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14. ABSTRACT

An analysis of the issues and remedies a Joint Force Commander should be concerned about because of the relationship between the United States and the newly-created International Criminal Court (ICC). Although the existence of the ICC creates the potential for significant problems to military operations, with proper planning and training, Joint Force Commanders should be able to minimize risk down to an acceptable level without mission-threatening impact. Joint Force Commanders should be aware that the ICC will be used by entities opposed to the foreign interests of the United States during and after each U.S. military operation that has a sufficient nexus to the ICC. Joint Force Commanders forewarned with this information, should incorporate into operational planning and training methods to counteract this threat. The Commander-in Chief thinks the ICC is fundamentally flawed because it puts American Servicemembers at fundamental risk of being tried (for the broadly-defined crimes of genocide, crimes against humanity, and war crimes) by an entity that is beyond America's laws, beyond America's reach, and can subject American civilian and military to arbitrary standards of justice.

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The International Criminal Court: Considerations for the Joint Force Commander

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College of the Department of the Navy.

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16 May 2003

THE INTERNATIONAL CRIMINAL COURT: CONSIDERATIONS FOR THE JOINT FORCE COMMANDER

> *President Bush thinks the (International Criminal Court) is fundamentally flawed because it puts American servicemen and women at fundamental risk of being tried by an entity that is beyond America's reach, beyond America's laws, and can subject American civilian and military to arbitrary standards of justice.*
>
> *-- White House Press Secretary Ari Fleischer.* [1]

> *The first global criminal court holds its inaugural session on (11 March 2003) when judges are sworn in . . . The (International Criminal Court) will try genocide, crimes against humanity, war crimes and the yet-to-be defined crime of aggression. Since it was officially set up last July, the ICC has received more than 200 complaints alleging war crimes, though it will say nothing about the nature of them . . . Richard Dicker, international justice expert at Human Rights Watch, said the inauguration of the first 18 judges would help to thwart U.S. efforts to undermine the court. "The judges' inauguration makes this court more unstoppable than ever".*
>
> *-- Reuters, 11 March 2003*[2]

INTRODUCTION

This paper will analyze the issues and remedies a Joint Force Commander should be concerned about because of the relationship between the United States and the newly-created International Criminal Court (ICC). Although the existence of the ICC creates the potential for significant problems to military operations, with proper planning and training, Joint Force Commanders should be able to minimize risk down to the acceptable level without mission-threatening impact.

Joint Force Commanders should be aware that the ICC, located in The Hague, will be used in some form by entities opposed to the foreign policy interests of the United States during and after each U.S. military operation that has a sufficient nexus to the claimed

jurisdiction of the ICC. While this may sometimes be motivated for retribution purposes, more importantly it will be done mainly to deter the future use of military force by the United States. In other words, in an attempt to make the United States "gun-shy" in its use of military force. Based on past experiences within other international forums, it is likely there will be continual attempts to use the ICC as a check on the superpower status of the United States and the implementation of its foreign policy. Joint Force Commanders forewarned with this information, should therefore incorporate into operational planning and training methods to counteract this threat, or at a minimum, to lessen its impact on military operations.

The implementation of the ICC creates a number of areas of concern for the Joint Force Commander. First, is the potential for ICC trials of U.S. Servicemembers and civilian employees for using military force legal under U.S. domestic law while acting under orders from their chains of command. The ICC's jurisdictional claims could result in the trial of U.S. Servicemembers for the broadly-defined offenses of "genocide", "crimes against humanity", "war crimes" and in the future the undefined crime of "aggression". Even if U.S. Servicemembers are not present for ICC proceedings, they could still be tried and convicted in absentia and international arrest warrants issued if they are convicted. Second, indicted U.S. Servicemembers and civilian employees located overseas could be apprehended by ICC party nations on behalf of the ICC. Third, Joint Force Commanders may need to avoid routing Servicemembers through, or launching strikes from, ICC party nations that have demonstrated a propensity to assertively support the ICC. Fourth, Joint Force Commanders and their staffs will need to factor in ICC considerations when planning for operations. This should include the possible impact on using current foreign bases and alliances, along with

the balancing of mission effectiveness with the probability of ICC action and its national strategic consequences. Finally, Joint Force Commanders and their staffs should insure ICC issue-related training is conducted for all Servicemembers and civilians involved in the process of operational planning and logistics.

