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**MEMORY BEYOND BORDERS? COSMOPOLITANISM AND  
THE INTERNATIONAL CRIMINAL COURT**

A Dissertation in  
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by

Jennifer Biedendorf

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The dissertation of Jennifer Biedendorf was reviewed and approved\* by the following:

Stephen H. Browne  
Professor of Communication Arts and Sciences  
Dissertation Advisor  
Chair of Committee

Thomas W. Benson  
Professor of Communication Arts and Sciences  
Edwin Erle Sparks Professor of Rhetoric

J. Michael Hogan  
Professor of Communication Arts and Sciences

John Christman  
Associate Professor of Philosophy, Political Science, and Women's  
Studies

Janet Lyon  
Associate Professor of English, Women's Studies, and Science,  
Technology, and Society

James P. Dillard  
Professor of Communication Arts and Sciences  
Head of the Department of Communication Arts and Sciences

\*Signatures are on file in the Graduate School

## ABSTRACT

The study examines how idioms of human rights and global institutions that enforce human rights function as sites of national and transnational memory formation. Of central concern is how a transnational memory of human rights gets articulated in discourses about international law, international juridical institutions, and humanitarianism. The International Criminal Court—as an international legal institution that emerged out of the international human rights system as a permanent juridical body designed to bring to justice perpetrators of war crimes, crimes against humanity, and genocide—figures as a key site for rhetorical inquiry into the study of transnational memory discourses.

A central concern of this project is to examine how transnational memory discourses—specifically transnational memory discourses of human rights—are employed to rhetorically produce or challenge the constitution of trans/national subjectivities and communities. Drawing on four sites where advocates are waging rhetorical battles over the meaning, reach, and application of the International Criminal Court, the study examines not only the emergence or existence, but also the resistance to transnational memory discourses at various levels. Specifically, this study helps us better understand the kinds of political subjectivities and rhetorical communities produced by discourses about the signing / unsigning of the International Criminal Court's treaty (chapter two), advocacy promoting ratification of the treaty (chapter three), negotiations over the Court's design with regards to the inclusion of a gender perspective in the treaty (chapter four), and the application and invocation of the Court's principles in contemporary advocacy campaigns for an intervention in Darfur, Sudan (chapter five).

While all four discourses composing this manuscript draw on transnational memory discourses and discourses that constitute transnational communities, the focus of this project is on the residual challenges that the discursive framework of the nation-state poses to transnational memory. As such, *Memory Beyond Borders?* provides insight into the rhetoric of advocacy campaigns seeking to produce and foster cosmopolitan attitudes and into those discourses attempting to resist it. Consequently, I contend that, while these discourses aid in constituting transnational subjectivities, they also serve as important sites for the articulation of nationalist discourses. That is, discourses that seem to be most explicitly directed toward transnationalism are also discourses that are heavily steeped in nationalist language and reproduce rhetorics of the nation-state.

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## Chapter 1

### Introduction

Human rights struggles and the discourses produced in and around them function as a form of memory politics designed to right past wrongs for a particular community. Consequently, such struggles play an integral role for the constitution of communities. While memory discourses often emerge out of particular (that is national or local) historic situations, due to a series of socio-political and cultural developments since the end of WW II, these discourses have become increasingly universalized and institutionalized. As a result of this international trajectory, human rights/memory discourses have become an important factor in the cultivation and shaping of an *international* community. This project examines how idioms of human rights and global institutions that enforce human rights function as sites of national and transnational memory formation. More specifically, this project aims to illustrate how rhetors draw on these kinds of trans/national memory discourses to produce or challenge the constitution of trans/national subjectivities and communities. To that end, I examine how a transnational memory of human rights gets articulated in discourses about international law, international juridical institutions, and humanitarianism. I argue that while these discourses serve to constitute new transnational memory discourses and transnational subjectivities, they also serve as important sites for the articulation of nationalist discourses. That is, discourses that seem to be most explicitly directed toward



transnationalism are also discourses that are heavily steeped in nationalist language and are producers of a rhetoric of the nation-state.

The forward slash used here in the word “trans/nationalism” highlights one of the primary contributions of this study. On one hand are advocates of cosmopolitanism to whom the creation of a transnational community is a “genuine” aspiration. On the other hand are advocates who favor traditional nation-state sovereignty and by implication oppose the creation of a cosmopolitan community. Throughout this project, I will show how both draw on nationalist rhetoric to achieve their goals. While it comes as no surprise that opponents of cosmopolitanism frame their rhetoric around the nation-state, it seems to be paradoxical that advocates of cosmopolitanism or discourses that appear to be necessarily transnational are packaged and sold to national audiences in a language that privileges the nation-state. We will see that these rhetorics have severe consequences for the cultivation and maintenance of transnational subjectivities, communities, and memory.

A central concern of this project is how the rhetoric of transnational memory discourses produce transnational subjectivities and transnational communities. Put slightly differently, I aim to shed light on how transnational memory discourses—specifically a transnational memory of human rights—are employed to rhetorically construct transnational communities. The underlying assumption guiding this work is the notion that communities are produced through discourse. This constitutive function of rhetoric, according to rhetorical scholar Michael Calvin McGee, is a “rhetorical fiction,” an entity that comes into being only through the process of being addressed rhetorically as a collectivity in which individuals must be seduced into a collective identity by at least

provisionally abandoning their individual identity. The concept of “the people,” McGee argues, should be thought of more as a “process than [a] phenomenon,” suggesting that “the people” is a transient construction.<sup>1</sup> “The people” exists only as long as the rhetorical discourse is effective in conjuring up a collective identity constructed of social and political beliefs or “myths” individuals are willing to accept. The entity of “the people” as a collective identity is thus always in the process of becoming and reconstitution while being on the verge of dissolution as discourse fails to constitute its subjectivity as a collective. In addition to the constitutive function of rhetoric, undergirding this study is the notion that international law plays a key role for the constitution of transnational communities and, more generally, the cultivation of a cosmopolitan consciousness. A key function in the development of transnational memory and cultivation of transnational communities is attributed to what David Hirsh calls “cosmopolitan law.”<sup>2</sup> Cosmopolitan law emerged out of international law—which was concerned with the rights of sovereign states—but seeks to limit state sovereignty by creating “minimum standards for the treatment of human beings by states.”<sup>3</sup> Applying international human rights standards and creating a transnational record of violations and jurisprudence, cosmopolitan law and its institutions contribute to the formation of a cosmopolitan memory and cosmopolitan consciousness.

My aim is to contribute to the scholarship on the rhetoric of public memory by illustrating how a transnational memory of human rights is rhetorically employed, advanced, and resisted. I argue that the formation of transnational forms of memory is tied to the creation of transnational solidarity and as such plays an important role for the creation of transnational subjectivities. I show how transnational memory discourses

function rhetorically to aid in people understanding themselves as transnational subjects and constitute transnational communities.

In this study, I examine several transnational memory discourses centered on issues of international justice and human rights. Central to this project is the newly established institution of the International Criminal Court (ICC) that went into force in 2002. As an international juridical body designed to prosecute individuals for war crimes, crimes against humanity, and genocide, the ICC serves as a memory site for the institutionalization of human rights and as a showcase for a wider popular concern for international justice. As such, the ICC has the potential of shifting the production of memory from primarily a national trajectory to a transnational one. Serving as the primary site of inquiry in this project, the second chapter examines U.S. policy discourses negotiating the establishment of the International Criminal Court (ICC). At the center of this chapter is the rhetorical constitution of a community produced by the U.S.'s unprecedented act of "unsigned" the legal document founding the Court. The third chapter discusses the rhetorical strategies of NGO advocacy campaigns arguing for support of the U.S. ratification of the ICC, focusing on how the ICC is employed to advance the promotion of an international community. Continuing the discussion of NGO involvement in the creation and promotion of the ICC, the fourth chapter critically examines the rhetorical efforts of policymakers arguing for the solidification and institutionalization of women's right in international law—specifically the inclusion of gender and sexual violence in the ICC treaty—and the arguments advanced by international conservative forces who obstructed such legislative efforts. In the fifth chapter, I expand my discussion from a direct engagement with the International

Criminal Court and focus on a discourse which invokes the values promoted by the ICC as a form of transnational memory. Specifically, I examine the discourses invoked by human rights advocates to intervene in the humanitarian crisis of Darfur. Having recently been referred to the ICC, this chapter showcases how advocates rhetorically invoke and deploy a transnational memory of human rights in responses to distant suffering.

While each of the four discourses composing this manuscript draw on transnational memory discourses and discourses that constitute transnational communities, the focus of this project is on the residual challenges that the discursive framework of the nation-state poses to transnational or cosmopolitan memory. Thus, rather than solely illustrating the emergence of transnational memory discourses, this study examines instances where the formation of an explicit move toward developing transnational subjectivities and transnational memory is obstructed. Together, these cases show how the idea and practice of transnational memory and, by extension, to the idea of the transnational or post-national subject or citizen, are alternatively cultivated and attacked.

The need for deepening our understandings of the constructions of post-national identities has become imperative in the context of economic and cultural globalization processes. As a consequence of these processes, political identities are becoming less clearly demarcated by territorial affiliations. Even though this may be perceived by the larger public as a rather intellectual discourse, these concerns have gained increasing relevance and have become a constitutive element of public discourse in the context of emerging discussions about the construction of a “European identity,” an issue that has gained extraordinary momentum in response to the recent Eastern territorial expansion of

the European Union. These discussions attest to an emerging global consciousness about post-national subjectivities. This project thus engages questions about the contours and attitudes of such a transnational community through a consideration of transnational memory. Given that our loyalties are less and less circumscribed by nation-state boundaries, an overarching concern of this study is to explore how we might cultivate understanding and responsibility beyond individuals' immediate communities of solidarity. Overarching questions motivating this study include the following: What kind of rhetorical discourses are needed to produce such subjectivities? What is the ethos of such a rhetorically crafted transnational subject or community? What kinds of "memories" and values are being invoked transnationally? What kinds of political opportunities do transnational memory discourses enable and foreclose? What are the challenges to the construction of such a transnational community?

### **Memory, the Nation, and Consequential Memory**

This project's focus on transnational memory expands current memory scholarship that currently tends to examine the production of memory as tied to particularized local or national contexts. This focus is predicated on the foundational work in memory studies offered by the French sociologist Maurice Halbwachs at the beginning of the twentieth century. Halbwachs' sociological approach toward memory—rather than Durkheim's psychological approach—put forth the argument that "It is in society that people normally acquire their memories. It is also in society, that they recall, recognize, and localize their memories."<sup>4</sup> Moreover, Halbwachs' presentist account of

memory—the notion that memory serves and is reconfigured to meet the concerns and needs of the present—locates memory squarely within a social context and structure that is “delimited in space and time.”<sup>5</sup> With the nation-state being a primary site of identification, solidarity, and social organization, it comes as no surprise that the study of memory has been approached mainly within the territorial confines of the nation-state, if not with a focus on more localized communities.<sup>6</sup> A classical example of this is the work of Pierre Nora, the core of which is an assumption of continuity of national history and ethnicity within the boundaries of the nation-state.

Few scholars have examined memory in international contexts. Some inroads toward understanding memory production and contestation in a global context have been made by comparative studies, for instance James Young’s *The Texture of Memory*. There, Young examines several countries’ Holocaust memorials and memorial cultures and the “national myths, ideals, and political needs” out of which particular memorial discourses emerge.<sup>7</sup> Examining the practices commemorating the Holocaust in Germany, Austria, Poland, Israel, and the United States, Young illustrates the rhetorical employment of these discourses for each country’s national identity formation. Young argues that Holocaust memory is still largely formed by national imperatives, implicitly subscribing to a territorially confined notion of memory.<sup>8</sup> As such, the lesson is not one of cosmopolitanism but of the importance of culture and context in the production of memory at the level of the nation-state. In addition to Young’s comparative work, there have been some recent case studies in memory scholarship in which the focus is placed on the transnationalization of memory practices, that is the relationships between local, national, and transnational memory production.<sup>9</sup> Aside from such exceptions, the bulk of

public memory scholarship remains focused on examinations of how memories are negotiated, contested, and appropriated by and for territorially bound communities, that is in local or national contexts. In short, such theorists and critics are examining how memory is made consequential, primarily within local contexts.<sup>10</sup> Whether intended or not, these theorists invite us to turn away from larger claims concerning how memory discourses, even those at local levels, have transnational consequences.

One notable exception to this focus on memory as territorially bound or parochial is the recent work of sociologists Daniel Levy and Natan Sznaider which examines memory in a global or transnational context. Levy and Sznaider argue that “alongside nationally bounded memories a new form of memory”—what they call cosmopolitan memory—has emerged.”<sup>11</sup> Cosmopolitan memories, they write, are the “practices that shift attention away from the territorialized nation-state framework, which is commonly associated with the notion of collective memory. Rather than presuppose the congruity of nation, territory, and policy, cosmopolitan memories are based on and contribute to nation-transcending idioms, spanning territorial and national borders.”<sup>12</sup>

Cosmopolitanism here refers to the phenomenon that “global concerns become part of local experiences of an increasing number of people.”<sup>13</sup> For Levy and Sznaider, this shift from “national to cosmopolitan memory cultures”<sup>14</sup> is primarily manifest in Holocaust remembrance in that it exhibits a simultaneous existence of global and local memory cultures.

Literary scholar Andreas Huyssen observes similarly that the Holocaust has taken on a “totalizing dimension,” since the Holocaust has symbolically been rendered a “cipher for the twentieth century as a whole and for the failure of the project of

enlightenment.”<sup>15</sup> At the same time, the Holocaust as a “universal trope” has been appropriated to meet more particularistic or localized concerns and purposes in its remembrance.<sup>16</sup> That is, memories of the Holocaust serve as a universal resource that may then be articulated to highly localized concerns. Huyssen concludes from this that political struggles over memory are still primarily, and more importantly, most effectively carried out at local or nation-state levels but linked with each other:

In the best-case scenario, the cultures of memory are intimately linked, in many parts of the world, to processes of democratization and struggles for human rights, to expanding and strengthening the public spheres of civil society. Slowing down rather than speeding up, expanding the nature of public debate, trying to heal the wounds inflicted in the past . . . those seem to be unmet cultural needs in a globalizing world, and local memories are intimately linked to their articulation.<sup>17</sup>

For the time being, Huyssen claims, we should be more concerned with how these discourses become manifest locally and how transnational memory supports or obstructs local memory practices.<sup>18</sup> However, as I show in this project, many memory discourses that are presented in a local idiom may have global consequences.

Levy and Sznajder draw slightly different conclusions from their claim about the proliferation of transnational memory discourses. They concur with Huyssen that the Holocaust contributed to developing normative standards for moral debates about human rights and justice at a transnational scale, which made the Holocaust serve as the prime example of an emerging cosmopolitan memory. Having triggered the adoption of a series of legal instruments to codify human rights, memories of the Holocaust have “become the cultural foundation for global human rights politics.”<sup>19</sup> This codification of human rights



violations into international law calls attention to the constitutive function of international law, particularly international criminal law, as a vehicle for the formation of an institutionalized cosmopolitan memory.<sup>20</sup> In addition to providing a general framework for international conduct, international criminal law serves a pedagogic function. Lawrence Douglas, for instance, has examined how the criminal trial as a specialized legal instrument has been used as a “tool of collective pedagogy.”<sup>21</sup> The trials of the Holocaust, he argues, function as “dramas of didactic legality” designed to “teach history and shape collective memory.”<sup>22</sup> Moreover, as we will see in the discourses over the establishment and ratification of the International Criminal Court, international criminal law has taken on and is widely recognized as an influential force in international policymaking. Legal scholar Ruti Teitel argues that newly established judicial institutions such as the ICC “make criminal justice the primary means of enforcing international rights law.”<sup>23</sup> What has emerged is a new cosmopolitan criminal law that evolved “out of international humanitarian and human rights law” and which is not confined to the conduct of states but also includes non-state organizations and individuals.<sup>24</sup> This kind of cosmopolitan law derives its authority not from state sovereignty but from “a set of supra-national principles, practices, and institutions.”<sup>25</sup> This cosmopolitan law, sociologist David Hirsh argues, plays a key role for the cultivation of cosmopolitanism as it aids in constructing universal rather than particularistic narratives that represents a form of collective memory for an international community.<sup>26</sup>

## **Globalization, Cosmopolitanism, and Transnational Memory**

Although the processes of globalization have been ongoing for centuries, the term “globalization” did not become widely used until the 1960s or 1970s. Since then globalization has been studied by various disciplines, rendering “globalization” as a general descriptive term for a number of different developments and processes. In the broadest sense, globalization is conceived of as an “accelerating interdependence,” or “global integration,” which refers to the “enmeshment among national economies and societies such that events in one country impact directly on others.”<sup>27</sup> Geographer David Harvey sees globalization as intricately linked to the postmodern condition and describes globalization as a “time-space compression” of social organization and interaction.<sup>28</sup> Arjun Appadurai has focused on the conditions a global and hybridized culture has produced through “global flows” of financial capital, commodities, communication, finances, and people.<sup>29</sup> While the subject of analysis and implications of globalization vary widely across disciplines, globalization is generally understood as an intensification of social interactions between people at a global scale. As such, globalization has brought about transformations at the economic, social-cultural, and political level, which raises questions about “the nature and scope of justice, democracy, and citizenship and their application beyond sovereign states.”<sup>30</sup>

The social and political transformations in particular and their attendant concerns will also have profound implications for memory production and memory practices. One of the key issues relevant for the study of public memory is related to questions about identity formation. The degree of human migration has changed the composition of

political communities and has established increasingly multicultural societies. Identity traditionally has been thought of as intricately tied to the nation—legally through formal citizenship and ideologically through participation in what Benedict Anderson called the “imagining” of a national culture and community.<sup>31</sup> During the nineteenth and twentieth centuries, citizenship was constructed in relation to nationality to such a degree that, as political theorist Etienne Balibar wrote, it “appears inseparable from belonging to a nation, whether through inheritance or naturalization.”<sup>32</sup> The “enhanced and politicized awareness” of ethnic or cultural differences in increasingly multicultural societies, however, has called into question conventional assumptions about civic identity and its relationship to a particular political community.<sup>33</sup> As a result of increased recognition of such differences, “ethnic, cultural and national consciousness have brought about either the loosening or the actual fragmentation of polities hitherto thought of as nation-states.”<sup>34</sup>

In addition to globalization processes having produced transformations with regards to cultural and political identity in the nation-state, they have brought on what is often referred to as a “crisis” for the sovereignty of the nation-state. At the level of the nation-state, globalization, and economic globalization in particular, have resulted in a degradation of democracy. With the rise of transnational actors such as international financial institutions, nation-state borders are increasingly eroded by multinational financial institutions and trade alliances, such as the International Monetary Fund (IMF), the World Bank, World Trade Organization (WTO), and the General Agreement on Tariffs and Trade (GATT). These supranational financial institutions are not subject to democratic electoral processes and therefore suffer from a democracy deficit or

accountability deficit. Similar arguments are made about the increasing influence of global civil society operating outside of the formal decision-making process and influencing international conferences, treaties, and agendas. By circumventing democratic decision-making processes, these international actors curtail the sovereignty of the nation-state.

These developments have produced a series of conditions that play a significant role for the production of memory discourses and will require a rethinking of memory formation as primarily a national endeavor. The experience of increasingly overlapping identities that transform our loyalties and sense of allegiances originally associated with the nation-state is coupled with the fact that the locus of political power no longer resides principally in national governments, as “effective power is shared and bartered by diverse forces and agencies at national, regional and international levels.”<sup>35</sup> As a result, we face a series of “new types of ‘boundary problems,’ which challenge the distinctions between domestic and foreign affairs, internal political issues and external questions, the sovereign concerns of the nation-state and international considerations.”<sup>36</sup> States and governments are confronted with issues (such as epidemics, environmental issues, weapons of mass destruction, fundamentalist movements) that no longer fall into clear-cut categories of domestic or international affairs. In short, “the enmeshment of national political communities in regional and global processes involves [nation states] in intensive issues of transboundary coordination and control,” which results in the creation of what David Held refers to as “overlapping communities of fate.”<sup>37</sup>

Moreover, memory discourses are affected by the human rights discourses that have intensified since World War II, in large part as a response to the atrocities of the

twentieth century. The Nuremburg War Trials in 1946, the signing of the UN Charter in 1945 and the subsequent adoption of the Universal Declaration of Human Rights in 1948 marked the beginning of an international institutional concern for human rights. In the 1990s, the crimes committed in former Yugoslavia and Rwanda prompted a stronger enforcement of international law safeguarding human rights. At an institutional level, these endeavors have recently culminated in the establishment of the International Criminal Court.

The proliferation of human rights discourses promoted by international organizations and institutions over the last sixty years has sparked a heightened concern with memory since the 1960s and 1970s. This proliferation of memory discourses, Huyssen has observed, must in part be considered a response to decolonization processes and the emergence of new social movements.<sup>38</sup> Huyssen notes that the “hypertrophy of memory” manifest in the abundance of archives and museums is in itself a response to changing notions of temporality and spatiality brought about by the globalization processes described above.<sup>39</sup> Against this background, Huyssen interprets the ever-increasing obsession with memory as evidence for a longing for stability and a sense of identity. Similar to Pierre Nora’s argument put forth in his seminal essay “Between Memory and History: Les Lieux de Mémoire,” he considers the urge to memorialize and archive a counter-reaction against rapid transformations in our lives that often seem beyond our control. The expansive growth of memory institutions (museums, archives, and monuments) are indicative of attempts to compensate for the loss of control by collecting, preserving, and stabilizing the past into a static entity. In this sense, memory discourses are not antithetical to globalization but rather emerge out of a will to

counteract the amnesia produced by globalization processes.<sup>40</sup> We will gain insight into how these concerns are rhetorically employed in discourses over nation-state sovereignty and a resistance to social change in the chapters of this manuscript.

The internationalizing or globalizing developments outlined above combined with an increased concern for human rights have contributed to a rise in transnational memory discourses. Hence, Halbwachs' territorially bound approach toward the study of memory must be revised because it presumes relatively unchanging collective formations.

Approaches that consider memory production primarily located in the nation-state no longer match the realities of how memory discourses are invoked and disseminated.

Contemporary memory is characterized by fragmented memory politics of particular ethnic and social groups and is increasingly decentered. Memory practices are no longer territorially bound but are increasingly part of a globalized system in which local, national, and transnational articulations of memory must be negotiated.

These political and cultural transformations brought about by globalization processes have recently given rise to the thriving scholarship on the concept of cosmopolitanism. While a comprehensive account of the multiple facets of cosmopolitanism is outside the scope of this project, I will provide a brief overview of the main tenets pertinent to this project. Originating in ancient Greek thought, cosmopolitanism referred to the belief that humans are part of two communities, including our closest kin and humanity as a whole. The concept was revived by Kant in his 1795 essay "Perpetual Peace," in which he envisioned cosmopolitan law as a structure of democratic republics guided by principles of mutual recognition and tolerance. Today, the concept of cosmopolitanism is being theorized in a host of disciplines with varying

definitions and emphases that can roughly be divided into moral cosmopolitanism and legal/institutional cosmopolitanism.<sup>41</sup> The moral strand, predicated largely on Kant's notion of cosmopolitanism as a means to build solidarity, peace, and justice and the belief in a moral universalism, is concerned with issues of solidarity, feelings of belongingness, and ethical obligations that transcend national borders in a world community. It is committed to a global egalitarianism based on the notion that all humans have an equal moral status and thus a right to equal respect and concern regardless of nationality or citizenship.<sup>42</sup> The legal/political strand focuses on establishing institutions of global governance and legal institutions to guarantee and secure the protection of universal human rights. In the latter approach, cosmopolitanism refers to a "vision of a global political consciousness that is generated and sustained by institutional structures."<sup>43</sup> As a whole, cosmopolitanism is understood as an emancipatory political ideal concerned with democratizing processes in a global context.

The two primary relevant contexts for this study in which cosmopolitanism is invoked is the field of international law and cosmopolitanism endorsed through global civil society. Robert Fine has recently pointed out,

Whilst international law has traditionally developed according to the principle that every state is sovereign within its own territory, cosmopolitanism endorses legal limitations on how rulers may behave towards the ruled; and whilst international law leaves it to states to protect the rights of individuals, cosmopolitanism looks also to the formation of international legal bodies above the level of nation-states to perform this function.<sup>44</sup>

One focus of this project is how cosmopolitan ideals of a cosmopolitan community are advanced through the rhetorical discourses produced by and about international law and international judicial institutions, specifically the ICC. The second approach toward cosmopolitanism particularly relevant for this project is the argument that civil society and social movements occupy a significant role in the promotion of cosmopolitan ideals, partly due to their ability to create a global or transnational public sphere, which is seen by some as indicative of the formation of cosmopolitan citizenship.<sup>45</sup> Raising awareness about issues of human rights, global social justice, transnational solidarity, and global democracy, global civil society has become a prime agent in shaping alternative, cosmopolitan communities guided by cosmopolitan values and principles.

