A Case Study in Declining American Hegemony: Flawed Policy Concerning the ICC

by Eric K. Leonard

On April 11, 2002, a group of state representatives, along with a coalition of non-governmental organizations, International Criminal Court supporters, and media personnel, gathered at the United Nations headquarters in New York. The purpose of this gathering was to celebrate the establishment of a permanent International Criminal Court (ICC). At this event, the Rome Statute for an International Criminal Court received its 60th ratification, establishing it as a functioning organization.[1] For many states, NGOs, and other human rights advocates, this marked a joyous moment in the struggle to uphold international humanitarian law and the principles of global justice. However, as a large portion of the international community celebrated, the United States began action to "unsign" the Rome Statute.[2] In the words of US Ambassador for War Crimes Issues, Pierre-Richard Prosper:

> *Today, at the request of the President, our mission up in the United Nations deposited a note with the UN Secretary-General as the depository of the Rome Treaty for the International Criminal Court stating that the United States does not intend to become a party to the ICC treaty and accordingly has no legal obligation as a result of our signature on December 31st, 2000. The president decided that this step was appropriate, and an important one in order make our position clear—our position that we will not support the ICC, believing that the document is flawed in many regards.*[3]

Since that time, the Bush administration's opposition to the Court continues.[4] In the 2004 presidential debates, President Bush twice referred to the ICC. In both instances, the President reiterated his opposition to the Court due to the fact that it can prosecute American citizens, troops, and diplomats. His administration also referenced the Court in its 2002 National Security Strategy:

> *We will take actions necessary to ensure that our efforts to meet our global security commitments and protect Americans are not impaired by the potential for investigations, inquiry, or prosecution by the International Criminal Court (ICC), whose jurisdiction does not extend to Americans and which we do not accept.*[5]

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The primary question that this article engages is whether the Bush administration's opposition to the Rome Statute is in the national interest of the United States. More broadly speaking, does the Bush administration's opposition to the ICC serve as an example of how a hegemon, founded upon a particular ideology, may undermine its own hegemonic status? The international community established the ICC to prosecute individuals accused of committing the most heinous international crimes—genocide, war crimes, and crimes against humanity.[6] Given the fact that traditional American allies and every member state of the European Union, with the exception of the Czech Republic, support this Court, is active opposition to the ICC's existence a prudent position, or will such a position simply ostracize the United States from the rest of the international community and undermine its ability to maintain America's hegemonic position?

In order to address these questions, this article begins with an examination of the concept of hegemony, along with its contested definition. It then proceeds to an analysis of American hegemony, including the basis for its continued preeminence. This article then returns to the ICC and examines this institution within the framework of the hegemonic discourse. Finally, it provides policy recommendations concerning the United States' position towards the ICC and draws upon this case as a starting point for policy recommendations concerning other liberal international institutions.

Understanding Hegemony

Hegemony is a concept that describes a global system of dominance and control. Its presence results in the initiation of a system that parallels the interests of the hegemonic actor(s). However, within the field of world politics, the notion of whom or what can attain, and hold, the status of a hegemon is contested. There exist several forms of hegemony, each with its own understanding of who initiates and upholds a hegemonically controlled system.

The more traditional understanding of hegemony cites nation-states as the sole possessors of hegemonic power. Stephen Gill describes this form of hegemony as follows: "International hegemony, as normally defined in the literature, has been associated with the dominance and leadership of a powerful state within the system of international relations, achieving power over other states."[7] The basis for this traditional form of hegemony is the notion of dominance and coercion. It engages the notion of military or economic dominance that the hegemonic power employs in an attempt to impose coerced loyalty from the rest of the global community, instead of simply resonating ideologically with the majority of actors. Currently, a large portion of hegemonic literature discusses the United States from this traditional perspective, while very little literature allows for a more ideational interpretation.[8]

Despite the historically accepted nature of this definition, international relations (IR) scholars have sought alternative, more inclusive definitions of this concept.

Robert Cox, building on the work of Italian scholar Antonio Gramsci, provides one of the most prominent of these alternative understandings. According to Cox:

> *Hegemony is a structure of values and understandings about the nature of order that permeates a whole system of states and non-state entities. In a hegemonic order these values and understandings are relatively stable and unquestioned. Such a structure of meanings is underpinned by a structure of power, in which, most probably, one state is dominant, but that state's dominance is not sufficient to create hegemony. Hegemony derives from the dominant social strata of the dominant states in so far as these ways of doing and thinking have acquired the acquiescence of the dominant social strata of other states.*[9]

The Gramscian form of hegemony denotes several key factors that differentiate it from the traditional definition. First, this definition engages hegemony as a consensual, rather than a coercive, form of rule. Building on Machiavelli's classic man/centaur analogy, Gramsci discusses power as occurring in two forms:

> *The supremacy of a social group manifests itself in two ways, as "domination" and as "intellectual and moral leadership." A social group dominates antagonistic groups, which it tends to "liquidate," or to subjugate perhaps even by armed force; it leads kindred and allied groups. A social group can, and indeed must, already exercise "leadership" before winning governmental power […] it subsequently becomes dominant when it exercises power, even if it holds it firmly in its grasp, it must continue to "lead" as well.*[10]

As Gramsci described, one form of power exists in the act of dominance and direct physical coercion. Although Gramsci acknowledges this form of authority, he also recognizes its limitations. Thus, Gramsci does not focus on this method of control in his definition of hegemony. Instead, Gramsci defines hegemony as "intellectual and moral leadership." In other words, Gramscian hegemony is obtained and perpetuated by popular consent, not coercion. If the actor relies on the latter, Gramsci believes he/she is showing signs of weakness, not strength. The implications of this definition for policymakers is clear—if a hegemon wishes to maintain the current social order, they must use consensus not repression.[11]

Second, this definition is much more inclusive than the traditional definition in that it embodies both state and non-state actors (in the form of social forces). Gramsci details an understanding of hegemony that expands beyond the traditional boundaries of authority and encompasses the social forces that are at work in the political system. These social forces, defined as civil society, include: social institutions such as religion, educational institutions, family, institutions involved in production and finance, classes, intellectuals, and others.[12] Thus, a Gramscian understanding of hegemony acknowledges both the influence and importance of state and society, and attempts to analyze the relationship that exists between them.