BACKGROUND

> *The hope after Nuremberg and Tokyo was that the international criminal laws that emerged from the ashes of the killing centers would become effective deterrents against any new Hitlers that might emerge. The unfulfilled hope, after those trials, was that there would be a permanent court and an independent prosecutor that would effectively act against the world's new tyrants, apprehending, trying, and punishing them in a permanent ICC.*
>
> -- *Howard Ball*[3]

As the quote above indicates, the original thought-process for an ICC was deeply rooted in good intensions and optimistic hopes for the future after two World Wars. The reality of a permanent ICC came up against the reality of the rivalries during the Cold War and no forward movement was made until the early 1990s. Proponents cited the wars of the 20th Century and post World War II genocides as evidence for the need for a permanent ICC.[4] The United States was one of these proponents, but as proposed drafts of the treaty -- which would later become formally known as the Rome Statute of the International Criminal Court -- came to fruition, the United States became fundamentally opposed to certain core aspects of it.[5] Unable to come to agreement during a United Nations final drafting conference held in Rome in July 1998, a vote was taken with 120 nations voting in favor of the treaty, 21 nations abstaining, and 7 nations, including the United States, voting against it.[6]

Negotiations continued during the ratification process and on the last day possible, 31 December 2000, President Clinton signed the ICC treaty, but did not send it to the U.S.

Senate for ratification. President Clinton signed the treaty to give the United States the ability and opportunity to continue negotiations to obtain sought-after exceptions to the treaty. After these efforts proved to be terminally unsuccessful, on 6 May 2002, President Bush "designed" the ICC treaty and formally notified the United Nations the United States would not ratify it.[7]

The treaty was written from the perspective of self-defense within one's own borders without taking into consideration the nature of expeditionary warfare or the super-power status of the United States. Specifically, the United States opposes the ICC provisions that: (1) Allow jurisdiction over citizens of a non-ICC party state for enumerated offensives; (2) Allow ICC state parties exceptions from future amendments creating new offensives, but not non-parties; (3) Include the crime of "aggression", but have not yet defined it; (4) Allow the ICC prosecutor wide latitude to initiate investigations of perceived offensives; (5) Do not hold the prosecutor responsible to the U.N. Security Council; (6) Do not hold the ICC to a system of "checks and balances" like that of U.S. courts; and, (7) Only allows ratification of the treaty as a whole.[8]

As of 10 March 2003, 89 countries have ratified the treaty that created the International Criminal Court, including U.S. allies: the United Kingdom, Italy, Germany, the Republic of Korea, Australia, Belgium, Spain, and Iceland.[9] The treaty entered into force on 1 July 2002, the date the ICC claims as the beginning of its jurisdiction for alleged enumerated offensives.[10] Countries, along with the United States, which have not ratified the treaty include China, India, Indonesia, Russia, Pakistan, Japan, Israel, Egypt, Turkey, Iran, and Iraq. It is likely more countries will ratify the treaty, as there are ongoing processes in a number of countries to do so.

The United States has pursued a proactive course of action to counter the potential threat of an active ICC. First, it has sought "Article 98" bilateral agreements[11] with countries which have ratified the ICC treaty that would prevent extradition of U.S. citizens from these countries for ICC trial. On 2 May 2003, Secretary of State Colin Powell signed an "Article 98 Agreement" with Albania, making it the twenty-eighth country to have such an agreement with the United States.[12] This number is likely to increase in the future as bilateral negotiations continue. Second, on 2 August 2002, President Bush signed into law "The American Servicemembers' Protection Act of 2002"[13], which entirely prohibits any United States federal, state or local government entity from cooperating with, or providing any assistance to, the ICC. In addition, it authorizes the President "to use all means necessary and appropriate" to recover Servicemembers held under an ICC order. Third, the United States negotiated for, and obtained, a unanimous United Nations Security Counsel resolution granting immunity from ICC investigation and prosecution to U.S. Servicemembers conducting U.N.-sanctioned peacekeeping operations, for a one-year period beginning 1 July 2002.[14] "The resolution states the counsel's intension to order further 12-month exemptions each year `for as long as may be necessary'".[15]