### **Institutionalized Cosmopolitan Memory**

The shift from “national to cosmopolitan memory cultures,”<sup>46</sup> is to a great extent attributable to the experience of the Holocaust, which triggered the evolution of the human rights regime and institutionalization of human rights norms “as a moral response”<sup>47</sup> to the atrocities of WW II, creating a kind of “institutionalized cosmopolitanism.”<sup>48</sup> The Holocaust has developed into a moral reference point and is often invoked as the grounds for a global moral responsibility. Thus, as communication scholar Robert DeChaine has noted, the “discourse of globalization intertwines with a discourse on morality.”<sup>49</sup> Levy and Sznajder argue that while “Memories of the Holocaust do not directly cause the emergence of a global legal culture . . . , they produce a continued negotiation process between ‘international law’ (i.e. finding the criteria for



degrees of wrongdoing) and ‘normative ethics’ (based on questions of reason and morality).”<sup>50</sup> We can see some of the more recent outcomes of this development in the demands for intervention in the Balkans, which “helped establish the link and thus the centrality of the Holocaust as a measure stick for international politics and a transnational value system.”<sup>51</sup> More recently, memory of the Holocaust configured into a moral value system has found expression in the concept “Responsibility to Protect” (R2P), the international community’s commitment to intervene in or prevent humanitarian crises.<sup>52</sup>

Landmark developments in this process of an institutionalization of cosmopolitan memory created in the immediate aftermath after WW II include the Universal Declaration of Human Rights that set a new standard for human rights and the UN Convention on the Prevention and Punishment of the Crime of Genocide, which codified genocide into an international crime.<sup>53</sup> The International Military Tribunal at Nuremberg (IMT) created legal precedents that limited nation-state sovereignty over its citizens in the context of human rights violations.<sup>54</sup> Article 6c of the London Agreement—the charter that laid the foundation for the International Military Tribunal—codified “crimes against humanity” to include “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds ... whether or not in violation of domestic law of the country where perpetrated.”<sup>55</sup> In this sense, Levy and Sznajder argue, Article 6c represented a

radical departure from exiting international law by recognizing individual responsibility not just in wartime extending protection to one’s own civilian population, granting supremacy to international law over domestic law, and

internationalizing the persecution of minorities. On the one hand, the Nuremberg trials affirmed sovereignty, as crimes against Germany's own citizens could only be said to have occurred after Germany started its 'aggressive war.' War was still the major crime. On the other hand, Article 6c and the legacy of Nuremberg would over time become a formidable challenge to the hitherto sacrosanct sovereignty of nation-states.<sup>56</sup>

The Nuremberg trials, Levy and Sznajder argue, are thus "remembered for establishing the previously unknown legal notion of crimes against humanity, thus providing a legal precedent that has structured public and legal debate about genocide ever since."<sup>57</sup> The principles established at the Nuremberg war crime tribunal and those established by the Universal Declaration of Human Rights (UDHR) adopted by the General Assembly of the UN on December 10, 1948 are "decisive for how contemporary human rights norms are limiting state sovereignty by providing international standards for how states can treat their own citizens."<sup>58</sup> In fact, these documents have much to do with how we are invited to value universal rights of the individual within the context of an international community. Anne Cubilié, for instance, observes that

The role of the body as it is defined within the Declaration is crucial to the document's legal and cultural project of human rights. In order to lay claim to the right of governance over all bodies anywhere on the Earth, the Declaration must first construct an international subject that exists prior to its incorporation as subject/citizen within state and cultural systems. Such a subject is not just granted rights to which he or she is entitled regardless of national and cultural

circumstance, but is also proscribed from behaving in certain ways toward the other members of the transnational community.”<sup>59</sup>

Cubilié calls special attention to the rhetorical dimension of the document for the constitution of an international subject. She concludes that the UDHR “performatively enacts the subject of an international ‘human’ with internationally recognized rights and responsibilities who exists prior to entrance into any other structure of identity and regulation—national, ethnic, religious, gender, and so on.”<sup>60</sup> DeChaine expands on the importance of the UDHR as a “catalyst for a novel, publicly crafted rhetorical vision of an ‘international community.’”<sup>61</sup> Central values undergirding the UDHR, DeChaine argues, are the principles of <human dignity>, <universality>, <brotherhood>, <duty>, and <democracy>, all of which have served as important ideographs in the rhetoric of the global human rights movement.<sup>62</sup> The principles and ideals laid out in the UDHR are powerfully articulated in contemporary human rights discourse from which the “ethos of the new international community” emerges.<sup>63</sup>

These legal frameworks have established a set of general principles that function as a form of cosmopolitan memory. In addition to the values laid out in these institutions, cosmopolitan trials represent a further example of an institutionalized cosmopolitan memory. David Hirsh has argued that cosmopolitan trials “seek to produce a narrative free from national particularity.”<sup>64</sup> He writes,

The process that we can see happening in the emergence of cosmopolitan law is also in part a process of the development of a cosmopolitan social collective memory. Courts receive particular and contradictory testimony; they act upon this according to their own rules, and produce a single narrative. Cosmopolitan courts

receive nationally particularistic narrative as testimony that they transform into an authoritative cosmopolitan social memory.<sup>65</sup>

The judgments or narratives produced by such cosmopolitan trials, Hirsh argues, carry “social power” with the potential to “shake the certainty of eternal myths of nationhood and ethnic superiority.”<sup>66</sup> Thus, the narratives forged through cosmopolitan criminal trials of their national contribute to “undermining myths of nationhood,” thereby contributing to the formation of a global collective memory.<sup>67</sup>

The legal documents and processes consolidating a human rights framework work in tandem with more general globalization processes that pave the way for the formation of cosmopolitan memories. As state authority and national decision-making processes have changed with processes of globalization, the nation-state no longer holds a monopoly over the production of memory discourses. As a result, memory cultures and memory discourses have undergone transformations:

Human rights are the new measure for a global politics, shaping the ways in which state authority is exercised. While the sovereignty of states remains intact, their authority to determine the scope of solidarities in purely national terms is diminished. New transnational solidarities have the potential to emerge. The decontextualized memory of the Holocaust facilitates this. In its ‘universalized’ and ‘Americanized’ form, it provides Europeans with a new sense of ‘common memory.’<sup>68</sup>

While the monopoly of the nation-state in defining memory discourses seems to wither, other forces, such as migration, immigration, and the pervasiveness of electronic mass communication, are becoming increasingly important factors in the production of

memory discourses that mitigate memory discourses sanctioned by the nation-state. For instance, frequent treatments of the Holocaust in media representations have brought forth a universalization of the Holocaust in the sense that the employment of the trope is no longer tied to a particular locale.

The transformation of memory cultures and discourses from a national to a transnational scale extend beyond Holocaust remembrance. Anthropologist Christina Schwenkel has shown in her case study on the memory of the war in Vietnam how commodification and “intensified global movements of people, knowledge, and capital” have prompted new articulations of Vietnamese memory of the war that is deeply affected by transnational forces, creating new transnational forms of memory.<sup>69</sup> Schwenkel argues that the “current production of historical memory in Vietnam is, in many respects, a transnational negotiated process that involves variously situated actors and their global engagements with memory....”<sup>70</sup>

Similarly, Geoffrey White’s study of the fiftieth Guadalcanal anniversary demonstrates the “construction of a national history that contends, on the one hand, with multiple local memories and, on the other, with powerful global forces of meaning.”<sup>71</sup> In contrast to John Bodnar, who contends in *Remaking America* that vernacular memories at the sub-national level compete with and resist memory production at the national level, White adds a further level of analysis by calling attention to the impact of supra-national forces in the production of memory discourses. Demonstrated by the example of war remembrance in the Solomon Islands, White argues that “transnational practices of recalling war easily override or transform other, local meanings and histories, including dissonant memories within the dominant nations.”<sup>72</sup> In this sense, transnational memory

making does have homogenizing effects, even though, as Levy and Sznajder are careful to point out, cosmopolitan memory is not necessarily to be understood as merely a process of homogenization. Instead, they argue, “cosmopolitan memory” should be considered as emerging precisely from the encounter between global schemes of interpretations and local conditions and interpretive schemes. White complicates this interplay of subnational and supranational forces in the production of memory, demonstrating that the production of war narratives typically falls under the auspices of world powers who have the authority to define and limit the appropriation of war memories by creating idealized representations of war—by invoking heroism, loyalty, and liberation rather than suffering—in an attempt to reconstruct their own national identity. This can have particularly adverse effects for the creation of a national history for young states who are “culturally, economically, and politically” closely tied to their former colonial powers. For these states, then “representing world wars in global frameworks of meaning may easily deform stories that derive their significance from the more specific and longer sweep of colonial history”<sup>73</sup> or those stories that emerge from “a variety of local voices and recall the war in terms other than those of the Allied epic of liberation.”<sup>74</sup>

### **Global Civil Society and Transnational Memory**

In addition to the increasing codification of human rights at an institutional level, which has led to the emergence of transnational memory cultures, some scholars suggest that transnational non-state actors, or global civil society, will also play a crucial role in

memory production across territorial borders. Sociologist Ulrich Beck argues, that in future memory discourses the “fenced in” history and memory of the nation-state will increasingly be replaced by a “polycentric memory” promoted by transnational and non-state actors, such as social movement organizations.<sup>75</sup> Global civil society actors, mostly comprised of non-governmental institutions, have been widely recognized as significant forces in the development and implementation of human rights norms and on issues of social justice.<sup>76</sup> As such, they are likely to play a formative role in the constitution of global communities and in defining the values, norms, and attitudes of that community.

The definitions of global civil society vary among scholars. The term global civil society is often used synonymously with “international society,” “transnational civil society,” and “the global public.”<sup>77</sup> In general terms, the label refers to a “global arena in which individuals and organizations other than sovereign states come together and engage in activities separate from those pursued by national governments.”<sup>78</sup> Since the 1970s, the number of NGOs, the mainstay of global civil society, has steadily risen. According to the Union of International Associations, there are about 18,000 headquarters of international NGOs and INGOs.<sup>79</sup> David Chandler notes in *Constructing Global Civil Society* that

Today, as transnational questions of human rights, the environment and international terrorism dominate the international agenda, it appears as if non-state actors of various kinds are becoming increasingly important players in international policy-making. Not just playing a major role in United Nations’ forums but also in the policy-making of international financial institutions and governments.<sup>80</sup>

Chandler summarizes that “both the need for and the existence of an international or global civil society has now gained a consensus.”<sup>81</sup> While the growing role of global civil society and NGOs in particular is widely agreed upon, the degree of influence these non-state actors have or should have is a contested issue among scholars.

Though it is not my goal to quantify the influence of NGOs, in this project I shed light on the role global civil society plays as an agent of social change. Located outside of formal political structures, civil society, and particularly non-governmental institutions, global civil society primarily operate through creating public spheres, which, in turn, help promote alternative visions of the future. Hayden argues that global civil society has become “a force for good global governance through dissemination of information, formation of open forums for dialogue and debate, and advocacy of greater democracy, transparency, accountability in governmental and multilateral institutions.”<sup>82</sup> In this sense, global civic engagement is a means to “restoring collective values and morality as a counterpoint to the narrow individualism or political apathy reflected in the institution of formal, state-based, politics.”<sup>83</sup> The fascination with global civic activism seems to lie in the “construction of a new global space”<sup>84</sup> and in developing an “alternative way of doing politics” as well as a “new type of political discourse, one which is not based on states and rejects the formal political competition for power based on instrumental rationality.”<sup>85</sup> Global civil society and the public sphere it creates, Calhoun argues, then may be thought of as the expression of a transformation of consciousness and as a space for new “social imaginaries” of transnational solidarity.<sup>86</sup> As such, global civil society is “defined not by geographical or spatial limits but by ideological ones, by adherence to global values rather than the particularisms of place.”<sup>87</sup>



## Chapter Overview

In this manuscript, I trace the ways in which transnational memory discourses produce or challenge the constitution of transnational subjectivities. The International Criminal Court provides the thread that binds the chapters together. In chapter two, I examine how issues of memory were of central concern throughout the stages of design and implementation of the International Criminal Court. Historically, large-scale atrocities have been adjudicated by ad hoc tribunals, such as the Nuremberg trials or the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). At the same time, there has been a movement for establishing a standing judicial body for the global enforcement of human rights that could adjudicate war crimes, crimes against humanity, and genocide. The International Criminal Court is the most recent of these tribunals created for enforcing international human rights. Its creation was widely recognized as a “historic opportunity for the world community to offer victims of these most serious and atrocities violations of human rights and humanitarian law a chance at justice and redress.”<sup>88</sup> Hailed as the “missing link in the international legal system” by UN Secretary-General Kofi Annan, the ICC is empowered to prosecute genocide, crimes against humanity, and war crimes occurring after July 2002. Despite this generally positive assessment, the ICC’s design and jurisdiction have caused considerable debate in foreign relations, particularly in light of the U.S. decision to revoke its signature to the ICC treaty in May 2002, shortly before the court entered into force in July 2002. This action, commonly referred to as the “unsigning” of an international treaty, is unprecedented in international law. This move

was widely commented on as the United States had played a leading role in the drafting of the Rome Statute for an International Criminal Court. The issues raised in this debate are not only the real consequences of the US not being subject to this treaty but also that the nullification of the US signature might set a precedent for retreating from other international treaties.

Drawing on news coverage, Congressional hearings, and the official speech announcing the U.S. decision to “unsign” the treaty, this chapter provides an analysis of the public debates about the International Criminal Court in the U.S. The focus of the chapter is the rhetorical production of memory, community, and sovereignty as expressed in the speech delivered by Under Secretary of State for Political Affairs, Marc Grossman, in May 2002 before the Center for Strategic and International Studies (CSIS). Focusing on how memory, community, and sovereignty are constituted and altered in U.S. public discourse around the ICC, I argue that the consequences of the brand of memory engendered by the act of unsigning laid out in this address are the abdication of global responsibility in the name of protecting U.S. sovereignty.

After having set up the context of the political stakes of the ICC in chapter two, chapters three and four examine the rhetorical strategies employed by non-state actors in advocating the establishment and design of the ICC. These chapters take us through major stages in the development of the ICC as an institution, including the drafting of the ICC treaty and the campaign for U.S. ratification of the treaty. The issues that come to the fore here are the discourses through which cosmopolitan identities are advocated for and against in the campaign for ratification by non-governmental organizations, debates over the inclusion of gender and sexual violence in international criminal law, and the

response from conservative forces working to obstruct such an expansion of women's rights. Scholars of global civil society who have examined the role of civil society actors in the creation of the ICC have come to the conclusion that "input of global civil society in the process which led to the adoption of this Statute has been almost unprecedented in international treaty negotiations...."<sup>89</sup> My analysis adds to this scholarship on the role of civil society in the creation of the ICC by explaining the kinds of communities non-state actors rhetorically construct through their discourse.

In chapter three, I focus primarily on the rhetoric of the NGO Citizens for Global Solutions, a key organization working to mobilize support for the ICC. Analyzing advocacy materials produced by Citizens for Global Solutions, I argue that the group's rhetoric addresses its audience through appeals to the nation-state, which sharply contrasts with the group's proposed goal of creating cosmopolitan subjectivities and communities. Citizens for Global Solutions' overarching goal is to sell the message of the ICC to a U.S. audience that is disposed negatively to the ICC due to the rhetorical intervention of the Bush administration into the ICC. In my analysis, we see how the instrumentalization of rhetoric both creates the possibility for such persuasion and undermines the goal of forging an international community guided by cosmopolitan values.

Chapter four extends this examination of the rhetoric of civil society organizations in framing the ICC. In this chapter, I highlight the discursive struggles of non-governmental organizations in drafting and designing the International Criminal Court, with a specific focus on gender in the ICC. My analysis takes shape against the background of the negotiation process during the Diplomatic Conference held at Rome in

June and July of 1998 which led to the establishment of the ICC treaty known as the Rome Statute. In this context, chapter four examines the rhetorical discourses of NGOs (and to a minor extent state delegates) negotiating the unprecedented inclusion of a gender perspective, including provisions on gender and sexual crimes, in the international treaty that would found the ICC. Whereas chapter three focused on advocates' drawing on transnational memory discourses to conjure into existence an international community defined by progressive ends of social justice, chapter four examines both progressive women's rights groups arguing for the inclusion of a gender perspective and social conservative, anti-women's rights groups that used the Diplomatic Conference as a staging ground to further their goals of reversing or stifling the expansion of women's rights in international criminal law. My examination of socially conservative NGOs crafting a rhetorical campaign to challenge and reject the explicit inclusion of women's rights in the Rome Statute highlights the work of social control and social maintenance that I begin addressing in chapter two. I approach the struggle for the inclusion of women's rights as a struggle over a type of transnational memory. I contend that social and religious conservative NGOs sought to influence the ICC treaty with a particularistic view of women's rights while objecting to cosmopolitan modes of remembrance—including certain transnational rights granted toward women—because universal human rights are thought of as interfering and undermining nation-state sovereignty. Hence, the community envisioned by these conservative forces is one marked by national sovereignty, and the rhetorical discourses of these groups are designed to stifle cosmopolitanism.

Chapter five turns our attention away from the memory work of more official sites and modes of discourse discussed in chapters two, three, and four by illustrating in a number of examples how advocates and the media industry have appropriated a transnational memory discourse of human rights. Specifically, chapter five examines several rhetorical texts that are part of the larger advocacy campaigns arguing for an intervention in the crisis in Darfur—a case that was referred to the International Criminal Court in March of 2005—and the implications of these appropriations both for political activism and the transnational communities it engenders. Activists and media campaigns have become central players in the Darfur crisis since the international juridical and legal communities have been slow to act. In my analysis I draw on several representative texts produced by mtvU (Music Television University), including the widely known videogame *Darfur is Dying* and the documentary *Translating Genocide*, featuring three college students chronicling their travel to Sudanese refugee camps. My analysis continues with a discussion of *The Devil Came on Horseback*, a highly acclaimed feature-length documentary about former Marine Brian Steidle’s experience in Darfur as a military observer. At the center of my analysis is a discussion of how the notion of witnessing is used in these texts to support international intervention to end the genocide. To that end, the chapter ends with a brief discussion of the Genocide Mapping Project produced in collaboration with Google and the Committee on Conscience. The overarching question I am addressing in this chapter is how certain forms of activism that dehistoricize and decontextualize the crisis might stunt the development of political consciousness and affect the ethos of humanitarian intervention and citizenship.

In the Epilogue, I conclude the manuscript and draw our attention to the findings of the report *On Trial: The US Military and the International Criminal Court*, published by the Stimson Center in 2006. The report tracked the attitudes towards the ICC held by U.S. military personnel that were alternatively uninformed and well informed about the ICC. Taking this report as a heuristic for my critical approach to the rhetoric of transnational public memory, I argue that the possibility for and character of cosmopolitan citizenship can be positively influenced by progressive advocates that work to better inform their audiences about cosmopolitanism rather than pander to them in nationalistic terms.

## Notes

<sup>1</sup> Michael Calvin McGee, "In Search of 'the People': A Rhetorical Alternative," *Quarterly Journal of Speech* 61 (1975): 242.

<sup>2</sup> See David Hirsh, *Law against Genocide: Cosmopolitan Trials* (London; Portland, OR.: GlassHouse Press, 2003), xii.

<sup>3</sup> *Ibid.*, 1.

<sup>4</sup> See Maurice Halbwachs, *On Collective Memory*, trans. Lewis A. Coser (Chicago: University of Chicago Press, 1992), 38.

<sup>5</sup> *Ibid.*

<sup>6</sup> For examples of scholars dealing with issues of dealing with memory at a national scale, see Robert Hariman and John Louis Lucaites, "Performing Civic Identity: The Iconic Photograph of the Flag Raising on Iwo Jima," *Quarterly Journal of Speech* 88 (2002); Carole Blair, Marsha S. Jeppeson, and Enrico Jr. Pucci, "Public Memorializing in Postmodernity: The Vietnam Veterans Memorial as Prototype," *Quarterly Journal of Speech* 77 (1991); Stephen H. Browne, "Remembering Crispus Attucks: Race, Rhetoric, and the Politics of Commemoration," *Quarterly Journal of Speech* 85 (1990); Stephen H. Browne, "Reading Public Memory in Daniel Webster's Plymouth Rock Oration," *Western Journal of Communication* 57 (1993); Stephen H. Browne, "Reading, Rhetoric, and the Texture of Public Memory," *Quarterly Journal of Speech* 81 (1995); John Louis Lucaites, "The Irony of 'Equality' in Black Abolitionist Discourse: The Case of Frederick Douglass's 'What to the Slave Is the Fourth of July?'" in *Rhetoric and Political*

*Culture in Nineteenth-Century America*, ed. Thomas W. Benson (East Lansing: Michigan State University, 1997); John Louis Lucaites and Celeste Michelle Condit, “Reconstructing <Equality>: Culturetypal and Counter-Cultural Rhetorics in the Martyred Black Vision,” *Communication Monographs* 57 (1990); Charles E. Morris III, “My Old Kentucky Homo: Lincoln and the Politics of Queer Public Memory,” in *Framing Public Memory*, ed. Kendall R. Phillips (Tuscaloosa: University of Alabama Press, 2004); Barbie Zelizer, “Reading the Past against the Grain: The Shape of Memory Studies,” *Critical Studies in Mass Communication* 12 (1995); Barbie Zelizer, *Remembering to Forget: Holocaust Memory through the Camera’s Eye* (Chicago: University of Chicago Press, 1998).

For comparative analyses, see for example Thomas McCarthy, “Vergangenheitsbewältigung in the USA: On the Politics of the Memory of Slavery,” *Political Theory* 30, no. 5 (2002); Barry Schwartz and Horst-Alfred Heinrich, “Shadings of Regret: America and Germany,” in *Framing Public Memory*, ed. Kendall R. Phillips (Tuscaloosa: University of Alabama Press, 2004). Nonetheless, even in these essays, memory cultures are understood as having a distinct national character. For a focus on vernacular memories, see John E. Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton, N.J.: Princeton University Press, 1991).

<sup>7</sup> James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven and London: Yale University Press, 1993), 2.

<sup>8</sup> Ibid.



<sup>9</sup> See for instance Brian Conway, “Local Conditions, Global Environment and Transnational Discourses in Memory Work: The Case of Bloody Sunday (1972),” *Memory Studies* 1, no. 2 (2008).; Christina Schwenkel, “Recombinant History: Transnational Practices of Memory and Knowledge Production in Contemporary Vietnam,” *Cultural Anthropology* 21, no. 1 (2006)., Geoffrey M. White, “Remembering Guadalcanal: National Identity and Transnational Memory-Making,” *Public Culture* 7, no. 3 (1995).; Thomas McCarthy, “Vergangenheitsbewältigung in the USA: On the Politics of the Memory of Slavery,” *Political Theory* 30, no. 5 (2002).; Lisa Yoneyama, “Traveling Memories, Contagious Justice: Americanization of Japanese War Crimes at the End of the Post-Cold War,” *Journal of Asian American Studies* 6, no. 1 (2003).

<sup>10</sup> See Pierre Nora, “Between Memory and History: Les Lieux De Memoire,” *Representations* 26 (1989).

<sup>11</sup> Daniel Levy and Natan Sznaider, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” *European Journal of Social Theory* 5, no. 1 (2002): 87.

<sup>12</sup> Daniel Levy and Natan Sznaider, “Sovereignty Transformed: A Sociology of Human Rights,” *The British Journal of Sociology* 57, no. 4 (2006): 660.

<sup>13</sup> Levy and Sznaider, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” 88.

<sup>14</sup> Ibid.

<sup>15</sup> Andreas Huyssen, *Present Pasts: Urban Palimpsests and the Politics of Memory* (Stanford: Stanford University Press, 2003), 13.

<sup>16</sup> Ibid., 13-14.

<sup>17</sup> Ibid., 27.

<sup>18</sup> Huyssen refers primarily to Holocaust memory as transnational memory in this context.

<sup>19</sup> Levy and Sznajder, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” 88.

<sup>20</sup> See Levy and Sznajder, “Sovereignty Transformed: A Sociology of Human Rights,” 662.

<sup>21</sup> Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, CT: Yale University Press, 2001), 2.

<sup>22</sup> Ibid., 3.

<sup>23</sup> Ruti G. Teitel, “Humanity’s Law: Rule of Law for the New Global Politics,” *Cornell International Law Journal* 35 (2002): 363. For Teitel, this is reason for concern as these developments give rise to a far-reaching legalism in foreign affairs, the appropriation of which is not clearly foreseeable.

<sup>24</sup> Hirsh, *Law against Genocide: Cosmopolitan Trials*, xii-xiii.

<sup>25</sup> Ibid., xiii.

<sup>26</sup> Ibid., xii.

<sup>27</sup> David Held and Anthony McGrew, “The Great Globalization Debate: An Introduction,” in *The Global Transformations Reader: An Introduction to the Globalization Debate.*, ed. David Held and Anthony G. McGrew. (Malden, Mass.: Polity Press, 2000), 3.

<sup>28</sup> David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Oxford England; Cambridge, Mass.: Blackwell, 1989).

<sup>29</sup> Arjun Appadurai, "Disjuncture and Difference in the Global Cultural Economy," *Theory, Culture & Society* 7 (1990).

<sup>30</sup> Niamh Reilly, "Cosmopolitan Feminism and Human Rights," *Hypatia* 22, no. 4 (2007): 180.

<sup>31</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. and extended ed. (London; New York: Verso, 1991).

<sup>32</sup> Etienne Balibar, "Propositions on Citizenship," *Ethics* 98, July (1988): 726.

<sup>33</sup> Derek Benjamin Heater, *What Is Citizenship?* (Malden, Mass: Polity Press, 1999), 2. Sociologist Yasemin Nuhoğlu Soysal for instance introduces new model of citizenship that could account for the integration of noncitizen migrant populations, *guestworkers*, in Europe. Specifically, Soysal advances a model of "postnational citizenship," a model of citizenship in which the legitimation of membership is based on universal personhood rather than nationality or the concept of territorial citizenship. She argues, "In the postnational model, universal personhood replaces nationhood; and universal human rights replace national rights. . . . The rights and claims of individual are legitimated by ideologies grounded in a transnational community, through international codes, conventions and laws on human rights, independent of their citizenship in a nation-state. Hence, the individual transcends the citizen. This is the most elemental way that the postnational model differs from the national model." See Yasemin Nuhoglu Soysal,

*Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago and London: University of Chicago Press, 1994), 142.

