R2P-Engaging Civil Society Project

Richard Cooper
Convenor
The Responsibility to Protect Coalition

April Donnellan
Executive Director
Global Philanthropy Project

Mark Hanis
Executive Director
Genocide Intervention Network

Victoria K. Holt
Senior Associate
The Henry L. Stimson Center

Michael McConnell
Regional Director
American Friends Service Committee

Mary Page
Director, Human Rights and Int.'l Justice
The John D. and Catherine T. MacArthur Foundation

John Prendergast
Vice Chairman
Enough Project

Peter Rundlet
Director of Policy
Humanity United

Amb. John Shattuck
Chief Executive Officer
John F. Kennedy Library Foundation

William Schulz
Former Director
Amnesty International USA

Alexander Thier
Senior Rule of Law Advisor
United States Institute of Peace

Joseph Volk
Executive Secretary
Friends Committee on National Legislation

John Washburn
AMICC Convenor
UN Association of the USA

Kelly Whitley
Deputy Convenor
The Responsibility to Protect Coalition

Appendix 3

U.N. General Assembly World Outcome Document (2005), pars. 139 and 139.

United Nations **A/60/L.1**
General Assembly

2005 World Summit Outcome Excerpt

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

Appendix 4

U.N. Security Council Resolution 1674 (2006)

United Nations S/RES/1674 (2006)

Security Council

Distr.: General
28 April 2006

Resolution 1674 (2006)

Adopted by the Security Council at its 5430th meeting, on 28 April 2006

The Security Council,

Reaffirming its resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict, its various resolutions on children and armed conflict and on women, peace and security, as well as its resolution 1631 (2005) on cooperation between the United Nations and regional organizations in maintaining international peace and security, and further reaffirming its determination to ensure respect for, and follow-up to, these resolutions,

Reaffirming its commitment to the Purposes of the Charter of the United Nations as set out in Article 1 (1-4) of the Charter, and to the Principles of the Charter as set out in Article 2 (1-7) of the Charter, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States,

Acknowledging that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and *recognizing* in this regard that development, peace and security and human rights are interlinked and mutually reinforcing,

Expressing its deep regret that civilians account for the vast majority of casualties in situations of armed conflict,

Gravely concerned with the effects of the illicit exploitation and trafficking of natural resources, as well as the illicit trafficking of small arms and light weapons, and the use of such weapons on civilians affected by armed conflict,

Recognizing the important contribution to the protection of civilians in armed conflict by regional organizations, and *acknowledging in this regard*, the steps taken by the African Union,

Recognizing the important role that education can play in supporting efforts to halt and prevent abuses committed against civilians affected by armed conflict, in particular efforts to prevent sexual exploitation, trafficking in humans, and violations of applicable international law regarding the recruitment and re-recruitment of child soldiers,

06-33199 (E)
0633199

Recalling the particular impact which armed conflict has on women and children, including as refugees and internally displaced persons, as well as on other civilians who may have specific vulnerabilities, and stressing the protection and assistance needs of all affected civilian populations,

Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians,

Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and *underlining* the importance of taking measures aimed at conflict prevention and resolution,

1. *Notes with appreciation* the contribution of the Report of the Secretary-General of 28 November 2005 to its understanding of the issues surrounding the protection of civilians in armed conflict, and *takes note of* its conclusions;

2. *Emphasizes* the importance of preventing armed conflict and its recurrence, and *stresses in this context* the need for a comprehensive approach through promoting economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law, and respect for, and protection of, human rights, and in this regard, *urges* the cooperation of Member States and *underlines* the importance of a coherent, comprehensive and coordinated approach by the principal organs of the United Nations, cooperating with one another and within their respective mandates;

3. *Recalls* that deliberately targeting civilians and other protected persons as such in situations of armed conflict is a flagrant violation of international humanitarian law, *reiterates* its condemnation in the strongest terms of such practices, and *demands* that all parties immediately put an end to such practices;