ANALYSIS

> *The U.S. military has reason to be wary of an ICC. The concept of allowing a civilian court to evaluate what essentially may be professional military judgments runs contrary to the core of the U.S. military system. The idea that the laws of war, so clearly and diligently ingrained in U.S. military doctrine and training, might be reinterpreted by an outsider is worrisome.*
>
> *-- William L. Nash*[16]

> *A fox should not be of the jury at a goose's trial.*
>
> *-- Thomas Fuller (17th Century)*[17]

While the potential impact of the ICC on military operations may appear remote to some, there are a number of significant indications to believe it does create the potential for significant problems to military operations. Past experiences in other international forums indicates it is likely there will be continual attempts to use the ICC as a check on the superpower status of the United States and the implementation of its foreign policy.

There are six major arguments against the position of this paper that the existence of the ICC creates the potential for significant problems to military operations. These are: (1) At a strategic level, the United States will continue to take actions that will make the ICC an ineffectual force on U.S. military operations; (2) The ICC will mirror the inaction and ineffectiveness of other international entities and never come into its own as a credible, functional punitive court; (3) Any country the United States has basing rights with would not be brazen enough to turn over U.S. Servicemembers for ICC prosecution; (4) There are no significant differences between U.S. Servicemembers being captured in combat operations by ICC nations and turning them over to the ICC, than their capture and incarceration as prisoners of war; (5) Realistically speaking, the worst that would probably happen to U.S. Servicemembers are a few “high-visibility” commanders or pilots being tried and convicted in absentia, which would only prevent them from traveling to certain “hard-core” ICC nations; and, (6) The ICC is a noble undertaking in the tradition of Nuremberg set-up to try major war criminals, therefore, the United States should have nothing to fear from the ICC unless U.S. military actions are truly acting outside the bounds of accepted international norms.

The first of these six counter-arguments -- that at a strategic level the United States will continue to take actions which will make the ICC an ineffectual force on U.S. military

operations -- fails to take into account that such actions may have the opposite result with some countries. The proactive courses of action taken to date have been: the Article 98 agreements with ICC countries; the enacting into domestic law the American Servicemembers' Protection Act of 2002; and, the United Nations Security Counsel resolution granting U.S. immunity for U.N-sanctioned peacekeeping operations. These efforts may reduce the potential impact of the ICC while at the same time have a "militant effect" on some ICC member states and non-governmental organizations (NGOs). While relations with certain ICC nations may improve, they may also worsen with other ICC nations, especially those who look at the ICC as a tool to lessen the status of the United States in international affairs.

Second, the ICC is historically unique and should not be dismissed as a non-threat to the Unites States when compared with other international legal bodies, which have often demonstrated an inability to be effective. In the past, international war-crimes courts have been ad hoc and standing international courts have dealt with other types of disputes between nations, or parties of nations seeking compensatory damages. The ICC offers the perception of credibility and carries the weight of having significant ties to the United Nations and also that 89 countries ratified the treaty which created it. As a result, the ICC has the potential to be an effective, functional punitive court.

Third, nations act first and foremost in their own national interests. Although the United States may have basing rights, over-flight rights, or some other arrangement with a country, this is not a bar from a country apprehending U.S. Servicemembers and turning them over to the ICC if that country views it best in its own national interests. In addition,

domestic political factors could also play a role, even if the host-nation leaders prefer not to cooperate with the ICC.

Fourth, there are significant differences between U.S. Servicemembers captured in combat operations by ICC nations and turned over to the ICC for trial, than with their capture and incarceration as prisoners of war. An ICC trial would mean trial as a war criminal, and possible long-term incarceration as a convicted prisoner, even if the military force used was legal under U.S. domestic law and the Servicemember was acting under orders. In contrast, capture and incarceration as prisoners of war as a general rule requires release after the end of the war.

Fifth, criminal complaints have already been drafted against the Joint Force Commander of Operation Iraqi Freedom and other United States military officials in a different forum in Belgium[18], the host-nation of NATO. Under the ICC, entire groups of Servicemembers taking part in a military action deemed to be a war crime could face trial and conviction in absentia. Future aerial strike missions by the United States against an ICC nation could undoubtedly give rise to complaints filed with the ICC. Pilots shot down and captured could be treated as alleged war criminals under the ICC instead of as lawful combatants.