<sup>34</sup> Derek Benjamin Heater, *What Is Citizenship?* (Malden, Mass: Polity Press, 1999), 2.

<sup>35</sup> David Held, "Regulating Globalization," in *The Global Transformations Reader: An Introduction to the Globalization Debate.*, ed. David Held and Anthony McGrew (Malden, Mass: Polity Press, 2000), 423.

<sup>36</sup> *Ibid.*, 423-24.

<sup>37</sup> *Ibid.*, 424.

<sup>38</sup> Huyssen, *Present Pasts*, 12.

<sup>39</sup> *Ibid.*, 21.

<sup>40</sup> See *Ibid.* See also Nora, "Between Memory and History: Les Lieux De Memoire."

<sup>41</sup> Patrick Hayden, *Cosmopolitan Global Politics, Ethics and Global Politics* (Aldershot, Hants, England; Burlington, VT: Ashgate, 2005), 3.

<sup>42</sup> See Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism, and Patriotism, Contemporary Political Theory* (New York: Cambridge University Press, 2004), 10.

<sup>43</sup> Pheng Cheah, "Cosmopolitanism," *Theory, Culture & Society* 23, no. 2-3 (2006): 486.

<sup>44</sup> Robert Fine, *Cosmopolitanism* (New York: New York, 2007), 2-3.

<sup>45</sup> See Nancy Fraser, "Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World," *Theory, Culture & Society* 24, no. 4-30 (2007).; Jürgen Habermas, *Die Postnationale Konstellation: Politische Essays* (Frankfurt a.M.: Suhrkamp Verlag, 1998).; Craig Calhoun, "Imagining Solidarity:

Cosmopolitanism, Constitutional Patriotism, and the Public Sphere,” *Public Culture* 14, no. 1 (2002)., Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998).

<sup>46</sup> Levy and Sznajder, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” 88.

<sup>47</sup> Daniel Levy and Natan Sznajder, “The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights,” *Journal of Human Rights* 3, no. 2 (2004): 154.

<sup>48</sup> *Ibid.*, 155.

<sup>49</sup> D. Robert DeChaine, *Global Humanitarianism: NGOs and the Crafting of Community* (Lanham, MD: Lexington Books, 2005), 12.

<sup>50</sup> Levy and Sznajder, “The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights,” 144.

<sup>51</sup> Levy and Sznajder, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” 98.

<sup>52</sup> See <http://www.responsibilitytoprotect.org/>

<sup>53</sup> Levy and Sznajder, “The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights,” 143.

<sup>54</sup> *Ibid.*, 147.

<sup>55</sup> *Charter of the International Military Tribunal, Nuremberg Trial Proceedings Vol 1*, section II, available at <http://avalon.law.yale.edu/imt/imtconst.asp>.

<sup>56</sup> Levy and Sznajder, “The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights,” 149.

<sup>57</sup> *Ibid.* In fact, the term originated in the preamble to the 1907 Hague Convention and was used in the context of the Armenian genocide in 1915. However, it was the Nuremberg Charter that first established crimes against humanity in positive international law.

<sup>58</sup> *Ibid.*, 150.

<sup>59</sup> Anne Cubilié, *Women Witnessing Terror: Testimony and the Cultural Politics of Human Rights*, (New York: Fordham University Press, 2005), 20-21.

<sup>60</sup> *Ibid.*, 18.

<sup>61</sup> DeChaine, *Global Humanitarianism: NGOs and the Crafting of Community*, 39.

<sup>62</sup> *Ibid.*, 46-49.

<sup>63</sup> *Ibid.*, 49.

<sup>64</sup> Hirsh, *Law against Genocide: Cosmopolitan Trials*, 148. Specifically, Hirsh discusses the legal cases of *Irving*, *Sawoniuk*, *Eichmann* and *Demjanjuk*.

<sup>65</sup> *Ibid.*, 142.

<sup>66</sup> *Ibid.*, 146, 50. This is particularly significant, Hirsh argues, since the very substance of crimes against humanity is “the most extreme ethnic and national conflict” and “coloured by national social memories.” See p. xix.

<sup>67</sup> *Ibid.*, xix.

<sup>68</sup> Levy and Sznajder, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” 100.

<sup>69</sup> Schwenkel, "Recombinant History," 5.

<sup>70</sup> Ibid., 20.

<sup>71</sup> White, "Remembering Guadalcanal," 530.

<sup>72</sup> Ibid., 552.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid., 553.

<sup>75</sup> Ulrich Beck, "Wie Versöhnung Möglich Werden Kann," *Die Zeit*, July 16, 2003. More specifically, Beck anticipates that one of the key questions in the politics of memory will be how reconciliation can become possible. The exemplary function of South Africa's Truth and Reconciliation Commission serves as one such example of the intersection between reconciliation and the role of transnational actors.

<sup>76</sup> For an overview, see for instance William Korey, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine*, (New York: St. Martin's Press, 1998). See also Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*.

<sup>77</sup> Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley: University of California Press, 2002), 7.

<sup>78</sup> Ibid.

<sup>79</sup> These figures are from the Union of International Associations, cited in Marlies Glasius, Mary Kaldor, and Helmut Anheier, eds., *Global Civil Society 2002* (Oxford; New York: Oxford University Press, 2002), 322.

<sup>80</sup> David Chandler, *Constructing Global Civil Society: Morality and Power in International Relations* (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2004), 5.

<sup>81</sup> *Ibid.*, 9.

<sup>82</sup> Hayden, *Cosmopolitan Global Politics*, 7.

<sup>83</sup> David Chandler, *Constructing Global Civil Society: Morality and Power in International Relations* (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2004), 7.

<sup>84</sup> *Ibid.*, 113-14.

<sup>85</sup> *Ibid.*, 112.

<sup>86</sup> Calhoun, "Imagining Solidarity."

<sup>87</sup> *Ibid.*, 114.

<sup>88</sup> *ICC Monitor*, "Core Principles of the Women's Caucus," *ICC Monitor*, no.8 (June 1998), 13.

<sup>89</sup> Marlies Glasius, "Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court," in *Global Civil Society 2002*, ed. Marlies Glasius, Mary Kaldor, and Helmut Anheier (Oxford; New York: Oxford University Press, 2002), 137.



## Chapter 2

### **The “Distinctly American Internationalism”: The United States’ Unsigning of the Rome Statute of the International Criminal Court**

The Preamble of the Rome Statute of the International Criminal Court of 1998 lays out the motivations and objectives of the first permanent international juridical body to prosecute individuals responsible for mass violence, including war crimes, crimes against humanity, and genocide. Those states party to the Rome Statute—the legal foundation for the International Criminal Court—claim to be:

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, Recognizing that such grave crimes threaten the peace, security, and well-being of the world, ...

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes, . . . [and]

Resolved to guarantee lasting respect for and the enforcement of international justice.

In sum, those party to the Rome Statute of the International Criminal Court attempt to “express a collective human conscience” premised on the notion that “human beings, as a

race, a collectivity, have a kind of combined conscience that works in the same way, despite huge differences of culture, time, place, civilization and religion.”<sup>1</sup> The ICC thus represents the crowning achievement for international human rights legislation.

Despite there having been “some 250 international and regional armed conflicts” that have produced an estimated 70 to 170 million casualties since World War II, the establishment of the International Criminal Court was a tedious process.<sup>2</sup> The movement to create the ICC was buttressed by an international movement for the global enforcement of human rights in the days following World War II. The Nuremberg War Trials in 1946, the signing of the UN Charter in 1945, and the subsequent adoption of the Universal Declaration of Human Rights in 1948 represented landmark developments in the creation of international human rights instruments. In the mid to late 1980s, the movement for international human rights law regained momentum with the establishment of the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the so-called Torture Convention and a proposal to prosecute individuals for international drug trafficking in 1989. During the early 1990s, the end of the Cold War and the mass violence in former Yugoslavia and Rwanda that urged the international community to develop mechanisms for stronger enforcement of international law to safeguard human rights and prompted the establishment of ad hoc war crime tribunals to prosecute those responsible for the atrocities. The experiences with these tribunals helped catalyze the most recent efforts to codify international human rights law through a permanent international tribunal that would be authorized to prosecute individuals (rather than states) for the most heinous crimes of international concern—the International Criminal Court (ICC).

After half a century of drafting the legal foundations of an international criminal court, the court became a reality. A UN diplomatic conference held in Rome, Italy in the summer of 1998 concluded its drafting process with the adoption of the Rome Statute, the legal treaty founding the ICC, and opened the Court for signature and ratification. Designed to “put an end to impunity” of those who perpetrated the “most serious crimes of concern to the international community as a whole,”<sup>3</sup> as laid out in the Preamble of the Rome Statute, the ICC represented “the culmination of international law-making of the twentieth century.”<sup>4</sup> Having entered into force on July 1, 2002, former UN Secretary General Kofi Annan hailed the ICC as the “missing link” in the international legal system because it creates the legal framework for individual accountability for crimes such as genocide, crimes against humanity, and war crimes.<sup>5</sup> With its potential to try cases involving perpetrators who have committed some of the gravest crimes of mass violence, the founding of the ICC has been “compared in significance to the founding of the United Nations itself.”<sup>6</sup>

Keeping with the historical centrality played by the United States in establishing judicial bodies to enforce human rights on a global level since World War II, the United States played an instrumental role in developing the International Criminal Court. Despite its deep involvement in the drafting process, however, the United States voted against the adoption of the Rome Statute at the end of the 5-week conference held in Rome in 1998. This vote against the adoption of the ICC was cast in response to treaty stipulations not including the demand that the UN Security Council retain veto power over the Court.

Even so, two and a half years later, President Clinton signed the Rome Statute on the last day it was open for signature (December 31, 2000), making the United States a

signatory to the treaty in a last-minute attempt to ensure the United States' future influence on the court.

Despite the historical record that repeatedly proves that a criminal court operating at the international level is necessary for a more effective enforcement of human rights and the fact that the United States played an important role in the drafting of the Statute of the International Criminal Court, the United States has changed its tune with regards to its support of the ICC. While U.S. public discourse about the court had been intense during the drafting process, Clinton's signature—signaling a commitment to the idea of the court—served as a catalyst for even fiercer debates in U.S. domestic and foreign policy centering on issues of the court's jurisdiction and procedural safeguards. The promise of US engagement with and support of the court that was secured by Clinton's signature was fundamentally altered on May 6, 2002, just two months before the scheduled date of the ICC entering into force, when the Bush administration engaged in a heretofore unprecedented act in the international community—it “unsigned” an international treaty. The Bush administration had sent a notice to the United Nations, the depositary of the Rome Statute, informing the international community of its decision to withdraw the U.S. signature from and to not recognize any obligations toward the Statute. This act of the United States withdrawing its signature from the Rome Statute has become known as “unsigned” in the literature of this case. Although the United States had been outspoken about its objections toward the ICC, renouncing its previously delivered signature was significant in so far as the signature only required the United States to not actively work *against* the purpose of the ICC. By implication, the rhetorical

act of withdrawing its signature from the treaty represented the United States' intent to actively oppose the ICC.<sup>7</sup>

The act of “unsigning” the treaty had far-reaching consequences in the United States and abroad. At the domestic level, it resulted in Bush launching a campaign aiming at further undermining the International Criminal Court, which has become manifest in a series of legislative acts designed to protect U.S. citizens from being prosecuted by the ICC. While the Bush administration and Congress were engaged in developing safeguards to exempt U.S. personnel from the court's reach, proponents of the court were caught worrying about the withering of the United States' credibility as a supreme enforcer of human rights. At the international level, responses to the act of unsigning ranged from incomprehension to sheer indignation. Amongst supporters of the ICC in the international community, the Bush administration's decision to unsign the treaty has been portrayed as destructive and even as a hysteric move on the part of the United States. Given the unsigning's highly symbolic value, the United States' official stance toward the ICC prompted a heated debate about the possible implications of such a course of action for future international treaties. Most prominently, the international community expressed fears that the act of unsigning would set a dangerous precedent soon to be followed by other countries that no longer saw the need or desirability for ratification of certain international treaties. David Scheffer, who was ambassador at large for war crimes and who headed the U.S. delegation during the ICC negotiations in Rome for the Clinton administration, argued that “If we 'unsign' the ICC, we give a signal that a new practice is acceptable, and we lay the groundwork for undermining a whole range of treaties.”<sup>8</sup>

The focus of this chapter is on the rhetorical discourses surrounding the unprecedented act of unsigned an international treaty, namely the Bush administration's unsigned the Rome Statute of the International Criminal Court. The creation of the Rome Statute, and by extension the ICC, marks a new type of international commitment to the preservation and protection of human rights on a global level. Conversely, I argue, the act of unsigned the Rome Statute represents an undoing of that commitment. As such, it serves as a crucial moment for the United States to reconstitute its identity and position in the international community. This project is informed by the assumption that the ICC is both an artifact of transnational public memory and at the same time a site of transnational public memory production. So too, is the unsigned of the Rome Statute. The ICC is an *artifact* of transnational public memory as the institution evolved out of several decades of concerted efforts to prosecute perpetrators for having committed war crimes, crimes against humanity, and genocide. It stands as empirical proof of the triumph of international law in an era of genocide, war crimes, and crimes against humanity. The ICC is a *producer* of transnational public memory discourses as the cases it will hear will hold perpetrators accountable, will help restore justice in war ravaged communities and will help rebuild a sense of community. Further, the cases it will hear will create greater awareness of human rights and will continue to shape how people are invited to remember human rights and mass violence at an international scale. Given this context, to the international community, the unsigned serves as a type of memorial to how discourses of national sovereignty remain dominant in an era when transnational interdependency and the need for transnational cooperation are beyond question. As such,

the act of unsigning functions as a site of global memory production as it inaugurated a distinct foreign policy agenda that John Bolton labeled “American Internationalism.”

The rhetorical act of “unsigning” the international ICC treaty—a symbolic act with very real consequences—became manifest in the speech “American Foreign Policy and the International Criminal Court” delivered on May 6, 2002 by Under Secretary of State for Political Affairs, Marc Grossman before the Center for Strategic and International Studies (CSIS).<sup>9</sup> The speech explains the United States’ stance on the ICC and the decision to withdraw its signature from the Rome Statute as communicated in an official letter to the UN earlier that day and serves as a illuminating and rich supplement to the official declaration sent to the UN. Drawing on Marc Grossman’s speech and public discourse discussing the moment of “unsigning,” I examine the rhetorical strategies employed by the Bush administration to present its concerns and decisions regarding the ICC in an attempt to explain the political and ideological assumptions that have shaped the controversy about the court and to reveal the United States’ implied vision of its role as a member in the international community. My analysis is informed by Philip Wander’s call for an ideological turn in criticism that “reflects the existence of crisis, acknowledges the influence of established interests and reality of alternative world-views, and commends rhetorical analysis not only of the actions implied but also of the interests represented.”<sup>10</sup> By analyzing the principal U.S. objections to the ICC, I show how notions of sovereignty and community figure in U.S. public discourse about the ICC. I conclude by analyzing the ways in which this discourse impedes or creates the possibility of forging a transnational memory. The chapter begins with two sections outlining the founding of the International Criminal Court and the court’s structural

characteristics. The third section details U.S. objections to the Court. The fourth section hones in on the rhetorical strategies at work in the speech “American Foreign Policy and the International Criminal Court.”

### **History and Founding of the International Criminal Court**

The idea of a world court grew out of a lack of a permanent tribunal that could prosecute individuals for having committed the most serious crimes of international concern, such as war crimes, genocide, and crimes against humanity. The earliest vision of an international criminal court dates back to Gustave Moynier, founding member of the International Committee of the Red Cross in Geneva, Switzerland. Moynier introduced the idea of an international criminal court in 1872 as a response to the violations of humanitarian law during the Franco-Prussian war.<sup>11</sup> The proposal was then rejected by many international governments.

Other efforts to try perpetrators for such grave offences can be traced back to the Hague Conventions and the League of Nations. The Hague Conventions for the Peaceful Settlement of International Disputes, a set of treaties from 1899 and 1907, were the first “international efforts to proscribe war crimes and to protect civilians during times of war.”<sup>12</sup> While these conventions did not result in the establishment of an international court, they did provide “a solid body of humanitarian law” during World War I.<sup>13</sup> The violence that had occurred during World War I led to the establishment of the League of Nations’ Permanent International Court of Justice to settle disputes between states.

Steven Roach, Professor of Government and International Affairs, notes that despite the



League's concern for "instituting the principle of international criminal accountability, most states rejected the inclusion of crimes against the laws of humanity,"<sup>14</sup> effectively leaving international law unprepared for the continued atrocities of the twentieth century.

This changed with the experiences of World War II which led to the conceptualization of human rights which played an important role in the development of the International Criminal Court. While human rights had received attention in the 1920s and 1930s when several legal scholars wrote proposals for an international criminal court, "most efforts toward international protection of rights were limited to jurisdiction at the national level."<sup>15</sup> The concern for human rights rose particularly following the end of World War II. The adoption of the UN Charter in 1945 marked the "beginning of widespread human rights discourse,"<sup>16</sup> which was followed by the establishment of the UN Commission on Human Rights (UNCHR) in 1946 and the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, all of which provided the path for human rights to become institutionalized at an international level.<sup>17</sup>

Despite all the advancements in international human rights legislation, the international community was not yet ready to create a permanent institution to prosecute international criminal law. Instead, the Nuremberg and Tokyo war tribunals were set up on an ad hoc basis. In popular memory and legal practice, the Nuremberg War Trials set the precedent for prosecuting individuals for "crimes against humanity"—a category of criminal offenses that was created in response to the crimes committed during the Holocaust. In 1948, the international community stepped further along the path towards internationalizing human rights legislation: The General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide.

The document adopted by the General Assembly called for more international collaboration in the pursuit of this endeavor, recognizing that “at all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required.”<sup>18</sup> In Resolution 260 B (III) of 9 December 1948, the General Assembly added that “in the course of development of the international community, there will be an increasing need of an international judicial organ,” and hence asked the International Law Commission (ILC), a UN body in charge of developing and codifying international law, “to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide.”<sup>19</sup> Having established the benefits of the creation of an international court to prosecute individuals for genocide and similar crimes, ad hoc committees established by the General Assembly submitted a draft statute for a permanent international criminal tribunal in 1951 and a revised statute in 1953. The political climate of the Cold War, however, resulted in the rejection of the statutes as unfeasible. Despite the shelving of the statutes drafted in the early 1950s, the conviction that “international criminal trials could concurrently express outrage, affirm the moral and legal foundations of human society, tell the story of a crime as fully as it could be uncovered, determine those most responsible for it, and punish them,” had remained “stubbornly alive” since the Nuremberg and Tokyo trials.<sup>20</sup> While scholars and legal experts continued to work on proposals for a permanent international criminal court periodically, more serious efforts to pursue these proposals were not made until 1989. Upon the request of the Prime Minister of Trinidad and Tobago in 1989, the General Assembly asked the International Law Commission to draft a statute for a permanent

international criminal court which would include the jurisdiction over international drug trafficking. This, incidentally, was only one year after the United States had ratified the Genocide Treaty produced by the UN Convention on the Prevention and Punishment of the Crime of Genocide.

The movement toward an international criminal court simultaneously regained momentum and urgency in the early 1990s in the context of the crimes committed in the former Yugoslavia and in Rwanda. The commission of such crimes in these crisis areas indicated that “military and political response to genocide, war crimes, and crimes against humanity were insufficient.”<sup>21</sup> The UN Security Council established ad hoc tribunals for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to adjudicate large-scale atrocities in 1993 and 1994. These tribunals presented an important development for the “concept of the international accountability of individuals” for severe crimes.<sup>22</sup> Still, while these ad hoc tribunals with their limited jurisdiction in terms of time and territoriality were responsive to the specific situations for which they were set up, they have presented several shortcomings. The establishment of ad hoc tribunals has proven to be extremely costly. Moreover, ad hoc tribunals are unable to provide timely responses to prosecuting perpetrators, often extending over several years—circumstances that result in evidence being destroyed and perpetrators not being held accountable. Lastly, whereas ad hoc tribunals are set up by powerful outsiders, a permanent criminal court would ensure a universal, “permanent commitment to punish these crimes consistently.”<sup>23</sup>

In the climate of urgency created by the crimes committed in the former Yugoslavia and Rwanda, the International Law Commission (ILC) drafted an

international criminal court statute in 1993 upon the request from the General Assembly. The ILC submitted its final version in 1994. In 1995, the General Assembly established the UN Preparatory Committee on the Establishment of an International Criminal Court (PrepCom) to draft a treaty for the court. Their task was to prepare a “widely acceptable consolidated text of a convention, to be submitted to a diplomatic conference of plenipotentiaries.”<sup>24</sup> The PrepCom was “supervised directly and exclusively by the General Assembly to achieve a court independent of (although closely related to) the UN.”<sup>25</sup> Starting in 1996, the PrepCom held six sessions to draft the text of the statute before the statute was finalized at the Rome conference in the summer of 1998.

The supranational institution envisioned by Moynier in 1872 was finally created during the intergovernmental conference held in Rome, Italy from June 15 to July 17, 1998. The conference culminated in the adoption of what became formally known as the Rome Statute of the International Criminal Court, the document that laid the legal foundations for the establishment of an international criminal court. Of the 160 countries attending the negotiations at the Rome Conference, 120 states voted yes on the approval of the statute, 21 abstained, and 7 states, including the United States, China, Iraq, Israel, Libya, Qatar, and Yemen voted against the Rome Statute.<sup>26</sup> Based on the idea of universal human rights, the court is empowered to prosecute individuals responsible for genocide, war crimes and crimes against humanity such as torture, mass killings, political slaughter, mass rape, and ethnic cleansing if their national judicial system is unable or unwilling to do so. The creation of the Court not only establishes in international law “universal rules to protect human beings in principle,” but also functions as “an

instrument to punish individuals who gravely breach the rules,” thereby addressing the previous lack of enforcement of international law.<sup>27</sup>

Despite drafting members’ estimations that it would take approximately ten years to gather the required sixty ratifications needed for the establishment of the court, the sixtieth state had ratified the treaty only four years after the drafting of the treaty, on April 11, 2002. That the drafting process and required ratifications moved along faster than originally anticipated is partly attributable to the events that had occurred in Rwanda and the former Yugoslavia. Moreover, Marc Weller suggests, the progress toward ratification must be seen in the context of the efforts of an “extraordinarily well coordinated global campaign of high quality NGOs in support of the Rome Conference” that imbued a sense of urgency to the creation of the court so that in fact, “after half a century of abortive attempts, it seemed that the organized international community was almost eager to engage in an act of international constitutional law-making in this instance.”<sup>28</sup> Located in The Hague, Netherlands, the ICC officially became operational on July 1, 2002. The first bench comprised of eighteen judges was elected by an Assembly of States Parties in February 2003. The first pre-trial hearings were held in 2006. As of March 2009, 108 countries are States Parties to the Statute.<sup>29</sup>

### **Structure and Characteristics of the International Criminal Court**

The creation of the ICC is based upon the structure and principles of the United Nations but represents an independent institution and treaty body. The UN member states are not identical with the states supporting the ICC. Since each member state has a single

vote in the Assembly of States Parties, the decision-making structure of the ICC differs in important ways from those of the UN where the five permanent members of the Security Council (China, France, Great Britain, Russia, and the United States) have the power to veto decisions. Insofar as majority opinions need not cede to a powerful individual opposition, the ICC has a more democratic structure than the UN.

The ICC is designed to prosecute individuals responsible for the most serious crimes of international concern, such as genocide, crimes against humanity, and war crimes committed after July 1, 2002, when the court entered into force. It has no jurisdiction over crimes committed before this date. The ICC can exercise jurisdiction over nationals of a state party, individuals who are accused of having committed such crimes in the territory of a state party, and in situations where a state has specifically consented to the ICC's jurisdiction. Lastly, the ICC has jurisdiction over situations referred by the UN Security Council, provided that those situations constitute a threat or breach to international peace and security and in which case the jurisdictional requirements do not need to be fulfilled.

With regards to its jurisdiction, the ICC differs in important respects from the International Court of Justice (ICJ) and ad hoc tribunals. Unlike the International Court of Justice, which deals primarily with disputes between states, the International Criminal Court has jurisdiction over individuals, not states or governments. Whereas the ad hoc tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—created by the UN Security Council—are limited in their jurisdiction to the specific situation for which they were established, the ICC is designed to eventually have a global reach.<sup>30</sup>

In contrast to the ICTY and ICTR, the main justificatory principle for the ICC lies in its permanent status. While antecedent ad hoc tribunals were created as a response to previously committed atrocities, the ICC was established as an institution to deter future crimes on a continuous basis at a global level. With an emphasis on the function of deterrence, the ICC in large part performs a rhetorical function. Cherif Bassiouni, chairman of the Drafting Committee of the Diplomatic Conference on the Establishment of an International Criminal Court, explains that the ICC is meant to foster “public processes” that will “reinforce social values and expectations concerning international conduct that will then contribute to the individual internalization of these values.”<sup>31</sup> In addition to serving as a rhetorical discourse useful for forging positive cosmopolitan values, the ICC is meant to stand as a persistent reminder to governments that the court could hold individuals and their governments accountable for war crimes and crimes against humanity. This persistent reminder is then a type of rhetorical *threat* that may help prevent such crimes in the future.<sup>32</sup> The ICC serves as an “international social control mechanism in enforcing sanctions against these crimes as opposed to ad hoc processes in which norms apply only selectively.”<sup>33</sup> For Bassiouni, what is at issue is not “the epistemological, ontological or ethical content of substantive norms prohibiting genocide, crimes against humanity and war crimes, but rather their effective instrumental function as a means of international social control.”<sup>34</sup> This theme recurs throughout the U.S. discourse about the ICC in the guise of fears over a competition between “international control” and “national sovereignty.”