Finally, Gramscian hegemony describes the outcome of the dialectical interaction of state and society as a historical bloc.[13] According to Gramsci, a historical bloc constitutes the alliance between political, economic, and social forces/institutions that form a complex, yet politically stable form, of rule. A historical bloc encompasses an intersubjectively accepted hegemonic order amongst

the divergent forms of actors that then creates an amalgamation of economic, political, social, and ideational forces. The result of such a bloc is usually the establishment of, in Marxist terminology, a superstructure in the form of identifiable institutions, which uphold the hegemonic doctrine of the current historical bloc.

One way to understand this conception of an historical bloc, and its relation to hegemony, is to look at Robert Cox's notion of world order. According to Cox, world order is predicated on the interaction amongst three social forces: ideas, material capabilities, and institutions.[14] The coordination of these forces works in a similar fashion to the previously discussed historical bloc. Thus, the coercive power of a dominant state, via material capabilities, is not sufficient for maintaining hegemony. The dominant power also needs the consent of other actors in the system around the ideational foundations of the historical bloc. Along with the consensual side of the triangle, Cox's understanding of world order emphasizes the importance of institutions that uphold and maintain the historical bloc. It is important to note that Cox does not consider any of these factors as the causal factor for hegemony. All three of these factors work in a co-constitutive manner, thus necessitating the presence of all three within an historical bloc.

In terms of global politics, many scholars view the widespread acceptance of classic liberal ideology as an example of an emerging historical bloc.[15] This dominant ideology, from a Gramscian perspective, is not simply the result of American dominance or traditional hegemony. The acceptance of these ideals, on a global scale, is the result of both state (material capabilities) and social forces (ideas). As this article will show, the ICC is the embodiment of the political freedoms found in classical liberal ideology, thus serving as a reflection of the historical bloc (the institution). Its approval by the global community is the result of an intersubjectively accepted ideal of justice that employs liberal ideology as its philosophical foundation. However, in order to assess the place of the ICC and/or other international institutions in this historical bloc, it is imperative that we first understand the characteristics of the liberal hegemonic order as found in classical liberal ideology.

Liberal Hegemony

The foundation of the current hegemonic order resides in the United States, through its current material position in the global community. However, the true source of this order is the ideational understanding of politics that focuses on a classical conception of liberal ideology. Following the logic of a Gramscian understanding of hegemony, one can see that this liberal ideational component of hegemony is what perpetuates and sustains the American position of primacy. The question that remains is whether the United States, as exemplified in its policy toward the ICC, is working to maintain the consensual side of hegemony, or simply promoting a more coercive order. Moreover, if the latter is the current reality, what does this mean for the future of American hegemony?

Philosophical Foundations

The ideology of liberalism is an often misunderstood and misinterpreted ideology. Most often, liberalism is regarded as an economic ideology that focuses on free market capitalism. Although this interpretation is not wrong, it is incomplete. The classic liberal philosophers' primary focus was on a new understanding of political and civil rights that forms the basis for a good society. The main crux of this ideology is that the individual and his/her rights are a priority.[16] This is counter to the classical philosophical understandings of political society that usually assert the primacy of the community and describe the individual as an organic "part" of the whole. Liberal ideology takes this classical notion of community and stands it on its head by describing the good society as one in which the individual is the central focus and the protection of his or her rights and liberties is the aim of the political structure.

If one adheres to the Gramscian conception of hegemony, then the cooperative nature of liberal institutionalism appears to be the most conducive form of authority when trying to solidify one's interests.

Along with this notion of individual primacy, liberalism embodies at least four other characteristics. First, liberal ideology asserts that reason and rationality are a critical component of human nature. In fact, it is reason that allows the individual to liberate themselves from the bonds of traditional, authoritarian, and rigid, hierarchically defined political structures, and move towards the construction of a free, individual-oriented liberal society.

In conjunction with the above, reason also provides each individual with freedom—freedom to pursue one's individual wants and desires. The liberal tradition defines this notion of freedom as liberty. Liberty is the ability to pursue one's self-defined goals without undue interference from outside sources. Liberal philosophy articulates this notion of liberty/freedom in the premise of individual rights or natural rights. These rights include life, liberty, and estate, or to use a more Jeffersonian understanding: life, liberty and the pursuit of happiness. According to classical liberal ideology, the only limitation on one's liberty or rights is in instances when the pursuit of one's own rights interferes with that of another.

It is this conflictual situation that gives rise to the third characteristic of liberal ideology—the need for limited government. Liberalists view government as a necessary evil whose primary purpose is to eradicate the conflict that arises between free individuals. Thus, government serves to counter the anarchical situation found in the state of nature, thus becoming a necessary component in the establishment of a stable and free liberal society. However, liberal tradition also emphasizes that the government's role remains minimal so as not to impinge on the rights of its citizens. Individuals allow for the establishment of a constitutional state so that it can protect their rights and freedoms, but does not hinder their pursuit of happiness. Thus, the

rule of law, not the independent power of the government, serves as the societal foundation of any liberal society.

Finally, liberalism asserts the equality of individuals, not in a substantive way, but in a fundamental one. In other words, liberalism does not pursue a socially, politically, and economically egalitarian society, as in a more Marxist socialist state. The liberal tradition believes in a society where freedom and liberty are equal, and where the rule of law remains the most appropriate method of achieving this equality.

Liberalism in the United States

Domestically, it is evident that classical liberal ideology played a fundamental role in the development of the United States. One only has to look at the foundational pillars of American political life (the Declaration of Independence, the Constitution, and the Bill of Rights) to recognize the Lockean, liberal bend to American society. However, the question remains as to how, if at all, this liberal ideology affects the development of US foreign policy. Although it is clear that the United States does not always predicate its foreign policy design on the principles of liberalism, it is also clear that during the twentieth century and into the twenty-first, there exists a strong lineage of foreign policy rhetoric and decision-making that focuses on the expansion of these liberal ideals.[17] Whether reality reflects the rhetoric is another question that I will return to later.

In dissecting the Rome Statute and its relationship to the liberal-legalist perspective, it is clear that the ICC embraces many of the liberties and freedoms of the American legal system.