Finally, while the concept of the ICC can be thought of as a noble undertaking in the tradition of Nuremberg set-up to try major war criminals, the ICC statute has a procedural process susceptible to manipulation. While it allows jurisdiction over citizens of a non-ICC party state for enumerated offensives, it allows party-states exceptions from future amendments creating new offensives, but not non-parties. It includes the crime of "aggression", but has yet to define it.

The ICC treaty empowers the ICC prosecutor wide latitude to initiate investigations of perceived offensives, but does not hold the prosecutor responsible to a much-higher authority like the U.N. Security Council and does not hold the court to a system of "checks and balances" like that of U.S. courts. There is a recent example of wide-latitude taken by a prosecutor in another war crimes forum. In 1999, on his own initiative, the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia conducted a legal analysis of NATO actions in Yugoslavia to determine if NATO members had committed war crimes during the 78-day Kosovo action.[19]

The position that the United States should have nothing to fear from the ICC unless U.S. military actions are truly outside the bounds of accepted international norms, does not take into account the reality of possible manipulation.

It is not difficult to envision a scenario in which if Saddam Hussein's Iraq had signed and ratified the ICC treaty, that American actions during Operation Iraqi Freedom would have led to complaints filed with the ICC. This would lead to investigations and possibly indictments, trials and international arrest warrants for the more "visible" American Servicemembers. Because neither Iraq nor the United States have ratified the Rome Statute, ICC jurisdiction does not apply.

Some pro-ICC entities claim a moral high-ground with the ICC asserting it is now valid International Law. The treaty that created the ICC, the Rome Statute of the International Criminal Court, has been formally opposed by the U.S. Congress, President George W. Bush, former President Clinton, and a majority of the most-populous nations representing a significant majority of the world's population. Conversely, the creation of an ICC has been supported by the majority of the total number of nations and a significant

number of domestic and international NGOs. Many of these have conducted an aggressive campaign under a banner of International Law, claiming that the Rome Statute must be obeyed by all nations, like domestic state law is to be obeyed by all citizens of that state. Treaty-created International Law is fundamentally different than American widely-accepted notions of "Law" based upon the U.S. Constitution. "To make a loose analogy, *treaties* are the international counterpart of national legislation. Unlike national legislation, which binds even those who dissent from it, treaties are only binding on those states which consent to become parties to them. In this respect they are more like contracts than statutes."[20] As a general rule, International Law treaties have bound treaty-member nations to certain courses of action, while the Rome Statute of the International Criminal Court applies to the conduct of individuals, including those citizens from nations that have not ratified the treaty. The ICC claims subject-matter jurisdiction[21] on enumerated offensives listed within the Rome Statute if at least one party is from a nation that has ratified the ICC treaty and it claims personal jurisdiction[22] over individuals involved in enumerated offensives, even if they are acting on orders lawful under the laws of their country.

CONCLUSIONS

> *War is thus an act of force . . . Attached to force are certain self-imposed, imperceptible limitations hardly worth mentioning, known as international law and custom, but they hardly weaken it.*
>
> *-- Carl Von Clausewitz*[23]

Notwithstanding the above quote, there are a number of International Law issues related to the ICC, which if not planned for, could weaken the Joint Force Commander's ability to conduct his mission.

Joint Force Commanders should not assume actions taken above the operational level will necessarily reduce the potential ICC impact on military operations. The course of action pursued at the strategic level to mitigate the effects of the ICC on military operations may reduce the potential impact of the ICC while at the same time have a "militant effect" on certain ICC member states and NGOs. While relations with certain ICC nations may improve, they may also worsen with other ICC nations, especially those who look at the ICC as a means to chip-away at the super-power status of the United States. These strategic level actions, which will apparently continue to be used and expanded where possible, include: (1) The "Article 98" bilateral agreements with countries which have ratified the ICC treaty; (2) The American Servicemembers' Protection Act of 2002, which entirely prohibits any domestic entity from cooperating with, or providing any assistance to, the ICC and authorizes the President "to use all means necessary and appropriate" to recover Servicemembers held under an ICC order; and, (3) The United Nations Security Counsel yearly resolutions for grants of immunity from ICC prosecution and/or investigations for U.S. Servicemembers conducting U.N.-sanctioned peacekeeping operations. Joint Force Commanders will need status information on these three areas to incorporate its use into planning and training.