Since the Rome Statute—once ratified by a state—becomes part of the national law of the ratifying state, the principle of complementarity is a central feature to the

court. The principle, stipulated in Article 17 of the Rome Statute, specifies that the ICC's jurisdiction is "complementary" to national legal jurisdictions and is thus an international, not a supranational institution.<sup>35</sup> The principle of complementarity further stipulates that the ICC adopts a case only if the accused person's state of primary jurisdiction is unwilling or unable to carry out the investigation or prosecution of the crime committed. The court will hear only cases that the accused person's home government has refused to bring to court in a reasonable manner. In this sense, the ICC can be understood as a court of last resort.

As stipulated in the Rome Statute, the International Criminal Court consists of eighteen judges, a Chief Prosecutor with one or more deputy prosecutors, and an administrative staff.<sup>36</sup> As is usual for international treaty organizations, the ICC's judges and prosecutor and deputy prosecutors will be elected by the states that ratified the statute—the Assembly of State Parties—with each national delegation having one vote. The eighteen judges, representing "the principal legal systems of the world" and displaying an "equitable geographical representation,"<sup>37</sup> are divided into several chambers: one chamber consisting of three judges exclusively dealing with indictments and pre-trial matters; three trial chambers consisting of three judges each; an appellate chamber consisting of five judges; and one presiding judge. The Assembly of State Parties can remove any of the judges or prosecutors by a simple majority vote. The assembly's additional functions are to review and approve the budget and to approve amendments to the Statute for possible ratification by the member states.<sup>38</sup> The court is financed by contributions from the states that are party to the Rome Statute, with each



country's contributions being determined by the same mechanism used to determine contributions to the UN.

### **The “Distinctly American Internationalism”—U.S. Objections to the ICC**

Historically, the United States has played a seminal role in creating documents and institutions that would lead to the establishment an international human rights system. With its influence on the (eventually unsuccessful) attempts to create a League of Nations, the founding of the United Nations and its attending documents, its leadership in creating major war crimes tribunals over the last sixty years, and its participation in drafting international human rights treaties, the United States has made a legacy for itself for having made significant “contributions to the contours of human rights practice, policy, and action worldwide.”<sup>39</sup> What is more, Stacy notes, is that the United States’ “funding of post-Cold War Rule of Law programs and support for domestic human rights systems . . . has further entrenched the international community’s perception of the United States as a human rights beacon.”<sup>40</sup> Thus, the United States’ human rights legacy is not limited to the procedural aspects of international human rights legislation but also serves an important rhetorical function.

Despite the United States dominant role in human rights legislation and efforts to build institutions of global governance, attempts at building an international criminal court in the early 1990s was tainted by U.S. policymakers’ distrust of international courts and specifically their distrust of such courts’ ability to neutrally apply international law, both of which were concerns that had been evolving against the backdrop of Cold War

international relations.<sup>41</sup> The principal argument against an international criminal court from the United States in the early 1990s was that such a court would have jurisdiction over U.S. citizens and could be used for politically motivated prosecutions.<sup>42</sup> These widely held beliefs created substantial obstacles for proponents arguing for the creation of an international criminal court.

In the mid 1990s, a confluence of factors created a context that contributed to the United States becoming more supportive of the creation of an international criminal court. These factors included the outbreak of the conflict in Yugoslavia and the growing realization that an institution that could hold *individuals* (rather than states) responsible could provide strategic advantages.<sup>43</sup> In 1993, the Security Council created an International Criminal Tribunal for the former Yugoslavia. Coupled with the already ongoing process of drafting a statute pursued by the ILC and the influence of NGOs who had played an important role in raising public awareness about the necessity of an international criminal court, these developments provided a window of opportunity for the United States to change its view on the desirability and feasibility of an international criminal court.<sup>44</sup>

By 1993, the United States had decided to support the creation of an international criminal court. Having played a seminal role in establishing the kinds of institutions that would render justice at an international scale, the United States was also at the forefront in drafting the International Criminal Court. Representatives of the Clinton administration were actively involved in the negotiations establishing the ICC. However, as political scientist Marlies Glasius points out, the United States was at the same time “working very hard to create the kind of Court that the United States wanted.”<sup>45</sup> The final

statute included several issues the United States would not agree to, which has subsequently resulted in strong U.S. opposition to the International Criminal Court. While several countries have expressed their objections against the treaty, the United States has done so more forcefully than others. Glasius notes that most countries that oppose the International Criminal Court, “have been satisfied merely not to ratify the treaty and to stay away from further negotiations,” whereas the United States is the “only state to date that has pursued an active policy of opposing the Court.”<sup>46</sup> The fierce rejection of the ICC is evidenced by impassioned commentaries on this issue in U.S. public discourse about the ICC and by legislation enacted immediately following the United States’ unsigned of the Rome Statute.

The public opposition to the ICC was spearheaded by former Senator Jesse Helms, Republican of North Carolina and Chairman of the Senate Committee on Foreign Relations. His views were published in an editorial, aptly entitled “We must slay this monster,” in the London daily *Financial Times* shortly after the United States voted against the Rome Statute in July 1998. In the article, the “monster” Helms refers to is the International Criminal Court that he exhorts his audience to “slay” because it allegedly poses a “threat to US national interests.” Helms’ commentary, although typically not representative due to his tendency to polarize, in this case expresses views not entirely unusual in U.S. public discourse about the ICC. Helms argued that “rejecting the Rome treaty is not enough. The US must fight the treaty. [ . . . ] even if the US never joins the court, the Rome treaty will have serious implications for US foreign policy....”<sup>47</sup> Calling the Rome treaty an “irreparably flawed and dangerous document,” he concludes that the United States

cannot treat it with the ‘benign neglect’ Mr. Axworthy [the Canadian Foreign Minister] is hoping for. As a Dutch delegate put it at the conclusion: ‘I won’t say we gave birth to a monster, but the baby has some defects.’ He is wrong. The ICC is indeed a monster—and it is our responsibility to slay it before it grows to devour us.”<sup>48</sup>

Foreshadowing his fierce opposition to come, Helms vows that “And so long as there is breath in me, the US will never - I repeat, never - allow its national security decisions to be judged by an International Criminal Court.”<sup>49</sup> Helms would later be responsible for introducing the American Service-Members’ Protection Act that became law in August 2002.<sup>50</sup> As we will see, Helms was not alone in thinking that abstention or even withdrawal from the treaty would not be sufficient to incapacitate it and that opponents must vigorously work against the court if they desire to dismantle it. In fact, Helms’ editorial echoed a statement made by Senator Rod Grams of Minnesota at the Senate Foreign Relations Committee hearings held on July 23, 1998, in the immediate aftermath of the adoption of the Rome Statute. In his opening statement, Grams said that “I hope that now the administration will actively oppose this court to make sure that it shares the same fate as the League of Nations and collapses without U.S. support for this court truly I believe is the monster and it is the monster that we need to slay.”<sup>51</sup>

Beyond this kind of commentary that likens the ICC to devil terms (i.e. the monster), the U.S. administration provided arguments against the ICC that raised concerns over a number of specific issues regarding the Court’s authority and structural characteristics. The United States’ principal objections to the ICC include the court’s jurisdiction over states that have not ratified the treaty, the court’s interference with state

sovereignty, its alleged weak procedural safeguards, and its potential for allowing politically motivated prosecutions. One of the primary concerns advanced by the Bush administration against the ICC is the court's jurisdiction over individuals from states that have not ratified the treaty. As such, the treaty is regarded as “[threatening] the sovereignty of the United States.”<sup>52</sup> But the concern over the potential loss of U.S. sovereignty is often articulated more explicitly in terms of the ICC subjecting the United States to supranational law and institutions. An editorial in the *Wall Street Journal*, for instance, argued that the enforcement of human rights and global justice is “best achieved by U.S. leadership and military strength.”<sup>53</sup> These objectives, however, would be threatened by globally operating juridical institutions that oversee the application of U.S. rule and military force. The editorial drew from a comment made by Harold Koh—former assistant secretary of state for democracy, human rights, and labor in the Clinton administration and Professor of Law at Yale University arguing in favor of the ICC—who had likened the creation of the International Criminal Court to “an international *Marbury versus Madison* moment.”<sup>54</sup> Contrary to how Koh presumably employed this comparison, the editorial characterized the 1803 decision as giving “a fledgling U.S. Supreme Court authority over the other branches of government.”<sup>55</sup> Just as the federal Supreme Court had received the power over state jurisdiction with the *Marbury v. Madison* case, the ICC as a “world court” would have “similar powers over America's democratic decisions and global leadership”<sup>56</sup> by providing the grounds for international law superseding national law.

Concerns over the shifting locus of power occupy the heart of the controversy over the ICC and spill over into scholarly circles as well. David Davenport, Research

Fellow at the conservative Hoover Institution, raises fears about the potentially waning status of U.S. leadership in the international community. Tracing the increasing influence of non-governmental institutions in global politics, for instance in the creation of the ICC, Davenport decries the emergence of such actors and their tactics as manifesting a “new diplomacy.”<sup>57</sup> The globalist agenda of this “new diplomacy,” he essentially argues, undermines nation-state interests and sovereignty. Accordingly, the “most powerful tool of the new diplomacy,” and thus the most alarming, is that it “is replacing the leadership of the U.S. and other world powers with that of nongovernmental organizations and smaller states.”<sup>58</sup> Davenport’s article reveals a deep mistrust of the influence of both international institutions and NGOs that have become increasingly important players in global politics.

Such commentary reinforces how the influence of international institutions like the ICC and globally operating NGOs figures prominently as a threat to U.S. leadership and to the concept of a sovereignty in the U.S. debates over the ICC. At the root of these arguments is the fear over a loss of the Westphalian model of the nation-state. According to this model, nation-states had complete sovereignty over their own territory. The desire to preserve the Westphalian model of the nation-state and with it the uncompromising pursuit of national interests take priority over benefits of the ICC for the larger global community, such as the ability to guarantee the enforcement of human rights norms at a global scale. Anxieties over declining nation-state sovereignty brought about by the ICC are articulated boldly by John Bolton, former U.S. ambassador to the UN and former Assistant Secretary of State for International Organization Affairs in the first Bush administration. In a passionate article published in the *Washington Post* in January 2001,

Bolton, identified by the British newspaper *Guardian* as the “intellectual leader of opposition to the ICC,”<sup>59</sup> urged the future administration to “unsign” the treaty as the “Rome Statute may risk great harm to our national interests.”<sup>60</sup> Bolton maintained that the Rome Statute of the ICC “is, in fact, a stealth approach to eroding our constitutionalism and undermining the independence and flexibility that our military forces need to defend our interests around the world.”<sup>61</sup> In his article, Bolton cast the supporters of the ICC as ill informed and misled, guided by a hidden, conspiratorial plan designed to undermine the power of the United States or as a “thinly disguised effort to block passage” of an act stipulating the immunity of American peace forces. Echoing David Davenport’s suspicion of international organizations and institutions, Bolton denounced the ICC as “an object of international ridicule and politicized futility” whose supporters “have an unstated agenda, resting, at bottom, on the desire to assert the primacy of international institutions over nation-states.”<sup>62</sup>

Bolton had put forth a similar argument during the Hearings before the United States House Committee on International Relations in July 2000 where he suggested that the *true* objective of the International Criminal Court is to create a system that would handcuff the United States. In 2000, Bolton argued that

Support for the International Criminal Court concept is based largely on emotional appeals to an abstract ideal of an international judicial system, unsupported by any meaningful evidence, and running contrary to sound principles of international crisis resolution. Moreover, for some, faith in the ICC rests largely on an unstated agenda of creating ever-more comprehensive

international structures to bind nation states in general, and one state in particular.<sup>63</sup>

Bolton's charge that the ICC "binds" nation-state must be understood as synonymous with the fear of no longer having impunity. Bolton makes no attempts at addressing why an international community might want to bind one nation-state in particular to international oversight. The act of "binding," instead, serves to instill fear of the proscription of U.S. national sovereignty without attempting to reconcile the contrary notion that his (Bolton's) opposition to the ICC implies a desire for the United States to be able to impose its sovereign will on other sovereign nation-states. Bolton combines this strategy of striking up fear about the ever-encroaching power of international organizations onto the sovereignty of nation-states with an attack against President Clinton as a way of ridiculing and dismissing all those who support the ICC. Bolton portrays the Clinton administration's support of the ICC as "naïve"<sup>64</sup> and characterizes Clinton's "last-minute-decision" to sign the Rome Statute as "injurious" and "disingenuous."<sup>65</sup> Laboring to challenge Clinton's ethos as a competent decision-maker, Bolton accuses the Clinton administration of never having "understood that the ICC's problems are inherent in its concept."<sup>66</sup>

Bolton works to legitimize his argument by associating himself with the U.S. legacy of assuming a leadership role in the protection of human rights, claiming that "No one disputes that the barbarous actions under discussion are unacceptable to civilized peoples."<sup>67</sup> Asserting the fundamental commonality of ICC opponents' and ICC supporters' goals, Bolton proceeds by casting the two parties' as differentiated by a difference in views about the appropriate *means* through which the enforcement of



human rights should be achieved, that is by creating a distinction between privileging “international power” over “international law”:

the real issue is how and when to deal with these acts, and this is not simply or even primarily a legal exercise. The ICC’s advocates make a fundamental error by trying to transform matters of international power into matters of law.

Misunderstanding the appropriate role of force, diplomacy and power in the world is not just bad analysis, but bad and potentially dangerous policy for the United States.<sup>68</sup>

His position suggests that international law would put unnecessary and undesirable restrictions on the ways in which power could be expressed internationally. Bolton’s conceptualization of proper internationalism suggests that power (represented by powerful nation-states) may authorize itself to “do justice” when the need arises. By contrast, Bolton sees the ICC being the opposite of a proper internationalism because it limits the selective application of force and enforces a consistent application of the rule of law when standing in judgment of and punish those responsible for genocide, war crimes, and other crimes against humanity.

As a logical conclusion, Bolton proposes that the United States withdraw from the treaty. Further undercutting Clinton’s position on the ICC and foreshadowing President Bush’s actions that would follow in May 2002, Bolton urged the incoming administration to “unsign” the Rome Statute, asserting that “What one president may legitimately (if unwisely) do, another may legitimately (and prudently) undo. The incoming administration seems prepared to take similar actions in domestic policy, and it should not hesitate to do so internationally as well.”<sup>69</sup> Bolton recognizes the pattern this course

of action could inaugurate. However, instead of distancing himself from this slippery slope, Bolton embraces the potential it enshrines as a defining feature of “American internationalism.”<sup>70</sup> He claims “Not only would an unsigned decision make the U.S. position on the ICC clear beyond dispute, it would also open the possibility of subsequently unsigned numerous other unratified treaties. It would be a strong signal of a distinctly American internationalism.”<sup>71</sup> Ironically, the distinct “American” dimension of the internationalism that Bolton envisions is precisely the retreat from and repudiation of notions and practices of “internationalism” (here understood as a kind of cosmopolitanism). Hence, the American brand of internationalism previewed in Bolton’s remarks would amount to a unilateralism rather than an embracement of internationalism. Not only does it ignore the fact that the kinds of crimes the ICC has been designed to adjudicate cannot be dealt with by one country alone, it also reveals a lack of concern for a more democratic world order.<sup>72</sup>

In addition to these reservations about the institution of the ICC as a source of a potential loss of sovereignty, the United States objects to several specific stipulations in the Rome Statute. Several of these objections refer to what the United States considers weak procedural safeguards in the overall design of the court,<sup>73</sup> some of which were amended during the drafting process of the Rome Statute.<sup>74</sup> Despite concessions to U.S. interests during this process, however, the alleged unchecked power of the prosecutor in initiating prosecutions remains major grounds for U.S. opposition to the court. ICC opponents consider the way in which prosecutions can be initiated as posing the risk that the United States would become the target of politically motivated accusations, which makes the office of the prosecutor one of the most cited contentious issues and a target of

ridicule. Echoing a language similar to Helms' and Bolton's commentaries, Lester Munson, former spokesman of the Senate Foreign Relations Committee, spoke of the office of the prosecutor as containing "enormous potential for abuse," warning that "it doesn't look so bad on paper, but then Dr. Frankenstein never intended for his monster to run amok."<sup>75</sup> In an attempt to eliminate this alleged flaw or "Frankenstein factor" in the structure of the court, the United States proposed to have the UN Security Council grant the exclusive authority to initiate prosecutions. Had this proposition been accepted, the most democratic element of the ICC would have been effectively eliminated.<sup>76</sup>

Another main objection brought forth by the United States is the inclusion of the category "crimes of aggression" in the treaty. The United States objects to any regulation that does not grant the exclusive right to the Security Council to determine what constitutes an act of aggression.<sup>77</sup> However, since an acceptable definition of the term "crime of aggression" has not yet been reached, the ICC cannot exercise jurisdiction over the crime of aggression until state parties will agree on a definition of the crime and will stipulate conditions under which the crime may be prosecuted. This will happen at the earliest during the ICC review conference to be held in 2010.

We have seen so far that implicit in most of these claims advanced by the United States is the anxiety about the loss of power and sovereignty of the United States. Moreover, the fear is that the ICC could render "false" justice due to politicized prosecutions and investigations of U.S. personnel. The final set of objections raised in the public discourse about the ICC comprises a presumed lack of due process protections. While some of the objections address the typical problems and "usual inadequacies of UN majority rule,"<sup>78</sup> such as how to ensure that the best lawyers are chosen, how the

court will be financed, or how to recruit the court's investigating force, supporters of the ICC consider these objections as unwarranted and exaggerated, if not displaying a willful ignorance that veils more deep-seated concerns regarding the leadership role of the United States. Broomhall notes:

The United States' legal argument is widely thought to be weak, but arises from deeper concerns emanating in different forms from the U.S. Congress and the Executive. . . . These concerns are relatively widespread among conservative commentators, but are not well supported among even sympathetic U.S. academics, who typically recognize that the Rome Statute offers significant safeguards (many based on U.S. proposals) and that constitutional concerns are misplaced."<sup>79</sup>

The eventual unsigned thus must be interpreted as founded on partisan grounds, lacking substantial support, even from partisan scholars, and based upon a perceived lack of safeguards, many of which, ironically, were drafted by the United States. While the U.S. objections are presented as arguments against the structure of the court, its legality, and its potential threat to the Constitution of the United States, these objections may well be nothing more than an attempt to cover up anxiety over the loss of U.S. sovereignty in an age where one must be naïve or cynical to deny the status of international interdependency.

### **Unsigning the Rome Statute**

The United States played an important role in promoting and developing antecedents to the ICC that sought to enforce human rights on a global level, such as the Nuremberg War Crimes Trials and the international tribunals for the former Yugoslavia and Rwanda. The Clinton administration upheld American involvement in such bodies by aiding in the drafting of the Rome Statute. Particularly in the area of defining crimes, the United States government was “one of the keenest advocates of the application of the advanced definitions of crimes against humanity and war crimes.”<sup>80</sup> In fact, Weller notes, the United States was “one of the most effective and technically competent delegations in this process, both before the Rome conference, at Rome, and even afterwards, when the elements of crimes were being defined.”<sup>81</sup> When the time came to approve the Statute in Rome the United States cast a negative vote on the grounds of particular stipulations in the treaty. Two and a half years later, despite several points of contention with the treaty, President Clinton unexpectedly signed the Rome Statute on December 31, 2000, joining 138 other countries that had signed the Rome Statute by then.<sup>82</sup> The date of Clinton’s signature is significant for two reasons: First, Clinton signed the treaty in the waning days of his term of office, to be precise, eighteen days prior to his administration leaving the White House. Second, the date marked the end of the period during which the Rome Statute was open for signature, as the deadline to sign the document closed on December 31, 2000.<sup>83</sup> In the weeks prior to Clinton’s decision to sign the Rome Statute, there had been vigorous debates about the approaching deadline. While Secretary of State Madeleine Albright and legal advocacy organizations, such as the American Bar

Association and the Lawyers Committee for Human Rights, had urged Clinton to sign the treaty, the Pentagon was strongly opposed.<sup>84</sup>

Still, one should not be too quick in praising Clinton's move toward joining the ICC as it was not delivered without reservations. Although Clinton did provide his signature to the international treaty, an act that according to diplomatic conventions typically signals a state's intention to ratify a treaty, he simultaneously qualified his signature by reiterating his administration's objections to the treaty, declaring that the United States is not "abandoning our concerns about significant flaws in the treaty."<sup>85</sup> What is more, Clinton concluded his statement by urging his successor to hold off ratifying the treaty until the United States' concerns about the court's weaknesses would be addressed. He stated, "I will not, and do not recommend that my successor submit the treaty to the Senate for advice and consent until our fundamental concerns are satisfied."<sup>86</sup> Although an ambiguous diplomatic maneuver as a whole, Clinton's last-minute decision is considered to express a desire for an "ongoing policy of 'constructive engagement,'" in the negotiations of the ICC.<sup>87</sup> Clinton's rationale was that at the very least, the signature would allow the United States to "remain engaged in making the I.C.C. an instrument of impartial and effective justice in the years to come," whereas the refusal to sign the Rome Statute would exclude the United States from engaging in the evolution of the court in the future.<sup>88</sup> Despite Clinton's cautious handling of the signature, Senator Jesse Helms quickly reinserted himself in the public debate, claiming that the main U.S. objections have not been resolved since the vote on the Rome Statute in July 1998. Foreshadowing his efforts to weaken the required consent of the Senate for

ratification of this international treaty, Helms pledged that “Nothing—I repeat, nothing—has changed since then to justify U.S. signature.... This decision will not stand.”<sup>89</sup>

In contrast to the prevailing message sent by the Clinton administration—that is one of a hesitant commitment to the institution of the ICC but one that foresees a probable future engagement with it—the Bush administration’s actions have been interpreted as representing a clearly antagonistic posture. This assessment is owing to its official repudiation of the ICC in May 2002 manifest in the act of unsigned the Rome Statute. Leading up to this act was a gradual move to pull out of the revision process of the Rome Statute. Whereas the Clinton administration had taken a lead role in the legal drafting process, the Bush administration’s initial stance “over the early course of 2001, was one of withdrawal from the ICC-related PrepCom process and of slow stocktaking, as the administration worked to develop a policy distinct from its predecessor.”<sup>90</sup> As it became clear that the required number of ratifications would be met, which in turn would result in the entering into force of the ICC on July 1, 2002, the United States submitted a formal letter to United Nations Secretary General Kofi Annan on May 6, 2002, renouncing its signature. The letter, signed by Under Secretary of State, John Bolton, stated that the United States “does not intend to become a party to the treaty” and that consequently “the United States has no legal obligations arising from its signature on December 31, 2000.”<sup>91</sup> Secretary of Defense Donald Rumsfeld declared in a press statement released on May 6, 2002 that the action “effectively reverses the previous U.S. Government decision to become a signatory.”<sup>92</sup> What the Clinton administration had signed, the Bush administration proceeded to *unsign*. On the same day, May 6, 2002, Under Secretary of State for Political Affairs, Marc Grossman, delivered a speech at an

event hosted by the Center for Strategic and International Studies (CSIS) in which he explained why the United States would renounce its involvement in a treaty creating an international criminal tribunal.

Grossman's announcement of the U.S.'s official repudiation of the Rome Statute did not come as a surprise despite its novelty in and implications for international law. Following Bolton's call to rescind the ICC signature in 2001, several commentators had discussed the possibility of the United States to withdraw its signature from the Rome Statute several months before it was officially announced.<sup>93</sup> At the end of March 2002, Pierre-Richard Prosper, the State Department's ambassador at large for war crimes issues, had declared that the unsigned of the treaty was "one of several options being considered by Washington as an indication that it was not bound by the treaty."<sup>94</sup> With the decision to unsign the treaty, the Bush administration chose the most public and most rhetorically significant one of its available options. The rhetorical dimensions of this act are highlighted by the fact that, as *Boston Globe* reporter Elizabeth Neuffer points out, it is not unusual for countries to sign a treaty and then not to submit it for ratification by lawmakers or to take a long time to ratify it. This was the case, for instance, with the Genocide Convention the United States had signed in 1948 but did not actually ratify until 1988. It is unusual, however, for a country to remove its signature altogether.<sup>95</sup> No President has ever revoked his predecessor's signature to a treaty. William Aceves, Professor of International Law, notes that the act of "unsigned" an international treaty is "unique in the history of international law, and U.N. officials indicate that no such precedent exists."<sup>96</sup> Ambassador at large for war crimes during the Clinton administration David Scheffer has argued that retracting the signature "exceeded even the actions of the



Reagan administration.”<sup>97</sup> The Reagan administration decided in 1987 to not seek ratification of an amendment to the Geneva Conventions known as Protocol 1 that the Carter administration had signed as the document would have given protections to soldiers of insurgent movements.<sup>98</sup> Due to its exceptionality, the act of unsigned raised questions about the role of the United States in the international community and the negative legal precedent this symbolic and legal act of unsigned an international treaty would set for the future. The unsigned marks the culmination of the fierce debates over the ICC that themselves were in violation of the spirit, if not the letter, of Article 18 of the Vienna Convention on the Law of Treaties. This 1969 treaty stipulating the obligations of nations to obey other international treaties requires signatory nations to “refrain from acts which would defeat the object and purpose of a treaty... until it shall have made its intention clear not to become a party to the treaty...”<sup>99</sup> This would mean that Clinton’s signature legally bound the United States to assuming, at minimum, a more detached and neutral stance towards the Court.