The characteristics of what G. John Ikenberry has referred to as the "American liberal grand strategy" are best captured by the concept of liberal internationalism.[18] Liberal internationalism involves the active promotion of American liberal ideals throughout the global community, in an attempt to create a community of liberal democratic states. Throughout the twentieth, and into the twenty-first century, this policy of liberal internationalism has an undeniable empirical basis in American foreign policy.[19] A sampling of Presidential speeches makes clear that almost every modern administration invokes the tradition of liberal internationalism in describing its foreign policy strategy. However, although Presidents from Woodrow Wilson to George W. Bush espoused the need for a liberal democratic order, the means by which they hope to achieve this liberal order differ significantly. Some, like Wilson, expressed the need for a liberal institutionalist foreign policy. This policy, often wrongly equated with liberal internationalism, extols the virtue of multilateral international institutions as the primary avenue for pursuing liberal order.[20] Others, like George W. Bush, believe in achieving a liberal order by whatever means necessary—institutional or not. The means of achievement in the latter policy is via

unilateralism and the notion that American interests shall determine how the United States engages the global community.

A Gramscian understanding of power provides a plausible framework for this debate over means. If one adheres to the Gramscian conception of hegemony, then the cooperative nature of liberal institutionalism appears to be the most conducive form of authority when trying to solidify one's interests. On the other hand, if one initiates a more unilateralist policy agenda, then one is simply imposing their views on the international community in a coercive manner. I will return to this discussion of means when analyzing US foreign policy concerning the ICC.

Liberalism and the ICC

With our understanding of liberal ideology complete, let us now turn to an examination of the details and infrastructure of the International Criminal Court. The purpose of this discussion is to decipher whether the structure and rules of the ICC embody the principles of liberalism, the American Creed, and as a result, the underlying historical purpose of American foreign policy. Such an analysis will provide readers with an empirical example of a current liberal institution, and American behavior towards it. In order to achieve such a goal, this article will assess the liberal nature of the ICC by employing a liberal-legalist model.

A liberal-legalist model argues for a system of government based on a certain set of core values: individual rights, equality before the law, and accountability.[21] In general, the liberal-legalist point of view espouses all of the virtues of a liberal world order. Therefore, if the ICC embraces the principles of a liberal-legalist model, then one can deduce that it also embraces and justifies, via its institutional existence, the liberal historical bloc. As a result, this empirical example will exemplify the position of US power and the future of its ability to lead this hegemonic order.

In dissecting the Rome Statute and its relationship to the liberal-legalist perspective, it is clear that the ICC embraces many of the liberties and freedoms of the American legal system. In regards to the individual rights of the accused, the Rome Statute retains a standard of protection that is equal to that of the American liberal judicial system. It prohibits self-incrimination, provides for free legal counsel, upholds the doctrine of innocent until proven guilty, allows for cross-examination of witnesses, and prevents the use of coercion, duress or threat of duress, torture, or any other form of cruel, inhumane, or degrading treatment or punishment.[22] In many ways, the Rome Statute parallels the American Bill of Rights—providing accused individuals the same set of rights accorded to any American citizen in their domestic legal system.[23]

The ICC also embraces the liberal tradition by predicating its notion of justice on established principles of international law. The authors of the Rome Statute did not create new definitions for the ICC's prosecutorial offenses. Instead, the leadership at the conference, along with the attending delegates, were very careful to base all of their definitions on established, accepted international legal doctrine. For instance, the conference delegates extracted the definition of genocide directly from

the Genocide Convention; the Geneva Conventions form the basis for the ICC's definition of war crimes; and the Hague Conventions, along with the Geneva Conventions, act as the foundation for the Court's definition of crimes against humanity. In conjunction with these codified definitions, the ICC also predicates its understanding of justice on the work of previous international tribunals. These tribunals include the International Military Tribunal at Nuremburg (IMT), the International Military Tribunal for the Far East (IMTFE), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR).

Finally, the ICC adheres to a democratic form of elections when appointing both the prosecutor and the sitting judges. According to the Rome Statute, the necessary qualifications for election as an ICC prosecutor and/or a judge are very demanding. The member states are responsible for nominating the candidates for prosecutor and justices. Upon nomination, these candidates must display experience and competency not only in the field of international law, but also in the area of humanitarian law.[24] Thus, the international community must recognize every nominated prosecutor and judge as an established and acknowledged expert within this issue-area. Once the Court receives nominations for these positions and ICC officials verify their credentials, member states vote (in a democratic fashion) for the open positions. A prospective judge must receive a two-thirds majority of the state parties present and voting, while the nominee for prosecutor must receive an absolute majority of the member states.[25] The Rome Statute also mandates that no two judges may claim the same nationality, and that the state parties shall consider geographic and gender equity in the nomination and election process. Finally, the Rome Statute instructs the judges and the prosecutor that their primary interest is the welfare of the Court. All other forms of identity are to remain subservient to the interests of international justice and the principles of the ICC.

Upon reading the Rome Statute, it becomes clear that this document, and its resulting institution, represents many of the core values inherent in a liberal democratic order, both in regards to the civilian population and the military personnel.[26] If one considers the ICC, with its liberal agenda, within the framework of a Coxian understanding of world order, it is empirically defensible to view the Court as the institutionalization of the liberal hegemonic order. The question that this article must now address is why the hegemonic state, and, in many ways, the primary author of the liberal hegemonic order, refuses to support the institutionalization of its ideational hegemony?

Assessing US Foreign Policy

As shown above, the ICC clearly embodies the basic principles of the liberal tradition and the American Creed. As a result of this conclusion, two questions arise: (1) Why does the United States feel it is imperative that it strive to undermine the work of the Court? (2) What does this mean for the future of American hegemony? The remainder of this article addresses these two questions and concludes with

policy recommendations concerning the ICC and the US relationship with other liberal institutions.

United States Opposition

In regards to the first question, official US opposition to the ICC centers around four broad concerns. The primary concern of US officials is that the Rome Statute allows for the prosecution of individuals from non-party states.[27] According to the Rome Statute, the Court's jurisdiction extends to: (1) actions taken by citizens of party states; (2) actions that take place on the soil of party states, irrespective of the defendant's nationality; or (3) actions taken on board a vessel registered within a party state.[28] This extensive form of jurisdiction allows the ICC prosecutor to pursue indictments of citizens whose national state is not party to the Rome Statute.

