The Heritage Foundation
Backgrounder
Executive Summary

No. 1249 February 5, 1999

THE INTERNATIONAL CRIMINAL COURT VS. THE AMERICAN PEOPLE

LEE A. CASEY AND DAVID B. RIVKIN, JR.

On July 17, 1998, in Rome, a treaty was adopted creating a permanent International Criminal Court (ICC) under the auspices of the United Nations. If 60 countries ratify this treaty, a court in the Netherlands will have the power to try and punish individuals for violations of certain international humanitarian norms. Some of these offenses are so broadly defined that Americans—indeed, citizens of any nation—could be subject to penalties of up to life imprisonment for actions never before considered punishable on the international level.

The powers of the ICC outlined in the Rome treaty are an open invitation to abuse. Cases could be brought before the court based upon the complaint of any country that ratified the treaty (an "ICC States Party") or the initiative of the ICC's prosecutor—an international independent counsel. Once indicted, the defendant(s) would be tried by a bench of judges chosen by the States Parties. As an institution, the ICC would act as police, prosecutor, judge, jury, and jailer. These functions would all be performed by ICC staff, or under their supervision, with only bureaucratic divisions of authority. The ICC would be the sole judge of its own power, and there would be no process to appeal its decisions, however irrational or unjust those might be.

In Rome, the Clinton Administration rightly refused to sign the ICC treaty because it could not obtain even minimum safeguards to prevent this court from being used as a political tool against the United States. The Administration's decision, however, came late in the process and apparently was motivated by fears that prosecutions might be brought against U.S. peacekeepers overseas, not by the belief that a permanent ICC is fundamentally flawed.

In fact, the participation of the United States in this treaty regime runs counter to U.S. national interests. Moreover, U.S. participation would be unconstitutional because it would subject individual Americans to trial and punishment in an extra-constitutional court without affording them all of the rights and protections the U.S. Constitution guarantees.

Produced by
The Kathryn and Shelby Cullom Davis International Studies Center

Published by
The Heritage Foundation
214 Massachusetts Ave., N.E.
Washington, D.C.
20002–4999
(202) 546-4400

Unfortunately, merely refusing to join the Rome treaty will not protect Americans from the ICC's reach. In an astonishing break with the accepted norms of international law, the Rome treaty would extend the ICC's jurisdiction to the nationals of countries that do not sign and ratify the treaty. Because of this unprecedented and unlawful attempt to assert power over the citizens of non-party states, it is not sufficient for the U.S. government merely to reject the treaty.

The existence of such a supranational court is a threat to the security of U.S. citizens both at home and overseas. The United States should use all of its considerable resources to prevent the ICC from being implemented. Specifically, Congress and the Administration should:

1. Inform other countries that ratifying the ICC treaty will negatively affect their relations with the United States.

2. Condition non-military assistance to a country on its rejection of the ICC treaty.

3. Make plain that a country's ratification of the ICC treaty will result in a reassessment of U.S. troop deployments in that country.

4. Renegotiate treaties and agreements governing the rights and responsibilities of U.S. military personnel stationed overseas so that no host state may surrender U.S. nationals to the ICC.

5. Demand that Americans serving in multilateral peacekeeping operations, if accused of criminal actions, be turned over to U.S. courts for trial and be exempt from ICC jurisdiction.

6. Renegotiate extradition treaties to specify that individuals extradited from the United States cannot, under any circumstances, be then extradited or otherwise transferred by the requesting state to the ICC for prosecution.

7. Prevent any U.S. funding from going to support the ICC.

8. Prevent cases from coming before the ICC that would establish precedents for investigation, trial, and conviction—if necessary, by vetoing any attempt by the U.N. Security Council to refer a matter to the ICC.

The purpose of these steps is twofold. First, they would provide American civilians and U.S. military personnel certain basic protections against the possibility that they would be brought for judgment before a court that does not meet the minimum due process standards guaranteed in the U.S. Constitution. Second, they would make it clear that, in the view of the United States, the ICC is an *illegal and illegitimate* institution that violates the principles of self-government and popular sovereignty, as well as the accepted norms of international law.