### **Marc Grossman: “American Foreign Policy and the International Criminal Court”**

Accompanying the official announcement of the unsigned of the Rome Statute, Grossman’s speech serves to outline U.S. foreign policy commitments with regards to the ICC. Drawing loosely on the rhetorical conventions of the manifestic genre, I contend that the act of unsigned functions as a constitutive moment for the production of a political subjectivity that eschews global responsibility to protect U.S. sovereignty. Grossman’s speech accomplishes this by gradually narrowing the way of being offered

by his speech while purportedly speaking from and for an inclusive, unified “American” voice. The act of unsigning the Rome Statute manifest in this speech, I argue, performatively challenges the collective memory of the United States’ commitment to human rights. In her book, *Manifestoes: Provocations of the Modern*, Janet Lyon identifies several distinct argumentative strategies typically found in manifestoes. First, the manifesto displays an oversimplified, highly selective history that outlines the development of oppression until the present. This selective history “functions more like myth than like empirical historiography” and is usually given in a passionate tone.<sup>100</sup> Second, the manifesto typically employs the form of an enumeration of grievances or demands to create the impression of one group being oppressed by another. The characteristic paratactical structure of numbered lists serves as a means to create a heightened sense of urgency of these grievances. The third recurring feature Lyon identifies may be the “only uniform convention among manifestoes” and refers to its particular “hortatory rhetorical style.”<sup>101</sup> This rhetorical device of calling for a course of action is coupled with the manifestic genre’s concern with the act of “truth-telling.” The fourth commonality found among most manifestoes is then an “epigrammatic, declarative rhetoric which directly challenges the named oppressor ... while uniting its audience in an exhortation to action.”<sup>102</sup> The general function of the manifesto has thus been to offer “revised historical perspectives” and “new hierarchies of power” by creating a rupture in the dominant political order.<sup>103</sup>

Divided into six sections, the organization of the speech “American Foreign Policy and the International Criminal Court” comprises several formal elements characteristic of the manifestic genre. The introductory section establishes an image of

“America” that evokes common American ideographs, or foundational values, such as justice, democracy, and freedom. The next two sections, entitled “Historical Perspective” and “A Flawed Outcome” sketch U.S. involvement in the development of the Rome Statute and list U.S. objections to the current status of the Statute in the form of a selective historical narrative. The fourth and fifth sections, entitled “Our Efforts” and “Our Philosophy,” reinforce U.S. principles and the requirements the ICC would have to meet in order for the United States to accept the Statute. The final section, “We Will Continue To Lead,” outlines the future role of the United States in the international community, stressing a continuing commitment to bringing those who violate international humanitarian law to justice, despite the unsigned of the Rome Statute.

Grossman begins the speech by thanking the CSIS for “hosting this discussion of American foreign policy and the International Criminal Court.”<sup>104</sup> Grossman’s word choice suggests that he is about to enter a dialogue about the arguments about U.S. foreign policy and its relation to the ICC. However, given the context of this speaking event—the U.S. having unsigned an international treaty, hence isolating itself from the international community—the term “discussion” is misleading and conceals the fact that this will not be a dialogue but rather a unidirectional form of communication. What follows in Grossman’s announcement is not a discussion in the sense of laying out different arguments to be engaged by a multitude of speakers, but a one-sided account of U.S. grievances with regard to the ICC. As we will see, Grossman’s purported discussion is not only limited by its unidirectionality but also by the gradual narrowing of agents in the speech.

From the outset, Grossman indicates a pragmatic approach toward the situation that is coupled with emotional appeals. Asking his audience to “Let [him] get right to the point. And then I’ll try to make my case in detail,” Grossman’s preview statement is followed by an abrupt proclamation of “American” beliefs and values:

Here is what America believes in: We believe in justice and the promotion of the rule of law. We believe those who commit the most serious crimes of concern to the international community should be punished. We believe that states, not international institutions are primarily responsible for ensuring justice in the international system. We believe that the best way to combat these serious offenses is to build domestic judicial systems, strengthen political will and promote human freedom.<sup>105</sup>

Grossman continues his declaration of fundamental beliefs constituent of U.S. political culture, including checks and balances and U.S. sovereignty, by adding how these ideals purportedly clash with the institution of the ICC. In this passage, the audience is offered a claim (states should remain the primary locus of power to adjudicate international issues) and a warrant (because “we” believe states do so more effectively). Audiences are not, however, offered grounds to support the claim or warrant. Instead, the audience is invited to develop an emotional attachment to the claim by becoming the “we”-identity that is conjured up in the opening lines of the speech. It is in this way that Grossman’s arguments are more properly understood as assertions.

Grossman’s proclamation of a set of beliefs and values—emphasized by the anaphoric use of “we believe”—is particularly noteworthy because Grossman favors the connotative term “America” over the more objective and neutral label “United States.”

Declaring “America’s” beliefs” rather than U.S. beliefs, Grossman draws on “America” as an ideograph, invoking concepts and foundational values, such as “freedom” and “democracy,” and “equality” more readily associated with the term “America” than with the signifier “United States.” Following Michael Calvin McGee, an ideograph is an ordinary language-term, words or phrases primarily used in political discourse. They function as abstractions or what he calls “one-term sums”<sup>106</sup> of an ideological “collective commitment to a particular but equivocal and ill-defined normative goal.”<sup>107</sup> The ideograph <America> is used here to invoke a series of unquestioned ideals as if they were relevant to the case of the ICC. Moreover, the nation is personified. Its beliefs are cast as morally virtuous, highlighting the depiction of America as a guarantor of those principles.

The use of the ideograph <America> instructs audiences how to read the act of unsigning. Given the exigency of the speech situation—the unsigning of the Rome Statute with far-reaching consequences in U.S. diplomatic relations—Grossman’s preference of the label “America” over the label “United States” suggests a degree of ignorance of and lack of concern for the fact that “America” comprises not only the United States but also includes Central America and an American continent on the Southern hemisphere. As an official document detailing the U.S. position on the withdrawal of the U.S. signature from an international treaty, the speech not only addresses a U.S. audience but also, if not primarily, an international audience, and specifically an international audience consisting of experts, such as policymakers, diplomats, and other officials working in the administration. Considering the high-profile positions of the audience members, the use of the label “America” rather than “United

States” constitutes a break with the proper naming conventions at this bureaucratic and administrative level. Although it is not uncommon in the United States to use the label “America” synonymously with the “United States of America,” the international audience addressed by this speech, including heads of states and ambassadors representing their respective countries, would be highly attuned to the nomenclature and its connotations. The lack of regard for the proper naming practices in the company of representatives of the international community parallels the lack of concern for the rules of conduct as a member of the international community expressed in the act of nullifying the signature to an international treaty. Translated into the realm of foreign relations, the ethnocentric attitude latent in the opening paragraphs of the speech replicates the act of unsigning as an exceptionalist approach in foreign policy.

Grossman’s use of the label “America” rather than “United States” serves another important function. Employing <America> as an ideograph that evokes associations with the rule of justice, the rule of law, and national sovereignty, Grossman simultaneously invokes the universal voice of the American people. The personification of “America” subsumes a myriad of voices into one unified position, suggesting that essentially all Americans share these beliefs. The use of the manifestic pronoun “we” in the series of “we believe” statements serves to anchor them as the beliefs of the American people as a whole rather than the administration that decided to unsign the treaty and whose rationale for unsigning Grossman was charged with outlining in this speech. The repetition of “we believe” proclamations subsumed under one unified “American” voice then serves to redirect attention from the more debatable arguments cast as “beliefs” (such as the focus on domestic institutions) as they are conflated with an ideographic and thus uncontested

and unchallenged understanding of “American” beliefs. As a whole, Grossman’s rhetorical choices in the opening of the speech suggest that the address was not delivered primarily for an international audience, but rather functions as a rhetorical performance for a U.S. audience.

I have suggested so far that Grossman speaks from the position of a general audience of Americans to a general audience of Americans. As the speech proceeds, however, the text gradually invites the audience into a way of being or subject position that is consistent with and affirms the Bush administration’s approach towards foreign policy.<sup>108</sup> The main purpose of the speech is to communicate the United States’ conviction that it is the responsibility of “states” or, by implication, domestic institutions rather than “international institutions,” to “[ensure] justice in the international system.” To accomplish this task, the United States initially positions itself not as countering or working against those principles that should be laid down in the Rome Statute but rather as affirming or upholding them. Hence Grossman’s affirmative proclamation of principles, “Here is what America believes in.” Following this proclamation of what America *does* believe in, however, the argument quickly shifts to distance “American” principles from those upheld by the ICC by bluntly announcing: “We have concluded that the International Criminal Court does not advance these principles.” The inherent logic of the speech suggests that the United States must renounce the ICC because the Court fails to advance “American” principles.

This context of the ICC allegedly not meeting the high standards of principles that “America” upholds will serve as the backdrop for the specific charges against the ICC laid out in the course of the speech. Having established a case pitting the United States—

as champions of international justice—against the ICC as a “false” attempt at international justice, Grossman provides a second and structurally similar list of beliefs to the one outlined in his opening remarks:

*We* believe the ICC undermines the role of the United Nations Security Council in maintaining international peace and security. *We* believe in checks and balances. The Rome Statute creates a prosecutorial system that is an unchecked power. *We* believe that in order to be bound by a treaty, a state must be party to that treaty. The ICC asserts jurisdiction over citizens of states that that have not ratified the treaty. This threatens US sovereignty. *We* believe that the ICC is built on a flawed foundation. These flaws leave it open for exploitation and politically motivated prosecutions.<sup>109</sup>

The enumeration of beliefs in the opening section of the speech implied a “we” consisting of an abstract, yet unified “America” sharing and upholding a set of foundational values. By contrast, the referent of the pronoun “we” in this declaration of beliefs represents a different community. The “we” that is speaking and being addressed in this section advances specific criticisms of the ICC that derive from specialist knowledge about the alleged flaws of the institution. Since a general audience is unlikely to have the specialist knowledge to make such arguments, this section marks the narrowing of the “we” from the nation as a whole to a “we” comprised of policy-makers. Coupled with the statement “we have concluded,” which suggests a process of deliberation about this issue, this section suggests that the “we” persona used in this section refers to a speaking subject and audience addressed of experts rather than an all-American “we.” The implied audience has shifted from an all-inclusive “we” of the American people as a whole to one



consisting of policymakers familiar with the intricacies of the International Criminal Court and responsible for making decisions such as unsigning a treaty.

This shift in personae from an inclusive national “we” to a “we” consisting of policymakers reveals an attitude of technocratic rationality underpinning the speech. Originating in the Progressive Era, the rhetoric of technocratic realism, Philip Wander argues, reemerged during the Kennedy administration and was based on the assumption that matters in foreign policy had become too sophisticated or “complex” to be discussed and decided upon by ordinary citizens. Instead, foreign policy required level-headed, analytical, “dispassionate, informed and pragmatic expertise” of informed elites.<sup>110</sup> The underlying endorsement of a technocratic notion of reason is rendered more explicit as the speech unfolds, specifically in the gradual transformation of personae invoked in the speech.

In the third paragraph, the speaking persona and implied audience no longer represent the American public writ large, nor do the speaking personae and implied audience of policymakers merely report research findings on the inadequacies of the ICC. Grossman is now speaking on behalf of President Bush: “President Bush has come to the conclusion that the United States can no longer be a party to this process.” One individual has replaced both the abstract and universal voice of an American “we” and the multiple voices of policymakers invoked earlier in the speech, collapsing agency into one locus of power. The will of the people has been rendered irrelevant. While maintaining that the signature withdrawal was a communal decision—evidenced by the claim that it was “*our* intention not to become a party to the Rome Statute” (my emphasis)—the agent in this drama has morphed from the American people into President Bush as the sole arbiter of

such a decision. We have now seen three shifts in the construction of the speech's second persona. Edwin Black developed the concept of the "second persona" as a way of opening texts up to critical judgment based upon implied audiences in the text.<sup>111</sup> As the second persona undergoes several transformations over the course of the speech, so too, does the rhetorical agency and way of being produced by the speech. Beginning the speech with an implied audience that circumscribes the entirety of the American people, and ending with *President Bush's* rejection of the ICC, Grossman gradually narrows the scope of rhetorical agency, ending on the will and authority of the President to reign over matters foreign and domestic.<sup>112</sup>

This narrowing of rhetorical agency betrays an important quality latent in the doctrine of a new "American Internationalism" invoked by Bolton, namely that the fear of weakening national sovereignty has more to do with ennobling the U.S. President than preserving the grounds for democratic deliberation. That is, while the speech invites U.S. audiences to see the unsigning as protecting their ("Americans") rightful lead in all affairs domestic and international, the decision was made by and for the presidential administration. Conversely, the people in whose voice the speech purports to speak initially are gradually written out of the decision-making process. At the same time, the people/Americans are invited to think of the unsigning *as if* they were part of this discourse and decision-making process. Thomas W. Benson argues that rhetoric as a way of being is "ideally a collaboration between speaker and listener to find a mutually satisfactory notion of themselves as interacting agents."<sup>113</sup> In this speech, this is achieved in the opening remarks where Grossman appeals to values shared by all Americans. Addressed as a community of Americans that shares foundational "American" principles

embraced by an all-inclusive American “we,” the speech offers a way of being the audience is readily willing to accept. As the speech unfolds, however, the argumentative structure is based on the presumption that the initial endorsement of those values that provide the grounds for the rejection of the ICC is still valid. The argumentative arch relies on the audience’s initial tacit endorsement of “American” principles, even though, over the course of the speech, the principles that are cited as being violated by the ICC are of a different character than those referred to as “American” principles in the opening of the speech. Cast in a language of well-reasoned arguments, the positions justifying the unisigning of the Rome Statute reveal positions predominantly emanating from the conservative side of the political spectrum. The narrowing of rhetorical agency, then, works through two competing movements in this speech. On one hand, it effaces the narrowing of rhetorical agency by inviting the audience to think of itself as an agent. On the other hand, it subtly, but gradually limits the number of those who can legitimately claim agency. What seems particularly insidious about this rhetoric is that the audience is invited to feel empowered while the speech disguises its own efforts to preserve the power of the few over both Americans and the international community under the banner of preserving national sovereignty.

The subtle narrowing of rhetorical agency is further accomplished through the use of technocratic notions of reason. Coupled with the narrowing of rhetorical agency via the gradual reduction of personae and their agency in the speech, the rhetoric of technocratic reason assists in further justifying and solidifying the act of unisigning rather than opening it up for debate. As Grossman moves into detailing the motivating factors for the United States’ repudiation of the Rome Statute, he primarily appeals to reason by

employing “factual” arguments about the defective institution of the ICC. These arguments are not presented in a fashion that would invite the “discussion” Grossman envisioned in the beginning of the speech but rather are asserted as if they were uncontested. For instance, Grossman states, “the current structure of the International Criminal Court undermines the democratic rights of our people and could erode the fundamental elements of the United Nations Charter, specifically the right to self defense.” Grossman appeals to a vague and unspecified concept of American citizens’ “democratic rights” and associates these with the necessity to use military force.

Grossman continues by outlining the reasons why the United States repudiates the ICC:

With the ICC prosecutor and judges presuming to sit in judgment of the security decisions of States without their assent, the ICC could have a chilling effect on the willingness of States to project power in defense of their moral and security interests. This power must sometimes be projected. The principled projection of force by the world's democracies is critical to protecting human rights—to stopping genocide or changing regimes like the Taliban, which abuse their people and promote terror against the world.<sup>114</sup>

Again, Grossman presents these arguments as if they were empirical facts. Using the passive construction that “power must sometimes be projected,” he deemphasizes that the use of military force is a political decision made by human agents. Moreover, Grossman strategically avoids mentioning that what the United States is concerned about is not that an amorphous group of “States” might be unwilling to “project” its force but that it is the United States that might no longer take the lead role in so-called “principled projections of force.” The mode of argumentation presented by Grossman is strikingly similar to

Bolton's rhetoric against the ICC. Bolton's main argument against the United States joining the Rome Statute is that the "ICC's failing stems from its purported authority to operate outside (and on a plane superior to) the U.S. Constitution."<sup>115</sup> In fact, he characterizes the ICC as a "stealth approach to erode our constitutionalism."<sup>116</sup>

Discussing the elements of executive power, Bolton reveals what appears to be at the core of U.S. objections to the ICC: "Never before has the United States been asked to place any of that power outside the complete control of our national government."<sup>117</sup>

Bolton's and Grossman's statements reveal an implicit understanding of the "U.S. Constitution" and "American democracy" as the highest goods conceivable, the supreme achievements of their kind.

Drawing on the implicit assumption that U.S. democratic institutions are unparalleled, Grossman continues by depicting President Bush's decision to unsign the treaty as the only logical conclusion to the United States' failed efforts to shape the institution according to U.S. standards and expectations. Grossman crafts the Bush administration's decision to withdraw its signature as the only reasonable response to agonizing struggles over questions of how to respond to the creation of the institution, assuring his audience that "the President did not take his decision lightly."<sup>118</sup> The Bush administration is depicted as having proceeded methodologically and prudently in its decision. Grossman asserts that the United States studied and analyzed the ICC systematically, and, when this comprehensive analysis showed shortcomings in the institution of the ICC, the U.S. did everything in its power to amend those flaws and participate in the revision process of the Rome Statute. Grossman's assertions present the United States as having carefully considered the implications of the Rome Statute and

thoroughly weighing arguments for and against the decision to unsign. Adding to this depiction is Grossman's emphasis on the righteousness of President Bush's decision by contrasting the United States' prudent and far-sighted approach toward drafting the ICC with the hasty and careless approach of the international community: "But in the rush to create a powerful and independent court in Rome, there was a refusal to constrain the Court's powers in any meaningful way."<sup>119</sup> Having crafted this image of the United States, the motif of the rational, level-headed, and cooperative global player finds its logical and sensible solution in the U.S. renunciation of the Rome Statute. Grossman states, "But after years of working to fix this flawed statute, and having our constructive proposals rebuffed, it is our only alternative."<sup>120</sup> As noted earlier, the United States has built a reputation for distancing itself from international legislature that it signed. As with the UN Convention on the Prevention and Punishment of the Crime of Genocide, the U.S. could have retained its signatory status while holding off the process of ratification indefinitely. That such an alternative to unsigning is well documented suggests that the sense of inevitability for the unprecedented act of unsigning projected by Grossman was a strategic move. That is, it was a rhetorical ploy implemented to heighten a sense of necessity to retroactively justify the action performed by the Bush administration.

Grossman casts the U.S. withdrawal from the treaty as a quasi-natural yet well-reasoned response to the fact that not all of the U.S.'s objections were removed. In connection with the invocation of U.S. founding principles, the act to unsign is legitimate and needs no further justification. Grossman announces in an overtly patronizing manner that "In the end, despite the best efforts of the U.S. delegation, the final treaty had so many defects that the United States simply could not vote for it."<sup>121</sup> But the conclusion to

withdraw the signature is not just a reasonable reaction. Rather, the logic underlying Grossman's argument is that when the United States' "serious" engagement in the revision process turned out not to be fruitful, the U.S. saw it as its *moral duty* to renounce the Rome Statute. The United States is presented as a righteous and benevolent player merely seeking to act in accordance with its own long-established, sensible principles, such as the concept of checks and balances that ostensibly stand in opposition to the principles of the ICC:

First, we believe the ICC is an institution of unchecked power. In the United States, our system of government is founded on the principle that, in the words of John Adams, "power must never be trusted without a check." Unchecked power, our founders understood, is open to abuse, even with the good intentions of those who establish it. But in the rush to create a powerful and independent court in Rome, there was a refusal to constrain the Court's powers in any meaningful way.<sup>122</sup>

Although too simplistic and general, these and similar arguments about the flaws of the ICC are asserted as transparent "facts" that need no further explanation. The performance of transparency is enhanced by a presentation of the arguments in a manner that transform the five objections against the ICC into a violation of foundational principles of the United States. Conversely, U.S. democratic principles are cast as subject to the unpredictable forces of the ICC (as a system of global governance) that must be tamed and countered.

The presentation of self-evident "facts" is designed to quell the need for further examination, above all because the United States' conclusion to "unsign" the Rome

Statute is to be thought of as the outcome of having the merits and shortcomings of the ICC already subjected to careful scrutiny. The primary implied audience or second persona in the speech, policy makers, is no longer invited to pursue intellectual inquiry or to have a “discussion” with the American public. Rather, it is asked to merely reproduce a presidential dictate. As such, I argue, the rhetoric employed in this speech is one that constructs the second persona as a disciplined subject. The site for mutual satisfaction of speaker and audience is the construction of a “disciplined” subject position that upholds prefabricated political views. Moreover, the effacement of arguments and their ideological underpinnings under the guise of self-evident “facts” creates the illusion of this being a “rhetoric-free” text. The rhetoric at work here is then a rhetoric of containment that fosters a desire for security and control rather than deliberation.

While the speech as a whole is premised on and works to reproduce a binary between those countries that are party to the statute and the United States, the last two sections of the speech, entitled “Our Philosophy” and “We Will Continue to Lead,” attempt to create identification with advocates of the ICC. The speech lists twelve points of what “we will” do in the future. Consisting of an amorphous enumeration of broad U.S. objectives, including to “support creative ad-hoc mechanisms” like those in Sierra Leone, to “work with countries to avoid any disruptions caused by the Treaty,” to “continue to discipline our own when appropriate,” to continue the United States’ “longstanding role as an advocate for the principle that there must be accountability for war crimes,” to “seek to mobilize the private sector to see how and where they can contribute,” the referent of the pronoun “we” expands once again from signifying a previously select group of ICC experts to policymakers in general. The seemingly



optimistic, future-oriented content of these objectives is reflected in the section's hortatory style reminiscent of the introductory remarks of the speech. Grossman calls for "working together," despite advocates' contradictory views on the ICC. Characterizing the disagreements between the supporters and the opponents of the ICC as "differences" in their "approach and philosophy," Grossman attempts to establish commonalities by calling for a joint objective: "While we oppose the ICC we share a common goal with its supporters—the promotion of the rule of law."<sup>123</sup>

The "rule of law" and the promotion of "justice" serve as two important factors around which the Bush administration's approach to the ICC would be built. Grossman declares: "So despite this difference, we must work together to promote real justice after July 1."<sup>124</sup> Here, in typically manifestic tradition, the text announces a break with history. The fulcrum of history and future is demarcated by the date the ICC comes into effect. What is at stake is nothing short of the concept of justice itself. More specifically, July 1, 2002, the date the ICC will enter into force, marks the ending date of a period during which "real justice" and the "rule of law" prevailed. The date is cast as inaugurating a period in which "real justice" will be severely compromised by a competing notion of justice—that is justice promoted and adjudicated by the ICC. Lincoln P. Bloomfield Jr., Assistant Secretary for Political-Military Affairs echoed this view in a speech to the United Nations in September 2003 in which he declared that "across the political aisle in Washington, there was and is a consensus view that the Rome Statute is incompatible with U.S. standards of justice."<sup>125</sup> By implication, "real justice" would have reigned had the Rome Statute been modified according to the United States' demands. Assuming control over the definition of the term "justice," the United States is constructed once

again as the sole legitimate arbiter of justice, whose wise admonitions and foresight were neglected by supporters of the ICC.

Rather than presenting the role of the ICC in terms of its function—namely to adjudicate the most serious international crimes under circumstances where nation-states are unable or unwilling to do so—Grossman casts the ICC as a counter-productive instrument that would encourage nation-states to shirk on their responsibilities for mending their violent pasts and undermine the principle of the law. He argues that, “In order for the rule of law to have true meaning, societies must accept their responsibilities and be able to direct their future and come to terms with their past.”<sup>126</sup> The ICC, as an “unchecked international body,” must be hindered from intruding into this “delicate process” of forming a national collective memory of a nation-state’s past. At this point, Grossman turns U.S. concerns over a loss of U.S. sovereignty into a matter of nation-state responsibility, that is a sense of duty for nation-states to deal with their own, domestic, issues: “International practice should promote domestic accountability and encourage sovereign states to seek reconciliation where feasible.”<sup>127</sup> Casting U.S. particularistic (national) interests in a language of quasi-universal concern for the sovereignty of other countries, Grossman announces that “a world of self-governing democracies is our best hope for a world without inhumanity.”<sup>128</sup> Grossman’s statement suggests that justice can ultimately be rendered only at a national or sub-national level and that the United States will therefore require non-intervention concerning domestic issues. The conclusion thus casts the United States’ act of unsigned as the path from the false justice of internationalism to the true justice of so-called “American internationalism.”

### **Concluding Remarks: Implications of the “Unsigning”**

The purposeful opposition to the operations of the International Criminal Court did not end with the U.S. unsigning the Rome Statute. Rather, the United States engaged in what Marc Weller calls an “aggressive diplomatic campaign to undermine the core concepts that underpin the ICC.”<sup>129</sup> Carried out at both the administrative as well as the congressional level, the campaign aimed at undermining the ICC “ranged from the deployment of national legislation against the Court, to the obstruction of crucial decisions of the UN Security Council and to pressure directed against individual states to contract out of the ICC regime they had just joined.”<sup>130</sup>

Specifically, U.S. efforts to weaken the International Criminal Court have included various measures to protect U.S. nationals from the reach of the Court, including the enactment of legislation such as the Nethercutt Amendment, which includes provisions to cut off Economic Support Funds to nations who are party to the ICC and who have not entered into Bilateral Immunity Agreements (BIAs) that protect U.S. nationals from the jurisdiction of the ICC.<sup>131</sup> Efforts to weaken the ICC were driven into the realm of the absurd when the US Congress passed the American Service-Members’ Protection Act (ASPA) in August 2002. This law, passed in the Senate by a margin of 78 to 21 votes, serves to protect the members of U.S. Armed Forces “against criminal prosecutions carried out by the International Criminal Court” to which the United States is not party and prohibits federal, state and local governments and agencies (including courts and law enforcement agencies) from cooperation with the ICC, including the transfer of classified national security information.<sup>132</sup> Section 2008 of the ASPA

authorizes the President “to use all means necessary and appropriate to bring about the release” of any U.S. national or allied personnel “who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court.”<sup>133</sup> Highlighting that the United States is authorized to use military force to release nationals that are detained by the ICC in The Hague, opponents have aptly nicknamed this provision “The Hague Invasion Clause” or “The Hague Invasion Act.”