Although the US description of ICC jurisdiction is factually accurate, it fails to recognize the similarity between the ICC's jurisdiction and the current system of international justice, which the US supports. Currently, if a country accuses a US soldier of perpetrating a crime against humanity, the US military system, in almost all cases, serves as the forum for prosecution. Under the principle of complementarity, the ICC allows for the same procedure.[29] If and only if the democratically elected panel of ICC judges deems the military trial to be biased, or otherwise unwilling or unable to produce an impartial hearing, can the ICC proceed with its own prosecution procedures. In short, the principle of complementarity assures the global community that any prosecution of the accused occurs in their native state first. Thus, in the case of the United States, the ICC can only act if the United States domestic judicial system, including the Uniform Code of Military Justice (UCMJ), fails to prosecute in an acceptable manner.[30]

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The other prosecutorial scenario that exists under current international legal precedent is one in which an American service member or citizen stands trial in the country in which the crime was committed. In this scenario, the United States has no recourse to the judicial proceedings and the prosecutorial country holds the accused accountable to their specific rule of law. This form of law may, or may not, coincide with the US system of law but, unlike the rule of law embodied in the Rome Statute, the method of foreign prosecution remains unpredictable. For example, if the Nigerian government accuses an American service member or citizen of a crime, that individual, in most instances, will stand trial in Nigeria, not in the United States. The ICC, because of the complementarity principle and the ratification process, allows the accused to return to their native country and stand trial before their own

domestic judicial system. Such a system would seem more consoling to those states, such as the US, that are concerned about politically motivated prosecutions by unfriendly governments.

Accompanying their concern over jurisdiction, US officials are also concerned that the ICC is prone to become more of an instrument of political motivation than a source of global justice. This argument centers on the power of the ICC prosecutor to initiate investigations proprio motu (on his/her own initiative), and the ability of other state parties to initiate investigations.[31] US officials are concerned that such broad powers of prosecutorial initiation will create an environment in which American service members, government officials, and/or citizens may become the target of politically motivated charges. Instead of pursuing criminals accused of violating the core crimes of humanitarian law, the US contends that the ICC will become a forum for attacking American foreign policy by accusing and prosecuting American military personnel, officials, or possibly even citizens. However, it is clear that the ICC's principle of complementarity serves as an institutional safety nets against the occurrence of such illegitimate prosecutions.[32]

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By dictating that the accused must return to their native state to face prosecution first, the Rome Statute significantly hinders the prosecutor's (or any other actors') ability to pursue a politically motivated charge. This is primarily due to the many layers of justice that the indictment must pass through. These layers include: first, a panel of judges that must approve the charges and the arrest warrant; second, the domestic judicial system of the accused, which has the initial opportunity to prosecute (the principle of complementarity); third, a panel of ICC judges which rules on the satisfactory nature of the domestic proceedings and whether the ICC has a right to prosecute; finally, the accused stands trial before the ICC and its liberal-legal principles. It seems, at least to this author, that the prospects of successfully pushing a trumped up, politically motivated charge through such a rigorous judicial process appears unlikely.

The third American objection concerns the constitutionality of the Statute. US officials have voiced concerns that the Rome Statute does not mesh with our own constitution, thus making its ratification in the United States Senate an unconstitutional act.[33] However, according to leading constitutional scholar Ruth Wedgewood, "there is no forbidding constitutional obstacle to US participation in the treaty."[34] She cites five principles that allow the US to ratify the Rome Statute without violating the American Constitution:

- US participation in past tribunals has already affected American lives and property. Thus, the precedent for such courts already exists.

- The ICC embodies the US principles of due process and individual rights.
- If the US government, and not the ICC, tried the crimes that come under the ICC's jurisdiction, these trials would occur in a military court. Since these military courts differ dramatically from US common law trials, the applicability of different standards of judgment is not a viable argument (i.e., a lack of a jury trial).
- The well-drafted rules and procedures of the ICC avoid many of the pitfalls found in the two ad hoc tribunals of the 1990s, both of which garnered US support.
- The Status of Forces Agreements (SOFAs) protects American military personnel from local arrest. According to SOFA, the President of the United States remains the final arbitrator over extradition matters. Therefore, if he/she deems the case unfair, the President retains the right to refuse extradition of the accused to the ICC.[35]

These five principles undermine the argument of constitutionality, thus providing US officials with the ability to ratify the Rome Statute without concern over its conflict with the US Constitution.

The final objection concerns the relationship between the ICC and the United Nations Security Council.[36] Most analysts believe that the United States, under the direction of the Clinton administration, would have moved forward with ratification if the international community allowed the United Nations Security Council to maintain veto power over the Court's proceedings. In essence, this would have created a situation in which the United States has veto power over, among other things, investigations, prosecution, and implementation of new regulations. One area in which this issue became critical was in regards to the inclusion of the crime of aggression.

The crime of aggression is contained within the Rome Statute, but its active inclusion in the Court's future prosecutorial power is contingent on an accepted definition of the concept, along with a future amendment to the Rome Statute. Therefore, in order for a definition to be settled upon, it must pass through the procedures of an amendment to the Statute, as defined in Articles 121 and 123. This procedure entails a rigid democratic process: a majority of those present must first vote to review the proposal, then a two-thirds majority of the state parties must vote to accept the amendment, and finally, seven-eighths of the state parties must accept the amendment. Even at this point, according to Article 121.5, the Court will not exercise its jurisdiction over nationals of a state party that has not accepted the crime. Such a multilayered and clearly democratic process was not sufficient for US representatives, however. The United States desired, and would still prefer, to have this issue decided by the UN Security Council (a patently undemocratic method). However, because of a concerted effort to limit UN Security Council activity in the ICC, the Rome conference delegates agreed to leave this issue to the member states. The contentious discussion surrounding this issue once again illuminates the Court's democratic methods and the US opposition to seemingly acceptable procedures.

If one views American concerns from an objective position, it is obvious that US trepidation over the reach of the Rome Statute, although valid in some instances, remains overstated. Thus, the United States lacks a procedural reason for opposing the ICC. However, this procedural form of opposition, although essential to the discussion, is not our primary focus. Instead, this article is tasked with an assessment of the impact of US opposition to the ICC on the current hegemonic discourse. For a proper analysis of this question, I must return to a discussion of Gramscian hegemony in order to link this interpretation to US policy concerning the ICC.