The fundamental rights secured by the Constitution—rights successfully defended by Americans on battlefields around the world—can be summed up as follows: The American people govern themselves, and they have a right to be tried in accordance with the laws enacted by their elected representatives and to be judged by their peers and none other. The Rome ICC treaty, in concept and execution, is utterly antithetical to these rights. It should be opposed by the United States with all the vigor it has mustered, throughout its history, to fight similar threats to the fundamental values of the Republic.

—Lee A. Casey and David B. Rivkin, Jr., are attorneys in the Washington office of Hunton & Williams, a major international law firm. Mr. Casey served during the Bush Administration in the Department of Justice's Office of Legal Counsel. Mr. Rivkin served in the Office of the Counsel to the President in the Bush White House and in the Departments of Justice and Energy.

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On July 17, 1998, a treaty creating a permanent International Criminal Court (ICC) to investigate, try, and punish individuals who violate certain international human rights norms[1] was adopted at a United Nations-sponsored conference in Rome. The treaty was adopted over the objections of the U.S. delegation.[2]

The Clinton Administration rightly voted against the treaty after all its efforts to obtain even the minimum safeguards to prevent this court from being used as a political tool against the United States had been defeated. The Administration's decision, however, came late in the process, and apparently was motivated by fears that prosecutions might be brought against U.S. peacekeepers overseas, not by the realization that the permanent ICC concept itself is fundamentally flawed.

As outlined in the Rome treaty, the ICC's powers are an open invitation to abuse. The crimes under the jurisdiction of the ICC are broadly defined and could subject individuals to penalties of up to life imprisonment for actions that never were thought punishable on the international level before. Cases could be brought before the court based upon the complaint of any country that ratifies the ICC treaty (an "ICC States Party") or the initiative of the court's prosecutor—an international independent counsel. Once indicted, individual defendants would be tried by a bench of judges chosen by the ICC States Parties. As an institution, the ICC would act as police, prosecutor, judge, jury, and jailer. All of these functions would be performed by its staff, or under its supervision, with only bureaucratic divisions of authority. The court would be the sole judge of its own power, and there would be no process to appeal its decisions, however irrational or unjust

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1. Crimes that would fall under ICC jurisdiction include genocide, war crimes, "crimes against humanity," and "aggression."
2. Statement of the Honorable David J. Scheffer, Ambassador at Large for War Crimes Issues, August 31, 1998, available at *http://www.state.gov/www/policy_remarks/1998/980831_scheffer_icc.html*.

those might be.

Unfortunately, merely refusing to join the Rome treaty will not protect Americans from the ICC's reach. In an astonishing break with the accepted norms of international law, the Rome treaty would extend the ICC's jurisdiction to the citizens of countries that have not signed and ratified the treaty. Consequently, if 60 other countries ratify this treaty, the ICC will be established in the Netherlands with the power to try and punish Americans, even if the United States does not sign or ratify it.[3] As a result, the United States can protect its citizens only by actively opposing ratification of the ICC treaty by 60 states; this would prevent the ICC's establishment.

AMERICA'S DEFEAT IN ROME

The Clinton Administration was an early and vocal supporter of the effort to create an international court and still favors the notion.[4] However, criticism from Capitol Hill spurred the Administration to moderate its support and propose solutions to the very serious public policy and constitutional impediments to U.S. participation in any international court that could prosecute and punish Americans. In particular, to remedy these defects, and to make the treaty acceptable to a skeptical Senate, the Administration proposed that the ICC should be allowed to prosecute only matters referred to the court by the U.N. Security Council.[5] This would have allowed the United States to protect its nationals through a judicious use of its Security Council veto.

Even before the Rome Conference opened in June 1998, however, the Administration's plan was opposed by numerous non-governmental organizations (NGOs) and a group of countries informally dubbed the "Like-Minded Group."[6] The Like-Minded Group argued that only an entirely unfettered court would be able to investigate the perpetrators of the worst violations of international humanitarian norms, and it opposed any limitations on the independence of the ICC and its prosecutor. Consequently, the limits proposed by the United States were rejected.