Another incident that sparked a considerable debate about the United States’ claimed special status was the U.S. threat to veto all future peacekeeping operations unless the UN Security Council provided immunity from prosecution through the ICC for its peacekeeping forces. The UN Security Council granted the United States immunity for a period of 12 months in 2002 and extended the immunity period for an additional year in 2003.<sup>134</sup> In addition to these ICC-related decisions, the Bush administration rejected the Kyoto Protocol and the Anti-Ballistic Missile Treaty within the first eight months after taking office.<sup>135</sup> Although not directly linked to the debates surrounding the ICC, the sum of these decisions in association with ICC-related legislation is considered to be evidence for the “Bush administration’s inclination to steer away from multinational obligations.”<sup>136</sup>

The so far unprecedented maneuver of “unsigned” an international treaty has been interpreted as indicating an increasingly unilateralist approach in U.S. foreign policy. Several commentators noted the potentially negative effects of the unsigned for international treaties, contending that it could result in a larger trend of countries pulling out of international treaties. Critics commenting on the potential effects for the United States suggested that this “rash action” could result in undermining U.S. “leadership and

credibility.”<sup>137</sup> One month before the official statement was delivered by Grossman, David Scheffer, who acted as ambassador at large for war crimes and who signed the treaty for the Clinton administration, had noted in the *New York Times* that “a Bush ‘unsigned’ would be a decisive repudiation that would not only devastate America’s credibility as the champion of international justice but reveal an American denial of reality.”<sup>138</sup> Others argued that the unsigned of the treaty would have doubly detrimental consequences as the United States would be even more subject to the will of the signatories to the Rome Statute because the U.S. would have less influence on the development of the ICC. Others viewed the U.S. withdrawal as an “empty gesture that will further estrange Washington from its allies.”<sup>139</sup> The *San Francisco Chronicle* anticipated the impending decision about the unsigned of the treaty to be an indicator of a recent trend toward unilateralism: “But the symbolism of the U.S. decision will be clear—the administration can either support the movement for global justice and human rights, or it can further its reputation as an arrogant Lone Ranger.”<sup>140</sup>

Perhaps more importantly than the legal consequences and ramifications for the United States’ reputation among world leaders, the act of “unsigned” is imbued with symbolic implications. Given the context of the United States’ human rights legacy, the act of unsigned rhetorically functioned as a rejection of principles of global responsibility, democracy, justice, and universal human rights. Recognizing the impact of the criticism of the U.S. position on the ICC, Lincoln Bloomfield, Assistant Secretary for Political-Military Affairs, conceded in a speech to Parliamentarians for Global Action at the United Nations in September 2003 U.S. shortcomings in addressing its concerns regarding the ICC. Bloomfield argues that the Bush administration “lowered its public

level of rhetoric” when it took up negotiations seeking bilateral immunity agreements in 2002 that would exclude U.S. citizens and military personnel from the jurisdiction of the ICC.<sup>141</sup> Looking back on how the United States publicized these developments, he admits that the Bush administration

probably could have made a more public display of its change in approach, because in fact this also represented a significant policy evolution as well. As we explained to foreign governments in our diplomatic discussions, but did not particularly advertise to the international press and foreign public opinion, the Administration decided to set aside the U.S. objections to the ICC and accept the reality of the Rome Statute and the Court. We informed governments the U.S. does not seek to undermine the ICC, and asked in return that our decision not to become a party be similarly respected.”<sup>142</sup>

While the US rhetoric regarding the opposition to the ICC may have softened over time, the symbolic effect of the act of unsigned the treaty endures. Jacques Derrida argues in his discussion of the function of the Declaration of Independence that the “we” of the American people did not exist as an entity before its declaration and was constituted only through the act of the signature. In this sense, the “we” that comes into being “gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature. The signature invents the signer.”<sup>143</sup> If the signature invents the signer, what type of signer is invented by an “unsigned?” According to rhetorical scholar Maurice Charland, constitutive rhetoric constitutes the subject from preexisting ideologies or narratives that audiences enter into and from which they understand the world. At the moment we enter language, we have always already entered

a subject position within the context of narratives, ideologies, or inherent logics.

“Constitutive rhetorics of new subject positions can be understood, therefore, as working upon previous discourses, upon previous constitutive rhetorics.”<sup>144</sup> For Charland, then, “the process by which an audience member enters into a new subject position is therefore not one of persuasion. It is akin more to one of conversion that ultimately results in an act of recognition of the ‘rightness’ of a discourse and of one’s identity with its reconfigured subject position.”<sup>145</sup> It is in this sense that to overcome the force of the unsigned one would need to reconstitute an “American” public.

The novelty of the subject position configured by the unsigned rests in the ramifications that it has on the modern international community. It is not, however, a wholly new phenomenon. Rather, it is marked by the American exceptionalist tradition, which is rooted in the Puritan vision of the United States as imbued with uniqueness. This vision has enjoyed a stronghold in the United States’ dominant understanding of itself as a “city upon a hill” that serves as the shining (moral) example for the rest of the world. In the realm of foreign policy, the belief in the superiority and invariability of U.S. institutions and the conviction that “US law was not to be trumped by any international law” function as reminders and manifestations of this exceptionalist tradition.<sup>146</sup> The documented relationship between the United States and international law attests to the simple fact that the administration has alternatives at its disposal for ignoring or otherwise freeing itself from the responsibilities of the international treaties that it signs. In unsigned the treaty, the Bush administration did not break with the tradition of silently holding itself outside of the reach of international law. Rather, it opened up a new chapter of open disregard for the international community under the banner of a “new

American internationalism.” Likewise, Grossman’s speech, the official announcement of the unsigning, made extensive use of the manifestic genre because the unsigning was not an explanation of differing legal or juridical models. Rather, it was the performance of a new political subjectivity, the “new American internationalism,” that U.S. residents were to identify with.

The act of unsigning the Rome Statute, then served primarily a rhetorical function. The “unsigning” of the Rome Statute has “undone” the U.S. as an agent in the international community. The act of “unsigning” communicates publicly that the United States distances itself from and, in fact has consigned itself outside of the international community. If the signature invents the signer, the unsigning “uninvents” the original signer committed to the enforcement of international human rights. Thus, the United States, previously a signer committed to the codification of international human rights law, has relinquished its status as a full member of the international community for, practically, it is no longer in the position of having an impact on issues concerning the ICC, and symbolically, it no longer considers itself commensurate with that identity. The moment of “unsigning” hence rhetorically functions to break the United States’ commitment to international justice and as such operates as a constitutive moment of a new kind of subject that creates and invites a new kind of memory of itself. Ed Casey argues in *Remembering: A Phenomenological Study* that “we are what we remember ourselves to be.”<sup>147</sup> The act of unsigning manifests the departure from and undoing of one kind of political subjectivity. The unsigning invents a new “we”—a “we” that is the conduit of unilateral U.S. foreign policy that precludes public deliberation, and instead “domesticates” discourses of international justice. At the same time, the speech that



officially announced the “unsigned” of the Rome Statute constructed a discourse that effaced its own rhetorical constitution of subjects and with it the United States’ joint responsibility to enforce accountability for war crimes and crimes against humanity at a transnational level.

In the remaining chapters, we will trace rhetorical discourses that variously attempt to challenge and promote this political subjectivity of an “American internationalism.” We will see that, while the political subjectivity performed by Grossman poses a significant challenge, advocates for a more cosmopolitan subjectivity are learning to use the resources of public memory effectively to affect significant change in how U.S. citizens see their role as members of an international community.

## Notes

<sup>1</sup> John Washburn, “The International Criminal Court Arrives: Establishing an Ethic of Peace and Justice.” Speech delivered at the Ethical Society of New York, AMICC, (June 30, 2002), available at [http://www.amicc.org/docs/John\\_EthicalSoc.pdf](http://www.amicc.org/docs/John_EthicalSoc.pdf).

<sup>2</sup> M Cherif Bassiouni, “Policy Perspective Favoring the Establishment of the International Criminal Court,” *Journal of International Affairs* 52, no. 2 (Spring 1999): 796. Bassiouni is professor of international law and former chairman of the UN committee that drafted the Rome Statute of the International Criminal Court.

<sup>3</sup> See Preamble of the Rome Statute. United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, (July 15-17, 1998), U.N. Doc. A/CONF. 183/9, available at [http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf).

<sup>4</sup> Marc Weller, “Undoing the Global Constitution: UN Security Council Action on the International Criminal Court,” *International Affairs* 78, no. 4 (2002): 693.

<sup>5</sup> Coalition for the International Criminal Court, *ICC Update: July 17th 2002 Special Edition*, CICC, (2002), available at <http://www.iccnw.org/documents/17July2002Update.pdf>.

Pace and Schense note that the creation of the Rome Statute “reflects the increasing centrality of the individual in international law, and in particular an international consensus about the accountability of individuals as perpetrators and the need to address

the suffering of individual victims.” See William Pace and Jennifer Schense, “The Role of Non-Governmental Organizations,” in *The Rome Statute of the International Criminal Court: A Commentary*, ed. Antonio Cassese, Paola Gaeta, and John RWD Jones (Oxford; New York: Oxford University Press, 2002).

<sup>6</sup> Brian Farrell, “An Isolationist View of the International Criminal Court,” *America* 187, no. 17 (2002): 19.

<sup>7</sup> See “Advocacy Center” on AMICC’s website at <http://amicc.org/advocacy.html>.

<sup>8</sup> Steven Mufson and Alan Sipress, “U.N. Funds in Crossfire over Court: Exemption Sought for U.S. Troops,” *Washington Post*, August 16, 2001, A01.

<sup>9</sup> According to the CSIS’s website, the center is an “independent, nonpartisan public policy research organization.” Most of the CSIS publications carry titles including references to “homeland security,” “transnational threats,” “National Missile Defense” and “weapons of mass destruction.” In the press release of the CSIS announcing Grossman’s speech, Grossman’s position is described as being “the department’s chief crisis manager [who] is responsible for integrating political, economic, global and security issues into U.S. bilateral relationships. See [http://www.csis.org/press/ma\\_2002\\_0506.htm](http://www.csis.org/press/ma_2002_0506.htm).

<sup>10</sup> Philip Wander, “The Ideological Turn in Modern Criticism,” in *Readings in Rhetorical Criticism*, ed. Carl R. Burgchardt (State College, Pennsylvania: Strata Publishing, Inc., 2000), 122.

<sup>11</sup> Adam Roberts, “Analysis: Just the Beginning: This Week the Long-Awaited International Criminal Court Is Born,” *Guardian*, April 8, 2002, 15.

<sup>12</sup> Steven C. Roach, *Politicizing the International Criminal Court: The Convergence of Politics, Ethics, and Law* (Lanham, MD: Rowman & Littlefield Publishers, 2006), 20.

<sup>13</sup> Marlies Glasius, *The International Criminal Court: A Global Civil Society Achievement*, Routledge Advances in International Relations and Global Politics (Milton Park, Abingdon, Oxfordshire; New York, NY: Routledge, 2005), 7.

<sup>14</sup> Roach, *Politicizing the International Criminal Court: The Convergence of Politics, Ethics, and Law*, 22.

<sup>15</sup> D. Robert DeChaine, *Global Humanitarianism: NGOs and the Crafting of Community* (Lanham, MD: Lexington Books, 2005), 41.

<sup>16</sup> *Ibid.*, 46.

<sup>17</sup> See *Ibid.*, 6.

<sup>18</sup> UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, adopted December 9, 1948, entered into force January 12, 1951.

<sup>19</sup> UN General Assembly, Resolution 260 B (III), December 9, 1948.

<sup>20</sup> Fanny Benedetti 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, no. 1 (1999): 3.

<sup>21</sup> Benedetti and Washburn, "Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference," 3.

<sup>22</sup> *Ibid.*

<sup>23</sup> Michael J. Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency* (New York: Palgrave Macmillan, 2008), 4.

<sup>24</sup> UN General Assembly, Resolution 5216 (LII), fifty-second session, Official Records, Supplement 49 at 384, UN Doc A/5249 (1997). Cited in Benedetti and Washburn, “Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference,” 3.

<sup>25</sup> Ibid.: 4. Benedetti and Washburn note that the General Assembly supervised the PrepCom in their task to not “create new international criminal or human rights norms but rather to devise an institution to apply them to acts of individuals.” Benedetti and Washburn, “Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference,” 5.

<sup>26</sup> Interestingly, several of these are countries that the United States has labeled “rogue” states. Israel has since then signed the treaty.

<sup>27</sup> Marlies Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” in *Global Civil Society 2002*, ed. Marlies Glasius, Mary Kaldor, and Helmut Anheier (Oxford; New York: Oxford University Press, 2002), 137.

<sup>28</sup> Weller, “Undoing the Global Constitution: UN Security Council Action on the International Criminal Court,” 697.

<sup>29</sup> See “The States Parties to the Rome Statute” on the ICC’s official website available at <http://www.icc-cpi.int/Menus/ASP/states+parties/>.

<sup>30</sup> It should be noted here that despite the United States’ strong opposition to the ICC, the United States is showing relatively strong support for the ICTY and ICTR as well as for the Special Court for Sierra Leone. Due to the limited range of these courts with regards

to “territories, time periods, crimes, and categories of suspects,” Scheffer, Cooper, and Voinov Kohler argue, they pose “minimal or no judicial risk to American nationals.” See David Scheffer, Richard Cooper, and Juliette Voinov Kohler, “The End of Exceptionalism in War Crimes: The International Criminal Court and America’s Credibility in the World,” *Harvard International Review*, (2007), available at <http://www.harvardir.org/articles/1647/>.

<sup>31</sup> Bassiouni, “Policy Perspective,” 801.

<sup>32</sup> Philippe Kirsch, former Chair of the Preparatory Commission for the International Criminal Court and current President of the ICC, is slightly more specific with respect to the argument about the ICC being a deterrent of crimes. He argues that “no one expects the ICC, on its own, to deter all crimes. The ICC must be part of a framework of measures to sustain a culture of accountability, including increased domestic prosecution of such crimes, greater use of universal jurisdiction, and greater international cooperation in suppressing international crimes. The United Nations, and in particular the Security Council, have an important role to play in this regard.” See Philippe Kirsch, “The International Criminal Court: Current Issues and Perspectives,” *Law and Contemporary Problems* 64 (2001): 4-5.

<sup>33</sup> Bassiouni, “Policy Perspective,” 801.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, 797.

<sup>36</sup> The current Chief Prosecutor, the Argentine lawyer Luis Moreno-Ocampo, was elected by the ratifying countries in April 2003.

<sup>37</sup> United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, Article 36.

<sup>38</sup> *Ibid.*

<sup>39</sup> Helen Stacy, "Relational Sovereignty," *Stanford Law Review* 55 (May 2003): 2052.

<sup>40</sup> *Ibid.*, 2053.

<sup>41</sup> Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency*, 69-70.

<sup>42</sup> *Ibid.*, 68. As we will see, similar arguments were made in the context of the adoption of the Rome Statute in 1998 and the ICC's entering into force in 2002.

<sup>43</sup> *Ibid.*, 74.

<sup>44</sup> See *Ibid.*, 71-75.

<sup>45</sup> Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 16.

<sup>46</sup> *Ibid.*, 17.

<sup>47</sup> Jesse Helms, "We Must Slay This Monster," *Financial Times*, July 31, 1998, 18.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Helms' bill of the American Service-Members' Protection Act was adopted by an overwhelming majority in the Senate in December 2001. The bill became law in August 2002.

<sup>51</sup> U.S. Senate. Subcommittee on International Operations of the Committee on Foreign Relations, *Is a U.N. International Criminal Court in the National Interest?* 105<sup>th</sup>

Congress, 2d sess., July 23, 1998, S. Hrg. 105-724. (Washington, DC: US Government Printing Office, 1998). Statement by Senator Rod Grams.

The hearings were held to “determine why the United States voted against the International Criminal Court and to ascertain future U.S. policy with respect to the Court.” See Michael P. Scharf, “Results of the Rome Conference for an International Criminal Court,” *ASIL Insights*, (August 1998), available at <http://www.asil.org/insigh23.cfm>.

<sup>52</sup> Marc Grossman, “American Foreign Policy and the International Criminal Court,” Remarks to the Center for Strategic and International Studies, Washington, D.C., U.S. Department of State, (May 6, 2002), available at <http://www.state.gov/p/9949pf.htm>.

<sup>53</sup> *Wall Street Journal*, “A Global Special Prosecutor?,” May 7, 2002, A26.

<sup>54</sup> See *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> David Davenport, “The New Diplomacy,” *Policy Review*, no. 116 (Dec. 2002/Jan. 2003).

<sup>58</sup> *Ibid.*, 22.

<sup>59</sup> Matthew Engel, “Rift with Us: Distaste for ‘International Entanglements’ Runs Deep,” *Guardian*, July 2, 2002, 4.

<sup>60</sup> John R. Bolton, “Unsign That Treaty,” *Washington Post*, January 4, 2001, A21.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*



<sup>63</sup> U.S. House of Representatives, Committee on International Relations, *The International Criminal Court*, 106<sup>th</sup> Congress, 2d sess., July 25-26, 2000. (No. 106-176). (Washington, DC: US Government Printing Office, 2000). Statement by John R. Bolton.

<sup>64</sup> Ibid.

<sup>65</sup> Bolton, “Unsign That Treaty.”

<sup>66</sup> Ibid.

<sup>67</sup> U.S. House of Representatives, Committee on International Relations, *The International Criminal Court*. Statement by John R. Bolton.

<sup>68</sup> Ibid.

<sup>69</sup> Bolton, “Unsign That Treaty.”

<sup>70</sup> Ibid.

<sup>71</sup> Ibid. The term was introduced in the speech “A Distinctly American Internationalism” by Governor George W. Bush at the Ronald Reagan Presidential Library, Simi Valley, California, on November 19, 1999.

<sup>72</sup> Michael Scharf, characterized the debate over the ICC in response to the U.S. voting against the Court in Rome as “the beginnings of an isolationist movement.” See U.S. Senate, Subcommittee on International Operations of the Committee on Foreign Relations, *Is a U.N. International Criminal Court in the National Interest?* Statement by Michael Scharf.

<sup>73</sup> Critics of the ICC have argued that the ICC lacks an appropriate system of checks and balances, and thus could be used to launch political attacks. The Rome Statute does include, however, several stipulations designed to ward off the potential

instrumentalization of the Court for political reasons. For instance, an investigation initiated by the Prosecutor will require the approval of a Pre-Trial Chamber of three judges that screens the evidence the Prosecutor has collected. This Pre-Trial Chamber must give their approval to proceed with the investigation. Additionally, the Pre-Trial Chamber must confirm any warrant requests. Furthermore, an accused person or any involved country has the chance to challenge the indictment during confirmation hearings before the Pre-Trial Chamber. See United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, Article 15.

<sup>74</sup> Even though the U.S. did not succeed in achieving its goals at the Rome conference on all points, the Rome Statute adopted in July 1998 does include a number of provisions that reflected U.S. lobbying efforts. See for instance Phillippe Kirsch, former President of the ICC, who noted that many safeguards were included specifically to meet U.S. demands. Kirsch, “The International Criminal Court: Current Issues and Perspectives,” 11. Similarly, Michael Scharf noted that, “Early on the United States correctly decided to engage, to make a major effort to try to turn this court into something that we could live with. And David Scheffer should be applauded; because, really, the United States bullied its way into getting the U.S. stamp on almost every single provision in the International Criminal Court statute. It is really a U.S. statute with just a couple of exceptions, a couple of things that we did not get.” See U.S. Senate, Subcommittee on International Operations of the Committee on Foreign Relations, *Is a U.N. International Criminal Court in the National Interest?* Statement by Michael Scharf.

<sup>75</sup> Elizabeth Neuffer, "US Pushes to Keep Its Troops Exempt from World Court," *Boston Globe*, May 23, 2002, A1.

<sup>76</sup> The significance of the provisions demanded by the United States regarding the authority of the Security Council becomes evident when one considers that the United States is one of the five permanent Council members with veto power.

<sup>77</sup> Jamie Mayerfeld, "Who Shall Be the Judge?: The United States, the International Criminal Court, and the Global Enforcement of Human Rights," *Human Rights Quarterly* 25, no. 1 (2003): 105. ICC critics fear that the court could investigate and prosecute U.S. leaders for "crimes of aggression" as soon as seven eighths of the member states will have agreed on the definition of the term "aggression."

<sup>78</sup> Hugo Young, "We Can't Allow Us Tantrums to Scupper Global Justice," *Guardian*, July 2, 2002, 14.

<sup>79</sup> Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*, *Oxford Monographs in International Law* (Oxford; New York: Oxford University Press, 2003), 165.

<sup>80</sup> Weller, "Undoing the Global Constitution: UN Security Council Action on the International Criminal Court," 701.

<sup>81</sup> *Ibid.*

<sup>82</sup> Bill Nichols, "Clinton Backs a World Criminal Court Treaty Faces Opposition from Many Republicans in Senate" *USA Today*, 2 January, 2001, 09A.

<sup>83</sup> Sean D. Murphy, "U.S. Notification of Intent Not to Become a Party to the Rome Statute," *The American Journal of International Law* 96, no. 3 (2002): 724.

<sup>84</sup> Steven Lee Myers, “U.S. Signs Treaty for World Court to Try Atrocities,” *New York Times*, January 1, 2001, A1.

<sup>85</sup> *New York Times*, “Clinton’s Words: ‘the Right Action,’” January 1, 2001, A6. This is the full-text transcript of Clinton’s statement delivered at Camp David regarding the addition of the United States’ signature to the Rome Statute. I used the *New York Times* transcript due to its accessibility.

<sup>86</sup> Murphy, “U.S. Notification,” 724.

<sup>87</sup> Coalition for the International Criminal Court, “Overview of the United States’ Opposition to the International Criminal Court,” (2006), available at [http://www.iccnw.org/documents/CICCFUS\\_US\\_Opposition\\_to\\_ICC\\_11Dec06\\_final.pdf](http://www.iccnw.org/documents/CICCFUS_US_Opposition_to_ICC_11Dec06_final.pdf)

<sup>88</sup> *New York Times*, “Clinton’s Words: ‘the Right Action.’”

<sup>89</sup> Thomas E. Ricks, “U.S. Signs Treaty on War Crimes Tribunal; Pentagon, Republicans Object to Clinton Move,” *Washington Post*, January 1, 2001, A1.

<sup>90</sup> Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*, 178.

<sup>91</sup> John R. Bolton, “International Criminal Court: Letter to UN Secretary General Kofi Annan,” U.S. Department of State, (May 6, 2002), available at <http://www.state.gov/r/pa/prs/ps/2002/9968.htm>. This is the official letter sent to the United Nations. According to Sean Murphy in his article “U.S. Notification of Intent Not to Become a Party to the Rome Statute,” there was no formal response from the United Nations to the United States letter except for a notification to the parties that indicated the receipt of the letter. See Murphy, “U.S. Notification.”

<sup>92</sup> See Donald Rumsfeld, “Secretary Rumsfeld Statement on the ICC Treaty,” U.S. Department of Defense, (May 6, 2002), available at <http://www.defenselink.mil/releases/release.aspx?releaseid=3337>.

<sup>93</sup> The *Washington Post* reported in August 2001 that the Bush administration is “considering how to “unsign” the treaty,” without running the risk of having “its hands tied by the anti-ICC legislation” or “infuriating” ICC allies. See Mufson and Sipress, “U.N. Funds in Crossfire over Court: Exemption Sought for U.S. Troops.” Although the possibility of “unsigning” the treaty by sending a letter to the UN to “unsign” the treaty at the time was only one alternative, one senior official administrator stated that “such a letter would arguably just be stating the truth,” indicating that such a statement would be in keeping with the United States’ strong oppositional stance towards the court. See Mufson and Sipress, “U.N. Funds in Crossfire over Court: Exemption Sought for U.S. Troops.”

<sup>94</sup> Elizabeth Neuffer, “US to Back out of World Court Plan Envoy: Bush Team May ‘Unsign’ Treaty,” *Boston Globe*, March 29, 2002, A22.

<sup>95</sup> *Ibid.*

<sup>96</sup> William J. Aceves, “The President’s Roman Holiday,” *San Diego Union-Tribune*, 5 September 2002. It should be noted here that while there seemed to be consensus amongst international law experts and commentators that the act of “unsigning” of an international *treaty per se* was unprecedented, as a country’s signature indicates the intent to ratify. See, for instance Michael Kelly, “Ignoring Criminal Treaty Harms U.S. Legacy,” *USA Today*, April 16, 2002, 12A.