US Opposition and its Hegemonic Status

As stated earlier, Gramscian hegemony is predicated on the notion of consent within a particular world order or historic bloc. The consent arises from an intersubjectively accepted ideology that permeates large portions of the global community. Thus, the relationship of the hegemon to the historic bloc and its base ideology is one of leadership, not domination. If the dominant power chooses to rule via coercion rather then consent, then it is more likely that its power will decline, rather than flourish.

One can view the formation of the International Criminal Court as an institutional manifestation of the current, Gramscian world order. Its formation is the result of a widely adhered to liberal ideology and, thus, the Court exists as the institutionalization of these ideas. The interesting aspect of the ICC's formation process is that the current hegemon has consistently opposed the institution, at least in its Rome Statute form. As stated earlier, the Clinton administration initially signed the Rome Statute, but it never intended to send the treaty before the Senate for ratification. The Bush administration not only opposes the notion of the ICC, it has also worked vehemently to undermine its objectives through a variety of methods.[37]

From a policy perspective, it is difficult to accept such action as serving the United States' national interest. As President Bush has stated, liberal internationalism remains the primary objective of American foreign policy. As stipulated in the National Security Strategy:

> *In pursuit of our goals, our first imperative is to clarify what we stand for: the United States must defend liberty and justice because these principles are right and true for all people everywhere. No nation owns these aspirations, and no nation is exempt from them.*[38]

Considering that these same liberal principles are the primary objectives of the Rome Statute, it appears nonsensical for the administration to oppose the ICC. Yet, the Bush administration, through its actions concerning the ICC, has made it clear that a discussion of promoting liberty and justice is secondary to considerations of state sovereignty and prosecutorial control. Liberal internationalism may be the rhetorical basis of the Bush administration's foreign policy agenda, but it pursues this goal via coercion and unilateralism, rather than consent. What this administration fails to recognize is that the means by which it pursues an historically defensible grand strategy is resulting in a loss of control over the liberal hegemonic order that

it, at least in rhetoric, desires to perpetuate. The Bush administration's need to openly oppose and undermine the objectives of the ICC in order to protect American sovereignty is but one example of this policy.

The formation of the ICC is the result of several factors, including the confluence of material capabilities from the like-minded states, the ideational input of the CICC, along with the Rome Conference's individual leadership.[39] The result is an institution that reflects an intersubjectively accepted liberal hegemonic order. Despite this fact, the United States feels the need to attack and degrade the Court, describing it as an institution constructed of "unaccountable judges and prosecutors."[40] The fact of the matter is that the judiciary composition of the ICC entails a set of democratically elected judges and prosecutors who are accountable to the body of member states. These judges and prosecutors vow to uphold the principles of established international law as a form of law that, as this article has shown, fully reflects the basic construct of American constitutional law. In short, from a strategic standpoint, one can only describe the current administration's position on the ICC as detrimental to the liberal grand strategy of American foreign policy. If, as Gramsci articulated, hegemony is based on consent and not coercion, then the United States must consider supporting institutions that reflect the liberal global order as the foundation of their hegemonic power. Anything less constitutes a sign of weakness, not strength.

The Unique Nature of the ICC Case

Although this argument is theoretically sound, one could argue that US policy since its rise to hegemonic status has not corresponded with its liberal rhetoric. More well-known examples include the United States' failure to ratify the Genocide Convention for nearly forty years (and then only with several reservations), US refusal to ratify the Convention on the Elimination of All Forms of Discrimination Against Women, and the US standing as one of only two states to have not ratified the Convention on the Rights of the Child.[41] Despite actions that remain clearly opposed to the liberal ideological basis of US hegemony, the United States has remained the hegemon throughout this period. So what makes US opposition to the ICC and its liberal-legal principles different?

With the end of the Cold War and the emergence of a new, predominantly liberal global order, a failure of the United States to accept these liberal-legal institutions becomes far more detrimental.

Several factors differentiate this case from past opposition to liberal-based treaty law. The first involves the alteration in global order and the impending decline of "hegemonic need." During the Cold War era, the United States could act in an exceptional manner with little consequences. The failure to ratify treaties that accorded with liberal values was inconsequential because the United States was seen

as a beneficial hegemon, necessary to counter the perceived threat of the Soviet Union.[42] Other actors in the system accepted these binding liberal agreements as a counter to the Soviet threat and yet, also accepted US denial of ratification because, materially, no other actor could fill the role of liberal hegemon. With the end of the Cold War and the emergence of a new, predominantly liberal global order, a failure of the United States to accept these liberal-legal institutions becomes far more detrimental.[43] In short, it is now the ideational, not simply the material-structural, authority that provides a state with power in the global system.

The second reason involves the level of legalization present in the ICC, as opposed to the aforementioned treaties.[44] From a legalization perspective, scholars rank all forms of international law based on three criteria: "the degree to which rules are obligatory, the precision of those rules, and the delegation of some functions of interpretation, monitoring, and implementation to a third party."[45] If a legal doctrine or institution has a low level of these characteristics, then it has a low level of legalization. The result is a relatively weak legal principle with little to no ideational authority or binding power. On the opposite end of this spectrum is an institution that has high levels of binding legal obligation, a precise use of language within the statute, and delegation of authority to a third party arbitrator. These institutions, if fully functioning, encompass a high level of ideational acceptance and thus present a strong presence in the international legal community.

The failure to participate in such a strong liberal-legal institution clearly places the United States at odds with a now fully functioning and relatively powerful institution that is intersubjectively accepted by a large number of its allies.

The typical Cold War treaty and/or institution lacked a high level of legalization, thus making its ideational power minimal.[46] The US may not have accepted these legal treaties, but this did not have a detrimental affect on its hegemonic status because, despite the fact that other countries had ratified these liberal treaties, the treaties themselves lacked any real authority. Therefore, failure to ratify a weak legal instrument was inconsequential. However, the ICC is a quintessential example of a hard form of legalization. This becomes important in the discussion of US hegemony because the failure to participate in such a strong liberal-legal institution clearly places the United States at odds with a now fully functioning and relatively powerful institution that is intersubjectively accepted by a large number of its allies. Within the area of humanitarian law, the United States' vehement opposition also appears as somewhat of an historical anomaly, thus further accentuating the divide between the US and this newly formed liberal institution.[47] It also exemplifies the current ideational position of the United States—which might now appear as contradictory to its traditional liberal foreign policy rhetoric.