Every attempt by the United States to avoid the creation of an international independent counsel, capable of second-guessing U.S. military decisions and punishing U.S. troops and officials for those decisions, was rejected. In addition, to assure that the United States could not exempt its people from the ICC's reach, the Like-Minded Group countries were successful in extending the treaty provisions over the nationals of countries that have not signed and ratified the treaty. On the Rome Conference's final day, the last U.S. proposals were voted down by a vote of 113 to 17,[7] and the conference delegates burst into cheers.

By that time, the fundamental divergence between the Clinton Administration's original vision of the ICC as a permanent international body capable of bringing to justice the world's worst tyrants and the vision of the Like-Minded Group and the NGO community was evident. After Rome, it is impossible not to conclude that these groups see the ICC primarily as a check upon a United States that has grown, in their view, too dominant in world affairs.

3. Sixty-nine countries had signed the International Criminal Court treaty as of December 18, 1998. No country had ratified the treaty as of that date.
4. In a September 1997 speech before the U.N. General Assembly, President William J. Clinton declared that a permanent international criminal court should be established before the century's end.
5. This proposed solution, although granting the United States more control over the ICC's actions, would fail to make U.S. participation in the ICC constitutional or adequately protect American citizens from this court.
6. The Like-Minded Group included U.S. allies, such as Britain, Canada, and Germany, who were joined in opposition to the United States by many Third World countries that are hostile to the U.N. Security Council and its supposed domination by the United States.
7. Press release, "U.N. Diplomatic Conference Concludes in Rome with Decision to Establish Permanent International Criminal Court," L/ROM/22, p. 2, available at *http://www.un.org/icc/*.

WHY AMERICANS MUST OPPOSE THE ICC

As adopted, the ICC treaty is an unchecked invitation to abuse and use as a political tool to restrain America's ability to defend its interests. Although the Clinton Administration refused to approve the ICC treaty, it has indicated that it might change its position if certain revisions were made. In fact, numerous NGOs and members of the Like-Minded Group are pressing the Administration to move in that direction.

However, even if the treaty were amended to incorporate measures that protect U.S. troops on peacekeeping missions from prosecution, it would remain both legally and politically inimical to the interests of the United States. Specifically:

- The ICC threatens American self-government. The creation of a permanent, supranational court with the independent power to judge and punish elected officials for their official actions represents a decisive break with fundamental American ideals of self-government and popular sovereignty. It would constitute the transfer of the ultimate authority to judge the acts of U.S. officials away from the American people to an unelected and unaccountable international bureaucracy. As Alexis de Tocqueville wrote in his *Democracy in America*, "[h]e who punishes the criminal is . . .the real master of society."

  In this regard, the claims of ICC supporters that the court is not directed at American citizens may be dismissed. Suggestions that U.S. soldiers and civilians could not be brought before the ICC because that court would be required to defer to U.S. judicial processes—the concept of "complementarity"—are disingenuous. Under the ICC treaty, the court would be the absolute judge of its own jurisdiction and would itself determine when, if ever, such a deferral was appropriate.

- The ICC is fundamentally inconsistent with American tradition and law. In its design and operation, the ICC is fundamentally inconsistent with core American political and legal values. Indeed, if Americans ever were arraigned before the ICC, they would face a judicial process almost entirely foreign to the traditions and standards of the United States.

  First and foremost, they would face a civil law "inquisitorial" system where guilt would be determined by judges (possibly from countries hostile to the United States) alone. There would be no right to trial by jury, a right considered so central by the Founders of the American Republic that it was guaranteed twice in the U.S. Constitution (in Article III, Section 2, and the Sixth Amendment).