The current status of the ICC is a potential threat to U.S. military members who participate in combat operations located within ICC signatory countries if subsequently captured or apprehended in ICC signatory countries without an Article 98 agreement with the United States. Within the next few years, it may become clearer as to what level this potential threat may attain. While this is the most serious threat against individual Servicemembers, other lower-level individual threats and risks exist. Servicemembers

indicted or convicted by the ICC in absentia will be unable to travel for any reason to an ICC signatory country without an Article 98 agreement with the United States, without fear of arrest and extradition to the ICC in the Netherlands. There is a larger potential threat of ICC indictment or conviction to higher-ranking military commanders because of their higher-visibility due to media coverage of U.S. military operations. There is also a threat to operational mission accomplishment if ICC issues become an overriding factor in operational planning and cause the non-use of key foreign bases, lines of communication, or airspace.

As a result, Joint Force Commanders and their staffs will need to incorporate into the planning phase of an operation courses of action that can lower the probability of exposure to apprehension and/or ICC trial, without impacting negatively on mission accomplishment.

Finally, there is also a possibility that the Joint Force Commander may be called upon to extract Servicemembers detained or imprisoned by, or on behalf of, the ICC, in accordance with The American Servicemembers' Protection Act of 2002.[24]

RECOMMENDATIONS

> *The next ten to twenty years will demonstrate whether the International Criminal Court can erode the principles of state sovereignty without itself being swept away by a backlash of indifference and outright opposition from sovereign states.*
>
> -- *Michael Newton*[25]

As to what actual impact the ICC will have on United States military operations, the cliché "only time will tell" is the most applicable. However, the Joint Operational Commander who implements a course of action by the use of operational art in planning and training to minimize or eliminate ICC impact on operations may never know if his actions were the proximate cause of the sought after result.

1. Joint Force Commanders should be made aware that the ICC will be used in some form or another by entities opposed to the foreign policy interests of the United States during and after each United States military operation that has a sufficient nexus to the claimed jurisdiction of the ICC. The existence of the ICC creates the potential for significant problems to military operations and should not be underestimated, dismissed as non-threatening, nor unplanned for. Conversely, neither should its potential impact on joint force operations be overestimated as to unduly impede operational planning or operations.

2. Joint Force Commanders should insure that updated lists of Article 98 signatory countries are distributed to those responsible for operational planning. The rapidly changing makeup of the countries that have ratified the ICC and those countries with Article 98 Agreements with the United States makes it imperative that Joint Force Commanders and their staffs be kept apprised of the latest updates on the status of these countries. "In the future, before conducting a training exercise, overflying territory, or mounting a territorial defense, the military will routinely determine whether the host nation, its neighbors, or an anticipated adversary is a `State Party' to the ICC".[26]

3. Joint Force Commanders and their staffs should factor in ICC considerations when planning for operations, including the possible impact on the future use of current foreign bases and alliances. Along with this, they should balance mission effectiveness with the probability of ICC action. "Thus, the ICC will become another routine piece of the complex mosaic of standing legal protections and associated deployment prerequisites".[27]

4. During the planning stages of an operation, along with all other planning factors, the Joint Force staff should factor in the probability of the strategic consequences of an

action by the ICC in response to the operation. In addition, they should factor in the probability of capture and trial of Servicemembers involved in the operation.

5. When planning operations, Joint Force Commanders should avoid, whenever possible, routing Servicemembers through, or launching strikes from, ICC party nations that have demonstrated a propensity to assertively support the ICC. This, of course, must be balanced against the impact such action may have on mission accomplishment.

6. Joint Force Commanders and their staffs should insure formal ICC issue-related training is conducted for all Servicemembers and civilians involved in the process of operational planning and logistics.

7. Joint Force Commanders and their staffs should continually update their ICC-related planning and training as the dynamics of ICC impact on world political issues changes.

8. General military training on the ICC should be given to all Servicemembers once they attach to the Joint Forces Command. All Servicemembers should receive training on: (1) The ICC's jurisdictional claims that could result in the trial of U.S. Servicemembers for the broadly-defined offenses of "genocide", "crimes against humanity", "war crimes" and in the future the undefined crime of "aggression"; (2) If U.S. Servicemembers are not present for ICC proceedings, they could still be tried and convicted in absentia and international arrest warrants issued if they are convicted, therefore preventing their ability to travel to over 60 countries; and, (3) The potential for ICC trial of U.S. Servicemembers and civilian employees for use of military force legal under U.S. domestic law while acting under the orders from their chains of command.