Finally, it is not simply the changing nature of the global system or the unique nature of the ICC but, as alluded to earlier in this article, it is also the level of obstruction that the United States has initiated that should be taken into account. In the past, though the United States has not ratified certain liberal treaties, it has also not initiated an overtly hostile attitude towards these legal statutes. In regards to the ICC, the United States, particularly under the Bush administration, has attempted to undermine the Court and its authority in several substantive ways. These include the diplomatic use of Bilateral Immunity Agreements (BIAs), or so-called Article 98 agreements, as well as domestic legislative action, such as the American Servicemembers Protection Act (ASPA), often referred to as The Hague Invasion Act.

The first of these methods (BIAs) are bilateral agreements, initiated by the United States, in which both parties agree not to extradite current or former government officials, military personnel (regardless of their national status), or citizens of the other party to the ICC. The purpose of these agreements, according to the US, is to protect American nationals from politically motivated prosecution in the ICC. As John Bolton articulated in November of 2003:

> *Article 98 agreements serve to ensure that US persons will have appropriate protection from politically motivated criminal accusations, investigations, and prosecutions. These straightforward agreements require that our partners agree, either reciprocally or non-reciprocally, not to surrender US persons to the International Criminal Court, not to retransfer persons extradited to a country for prosecution, and not to assist other parties in their efforts to send US persons to the ICC. We have worked hard to find mechanisms and formulations in these agreements that meet our requirement of blanket coverage while also responding to the needs of our bilateral partners.*[48]

In order to attain these agreements, the United States has threatened economic sanctions that include the termination of military aid and other forms of foreign assistance.[49] Such a hard line stance by the Bush administration exemplifies their displeasure with the Court, and its fears of its jurisdictional reach.

Along with the signing of BIAs, the United States government has also passed domestic legislation with the intent of undermining the ICC.[50] The American Servicemembers Protection Act of 2001 stipulates that the United States government views the ICC as an institution that exposes US military personnel and governmental officials to prosecution that is not pursuant with the US Constitution. As a result, the ASPA authorizes the President "to use all means necessary and appropriate to bring about the release from captivity of any person described in subsection (b) who is being detained or imprisoned against that person's will by or on behalf of the International Criminal Court."[51]

This act also allows the United States to terminate military assistance to ICC party states, limits the availability of US peacekeepers to UN-mandated missions, prohibits the transfer of classified national security information to the ICC, and generally prohibits any cooperative arrangements between the United States and the Court. As with the BIAs, this act of Congress is a clear attempt to undermine the

actions of the ICC, publicly state US opposition to the Court, and generally limit the ICC in its ability to pursue international justice.

Such activity not only shows a failure to embrace the binding nature of liberal-legal principles (as was the case during the Cold War), but a desire to defeat the implementation of these principles. This hostile approach to the ICC is a radically different policy agenda than was previously pursued and, one could argue, is detrimental, on a much greater scale than previous non-acceptance tactics, to the ideational power of the United States and its ability to lead a liberal global order.[52]

Conclusion

This article attempted to demonstrate several things: (1) that the ideational basis of American hegemony resides in the classical liberal tradition, and that this consensual component of American hegemony is the true strength of US power; (2) that this liberal tradition also serves as the foundation for the International Criminal Court, thus showing that the interests of ICC advocates coalesce with American interests; (3) that American policy towards the ICC is not only hindering the international community's pursuit of global justice, it is also undermining the current status of American hegemony and the perpetuation of the American liberal order. Furthermore, if the US policy towards the ICC extends to other liberal institutions, the end of the US liberal hegemonic moment appears imminent.[53]

In empirically analyzing the basis of American hegemony, it is clear that the United States, throughout much of its history, has pursued an international system that reflects its domestic liberal values. Under the Bush administration, the tradition of liberal internationalism remains a critical doctrine of American foreign policy. Thus, the current administration recognizes, at least implicitly, the power of liberal Gramscian hegemony. This hegemony of ideas is one aspect of America's position as the dominant global power. However, counter to the recommendations of Machiavelli and the understandings of Gramsci, the current administration appears to be working against its own position of power by engaging in more coercive, unilateralist tactics, instead of assuming a leadership role in the perpetuation of the consensual base surrounding global liberal values. By assuming a more affable position on the ICC, the Bush administration would make great strides towards the retention and perpetuation of its power.

In making this recommendation, it is important to recognize that such a policy originates from a power-based perspective, not a moral one. Many of the world's most pre-eminent legal scholars have drafted supportive documents in favor of US ratification based on morality. As evidenced by the continuing lack of ICC support in the United States government, it is apparent that this line of rational thinking has not fully permeated the mindset of current American policymakers. Thus, this article attempts to speak to government officials in a language they can understand—power. By opposing the ICC, the United States is failing to support its own liberal agenda. The result of such action is a loss of ideational power, a decline in hegemonic status, and a defeat for American national interest—in short, a loss of power.

In order to rectify this situation, the US need not openly embrace the ICC and immediately move toward ratification. Instead, the US should establish a working relationship with the Court and cease its undermining tactics.[54] An initial step might entail participation in the upcoming review conference in 2009. Another possible policy initiative would be to act on Secretary of State Condelezza Rice's stipulation that the US not follow through on the BIAs it has signed.[55] If the US takes these small steps, then it is possible to restore American influence and ideational leadership.

It is also important to recognize that US policy concerning the ICC is but one example of a counter-productive foreign policy agenda concerning the maintenance of US hegemony. Thus, in making a recommendation concerning future American relationships with multilateral liberal institutions (such as the ICC), it is clear that a supportive association with these organizations will better serve the administration's ultimate goal—the perpetuation of America's position of power and the spread of American ideals. Movement towards an acceptance of the ICC might serve as an initial signal of future policy change, but it will also serve as a foundation for future participation in liberal institution building and the continued promotion of a liberal world order.