  Trial by jury is not, of course, the only right guaranteed to Americans that would be unavailable in an ICC. For example, an American surrendered to the ICC would not enjoy rights to reasonable bail or a speedy trial, as those rights are known and guaranteed in the United States. Although the ICC would have to provide a trial "without undue delay," this could mean many years in prison. For instance, mocking the presumption of innocence, the prosecutor of the United Nations International Criminal Tribunal for the Former Yugoslavia, a court widely viewed as a model for the ICC, actually argued that up to five years would not be too long to wait *in prison* for a trial.[8]

  In addition, the fundamental right of a defendant to confront the witnesses against him and to challenge their evidence would be fatally compromised in the ICC. The "international" rule and practice is quite different. In the U.N. Yugoslav Tribunal, both anonymous witnesses and extensive hearsay evidence (where the witness cannot be challenged) have been allowed at criminal trials.[9] Moreover, the

8. See *Prosecutor* v. *Aleksovski* (Prosecution Response to the Defence Motion for Provisional Release ¶ 3.2.5.) ICTY Case No. IT-95-14/1-PT (14 Jan. 1998).

9. See Michael P. Scharf, *Balkan Justice* (Durham, NC: Carolina Academic Press, 1997), pp. 7, 67, 108–109.

ICC prosecutor would be able to appeal a verdict of acquittal, effectively placing the accused in "double jeopardy." Such appeals have been forbidden in the law of England and the United States since the 17th century. If convicted, the defendant would be unable to appeal the verdict beyond the ICC itself, and could be consigned to a prison in any one of the States Parties to the treaty at the ICC's pleasure and under its supervision.

- The ICC violates constitutional principles. The failure of the ICC treaty to adopt the minimum guarantees of the U.S. Constitution's Bill of Rights is, in fact, one of the principal reasons why the United States could not, even if it wanted to, join the ICC treaty regime.

  As the U.S. Supreme Court recently suggested in *United States* v. *Balsys*,[10] the United States cannot participate in or facilitate a criminal trial under its own authority, even in part, unless the Constitution's guarantees are preserved. If, however, the United States were to join the ICC treaty regime, the prosecutions undertaken by the court, whether involving the actions of Americans in the United States or overseas, would be "as much on behalf of the United States as of" any other State Party.[11] Since the guarantees of the Bill of Rights would not be available in the ICC, the United States could not participate in, or facilitate, any such court.

  United States participation in the ICC treaty regime would also be unconstitutional because it would allow the trial of American citizens for crimes committed on American soil, which are otherwise entirely within the judicial power of the United States. The Supreme Court has long held that only the courts of the United States, as established under the Constitution, can try such offenses. The Supreme Court made this clear in the landmark Civil War case of *Ex parte Milligan*. In that case, the Court reversed a civilian's conviction in a military tribunal, which did not provide the guarantees of the Bill of Rights, holding that "[e]very trial involves the exercise of judicial power," and that the military court in question could exercise "no part of the judicial power of the country."[12] This reasoning is equally applicable to the ICC.

- The ICC contradicts the founding principles of the American Republic. United States participation in the ICC treaty regime would be fundamentally inconsistent with the founding principles of this country. The Declaration of Independence, which articulates the principles that justify the American Republic's very existence, listed the offenses of the King and Parliament that required separation from England, revolution, and war. Prominent among those offenses were accusations that Britain had (1) subjected Americans "to a jurisdiction foreign to our constitution and unacknowledged by our laws"; (2) "depriv[ed] us, in many cases, of the benefits of Trial by Jury"; and (3) "transport[ed] us beyond [the] Seas to be tried for pretended offences."[13]

  These provisions referred to the British practice of prosecuting Americans in "vice-admiralty" courts for criminal violations of the navigation and trade laws. Like the ICC, these courts followed the civil law, "inquisitorial" system.[14] Convictions, of course, could be obtained far more easily from these tribunals than from uncooperative colonial juries.[15] The

10. 1998 U.S. LEXIS 4210 (S.Ct. 1998).
11. 1998 U.S. LEXIS 4210 at *57–58.
12. 71 U.S. (4 Wall.) 2 (1866).
13. Declaration of Independence ¶ 14, 19, 20 (U.S. 1776).
14. See, generally, Thomas C. Barrow, *Trade and Empire: The British Customs Service in Colonial America 1660–1775* (Cambridge, MA: Harvard University Press, 1967), p. 256; Don Cook, *The Long Fuse: How England Lost the American Colonies 1760–1785* (New York: Atlantic Monthly Press, 1995), p. 59.