9. Along with all other aspects of joint force planning, the maintaining of alliances and coalitions is an important factor. "Political and military intentions of multinational partners will impact on planning and operations . . . each nation will have its own agenda and strive to accomplish it."[28] Joint Force Commanders should become aware that it may become more difficult to maintain alliances and coalitions before and during operations due to the existence of the ICC and should make plans for contingencies if alliances and coalitions fall apart.

10. The Staff Judge Advocates of the Combat Commanders should ensure that a review is made of all Status of Forces Agreements with nations within their areas of operations that have ratified the ICC and have not signed an Article 98 Agreement with the United States. Specifically, provisions covering procedures for turning over Servicemembers for prosecution by the host nation or others should be closely evaluated. In some circumstances, a few standing Status of Forces Agreements may already prevent the turning over of American Servicemembers by host nations to the ICC for trial.

11. The United Nations Security Counsel's resolution granting immunity for one year from ICC investigation and prosecution to U.S. Servicemembers conducting U.N.-sanctioned peacekeeping operations expires on 1 July 2003. Although the resolution states an intension to renew this immunity on a year-by-year basis, Joint Force Commanders conducting U.N.-sanctioned peacekeeping operations should be made aware that the immunity is currently short-term and tenuous. As a result, Joint Force Commanders responsible for U.N.-sanctioned peacekeeping operations should plan for the possibility that they may receive orders to end such operations on a short timeline, or to continue them without ICC immunity.

12. Joint Force Commanders should identify and prioritize those ICC countries without Article 98 agreements within their areas of responsibility which, under current mission and planning requirements, are logistically critical. This prioritization information should be passed up the chain-of-command to be passed on to government entities negotiating Article 98 agreements and should be updated as events dictate.

13. If ICC conviction in absentia of U.S. Servicemembers occurs, Joint Force commands should become aware of these individuals and make certain they are in no way allowed in, nor routed through, any ICC country which has not signed an Article 98 Agreement with the United States. This also applies to ICC indicted U.S. Servicemembers and civilian employees, because under the ICC treaty, they can be apprehended by ICC party nations on behalf of the ICC.

14. There is also a possibility that a Joint Force Commander may be called upon to free Servicemembers detained or imprisoned by, or on behalf of, the ICC. In accordance with the provision of The American Servicemembers' Protection Act of 2002 which authorizes the President "to use all means necessary and appropriate"[29] to recover Servicemembers held under an ICC order, pertinent training and planning should be conducted for such an operation by applicable joint force commands.

Although the existence of the ICC creates the potential for significant problems to military operations, with the recommended planning and training, Joint Force Commanders should be able to minimize risk down to the acceptable level without mission-threatening impact.

ENDNOTES

[1] "U.S. Will Not Sign On To International Criminal Court, Bush Says", 2 July 2002, The United States Mission to the European Union, <http://www.useu.be/Categories/Justice%20and%20Home %20Affairs/July0202ICCCourtUSBush.html> [9 May 2003].

[2] "World Criminal Court Launched", CNN.Com, Reuters, 11 March 2003, <http://www.cnn.com/ 2003/WORLD/europe/ 03/11/warcrimes.court.reut/>. [6 May 2003].

[3] Howard Ball, Prosecuting War Crimes and Genocide, (Lawrence, KS: University Press of Kansas, 1999), 218.

[4] Ball, 219.

[5] Daniel V. Wright, "Strategic Implications of U.S. Non-Support for the International Criminal Court", Carlisle Barracks, PA: U.S. Army War College, 31 March 1999, 1-2.

[6] Walter E. Lippincott, "The International Criminal Court: An Analysis and Implications for the United States Military", Carlisle Barracks, PA: U.S. Army War College, 4 April 2000, 1.

[7] "The United States Mission to the European Union, Brussels, Belgium, Fact Sheet: The ICC, 6 May 2002", <http://www.useu.be/Categories/Justice%20and%20Home%20Affairs/ May0602ICCFactSheet.html>. [9 May 2003], 1.

[8] The United States Mission to the European Union, 2.