NOTES

1 International Criminal Court, *The Rome Statute for the Establishment of a Permanent International Criminal Court.* Available at: http://www.iccnow.org (accessed February 19, 2007). The Rome Statute for the Establishment of a Permanent International Criminal Court required 60 state ratifications for the Court to come into force. As of 2/14/07, the Statute has 104 ratifications and 139 signatories (although the United States and Israel have withdrawn their signatures).

2 For a detailed discussion of the action of "unsigning." see Edward T. Swaine, "Unsigning," *Stanford Law Review*, v. 55 (2003): 2061–2089,

3 Pierre-Richard Prosper, Foreign Press Center Briefing, May 6, 2002. Available at: http://fpc.state.gov/9965.htm (accessed December 2, 2006).

4 Jean Galbraith, "The Bush Administration's Response to the International Criminal Court," *Berkeley Journal of International Law*, v. 21 (2003): 683–702. Provides a detailed analysis of Bush administration policy towards the ICC. The one instance in which the US opposition appears to have softened is the UN Security Council decision (UNSC Resolution 1593) to allow ICC jurisdiction over the Darfur crisis. The US abstained on this vote.

5 National Security Council, *The National Security Strategy of the United States of America*, (Washington DC: September 2002), 31. Available at: http://www.whitehouse.gov/ncs/nss.pdf, (accessed February 1, 2007).

6 The crime of aggression is also included in the Rome Statute. However, the international community has not yet approved a definition of this crime. Until a consensus definition emerges, this crime will remain outside of the ICC's jurisdiction.

7 Stephen Gill, "Epistemology, Ontology, and the Italian School," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 2003), 41–42.

8 Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan Books, 2003); one example of the more materially-focused or traditional literature on American hegemony.

9 Robert W. Cox, "Gramsci, Hegemony and International Relations: An Essay in Method," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 1993), 42.

10 Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, Translated by Q. Hoare and G. Nowell Smith (NewYork: International Publishers, 1971), 57–58.

11 The notion of consensus building instead of repression is a familiar theme in the current literature on American power. Most notably, Joseph S. Nye, Jr., *The Paradox of American Power: Why the World's Only Superpower Can't Go It Alone* (New York: Oxford University Press, 2002); and Joseph S. Nye, Jr., *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004); discusses the concept "soft power."

Although this concept is similar to Gramscian hegemony, the concepts are not synonymous (as Nye himself implicitly admits by not acknowledging Gramsci's work in his list of references).
[12] Joseph V. Femia, *Gramsci's Political Thought: Hegemony, Consciousness, and the Revolutionary Process* (Oxford: Oxford University Press, 1981), 26–29.
[13] Gramsci, Selections from the Prison Notebooks, 366.
[14] Robert W. Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," *Millenniun: Journal of International Relations Studies* 10 (1981): 126-155; Robert W. Cox, *Production, Power, and World Order: Social Forces in the Making of History* (New York: Columbia University Press, 1987); Cox, "Gramsci, Hegemony and International Relations."
[15] Cox, "Gramsci, Hegemony and International Relations."; Enrico Augelli and Craig N. Murphy, "Gramsci and International Relations: A General Perspective and Example From Recent US Policy Toward the Third World," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 1993).
[16] John Locke, *Second Treatise of Government*, (Cambridge, MA: Hackett Publishing Company, Inc., 1980); serves as the philosophical foundation for liberal ideology. Several contemporary works on US foreign policy explore the importance of this ideology within the foreign affairs and international politics literature. This list includes: Daryl Glaser, "Does Hypocrisy Matter? The Case of US Foreign Policy," *Review of International Studies* 32 (2006): 251–268; Michael Ignatieff (ed.), *American Exceptionalism and Human Rights* (Princeton, NJ: Princeton University Press, 2005); G. John Ikenberry, "Liberalism and Empire: Logics of Order in the American Unipolar Age," *Review of International Studies* 30 (2004): 609–630; G. John Ikenberry, "Liberal Hegemony and the Future of American Postwar Order," in *International Order and the Future of World Politics*, eds. T.V. Paul and John A. Hall (Cambridge, MA: Cambridge University Press, 1999), 123–145; and Seymour Martin Lipset, *American Exceptionalism: A Double-Edged Sword* (New York: W. W. Norton & Company, 1997).
[17] Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (Princeton, NJ: Princeton University Press, 1994); Colin Dueck, "Hegemony on the Cheap: Liberal Internationalism from Wilson to Bush," *World Policy Journal* (Winter 2003/2004): 1–11.
[18] G. John Ikenberry, "America's Liberal Grand Strategy: Democracy and National Security in the Post-War Era," in *American Democracy Promotion: Impulses, Strategies, and Impacts*, ed. Michael Cox et al. (New York: Oxford University Press, 2000), 103–126.
[19] Smith, *America's Mission*; Ikenberry, "America's Liberal Grand Strategy"; Dueck, "Hegemony on the Cheap."
[20] John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution," in *Multilateralism Matters*, ed. John Gerard Ruggie (New York: Columbia University Press), 3–50.
[21] Antonio Franschet, "The Rule of Law, Inequality, and the International Criminal Court," *Alternatives: Global, Local, Political* 29 (2004): 23–43.
[22] *Rome Statute*, Articles 22–33, 55, 81–85.
[23] The one glaring exemption from the Rome Statute is trial by jury. All ICC proceedings are bench trials conducted by a panel of judges. The process is much more akin to the United States form of military justice then United States constitutional law.
[24] *Rome Statute*, Articles 36.3[b] and 42.4.
[25] *Rome Statute*, Articles 36.6[a] and 42.4.
[26] In regards to military personnel, many of the liberal principles inherent in the Rome Statute exceed those contained in the United States Military Code of Justice. It also seems unlikely that a US service member will ever face trial in the ICC due to the principle of complementarity. See Robisnon O. Everret, "American Servicemembers and the ICC," in *The United States and the International Criminal Court: National Security and International Law*, ed. Sarah B. Sewall and Carl Kaysen (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 2000), 137–152; and Victoria Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," *The Henry L Stimson Center*, Report No. 55 (March 2006).
[27] David Scheffer, "US Policy and the Proposed Permanent International Criminal Court (transcript of a speech at the Carter Center, Atlanta, GA)," *US Department of State Dispatch* 8 (1997): 20–22; David Scheffer, "Development at the Rome Treaty Conference (transcript of a speech to the Foreign Relations Committee, United States Senate)," *US Department of State Dispatch* 9 (1998): 19–23; David Scheffer, "The United States and the International Criminal Court." *The American Journal of International Law* 93 (1999): 12–22; David Scheffer, "The US Perspective on the ICC," in *The United States and the International Criminal Court: National Security and International Law*, ed. Sarah B. Sewall and Carl Kaysen (Lanham, MD: Rowman & Littlefield Publishers Inc., 2000), 115–118; David Scheffer, "Evolution of US Policy Towards the International Criminal Court," address at Washington College of Law, American University, Washington DC, March 31, 1998. Available at: http://www.state.gov/www/policy_remarks/1998/980331_scheffer_tribs.html (accessed February 19, 2007); George W. Bush, "Comments During First Presidential Debate," September 30, 2004. Available at http://www.debates.org/ (accessed February 19, 2007).