U.S. Constitution's Framers sought to eliminate forever the danger that Americans might again be surrendered to a foreign power for trial by specifically requiring that criminal trials be by jury and conducted in the state and district where the crime was committed. This is the only right guaranteed by the Constitution to be stated twice in the original document and its first ten amendments. As Justice Joseph Story explained, the "object" of these provisions was "to secure the party accused from being dragged to a trial in some distant state, away from his friends, and witnesses, and neighborhood; and thus subjected to the verdict of mere strangers, who may feel no common sympathy, or who may even cherish animosities, or prejudices against him."[16]

Of course, if the United States were to join the ICC treaty, Americans again would face transportation beyond the seas for judgment, without the benefits of trial by jury, in a tribunal that would not guarantee the other rights they take so much for granted and where the judges may well "cherish animosities, or prejudices against" them.

- The ICC threatens America's ability to defend its interests through military action. The ICC would be able to prosecute any individual American, including the President, military and civilian officers and officials, enlisted personnel, and even ordinary citizens who were involved in any action it determined to be unlawful and within its jurisdiction.

  For example, if the ICC existed today, it could investigate President Clinton's August 1998 attack on Osama bin Laden's terrorist base in Afghanistan or the more recent attacks on Iraq. Possible allegations would be that these attacks constituted "aggression" or crimes against humanity based upon any resultant damage to civilians or civilian property. If the ICC determined that there was sufficient evidence to support an indictment, the President, the Secretary of Defense, or any other individual who took part in planning or executing the attacks could be sought by the ICC to be tried for these actions, even though they were entirely lawful under the Constitution and laws of the United States.

WHY OTHER COUNTRIES SHOULD OPPOSE THE ICC

Every other nation should share the concerns of the United States over the threat the ICC poses to the rights of individual citizens, the ability to protect national interests through military action, and the irrevocable transfer of national sovereignty to an unelected and unaccountable international institution. In addition, they should also object to the ICC treaty because it is an outright violation of international law.

Under the ICC treaty, the court can claim the power to investigate and try citizens of any state—even the citizens of states that are not party to the treaty—based upon events taking place in the territory of a member state. This assertion of power is unprecedented and entirely unsupported in international law.

A treaty is a contract between sovereign states and, like private contracts, cannot bind states that have not agreed to its terms. This is one of the most basic and well-established rules of international law.[17] The ICC, of course, is to be established by treaty and is entirely a creature of its founding instrument. It has no other status in international law. Consequently, as a legal matter, the ICC cannot exercise jurisdiction over American citizens without the expressed consent of the United States, which the United States has not given and could not constitutionally give.

15. These courts were located in the thirteen colonies and elsewhere in the British Empire. The British also claimed the right to transport Americans to England to be tried on treason charges, a claim that prompted immediate denials from colonial legislatures. See *United States* v. *Cabrales*, 118 S.Ct. 1772, 1774 & n.1 (1998).

16. Joseph Story, *Commentaries on the Constitution of the United States* 658 (1833) (Durham, NC: Carolina Academic Press, 1987).

Claims made by ICC supporters that the court may legally exercise a "universal jurisdiction" are incorrect. The principle of "universal jurisdiction" is one of the most misunderstood and abused concepts in international law. It is, in fact, a narrow doctrine that allows states to extend their *domestic* law to punish individuals guilty of certain criminal activity taking place otherwise beyond the jurisdiction of any state. Traditionally, it has been limited to piracy and the slave trade, crimes occurring on the high seas, which may be otherwise unreachable under the ordinary principles of territorial jurisdiction.