4. *Reaffirms* the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity;

5. *Reaffirms also* its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to (i) torture and other prohibited treatment, (ii) gender-based and sexual violence, (iii) violence against children, (iv) the recruitment and use of child soldiers, (v) trafficking in humans, (vi) forced displacement, and (vii) the intentional denial of humanitarian assistance, and *demands* that all parties put an end to such practices;

6. *Demands* that all parties concerned comply strictly with the obligations applicable to them under international law, in particular those contained in the Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council;

7. *Reaffirms* that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses, *draws attention* to the full range of justice and reconciliation mechanisms to be considered, including national, international and "mixed" criminal courts and tribunals and truth and reconciliation commissions, and *notes* that such mechanisms can promote not

only individual responsibility for serious crimes, but also peace, truth, reconciliation and the rights of the victims;

8. *Emphasizes* in this context the responsibility of States to comply with their relevant obligations to end impunity and to prosecute those responsible for war crimes, genocide, crimes against humanity and serious violations of international humanitarian law, while recognizing, for States in or recovering from armed conflict, the need to restore or build independent national judicial systems and institutions;

9. *Calls on* States that have not already done so to consider ratifying the instruments of international humanitarian, human rights and refugee law, and to take appropriate legislative, judicial and administrative measures to implement their obligations under these instruments;

10. *Demands* that all States fully implement all relevant decisions of the Security Council, and in this regard cooperate fully with United Nations peacekeeping missions and country teams in the follow-up and implementation of these resolutions;

11. *Calls upon* all parties concerned to ensure that all peace processes, peace agreements and post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians including (i) the cessation of attacks on civilians, (ii) the facilitation of the provision of humanitarian assistance, (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, (iv) the facilitation of early access to education and training, (v) the re-establishment of the rule of law, and (vi) the ending of impunity;

12. *Recalls* the prohibition of the forcible displacement of civilians in situations of armed conflict under circumstances that are in violation of parties' obligations under international humanitarian law;

13. *Urges* the international community to provide support and assistance to enable States to fulfil their responsibilities regarding the protection of refugees and other persons protected under international humanitarian law;

14. *Reaffirms* the need to maintain the security and civilian character of refugee and internally displaced person camps, *stresses* the primary responsibility of States in this regard, and *encourages* the Secretary-General where necessary and in the context of existing peacekeeping operations and their respective mandates, to take all feasible measures to ensure security in and around such camps and of their inhabitants;

15. *Expresses its intention* of continuing its collaboration with the United Nations Emergency Relief Coordinator, and *invites* the Secretary-General to fully associate him from the earliest stages of the planning of United Nations peacekeeping and other relevant missions;

16. *Reaffirms* its practice of ensuring that the mandates of United Nations peacekeeping, political and peacebuilding missions include, where appropriate and on a case-by-case basis, provisions regarding (i) the protection of civilians, particularly those under imminent threat of physical danger within their zones of operation, (ii) the facilitation of the provision of humanitarian assistance, and

(iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, and *expresses its intention* of ensuring that (i) such mandates include clear guidelines as to what missions can and should do to achieve those goals, (ii) the protection of civilians is given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates, and (iii) that protection mandates are implemented;

17. *Reaffirms* that, where appropriate, United Nations peacekeeping and other relevant missions should provide for the dissemination of information about international humanitarian, human rights and refugee law and the application of relevant Security Council resolutions;

18. *Underscores* the importance of disarmament, demobilization and reintegration of ex-combatants (DDR) in the protection of civilians affected by armed conflict, and, in this regard, *emphasizes* (i) its support for the inclusion in mandates of United Nations peacekeeping and other relevant missions, where appropriate and on a case-by-case basis, of specific and effective measures for DDR, (ii) the importance of incorporating such activities into specific peace agreements, where appropriate and in consultation with the parties, and (iii) the importance of adequate resources being made available for the full completion of DDR programmes and activities;