[28] *Rome Statute*, Article 12.
[29] *Rome Statute*, Article 17(2).
[30] Anne-Marie Slaughter, "The partial rule of law: America's opposition to the ICC is self-defeating and hypocritical," *The American Prospect* 15 (2004). Article 20 of the Rome Statute points out the irrationality and hypocrisy of the United States' position.
[31] Scheffer, "Development at the Rome Treaty Conference," 21.
[32] Eric K. Leonard, "Discovering the New Face of Sovereignty: Complementarity and the International Criminal Court," *New Political Science* 27 (2005): 91–108.
[33] Colin Powell, "Transcript of fiscal year 2002 State Department Appropriations Hearing Before the Subcommittee of the House Appropriations Committee," US House of Representatives, (April 26, 2001). Powell stated that he does not think the Bush administration should send the Rome Statute to the Congress for ratification "because of concerns we have, frankly, about the constitutional rights of our servicemen and women who might be overseas and somehow become subject to the risks associated with such a court."
[34] Ruth Wedgewood, "The Constitution and the ICC," in *The United States and the International Criminal Court: National Security and International Law*, ed. Sarah B. Sewall and Carl Kaysen (Lanham, MD: Rowman & Littlefield Publishers Inc.,) 121.
[35] Wedgewood, "The Constitution and the ICC," 120–127.
[36] The ICC-UN relationship is articulated in: United Nations, Negotiated Relationship Agreement Between the International Criminal Court and the United Nations, Available at:
http://www.iccnow.org/documents/ICC-ASP-3-Res1_English.pdf, (accessed December 12, 2006).
[37] US Department of Sate, "American Servicemembers Protection Act of 2002" Available at:
http://www.state.gov/t/pm/rls/othr/misc/23425.htm, (accessed December 12, 2006), This act, which was part of a 2002 supplemental appropriations bill, is one such method. The Act gives the President of the United States the right to protect US officials, service members or citizens from prosecution before the ICC. This protection takes the form of any means necessary, including invasion of the Hague. I will return to US undermining tactics later in the article.
[38] *The National Security Strategy*, 3.
[39] Fanny Bendetti and John L. Washburn, "Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference," *Global Governance* 5 (1999): 1–38; Eric K. Leonard, *The Onset of Global Governance: International Relations Theory and the International Criminal Court* (Aldershot, Hampshire: Ashgate Publishing, 2005).
[40] Bush, "Comments During First Presidential Debate."
[41] Somalia is the other non-ratifying state. These are just a few examples of US aversion to international treaty law.
[42] One could argue that the United States failure to serve as a hegemon in the inter-war years is one contributing factor to World War II. Therefore, the democratic liberal community of states saw a real need for a hegemon to lead during the Cold War years.
[43] See John Gerard Ruggie, "American Exceptionalism, Exemptionalism, and Global Governance," in Ignatieff, ed., *American Exceptionalism*, 304–338; and Nye, *The Paradox of American Power*; for a discussion of the changing nature of global governance and the US position in that structure.
[44] See Judith Goldstein, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter (eds.), "Legalization and World Politics," special edition of *International Organization* 54 (2000): 385–703.
[45] Goldstein, Kahler, Keohane, and Slaughter, "Introduction: Legalization and World Politics," 387.
[46] The Genocide Convention is one example. This treaty has a high level of precision, but a rather low level of obligation and a low level of delegation thus defining its norms as low level legalization.
[47] In the past, the United States has not only accepted, but in many instances initiated the movement to such hard forms of legalization. Examples of this support would include: the post-World War II tribunals in Germany and Japan, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda.
[48] John Bolton, "American Justice and the International Criminal Court," remarks at the American Enterprise Institute, Washington, D.C. on November 3, 2003. Available at:
http://www.state.gov/t/us/rm/25818.htm. (accessed February 14, 2007).
[49] This has culminated in the passing of the Nethercutt Amendment, as part of the 2006 joint Appropriations Bill, which authorizes the termination of Economic Support Funds to ICC party states that have not signed a BIA with the United States.
[50] See Lilian V. Faulhaber, "American Servicemembers Protection Act of 2002," *Harvard Journal on Legislation* 40 (2003): 537–557; for a detailed analysis of this legislation.
[51] *American Servicemembers Protection Act of 2002*, Sec. 2008 (a).
[52] As discussed earlier in this article, numerous scholars have empirically verified this claim including, Ignatieff (ed.), *American Exceptionalism*; Julie A. Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy*

(New York: Routledge, 2004); and Nye, *The Paradox of American Power.*
[53] I emphasize "US" because it will not mean the end of the liberal moment, just the United States' ability to serve as its hegemon.
[54] One example of a more conciliatory tone concerning the work of the ICC is the recent United States abstention from the Security Council vote on the Darfur situation. United Nations, *Security Council Refers Situation in Darfur, Sudan, to Prosecutor of International Criminal Court* (New York, 2005), SC/Res/1593.
[55] Condoleezza Rice, "Trip Briefing, En Route to San Juan, Puerto Rico," March 10, 2006, Available at: http://www.state.gov/secretary/rm/2006/63001.htm, (accessed December 12, 2005). As stipulated earlier in this article, BIAs or Article 98 agreements are US requested agreements in which other nation-states agree not to transfer US current or former officials, military officials, or common citizens to the ICC.