More recently, claims have been made that states may exercise universal jurisdiction over "war crimes," punishing perpetrators even though the crimes took place in the territory of another state. The actual support for this proposition, however, is comparatively weak. As a leading expert in the field, Alfred P. Rubin, distinguished professor of international law at the Fletcher School of Law and Diplomacy at Tufts University, wrote in late 1996:

> the extension of a national jurisdiction to make criminal the acts of some foreigners outside the territory of the prescribing state has been much exaggerated by scholars unfamiliar with the actual cases and equally unaware of the dismal record of failed attempts to codify the supposed international criminal law relating to "piracy" or the international slave trade.[18]

In any case, whatever the authority of states to extend the criminal jurisdiction of their domestic courts to the nationals of other states on a universal jurisdiction theory, there is no support in international law or practice for the proposition that states may delegate that power to an international court created by treaty, and thereby subject the nationals of other states to prosecution and judgment in that court. In fact, any attempt to subject the nationals of non-party states to the ICC's power would be fundamentally inconsistent with the United Nations Charter, which guarantees the sovereign equality of states.[19] This sovereign equality includes, among other things, the fundamental principles that "(a) States are juridically equal; (b) Each State enjoys the rights inherent in full sovereignty; (c) Each State has the duty to respect the personality of other States."[20]

The Rome treaty violates these principles by asserting the jurisdiction of the ICC, an institution that is entirely a creature of the ICC treaty and has no foundation in customary international law. Indeed, the Rome Conference that drafted and adopted the treaty attempted to act as an international legislature, imposing legal obligations and perils on the citizens of the United States without their consent. This action is illegal. Consequently, any attempt by the ICC to exercise its jurisdiction over the citizens or nationals of the United States would constitute a grave violation of international law, and a hostile act directed squarely at the American people.

HOW THE U.S. MUST PROCEED

Because of the ICC treaty's unprecedented and unlawful assertion of power over the nationals of states that have not joined the ICC treaty regime, it is not sufficient for the United States merely to reject the treaty. This will not serve to protect American citizens from the ICC. The existence of a

17. See Vienna Convention on the Law of Treaties, Art. 34, reprinted in Louis Henkin *et al*., *Basic Documents Supplement to International Law: Cases and Materials*, 3rd ed. (St. Paul, MN: West Publishing Co., 1993) ("A treaty does not create either obligations or rights for a third State without its consent."); Restatement (Third) of the Foreign Relations Law of the United States § 324 (1987) (same).

18. See Alfred P. Rubin, "Dayton, Bosnia and the Limits of Law," *The National Interest* (Winter 1996/7).

19. See U.N. Charter, Art. 2, Cl. 1 ("The Organization is based on the principle of the sovereign equality of all its Members."), reprinted in Ian Brownlie, *Basic Documents in International Law*, 4th ed. (Oxford: The Clarendon Press, 1995), pp. 1, 3.

20. See U.N. General Assembly, *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, reprinted in Brownlie, *Basic Documents in International Law*, pp. 36, 44.

supranational court claiming jurisdiction over Americans is a threat to the security of U.S. nationals both in the United States and overseas, and the United States should use all of its considerable resources to prevent this treaty from ever taking effect.

Specifically, the U.S. should:

1. Inform other countries that ratifying the ICC treaty will negatively affect their relations with the United States. The United States can, and should, inform both its allies and adversaries that ratification of the ICC treaty, in view of that document's illegal jurisdictional claims, will be considered an unfriendly act directed at the United States, and that this act will adversely affect bilateral relations between the United States and any state joining the ICC treaty regime. The precise impact would, of course, be determined on a country-by-country basis.

2. Condition non-military assistance to a country on its rejection of the ICC treaty. With respect to some states, Congress should condition the disbursement of foreign assistance upon a recipient's rejection of the ICC treaty. Obviously, the United States should not undermine its security interests by halting military assistance if a country threatens its relationship with the United States by ratifying the ICC. However, halting technical and economic assistance to countries that ratify the ICC treaty is reasonable and would send an unmistakable message of America's adamant opposition to the flawed ICC.

3. Make plain that a country's ratification of the ICC treaty will result in a reassessment of U.S. troop deployments in that country. The United States should not contemplate a policy of isolation, nor should it withdraw U.S. troops from strategically important deployments. Such a policy would not be in its long-term interests. However, the United States should inform countries in which U.S. troops are stationed that ratification of the ICC would present a direct threat to U.S. soldiers stationed within their borders and, therefore, would require a reassessment of the terms and conditions of its U.S. overseas troop deployments.