The legality and ramifications of such an act, however, were more contentiously debated issues amongst scholars. Some commentators speculated whether or not “unsigned” does not represent a more sincere approach in the context of the U.S. opposition than a signature that would not lead to ratification or whose ratification would be delayed indefinitely. Commentators noted, for instance, the practice of the United States to sign but not ratify or to only partially subscribe to international treaties, especially international human rights treaties. Such treaties include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Labor Organization (ILO) Conventions, and the Convention on the Rights of the Child (CRC). Of 193 sovereign states, the United States, together with Somalia, are the only two countries that have not ratified the Convention on the Rights of the Child. Interestingly, some of the United States’ arguments against ratification echo those of U.S. opposition against the ICC, namely the issue of sovereignty. For a more detailed discussion of the failed ratification process of the CRC in the United States, see Julie Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy* (New York: Routledge, 2004), 155-59. See also note 99 and Swaine’s article “Unsigned” for a more thorough discussion on this topic. Edward T. Swaine, “Unsigned,” *Stanford Law Review* 55 (2003).

<sup>97</sup> Neil A. Lewis, “U.S. To Renounce International Crime Tribunal,” *Pittsburgh Post-Gazette*, May 5, 2002, A19.

<sup>98</sup> *Ibid.*

<sup>99</sup> United Nations, *Vienna Convention on the Law of Treaties*, United Nations Treaty Series 1155, (May 23, 1969). See Article 18. The treaty is available online at the United Nations Treaty Collection at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

There is some ambiguity about the status of Article 18 as well as the recognition of Article 18 by the United States. While the United States has not actually ratified the Vienna Convention, Bolton's statements in his article "Unsign that Treaty" at least implicitly recognizes Article 18 of the Vienna Convention, while simultaneously arguing for disregarding it. Bolton writes: "The president is undoubtedly thinking of Article 18 of the Vienna Convention, which requires signatories to a treaty, before ratification, not to undertake any actions that would frustrate its objectives." Shortly thereafter, he continues, "Relying on Article 18, which cannot sensibly apply to our government of separated powers, is wrong in many respects, not least that the United States has never even ratified this Vienna convention." See Bolton, "Unsign That Treaty."

<sup>100</sup> Janet Lyon, *Manifestoes: Provocations of the Modern* (Ithaca, New York: Cornell University Press, 1999), 15.

<sup>101</sup> *Ibid.*, 13. Lyon argues that the manifesto derives this style that urges some course of action from its "constitutive discourses of religious prophecy, and chiliasm (or millennialism), the martial language of war or siege; and the forensic mode of persuasive rhetoric" (13).

<sup>102</sup> *Ibid.*, 15.

<sup>103</sup> *Ibid.*

<sup>104</sup> Grossman, "American Foreign Policy." The speech was delivered on May 6, 2002 at the Center for Strategic and International Studies (CSIS).

<sup>105</sup> Ibid.

<sup>106</sup> Michael Calvin McGee, "The 'Ideograph': A Link between Rhetoric and Ideology," *Quarterly Journal of Speech* 66 (1980): 7.

<sup>107</sup> Ibid., 15.

<sup>108</sup> See Thomas W. Benson, "Rhetoric as a Way of Being," in *American Rhetoric: Context and Criticism*, ed. Thomas W. Benson (Carbondale and Edwardsville: Southern Illinois University Press, 1989).

<sup>109</sup> My emphasis.

<sup>110</sup> Philip Wander, "The Rhetoric of American Foreign Policy," *Quarterly Journal of Speech* 70, no. 4 (1984): 350. See also Murphy's discussion of technocratic realism in the context of the Kennedy administration. John M. Murphy, "The Language of the Liberal Consensus: John F. Kennedy, Technical Reason, and The "New Economics" At Yale University," *Quarterly Journal of Speech* 90, no. 2 (2004).

<sup>111</sup> See Edwin Black, "The Second Persona," *Quarterly Journal of Speech* 56 (1970).

<sup>112</sup> Ibid.

<sup>113</sup> Benson, "Rhetoric as a Way of Being," 318.

<sup>114</sup> Grossman, "American Foreign Policy."

<sup>115</sup> John R. Bolton, "The Risks and Weaknesses of the International Criminal Court from America's Perspective," *Law and Contemporary Problems* 64, no. 1 (2001): 169.

<sup>116</sup> Ibid.



<sup>117</sup> Ibid.,173.

<sup>118</sup> Grossman, “American Foreign Policy.”

<sup>119</sup> Ibid.

<sup>120</sup> Although the pronoun “our” also refers not only to the Bush Administration but also the previous Clinton Administration, Grossman is consistent in that he refers to presumable knowledgeable experts making these decisions.

<sup>121</sup> Grossman, “American Foreign Policy.”

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Lincoln Bloomfield, “Bloomfield Defends U.S. Course on International Criminal Court: Lincoln Bloomfield Remarks in New York to Parliamentarians for Global Action,” Bureau of International Information Programs, U.S. Department of State, (September 17, 2003), available at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2003&m=September&x=20030917172946samohjtj0.8693201>.

<sup>126</sup> Grossman, “American Foreign Policy.”

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Weller, “Undoing the Global Constitution: UN Security Council Action on the International Criminal Court,” 694.

<sup>130</sup> Ibid.

<sup>131</sup> The Bilateral Immunity Agreements (BIA) would exclude several groups of U.S. personnel (military personnel, former and current government officials, U.S. nationals as well as foreign contractors working for the United States) from jurisdiction of the court and would prohibit their surrender to the ICC. Hence, the BIAs are alternatively referred to as Article 98 agreements, impunity agreements or bilateral non-surrender agreements. While the United States argue that the BIAs conform to Article 98 of the Rome Statute, the legality of such agreements is highly contested among legal experts.

<sup>132</sup> See “American Service-Members’ Protection Act of 2002,” U.S. Department of State, available at <http://www.state.gov/t/pm/rls/othr/misc/23425.htm>.

<sup>133</sup> *Ibid.*, Section 2008.

<sup>134</sup> United Nations Security Council Resolution 1422. See UN Security Council Press Release SC/7450, “Security Council Requests International Criminal Court Not to Bring Cases against Peacekeeping Personnel from States Not Party to Statute,” United Nations, (July 12, 2002), available at <http://www.un.org/News/Press/docs/2002/sc7450.doc.htm>.

<sup>135</sup> John Keane, *Global Civil Society?* (Cambridge: Cambridge University Press, 2003), 119.

<sup>136</sup> Neil A. Lewis, “U.S. Will ‘Unsign’ Global Court Treaty: White House Fears Capricious Charges,” *Chicago Tribune*, May 5, 2002, 4.

<sup>137</sup> *Wall Street Journal*, “A Global Special Prosecutor?”

<sup>138</sup> David Scheffer, “A Treaty Bush Shouldn’t ‘Unsign’,” *New York Times*, April 6, 2002, A15.

<sup>139</sup> *Wall Street Journal*, “A Global Special Prosecutor?”

- <sup>140</sup> *San Francisco Chronicle*, “No Way to Lead the World,” April 23, 2002, A16.
- <sup>141</sup> Bloomfield, “Bloomfield Defends U.S. Course on International Criminal Court: Lincoln Bloomfield Remarks in New York to Parliamentarians for Global Action.”
- <sup>142</sup> *Ibid.*
- <sup>143</sup> Jacques Derrida, “Declarations of Independence,” *New Political Science* 7, no. 1 (1986): 10.
- <sup>144</sup> Maurice Charland, “Constitutive Rhetoric: The Case of the Peuple Québécois,” *Quarterly Journal of Speech* 73 (1987): 142.
- <sup>145</sup> *Ibid.*
- <sup>146</sup> See Forsythe for a brief discussion on this issue. David P. Forsythe, “The United States and International Criminal Justice,” *Human Rights Quarterly* 24 (2002): 975. For an analysis of how President Bush’s rhetoric associates human rights with the myth of American exceptionalism, see Mary E. Stuckey and Joshua R. Ritter, “George Bush, <Human Rights>, and American Democracy,” *Presidential Studies Quarterly* 37, no. 4 (2007).
- <sup>147</sup> Edward S. Casey, *Remembering: A Phenomenological Study* (Bloomington: Indiana University Press, 1987), 290.

### Chapter 3

#### **Remaking the ICC for the U.S.: Citizens for Global Solutions' Advocacy**

The International Criminal Court marks the culmination of the post-World War II movement for the global enforcement of human rights. Though there are antecedents, the concern for establishing a permanent international criminal court became more seriously pursued with the series of events including the signing of the UN Charter in 1945, the Nuremburg War Trials in 1945 and 1946, and the adoption of the Universal Declaration of Human Rights in 1948. The experience of the Holocaust in particular made it increasingly apparent that promises of “never again” required vigilance and action. The international community’s attempts to establish an international criminal court failed in the early 1950s, and although efforts to develop an international criminal court stagnated during the Cold War, the concern with international human rights did not. The 1970s saw an increasing interest in international human rights with civil society organizations maturing in the West, partly in response to the threat of the Cold War.<sup>1</sup> Their presence helped reinvigorate a movement towards an international criminal court, which became a more realistic possibility with the end of the Cold War.<sup>2</sup>

During the early 1990s, the atrocities committed in the former Yugoslavia and Rwanda provided the impetus for a renewed effort to establish a permanent international judicial body that would punish the perpetrators of mass atrocities. These crimes again highlighted the need for a court with global reach that would be able to prosecute war crimes, genocide, and crimes against humanity. Philippe Kirsch, former Chair of the

Preparatory Commission for the International Criminal Court, explained that the main objective of the establishment of an international criminal court was to “replace a culture of impunity for the commission of very serious crimes, which has existed and still exists to a large extent, with a culture of accountability.”<sup>3</sup> Out of these considerations, the International Law Commission (ILC) was charged with drafting a Statute for a future International Criminal Court. In 1994, the ILC submitted its final draft to the UN, which subsequently led to the establishment of UN committees to review and revise the draft Statute. After a four-year process of drafting and negotiating a Statute, the legal document for the establishment of an International Criminal Court was finalized at the UN Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome, Italy in July 1998; hence the treaty is referred to as the Rome Statute. The Court became operational on July 1, 2002, after sixty states had ratified the treaty.

In the previous chapter, I traced the path from the United States’ tumultuous encounter with the ICC to the Bush administration’s unprecedented unsigning of an international treaty. I have argued that this act represented the U.S.’s abdication of a commitment to its human rights legacy and as such an erasure of a kind of transnational memory with consequences for the future formation of transnational memory discourses. In the next two chapters, I continue my discussion of transnational memory through an examination of the rhetorical discourses of global civil society organizations in the adoption and ratification process of the Rome Statute of the International Criminal Court. Since the drafting of the Universal Declaration of Human Rights, global civil society, specifically non-governmental organizations, has played a significant role in shaping the agendas and discourses of contemporary humanitarian politics.<sup>4</sup> Specifically, non-

governmental organizations were instrumental in the creation of the International Criminal Court. Scholars who have studied the role of civil society actors in the creation of the ICC have even gone so far as to argue that the “input of global civil society in the process which led to the adoption of this Statute has been almost unprecedented in international treaty negotiations....”<sup>5</sup> The involvement of global civil society actors (or, more precisely, NGOs) illustrates that NGOs are on the frontlines in engaging in the kind of advocacy that can contribute to the formation of transnational memory and community. Inquiring into the rhetorical work of these organizations, then, is instrumental to understanding how memory discourses operate and their potential impact at a transnational scale.

In this chapter, I examine the rhetorical discourse of non-governmental organizations’ efforts to create a “global public sphere” in support of the International Criminal Court, focusing on the implicit understanding of transnational memory and community operating in the rhetorical discourses of NGOs working to promote ratification of the International Criminal Court. In these discourses, we see how advocates work to shape international politics within the constraints of national audiences. Through this analysis, we will gain a better understanding of how non-state actors work to shape international policy, and how such advocacy and its object, namely international policy, invites us to remember ourselves as citizens and actors in a trans/national context.

The chapter begins with an overview of the emergence of NGO involvement and their modes of mobilization in an effort to create an ICC in the 1990s. I focus on the Coalition for the International Criminal Court (CICC), a network consisting then of 800,

now of over 2,500 NGOs advocating for the establishment of a fair and independent International Criminal Court.<sup>6</sup> Founded in the context of the UN Ad Hoc Committee meetings for the International Criminal Court in 1995, the Coalition's goals are to raise awareness and disseminate information about the Court, promote ratification of the Rome Statute, and support the work of the ICC.<sup>7</sup> This alliance of a diverse set of organizations has been labeled a "model of collaboration among civil-society actors and between civil society, governments and international organizations."<sup>8</sup> The following section of the chapter hones in on advocacy materials produced by one NGO member of the Coalition for the International Criminal Court, "Citizens for Global Solutions," whose goal is to promote ratification of the International Criminal Court after the Rome Statute was adopted. My analysis of the group's rhetoric details how the NGO packages a cosmopolitan (or transnational) notion of citizenship—manifest in U.S. support of the ICC—in language that Americans can readily identify with as Americans and accept.

### **NGO Involvement in the ICC Negotiations**

After failed attempts to establish an International Criminal Court in the 1950s,<sup>9</sup> the political climate of the early 1990s provided the context for NGOs to reinsert themselves into the reemerging ICC negotiations and to launch a campaign that would culminate in the participation of a broad spectrum of NGOs at the Rome Conference in 1998.

Several NGOs and legal experts had followed the UN deliberations about an international criminal court in the early 1990s and the negotiations about the ad hoc

tribunals in the former Yugoslavia and Rwanda in 1993 and 1994.<sup>10</sup> At the same time, William Pace of the World Federalist Movement had been establishing contacts with NGOs interested in ICC advocacy. In March of 1994, the World Federalist Movement arranged a conference call with a set of NGOs to discuss NGO strategies for the meeting of the UN General Assembly's Sixth Committee that was scheduled for fall 1994 to discuss the ILC's draft statute.<sup>11</sup> During the UN meeting, Pace organized a meeting with several NGOs to further discuss NGO strategies. The NGO meeting was partly prompted by the UN General Assembly's decision to not send the draft Statute to a treaty-drafting conference but rather to discuss the potential creation of a court further in an ad hoc committee.<sup>12</sup> On February 10, 1995, 25 NGOs joined together to form the NGO Coalition for an International Criminal Court (CICC) to observe the Ad Hoc Committee meeting called for by the UN General Assembly's Sixth Committee and that was to start its work in April 1995.<sup>13</sup> The newly founded Coalition's objectives were to "advocate for the creation of an effective, just, and independent International Criminal Court," and to serve as a forum for information exchange between NGOs, state delegates, and as a "resource for coordination between NGOs."<sup>14</sup> The Ad Hoc Committee's purpose was to determine whether or not to hold formal negotiations and a diplomatic conference on an international criminal court and the feasibility of such endeavors. To that end, during the two 10-day meetings of the Ad Hoc Committee, the Coalition worked closely with a small group of so-called Like-Minded-Governments who supported the creation of the ICC in order to secure the creation of a preparatory committee by the UN General Assembly. The Coalition's principal forms of advocacy included "NGO-government consultations and the conduct of expert dialogue between NGOs and governments,"



raising global awareness by building civil society networks, as well as “documentation and distribution of information related to the ICC.”<sup>15</sup>

The Ad Hoc Committee concluded with a report that emphasized the broad consensus over the necessity of an international criminal court,<sup>16</sup> and the Ad Hoc Committee was converted into the preparatory committee (PrepCom) with the mandate to create a draft statute that could serve as the basis for negotiation for a diplomatic conference. During the six PrepCom meetings held between March 1996 and April 1998 leading up to the Rome Conference in July 1998, the CICC’s main strategies for mobilization were to raise awareness about the court both for the general public and state delegations. The Coalition members met with state delegates involved in the negotiations, wrote position papers, provided reports from NGOs on relevant issues to delegates, publicized materials on the ICC electronically, and published articles in legal journals.<sup>17</sup> Marlies Glasius, research fellow at the Centre for the Study of Global Governance at the London School of Economics, notes that the CICC provided “specialist documentation,” which served primarily to inform and influence “a specialist public of NGOs, academics, and state representatives on specific sub-themes, promoting certain alternatives over others with reference to precedent, legal argument, or political realities.”<sup>18</sup> In the years prior the Rome Conference, NGOs also organized conferences around the world “contributing substantially to a global specialist debate on the court and international justice”<sup>19</sup> involving “academics, NGO advocates, practicing lawyers, and state officials.”<sup>20</sup>

From the 25 organizations that founded the CICC in 1995, the Coalition grew to include over 800 organizations by the time the Rome Conference began. Of these, 236

were accredited to participate in the Rome Conference, providing 450 representatives in the Rome negotiations.<sup>21</sup> Representing a multitude of issues and interests, not all Coalition members necessarily agreed on all the specific details of the proposed Court. Struett notes that while the members of the CICC had a variety of focal areas, their overall unity was established through their fundamental agreement that “some sort of international criminal court was the best way to deal with the impunity that perpetrators of international law crimes have historically enjoyed.”<sup>22</sup> Moreover, the Coalition Secretariat’s aided in building consensus amongst the various Coalition members by “identify[ing] and expand[ing] areas of commonality” and by encouraging them to “develop joint positions and strategies where possible.”<sup>23</sup> Similarly, Borroughs and Cabasso note that the Coalition “typically did not expressly take positions on specific contested issues, but there was agreement and advocacy as to broad principles.”<sup>24</sup> The diversity of backgrounds and interests the NGOs brought to the table by the multitude of NGO members, then, created a certain set of limitations and benefits for how the NGO could shape their rhetorical discourse. Borroughs and Cabasso for instance note that “there was no thorough discussion, still less any formal collective decision-making, among all participating NGOs. Partly this was for practical reasons, because of the number of NGOs, the cumbersome internal decision-making procedures of some NGOs, and the onslaught of events, and partly because it was deemed too divisive to get into controversial matters.”<sup>25</sup> Perhaps out of a recognition that consensus over specific rhetorical positions would be hard to establish, let alone communicate, with such a diverse group of advocates, William Pace, Convenor of the CICC, emphasized the value

of the Coalition's pluralism, insisting that it is "vital to maintain the plurality of ideas and objectives represented by the Coalition's loosely bound constituents."<sup>26</sup>

While Pace's statement may primarily reflect a rhetorically crafted image to divert attention from the Coalition's difficulty of building broad-based consensus on specific issues, the fact that NGO participants came from a variety of backgrounds with different focal points did indeed prove advantageous for their advocacy campaign. Based on their thematic interests, NGOs split into regional, thematic, and faith-based caucuses, which allowed for more focused advocacy work on the part of NGO participants.<sup>27</sup> The CICC formed twelve working groups, each consisting of four to eight members, to follow different thematic areas in the negotiation process and to publicize the results in daily reports to NGOs and state delegations.<sup>28</sup> NGOs also provided valuable information and documentation about the rationale for certain provisions and how they had developed during the earlier stages of the negotiations.<sup>29</sup> This was crucial, since only about 60 states were represented at the Preparatory Committee on the Establishment of an International Criminal Court (PrepCom) negotiations held from 1996-1998, whereas representatives from over 160 countries attended the Rome Conference.<sup>30</sup>

Besides providing research and publicizing such documentation to state delegations and the wider public, other forms of NGO advocacy during the Rome Conference included holding regular meetings with NGOs and state delegations, and seeking funding to bringing more NGOs from the Global South to the Rome conference. The NGO "No Peace without Justice" provided a technical assistance program which offered legal experts to state delegations. This way, several state delegations, particularly from developing countries, were able to increase their size and influence.<sup>31</sup>

News of the conference was disseminated to a wider public by the Coalition's newspaper *ICC Monitor* and the UN daily news bulletin *Terraviva*. The NGO Advocacy Project produced daily newsletters about the proceedings of the negotiations to interested advocates.<sup>32</sup> In an effort to create more public awareness of the ICC, some organizations engaged in street activism. Amnesty International organized the performance of a "human carpet" symbolizing the victims of war crimes and crimes against humanity during the Rome Conference in July 1998, while No Peace without Justice orchestrated a vigil the day before the outcome of the Rome Conference. Prior to the Rome Conference, some organizations had made efforts to create widespread public support of the court by publishing petitions for the establishment of an International Criminal Court, including signatures from celebrities, in international newspapers such as the *Le Monde* and *The International Herald Tribune*.<sup>33</sup> The significance of the Coalitions' broad-based advocacy work is succinctly summarized by one state delegate who claimed that the CICC was "the world's principal source of information on the ICC."<sup>34</sup>

Although it is difficult to trace NGO involvement in the treaty negotiations in the final outcome, there is a consensus that NGOs were particularly successful with regards to the shaping the role of the prosecutor. While the prosecutor was originally not supposed to be able to initiate proceedings, NGO efforts aided in redefining the role into that of an independent prosecutor who is able to do so. Furthermore, the inclusion of certain provision regarding the psychological and financial support of victims and witnesses and the financing of the court were areas in which civil society actors have left at least some imprint. Lastly, the inclusion of gender and sexual violence as crimes in the Rome Statute is largely attributed to NGO advocacy campaigns, an issue that will be

discussed in the next chapter. In addition to these thematic provisions included in the Rome Statute that are beneficial outcomes of the NGO involvement in the ICC negotiations, Glasius points to the democratic implications of the civil society activism in international law-making. She concludes that one of the primary outcomes of the unprecedented NGO involvement in the drafting of an international treaty was the enhancement of transparency in the negotiation process. She writes,

Traditionally, international law-making has occurred in complete secrecy; all that became available to the public was the final product – and sometimes, there were also secret treaties. It is unlikely that international negotiations will ever be entirely open, but the Coalition for an International Criminal Court took the potential for making international negotiations transparent to its limits.<sup>35</sup>

NGO involvement in the drafting and negotiation process thus set the precedent for a more democratic process of international law-making.<sup>36</sup> The Coalition is continuing to work on promoting awareness of the ICC, supporting ratification, and encouraging civil society participation with the ICC.<sup>37</sup>

### **Citizens for Global Solutions**

Having traced the emergence of NGO involvement in the ICC negotiations in the early 1990s and the general rhetorical strategies employed by NGOs in putting the ICC on the international agenda, we now turn our attention to the U.S. ratification campaign of the ICC after the Rome Statute was adopted in the summer of 1998. Specifically, I examine a set of texts produced by one prominent NGO member of the Coalition for an

International Criminal Court, Citizens for Global Solutions. Citizens for Global Solutions works on issues including U.S. global engagement, peace and security, international institutions, health and environment, and international law and justice. The NGO promotes U.S. cooperation at a global level, recognizing that “in today’s interconnected world, our lives, our jobs and our families are increasingly affected by global problems.”<sup>38</sup> Citizens for Global Solutions emerged out of the movement for world federalism founded in the 1930s in an attempt to work toward ensuring international peace. Today, the organization is part of the larger World Federalist Movement-Institute for Global Policy (WFM-IGP), an alliance of organizations working towards a global federalist system of democratic global institutions that are “accountable to the citizens of the world.”<sup>39</sup> Citizens for Global Solutions seeks to “build political will” for finding global solutions by “educating Americans about our global interdependence, communicating global concerns to public officials, and developing proposals to create, reform, and strengthen international institutions such as the United Nations.”<sup>40</sup> Since it is committed to “[strengthening] laws and institutions that protect human rights,” one of Citizens for Global Solutions focal points is the promotion of U.S. cooperation with the International Criminal Court. Hence, the group also serves as a member of the steering committee for the American NGO Coalition for the International Criminal Court (AMICC). Specifically, Citizens for Global Solutions campaign focuses on offering advocates communication strategies to garner support of the ICC.

Citizens for Global Solutions’ campaign for support of the ICC is set against the backdrop of U.S. opposition to the Court, which makes the United States the primary audience the organization seeks to address with its advocacy campaign. Emphasizing the

crucial role the United States played in the promotion of human rights in the past, Citizens for Global Solutions expressly draws from a transnational public memory discourse of human rights and invokes the legacy of human rights promotion so often summoned in American public address. On its website informing about issues of “international law and justice,” Citizens for Global Solutions states:

Ever since the Nuremberg war crimes trials after World War II, the United States has championed international law as a means to end impunity for war crimes and genocide while promoting American principles like due process, equality before the law and the protection of basic human rights. The United States was instrumental in creating tribunals to prosecute the individuals responsible for genocide and ethnic cleansing in Yugoslavia and Rwanda, and actively participated in the process that created the International Criminal Court (ICC).<sup>41</sup>

Citizens for Global Solutions’ campaign for support of the ICC is informed by a memory of the U.S.’ formative role in the global movement for the enforcement of human rights. Moreover, the organization’s rhetoric invokes a transnational memory of atrocities, listing the names of political leaders who bear responsibility for atrocities that now fall under the jurisdiction of the ICC. In doing so, Citizens for Global Solutions implicitly endorses cosmopolitan commitments to international justice and law.

Highlighting that the United States’ past commitment to the promotion of human rights has been weakened by the Bush administration that has “turned its back on this legacy,”<sup>42</sup> Citizens for Global Solutions claims that the Bush administration’s attitude toward the ICC is “inconsistent with our traditional role as the leading proponent of human rights, the rule of law, and justice.”<sup>43</sup> The rhetoric of transnational memory is coupled with an

exceptionalist discourse that is used to legitimize the United States' continued engagement in human rights promotion. Appealing to advocates' sense of ethical obligation to get involved in the support of the ICC, the organization claims that "It is our duty to ensure that the Hitlers and Pol Pots of the future face justice for their crimes."<sup>44</sup> Invoking a community guided by cosmopolitan values, Citizens for Global Solutions exhorts its audience to "continue to work with our allies to uphold our legacy of championing international law and human rights."<sup>45</sup> While occasionally drawing from national memory discourses and invoking national interests, the overall mission of the organization documented publicly is geared towards forging a cosmopolitan community. However, this commitment to cosmopolitanism is not seen quite as clearly in the organization's rhetorical campaign in support of ratification of the ICC. In this regard, I argue, the organization misses an important opportunity to create a vision of a cosmopolitan community by resorting to a language that invokes primarily a national (meaning U.S.) collective memory.