[9] The 89 ICC countries are: Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Colombia, Costa Rica, Croatia, Cyprus, Democratic Republic of Congo, Denmark, Djibouti, Dominica, East Timor, Ecuador, Estonia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Lesotho, Liechtenstein, Luxembourg, Macedonia, Malawi, Mali, Malta, Marshall Islands, Mauritius, Mongolia, Namibia, Nauru, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, Saint Vincent and The Grenadines, Samoa, San Marino, Senegal, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Tanzania, Trinidad and Tobago, Uganda, United Kingdom, Uruguay, Venezuela, and Zambia. Totals by geographic area: African = 21, Europe (non EU countries) = 21 , Latin America and the Caribbean 18, EU Member States = 15, Asia and the Pacific = 12, North America (Canada) = 1, Middle East (Jorden) = 1. "Rome Statute of the International Criminal Court State Parties", <http://www.icc-cpi.int/statesparties/allregions.php>. [9 May 2003].

[10] Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF.183/9, 17 July 1998 Article 126, <http://www.un.org/law/icc/statute/romefra html>. [9 May 2003].

[11] Rome Statute, Article 98, <http://www.un.org/law/icc/statute/romefra html>. [9 May 2003]. Article 98 of the Rome Statute states: "Cooperation with respect to waiver of immunity and consent to surrender. 1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the

immunity. 2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender."

[12] "U.S., Albania Sign International Criminal Court Article Agreement", The United States Mission to the European Union, <http://www.useu.be/Categories/Justice%20and%20Home%20Affairs/May0203USAlbaniaArticle98.html> [9 May 2003]. The 28 countries with Article 98 Agreements with the United States as of 2 May 2003 are: Afghanistan, Albania, Azerbaijan, Bahrain, Democratic Republic of the Congo, Djibouti, Dominican Republic, East Timor, El Salvador, the Gambia, Georgia, Honduras, India, Israel, Marshall Islands, Mauritania, Micronesia, Nauru, Nepal, Palau, Romania, Rwanda, Sierra Leone, Sri Lanka, Tajikistan, Tonga, Tuvalu, and Uzbekistan.

[13] Public Law 107-206; 116 Stat. 820.

[14] William Orme, "U.S. Granted Immunity For Peacekeepers", Los Angeles Times, 13 July 2002, p. 1.

[15] Orne, 1.

[16] William L. Nash, "The ICC and the Deployment of U.S. Armed Forces", in The United States and the International Criminal Court, eds. Sarah B. Sewall and Carl Kaysen (Lanham, MD: Rowman & Littlefield Publishers, 2000), 156.

[17] Thomas Fuller, quoted in Laurence J. Peter, ed., Peter's Quotations: Ideas For Our Time (New York, NY: Bantam Books, 1979), 274.

[18] In 1993, Belgium passed a law of "universal jurisdiction" which holds that any one in the world can be tried for war crimes allegedly committed anywhere. Jeffrey T. Kuhner, "Iraqis Target Gen. Franks For War Crimes Trial In Belgium", The WashingtonTimes, 28 April 2003, p. 1.

[19] Walter E. Lippincott, "The International Criminal Court: An Analysis and Implications for the United States Military", Carlisle Barracks, PA: U.S. Army War College, 4 April 2000, 17.

[20] Horace B. Robertson, Jr., "Contemporary International Law: Relevant To Today's World?", Naval War College Review, (Summer 1992): 93.

[21] "The subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other.", Black's Law Dictionary, 5th ed. (St. Paul, MN: West Publishing Co., 1979), 1278.

[22] "The power of a court over the person of a defendant in contrast to the jurisdiction of a court over a defendant's property or his interest therein.", Black's, 1030.

[23] Carl von Clausewitz, On War, Michael Howard and Peter Paret, ed. and Trans., (Princeton, NJ: Princeton University Press, 1989), 75.

[24] Public Law 107-206: 116 Stat. 820, Section 2008.

[25] Michael A. Newton, "Comparative Complementarily: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court", Military Law Review (March 2001): 167 Mil.L.Rev. 20, 29.

[26] Nash, 160.

[27] Nash, 160.

[28] Joint Chiefs of Staff, Joint Task Force Planning Guidance and Procedures, Joint Pub. 5-00.2, (Washington, DC: 13 January 1999), IX-58.

[29] Public Law 107-206: 116 Stat. 820, Section 2008.

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