19. *Condemns in the strongest terms* all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children, and *undertakes* to ensure that all peace support operations employ all feasible measures to prevent such violence and to address its impact where it takes place;

20. *Condemns in equally strong terms* all acts of sexual exploitation, abuse and trafficking of women and children by military, police and civilian personnel involved in United Nations operations, *welcomes* the efforts undertaken by United Nations agencies and peacekeeping operations to implement a zero-tolerance policy in this regard, and *requests* the Secretary-General and personnel-contributing countries to continue to take all appropriate action necessary to combat these abuses by such personnel, including through the full implementation without delay of those measures adopted in the relevant General Assembly resolutions based upon the recommendations of the report of the Special Committee on Peacekeeping, A/59/19/Rev.1;

21. *Stresses* the importance for all, within the framework of humanitarian assistance, of upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence;

22. *Urges* all those concerned as set forth in international humanitarian law, including the Geneva Conventions and the Hague Regulations, to allow full unimpeded access by humanitarian personnel to civilians in need of assistance in situations of armed conflict, and to make available, as far as possible, all necessary facilities for their operations, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets;

23. *Condemns* all attacks deliberately targeting United Nations and associated personnel involved in humanitarian missions, as well as other humanitarian personnel, *urges* States on whose territory such attacks occur to

prosecute or extradite those responsible, and *welcomes* in this regard the adoption on 8 December 2005 by the General Assembly of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel;

24. *Recognizes* the increasingly valuable role that regional organizations and other intergovernmental institutions play in the protection of civilians, and *encourages* the Secretary-General and the heads of regional and other intergovernmental organizations to continue their efforts to strengthen their partnership in this regard;

25. *Reiterates* its invitation to the Secretary-General to continue to refer to the Council relevant information and analysis regarding the protection of civilians where he believes that such information or analysis could contribute to the resolution of issues before it, requests him to continue to include in his written reports to the Council on matters of which it is seized, as appropriate, observations relating to the protection of civilians in armed conflict, and encourages him to continue consultations and take concrete steps to enhance the capacity of the United Nations in this regard;

26. *Notes* that the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict, may constitute a threat to international peace and security, and, *reaffirms in this regard* its readiness to consider such situations and, where necessary, to adopt appropriate steps;

27. *Requests* the Secretary-General to submit his next report on the protection of civilians in armed conflict within 18 months of the date of this resolution;

28. *Decides* to remain seized of the matter.

Appendix 5

List of States Parties to the Rome Statute of the ICC and of Non-Party Signatories as of March 2008*

Country**	Date of Ratification/Accession
African States(29 States Parties)	
Benin	22 January 2002
Botswana	8 September 2000
Burkina Faso	16 April 2004
Burundi	21 September 2004
Central African Rep.	3 October 2001
Chad	1 November 2006
Congo (Brazzaville)	3 May 2004
Comoros	18 August 2006
Dem. Rep. of Congo	11 April 2002
Djibouti	5 November 2002
Gabon	20 September 2000
Gambia	28 June 2002
Ghana	20 December 1999
Guinea	14 July 2003
Kenya	5 March 2005
Lesotho	6 September 2000
Liberia	22 September 2004
Malawi	19 September 2002
Mali	16 August 2000
Mauritius	5 March 2002
Namibia	25 June 2002
Niger	11 April 2002
Nigeria	27 September 2001
Senegal	2 February 1999
Sierra Leone	15 Sept .2000
South Africa	27 November 2000
Tanzania	20 August 2002
Uganda	14 June 2002
Zambia	13 November 2002

Latin American & Caribbean States (22 States Parties)	
Antigua & Barbuda	18 June 2001
Argentina	8 February 2001
Barbados	10 December2002
Belize	5 April2000
Bolivia	27 June 2002
Brazil	20 June 2002
Colombia	5 August 2002
Costa Rica	7 June 2001
Dominica	12 February 2001 (a)
Dominican Republic	12 May 2005
Ecuador	5 February 2002
Guyana	24 September 2004
Honduras	1 July 2002
Mexico	28 October 2005
Panama	21 March 2002
Paraguay	14 May 2001
Peru	10 November 2001
St. Kitts & Nevis	22 August 2006 (a)
St. Vincent & Grenadines	3 December 2002 (a)
Trinidad & Tobago	6 April1999
Uruguay	28 June 2002
Venezuela	7 June 2000