   Tens of thousands American service men and women are stationed overseas, principally in Western Europe, but also in the Persian Gulf and Asia, and their presence is in the interests of the United States and the host states as well. Many of these hosts rely upon U.S. military power to guarantee their security and stability. It should be made clear to these states that part of the price they must pay for such protection, which allows them to eschew much of the defense spending that otherwise would be required to ensure their security, is the guarantee that they will not subject U.S. nationals to the ICC's jurisdiction.

4. Renegotiate treaties and agreements governing the rights and responsibilities of U.S. military personnel stationed overseas. Currently, the status of these men and women is governed by treaties between the United States and the host governments, which are known as "status of forces" agreements (SOFAS). As a general rule, these agreements provide that U.S. service personnel accused of criminal conduct in carrying out an official duty in the host country will, at least in the first instance, be turned over to U.S. military judicial processes for investigation and prosecution. New provisions must now be inserted into each of these agreements specifically forbidding the host state from surrendering U.S. nationals to the ICC. Both Senate Foreign Relations Committee Chairman Jesse Helms (R–NC) and the Clinton Administration have targeted these agreements as needing attention in light of the Rome treaty. Such attention should begin immediately.

5. Demand that Americans serving in multilateral peacekeeping operations, if accused of criminal actions, be turned over to U.S. courts for trial and be exempt from ICC jurisdiction. Before U.S. troops are dispatched to participate in "peacekeeping" missions, whether under the auspices of the United Nations, NATO, or otherwise, agreements must be secured that U.S. nationals participating in the operation will

not be surrendered to the ICC. Such agreements should be unobjectionable to the parties concerned in such
missions, be they the United Nations, the receiving states, or other participating countries, since they would not immunize U.S. nationals from punishment for any crimes they might commit, but merely ensure that Americans are tried in accordance with the laws and customs of the United States. Indeed, if the assurances of the ICC's supporters that the establishment of the court was not directed against the United States are true, then such a request should be quickly granted. Senator Helms has suggested this measure as well.

6. Renegotiate extradition treaties. In order to ensure the protection of its citizens, the United States should systematically renegotiate its extradition treaties, adding provisions that make it clear that individuals extradited from the United States cannot, under any circumstances, then be extradited, or otherwise transferred, by the requesting state to the ICC for prosecution.

7. Prevent any U.S. funding from going to support the ICC. Washington should attach funding limitations to all U.S. payments to the United Nations that forbid the use of its monies to support the ICC or its work.

8. Prevent cases from coming before the ICC. It is not in America's interest for the ICC to establish precedents of investigation, trial, and conviction. Although the United States cannot prevent all cases from coming before the ICC, it can close one avenue. Washington should instruct the U.S. representative to the U.N. Security Council to veto any attempt by that body to refer a matter to the ICC for investigation.

The purpose of these measures is twofold. First, they would provide American civilians and U.S. military personnel certain basic protections against the possibility that they would be brought for judgment before a court that does not meet the minimum due process standards guaranteed by the U.S. Constitution. Second, they make it clear that, in the view of the United States, the ICC is an *illegal and illegitimate* institution which violates the principles of self-government and popular sovereignty, as well as accepted norms of international law.

CONCLUSION

The fundamental rights secured by the American Revolution and War for Independence—rights subsequently enshrined in the U.S. Constitution and successfully defended by Americans on battlefields around the world—can be summed up as follows: The American people govern themselves, and they have a right to be tried in accordance with the laws enacted by their elected representatives and to be judged by their peers and none other. The Rome ICC treaty, in its conception and execution, is utterly antithetical to these rights. It should be opposed by the United States with all the vigor it has mustered, throughout its history, to fight similar threats to the fundamental values of the Republic.

—Lee A. Casey and David B. Rivkin, Jr., are attorneys in the Washington office of Hunton & Williams, a major international law firm. Mr. Casey served during the Bush Administration in the Department of Justice's Office of Legal Counsel. Mr. Rivkin served in the Office of the Counsel to the President in the Bush White House and in the Departments of Justice and Energy.