Asian States (13 States Parties)	
Afghanistan	10 February 2003 (a)
Cambodia	11 April 2002
Cyprus	7 March 2002
Fiji	29 November 1999
Japan	17 July 2007 (a)
Jordan	11 April 2002
Marshall Islands	7 December 2000
Mongolia	11 April 2002
Nauru	12 November 2001
Rep. of Korea	13 November 2002
Samoa	16 September 2002
Tajikistan	5 May 2000
Timor-Leste	6 September 2002 (a)
Eastern European States (16 States Parties)	
Albania	31 January 2003
Bosnia-Herzegovina	11 April 2002
Bulgaria	11 April 2002
Croatia	21 May 2001
Estonia	30 January 2002
Georgia	5 September 2003
Hungary	30 November 2001
Latvia	28 June 2002
Lithuania	12 May 2003
Macedonia, FYR	6 March 2002
Montenegro	23 October 2006
Poland	12 November 2001
Romania	11 April 2002
Serbia	6 September2001
Slovakia	11 April 2002
Slovenia	31 December 2001

Western European and Other States (25 States Parties)	
Andorra	30 April 2001
Australia	1 July 2002
Austria	28 December 2000
Belgium	28 June 2000
Canada	7 July 2002
Denmark	21 June 2001
Finland	29 December 2000
France	9 June 2000
Germany	11 December 2000
Greece	15 May 2002
Iceland	25 May 2000
Ireland	11 April 2002
Italy	26 July 1999
Liechtenstein	2 October 2001
Luxembourg	8 September 2000
Malta	29 November 2002
Netherlands	17 July 2001
New Zealand	7 September2000
Norway	16 February 2000
Portugal	5 February 2002
San Marino	13 May 1999
Spain	24 October 2000
Sweden	28 June 2001
Switzerland	12 October 2001
United Kingdom	4 October 2001

* (a) indicates accession
** Grouped according to the UN General Assembly Regional Groups

Country	Date of Signature
Armenia	10 January 1999
Bahamas	29 December 2000
Bahrain	11 December 2000
Bangladesh	16 September 1999
Cameroon	17 June 1998
Cape Verde	28 December 2000
Chile	11 September 1998
Cote d'Ivoire	30 November 1998
Czech Republic	13 April 1999
Egypt	26 December 2000
Eritrea	7 October 1998
Guinea-Bissau	12 September 2000
Haiti	29 February 1999
Iran	31 December 2000
Israel	31 December 2000
Jamaica	8 September 2000
Kuwait	8 September 2000
Kyrgyzstan	8 December 1998
Madagascar	18 July 1998
Monaco	18 July 1998
Morocco	29 December 2000
Mozambique	8 September 2000
Oman	20 December 2000
Philippines	28 December 2000
Republic of Moldova	8 September 2000
Russian Federation	13 September 2000
Saint Lucia	27 August 1999
Sao Tome & Principe	28 December 2000
Seychelles	28 December 2000
Solomon Islands	3 December 1998
Sudan	8 September 2000
Syrian Arab Republic	29 November 2000
Thailand	2 October 2000
United Arab Emirates	27 November 2000
United States+	31 December 2000
Ukraine	20 January 2000
Uzbekistan	29 December 2000
Yemen	28 December 2000
Zimbabwe	17 July 1998

+ On 6 May 2002, John Bolton, the Under Secretary of State for Arms Control and International Security, sent a letter to Kofi Annan stating that "the United States does not intend to become a party to the treaty," and that, "[a]ccordingly, the United States has no legal obligations arising from its signature on December 31, 2000."

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