We have seen in the previous chapter that U.S. opposition to the court—culminating in the unsigning of the Rome Statute—has been vigilant and has proven to be difficult to overcome. Citizens for Global Solutions has addressed this issue by drafting documents that attend to the particular challenges the International Criminal Court poses for garnering support from various audiences. The difficulty of building support for the ICC rests on two grounds: First, the ICC functions as an international justice institution, and second, the U.S. discourse is deeply steeped in arguments about national concerns. The following sections discuss how Citizens for Global Solutions addresses these challenges in its advocacy materials. The analysis mainly draws on two documents. The



first document, entitled “Communications Strategies for International Justice Institutions: The Third Vancouver Dialogue” explains the characteristics of international justice institutions that tend to impede broad-based public support. The second, entitled the “New ICC Communications Guide: . . . And Justice for All: How to Talk about the ICC in the U.S.” addresses the specific rhetorical constraints the ICC poses for *U.S.* audiences.

The “Communications Strategies for International Justice Institutions: The Third Vancouver Dialogue” report is the outcome of a conference held at the Liu Institute for Global Issues at the University of British Columbia in December of 2004. The conference was convened to provide a forum for “educational and outreach events that can mainstream international justice into the public consciousness.”<sup>46</sup> Recognizing that “collective international action to end impunity for mass crimes is still relatively new,” the authors of the report argue that an overarching goal of International Justice Institutions (IJIs) will be to “build support globally for international justice.”<sup>47</sup> In this discourse, building support for IJIs is roughly synonymous with instilling them into the public consciousness, which suggests that the group is cognizant that its work is primarily engaging in the rhetoric of public memory.<sup>48</sup> That is, the organization is using rhetorical devices to create and shape a memory or consciousness favorable to international justice institutions.

The report begins by establishing the relatively new and difficult position IJIs are occupying with regards to communicating their objectives and work. Independent IJIs are, by definition, not affiliated with other organizations, which creates a particular set of problems for institutions that should be impartial and independent. Having their own “communications strategy” to promote their work and objectives on the one hand and

guaranteeing their commitment to operating as an independent institution on the other hand, is “a very complex and relatively new task” such judicial institutions are encountering.<sup>49</sup> The report explains,

International justice institutions (IJIs) are among the most recent members of the community of international institutional actors. Both their newness and uniqueness has meant that they are undergoing the basic developmental processes that nation-states, other international organizations, and even most types of non-governmental organizations, now take for granted. In this evolution and rapid acceleration of their role in international affairs, learning to communicate effectively has proved to be among the most pressing challenges for IJIs.<sup>50</sup>

The report emphasizes how IJIs find themselves in a peculiar conundrum between upholding neutrality as judicial institutions while at the same time having to raise public consciousness and garner public support of their work as judicial institutions. Whereas NGOs, governments, and civil society have relatively few limitations for how they communicate about issues regarding international justice, and are “*expected* to take a stand” and advocate a particular position, IJIs are “constrained by the customs of legal process and independence,” while working in highly “politicized environments.”<sup>51</sup> As a result, the competing trajectories of IJIs often create a “communications policy nightmare.”<sup>52</sup> Furthermore, IJIs often do not have access to communication experts or the “resources to create the strategies and tools.”<sup>53</sup> These circumstances are exacerbated by the commonly held perspective that IJIs are “not supposed [to] engage in strategic communications” to begin with.<sup>54</sup> Justice, as we are taught to believe, is to be blind,

outside the realm of the political, the ideological, and “above the fray....”<sup>55</sup> This unfortunate learned belief places justice firmly outside the realm of rhetoric.<sup>56</sup>

The report presumes that inexperience with devising suitable communication strategies has resulted in the international community becoming witness to “how poorly planned (or unplanned) communications can set back the work of an IJI with both local populations and international public opinion.”<sup>57</sup> The report’s purpose, therefore, was to offer a “practical policy document” with “practical ideas and guidelines” so that IJIs can develop “effective strategic communications policies and tools.”<sup>58</sup> As such, the report served as a primer on using rhetoric to circulate knowledge and promote support of international justice institutions.

In addition to the ambiguous position international justice institutions occupy by virtue of their institutional constraints, they also encounter challenges due to the relatively low public acceptance of their purpose, role, and work. The lack of public acceptance is not based upon well thought out and soundly argued cases against IJIs in general or the ICC in specific. Rather, lack of public acceptance is based on a lack of knowledge, partisan adherence, or perceived threats to concepts such as autonomy or sovereignty. This creates the need for rhetorical campaigns to present these ideas to U.S. audiences. We will see in the conclusion of this study that levels of support for the ICC grow exponentially once U.S. audiences become better informed about the court. Strikingly, the increase of support that comes alongside increased knowledge transcends right-left ideological lines. Generating support is not, however, as simple as offering people comprehensive information. If it were so easy, NGOs working on behalf of the court would have a simple task ahead of them. Instead, pro-ICC NGOs must rely on

strategic communication to generate attention, frame the discussion, and then provide more comprehensive information.

**“... And Justice for All: How to Talk about the ICC in the U.S.”**

Based on the particular challenges JJs pose for generating public support, Citizens for Global Solutions has devised a “strategic communications plan” to promote the ICC, a report aptly entitled “... And Justice for All: How to Talk about the ICC in the U.S.” The 56-page document published by Citizens for Global Solutions in October 2005 serves as a communications guide with the purpose of providing “advice to supporters of the ICC on communicating with American audiences about the ICC and the U.S. relationship with the Court.”<sup>59</sup> Citizens for Global Solutions encourage supporters of the ICC to utilize the strategies outlined in the report to learn how to communicate “with Americans about positive, constructive U.S. global engagement.”<sup>60</sup> The strategies provided in the handbook respond to a felt need among advocates of the ICC for a “common strategy and approach to deal with the crippling polarization and lack of genuine debate on the issue.”<sup>61</sup> The report characterizes the general U.S. sentiment toward the ICC as a “toxic” topic about which public statements “were rarely made by influential figures.”<sup>62</sup> It thus came as no surprise that “the American debate about what role the U.S. should play regarding the Court had become both marginalized and one-sided.”<sup>63</sup>

Against the background of this attitude of skepticism toward the ICC in the United States, the communications guide was developed when a group of leading U.S.

ICC advocates from Citizens for Global Solutions started to develop strategies for main audiences of ICC-related communications in 2004.<sup>64</sup> The handbook was drafted with the knowledge that the Court Assembly of States Parties (ASP) will convene a seven-year review conference of the Rome Statute starting in 2009. The conference will provide the opportunity for states that have joined the Court to make changes to the treaty, which leads ICC supporters in the U.S. to consider the time period from 2005 to 2009 to be a crucial opportunity “to build the case that the U.S. needs a different approach to the Court.”<sup>65</sup> The position the United States takes toward the ICC during this four-year period is furthermore significant because it will determine “whether to join the Court in advance of the review conference....”<sup>66</sup> The goal over these four years is thus to educate the public and Congress “about the true purpose of the Court, explaining how it promotes our interests and values and poses no risk to the U.S.”<sup>67</sup> This statement foreshadows the handbook’s emphasis on U.S.-centered collective memory discourses of shared beliefs and values.

One of the key messages of the report is that the U.S. “should move toward constructive engagement with the International Criminal Court, assisting the Court’s efforts to bring to justice the world’s worst criminals while monitoring and guiding its development from ‘inside the tent.’”<sup>68</sup> In this sense, the Citizens for Global Solutions’ “communications guide” is a form of activism designed to “provide advice to supporters of the ICC on communicating with American audiences about the ICC and the U.S. relationship with the Court.”<sup>69</sup> It accomplishes this by presenting itself like a handbook for rhetorical action, adopting, for a major part of the report, a tone that is reminiscent of

a chapter in an introductory textbook on public speaking. Accordingly, much of the report appears to be based on “public speaking truisms.”<sup>70</sup>

The handbook starts with a 1-page “Quick Reference Guide” listing the primary audiences for the report, and the desired outcomes and key messages to be promoted. The report identifies its “priority target audiences for International Criminal Court-related communications” as members of the military, Jewish organizations, and experts who form and influence foreign policies.<sup>71</sup> Additionally, the handbook is designed to address the media and the general public. The handbook’s explicitly stated goal is to help ICC supporters “understand how key American audiences perceive the ICC and how to best engage these audiences in a constructive dialogue about the court.”<sup>72</sup> Based on interviews with focus groups, the handbook aims to “identify the messages that—if totally believed by our target audiences and the public—would lead them to agree with us that the U.S. should join the ICC.”<sup>73</sup> Hence, the handbook’s “desired policy outcome” is to “soften” the Bush administration’s “anti-International Criminal Court stance and persuad[e] Congress that the U.S. should be a constructively engaged observer of the Court’s proceedings.”<sup>74</sup> The link to Jewish organizations, although not clearly outlined at this point in the report, is based on the report’s findings that some Jewish American groups have been “skeptical of international organizations that are linked to the United Nations,” as they see such institutions potentially taking actions against Israel because some member states might be negatively predisposed towards Israel.<sup>75</sup>

## **Public Opinion Polling and Principles of Strategic Communication**

The handbook discusses the general misconceptions that guide public opinion about the character of the ICC. Drawing on a series of polls, the handbook concludes that while administration officials reflect the larger U.S. population's opinion on the International Criminal Court and hence back the court, congressional staff "mis-reads" the public on the issue: "Because the debate about the International Criminal Court (ICC) in the U.S. has been so one-sided, policymakers and the media tend to assume that the public does not support the ICC. However, public opinion polls consistently show strong American public support for U.S. ratification of the Rome Statute establishing the ICC."<sup>76</sup> Employing the phrase "mis-read," the report calls for better informing Congresspeople rather than decrying or denouncing them for their anti-ICC stance. Here we see a strategic use of rhetoric as a way of being by inviting the targeted audiences into a program of communicative action rather than calling them out for employing deceit in their criticism of the ICC.<sup>77</sup> This allows U.S. audiences to see policymakers as misunderstanding the level of support and to call for a more accurate representation of their views while at the same time allowing representatives to change their stance on the ICC without risking embarrassment or loss of votes.

Drawing from the poll results regarding public opinion on the ICC, the handbook operates from the general presumption that "American audiences" must be adequately informed and educated about the International Criminal Court in order to support it. Responding to this deficit in public knowledge about the court, the communications guide offers "advice to supporters of the ICC"<sup>78</sup> to engage audiences in effective and

informative communication about the ICC. The authors claim to have come to a clearer understanding of the public's attitudes and "the ideas and values that motivate these beliefs" as the research brought to light "themes and patterns in how some key groups of people think about the ICC and what kinds of arguments they regard as credible and motivating."<sup>79</sup>

Highlighting "principles of strategic communication," the report introduces a set of key rules to consider in designing persuasive messages and links those principles to the specific demands of U.S. audiences in discussions about the ICC. Recognizing that "the conclusions we draw from any information" are shaped by "those deeply held beliefs and stories about the world that we already have in our heads,"<sup>80</sup> the handbook suggests to "use 'big ideas' or stories" that strike a familiar chord when entering discussions about the Court. The communications guide instructs its readers to ask themselves a series of questions, including "What is U.S. participation in the International Criminal Court 'about' to you? Building a world with justice for the victims of atrocious crimes? The legacy of American leadership at Nuremberg? An interconnected world that requires teamwork to solve problems? Making smart choices in our foreign policy? The U.S. working in partnership with other countries? Putting bad guys in prison?"<sup>81</sup> The implicit assumption is that readers would draw conclusions about the positions their audiences are likely to hold based on their own views. The series of questions is significant in that it acknowledges the principles underlying the ICC's work—international cooperation and responsibility—while its focus is decidedly on U.S. values, concerns, and interests, and on establishing how the United States can benefit from the International Criminal Court.



Each question is designed to invoke American values to demonstrate that these are not at odd with the values enshrined in the ICC.

Although the authors argue that using “research-based messages,”<sup>82</sup> is an important aspect of communicating about the ICC, a predominant theme that emerges in this text is that providing factual information is oftentimes not sufficient to convince opponents of the ICC of the necessity of the institution. In fact, the authors admit that in working with the International Criminal Court in the United States, “one of the most frustrating aspects. . . is the persistence of myths about what the Court is, how it works, and how it will affect Americans.”<sup>83</sup> The handbook illustrates this point referring to the commonly held view that the United States spends too much on foreign aid. This belief, the authors write, “is not something that is negotiable—no amount of education or advocacy will change it.”<sup>84</sup> Instead, the authors claim, “what works is to tell a story that incorporates people’s values.”<sup>85</sup> Citing this as a belief that even the most factually accurate and historically faithful account would not be able to debunk, the authors suggest that if the arguments provided do not offer a mode of existence that is favorable to the audience, the audience will reject the idea as a whole.<sup>86</sup>

Given that research-based messages have not proven to be most effective, the handbook borrows from the sociological concept of framing, a technique of “storytelling,” to provide a familiar context for the “facts that you are presenting and [to] open their minds to the conclusions you’d like them to reach.”<sup>87</sup> The text recommends a list of six “useful frames” deemed particularly helpful to engage U.S. audiences that oppose the ICC in discussions about the Court. These frames are offered as tools to “give

meaning” to facts and figures about the ICC and are, once again, designed specifically for targeting the beliefs and concerns of U.S. audiences and a U.S. political culture.<sup>88</sup>

The first frame the authors’ focus group research identified as U.S. audiences responding favorably to is “pragmatics.” To the tested audiences, pragmatics connoted results, effectiveness, and common sense. The second cluster of ideas that was identified as resonating with U.S. audiences is “farsightedness,” suggesting prevention, investment, and stewardship for future generations. The third theme, clustered under the heading “comprehensiveness,” invokes seeing the big picture, using all available tools, and a balanced approach. “Trustworthiness,” the fourth theme, echoes traits such as keeping promises, practicing what we preach, avoiding double standards, while “collaboration” is associated with teamwork, team leadership, respecting and listening to others. Lastly, the “principled” category suggests putting America’s strength to great purpose, fairness, justice, being ethical, common decency, living up to our values, the American way. These concepts are thought of as concepts “familiar to Americans.”<sup>89</sup> As suggested by the communications guide, these values reflect a set of distinctly American values and offer modes of being that Americans can connect to their “own life experiences.” As such, they function like “a connective tissue,” or key elements of a “shared vision for how America should be in the world.”<sup>90</sup> So far, the handbook seems to suggest circumventing the central issue at hand—the ICC—by avoiding direct advocacy of the ICC. Instead, the objective appears to be to frame the discussion of the ICC in such a way that it does not directly assault the “deeply held beliefs” invoked in criticisms or dismissals of the court in specific and cosmopolitanism in general. Consequently, the handbook seems to suggest thwarting the discussion of cosmopolitanism by redirecting the attention to

discussions about U.S. interests that U.S. audiences may better understand and more willingly accept.

### **Framing Justice and Joining the International Community**

To frame the work of the ICC, the handbook buttresses its strategies for challenging audiences' existing beliefs and values to identify a set of concepts to avoid while communicating about the ICC. Conversely, it discusses key arguments that invoke particularly resonant and thus persuasive values with the respective audiences primarily targeted with the handbook. For instance, the communications guide discourages from using "language that implies a bureaucratic body," as this latches on to many Americans' beliefs that international institutions are "wasteful" and ineffective. Specifically, the authors advise against using phrasings such as "international body" or "institution" for these terms would reinforce the already existing skepticism of such entities for crucial audiences.<sup>91</sup> Alternatively, supporters of the ICC are encouraged to "speak of the Court as an improvement on *ad hoc* tribunals," for the public is generally inclined to see the benefits of these courts.<sup>92</sup> As a variation of the theme of invoking fear responses, the handbook advises against drawing on the principle of "the rule of law," because the concept is easily misconstrued and associated with an overly regulated society. Use of the term "rule of law," the handbook explains, could "play into the public's fears" over totalitarian structures and hence advises to use the phrase "sparingly and with some consideration for how [a] specific target audience will interpret it."<sup>93</sup> In each case, the rhetorical discourses are working to shape audiences' perceptions of the Court.

Corresponding to the concepts and narratives familiar to “Americans” outlined above, the handbook emphasizes how appeals to national concerns are more persuasive than appeals to the emergence of an international community. A prominent example of this emphasis can be found in the context of the text’s discussion of the significance of the United States joining the international community. The reasons to join the international community are presented in a way that highlights the benefits for the United States with regards to its leadership role. While the handbook discusses community-oriented benefits that would result from the U.S. joining the court, it simultaneously draws heavily on appeals to the United States’ self-interest in its recommendation of how to communicate about the court. The authors are hesitant to advise supporters of the ICC to make arguments invoking cosmopolitan ideals because large parts of the audience may not respond favorably. For instance, the argument to join the pro-ICC international community based on the grounds that “all other major democracies” are party to the Statute while the United States is “isolated from its allies because of its opposition to the Court” might draw a favorable response from some audiences, including “certain sections of internationalist policymakers.”<sup>94</sup> It could, however, also be interpreted as a “weakminded ‘me too’ policy” and could hence “backfire” with those audiences “who see the U.S. as a force for good (in its own right), and take pride in its ability to challenge the entire world as needed.”<sup>95</sup>

Similarly, the degree to which the “Americanness of the ICC” should be emphasized in ICC-related discussions remains ambiguous in the handbook. Again, the authors make it a point to mention that the resonance of this argument depends strongly on the particular audience. For instance, the message that the ICC “embodies

fundamental American values of accountability, equality, and justice,” is considered to strike a balance between two different perspectives on the ICC: those who view the ICC as an institution grounded primarily in American values and one that considers the ICC an institution based on universal principles.<sup>96</sup> On the one hand are those that consider the ICC an institution that “upholds universal human rights values.” On the other hand, the ICC is viewed as primarily promoting “American” values because “America has . . . been at the vanguard of promoting these universal values.”<sup>97</sup>

The authors recognize that audiences may differ in their responsiveness to such arguments. While the notion that the ICC upholds “American values that the rest of the world shares”<sup>98</sup> might resonate more strongly with audiences who are concerned about raising “other nations to our standards,”<sup>99</sup> other groups might be more responsive to the notion that the ICC upholds universal values. For instance, some audiences interviewed by the authors of the guidebook “cautioned that the Court is not simply American and should not be presented as such” and that “co-opting the Court as an American project undermines its larger purpose and appeal.”<sup>100</sup> The text concludes that “these concerns do not preclude calling attention to the fact that the ICC stands for the same values that America holds dear,”<sup>101</sup> suggesting that emphasizing the Court’s “Americanness” is crucial to build support for the institution as the necessary first step toward developing cosmopolitan values.

The acknowledgment of the power of such Americentric argument comes as no surprise, given that from the outset, when treaty negotiations began in 1995, “conservatives in the United States have been concerned about its creation and its implications for American sovereignty and international actions.”<sup>102</sup> Against this

background of a climate of “fear and deep doubt about the reach, mandate and operation of the Court,”<sup>103</sup> the handbook offers a number of strategies for communication with U.S. conservatives, highlighting the integral role U.S. conservatives have played in the development of the court. Harkening back to one of the main themes or frames to which U.S. audiences would respond favorably, the communications guide warns that “the U.S. believes that human rights and justice for the victims of genocide are important—and that we should practice what we preach.”<sup>104</sup> Thus, advocates are to affirm the belief that the United States has a noble and long-standing commitment to human rights, to acknowledge the role of conservatives in the creation of the court, and to then promote the conclusion that “American” conservatives ought to be pro-human rights and pro-ICC.

While much of the text avoids explicitly endorsing cosmopolitanism by focusing specifically on American values, concepts, and narratives, it does so more openly in its discussion of the concept of justice that is underlying the International Criminal Court. In a section entitled “Tough Questions (And How to Deal with Them)” that outlines thirteen questions and model responses advocating the ICC, the report repudiates an issue that is particularly prominent in U.S. discussions about justice, the death penalty. Instead, the handbook quite frankly endorses an alternative concept of justice. In the model response to the question “How can the Court say it delivers justice when it won’t allow the death penalty for these horrible crimes?” the handbook suggests to “reframe to focus on delivering justice.”<sup>105</sup> The response leads into an explanation of the court’s quest for accountability of the perpetrators and the benefits for the victims of such crimes under the ICC by claiming that “the very fact of hearing the truth in a court of law and putting the criminals in jail can be an important part of a healing process.”<sup>106</sup> Referring to the

“innovative Victims Trust Fund,” designed to “rebuild lives and communities shattered by unimaginable violence,” the handbook turns the discussion from a retributive to a restorative model of justice.<sup>107</sup> The goal is to shift a discussion of justice as the product of punishment to a notion of justice as a process of ending ills while aiding in the recovery or healing process of those who have survived. With this focus on a restorative model of justice, Citizens for Global Solutions more directly works to steer away from distinct American discourse to one that abstracts from this particularized conceptualization of justice. Although this approach, in itself, is not an endorsement of cosmopolitanism, it functions as an example of how other concerns regarding the ICC could be approached from a perspective that allows audiences to look beyond national borders.

Moreover, Citizens for Global Solutions highlights the transcendence of national borders in the discussion of how to address foreign policy leaders regarding the ICC. Citizens for Global Solutions explicitly suggests an alternative framework to the instrumental view of international relations as a “power struggle” for nations to “maximize their economic and military advantage.”<sup>108</sup> Its recommended alternative is the “global system frame” that offers a “larger perspective” by conceiving of the international community as an “interlinked and interdependent system” that is guided by the idea that “national borders seem less important than the global good.”<sup>109</sup> Despite these examples that represent a more explicit endorsement of cosmopolitanism, the overriding impression of the handbook’s recommendations for communicating about the ICC remains cast in discourses of U.S. exceptionalism and nationalism.

Citizens for Global Solutions, and specifically their materials on communication strategies, offer a perspective on educating about cosmopolitan ideals of global

cooperation. These views are challenged by a range of conservative actors that view these ideals as threatening their conceptualizations of sovereignty. My analysis of these documents showed that Citizens for Global Solutions' appeals to the rhetorical framework of the nation-state outweigh references to the "global system" framework. Thus, while the overall objective is to create global support and cooperation through international justice institutions like the ICC and to produce cosmopolitan sensibilities, as a whole, appeals to the nation-state paradigm are favored over appeals to cosmopolitan values.

Given the context of Citizens for Global Solutions' purpose and mission, the particular focus on U.S. concerns in the communications handbook is striking. Citizens for Global Solutions' objective to argue for an International Criminal Court and the cosmopolitan values it represents are heavily challenged by a memory of discourses, narratives, and values associated with the concept of the nation-state. Rather than invoking cosmopolitan values, the handbook relies heavily on providing specific examples of narratives that an *American* audience can relate to and that invoke *American* frames of reference. As such, the handbook appeals to the audience as members of a nation-state and the shared set of values and beliefs of a bounded community. With this argument I do not mean to diminish Citizens for Global Solutions' efforts to publicize advice on how to approach the subject of the ICC with certain segments of the public. The organization's use of U.S. nationalist discourses reflects the origin, character, and degree of opposition with which U.S. audiences have encountered the ICC and as such, the organization's discourse is designed to address the very real opposition of some of these audiences to the ICC. At the same time, the reliance on U.S. *national* concerns in the discourse promoting an



*International Criminal Court* raises the question whether an important opportunity to highlight ideals of international cooperation and responsibility was missed. That is, Citizens for Global Solutions recognized the need to speak to U.S. audiences in language that U.S. audiences understand. However, by so doing, might the NGO have sacrificed the production of a genuine cosmopolitan attitude for support of the Court? As we will see in the next chapter, the challenges to the promotion of such cosmopolitan ideals is waged even at the level of UN conferences, which, by definition, are designed to promote cosmopolitanism.

## Notes

<sup>1</sup> Benjamin N. Schiff, *Building the International Criminal Court* (Cambridge; New York: Cambridge University Press, 2008), 28-29.

<sup>2</sup> For a more thorough discussion of this development, see Schiff, *Building the International Criminal Court*, 28-29.

<sup>3</sup> Philippe Kirsch, "The International Criminal Court: Current Issues and Perspectives," *Law and Contemporary Problems* 64 (2001): 3.

<sup>4</sup> See, for instance, Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998) for an overview of civil society in human rights legislation. See also Julie Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy* (New York: Routledge, 2004) for a discussion of several case studies in which civil society has been particularly influential. See Elizabeth Jay Friedman, "Gendering the Agenda: The Impact of the Transnational Women's Rights Movement at the Un Conferences of the 1990s," *Women's Studies International Forum* 26, no. 4 (2003) for a discussion of women's rights activists and their impact on UN conferences in the 1990s.

<sup>5</sup> Marlies Glasius, "Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court," in *Global Civil Society 2002*, ed. Marlies Glasius, Mary Kaldor, and Helmut Anheier (Oxford; New York: Oxford University Press, 2002), 137. Glasius mentions a variety of number of global civil society actors and their strategies that have helped establish the International Criminal Court.

<sup>6</sup> William Pace, “The Rome Statute System: Future Perspectives and Challenges,” Statement on the occasion of the 10 Years’ Celebration of the Adoption of the Rome Statute for the Coalition for the International Criminal Court, The Hague, CICC, (July 3, 2008), available at <http://www.iccnw.org/?mod=rome>.

<sup>7</sup> See Coalition for the International Criminal Court (CICC) website “About the Coalition,” available at <http://www.iccnw.org/?mod=coalition>.

<sup>8</sup> Coalition for the International Criminal Court (CICC), “Friends of the Coalition,” CICC, available at [www.iccnw.org/gettinginvolved/friendsofthecoalition.html](http://www.iccnw.org/gettinginvolved/friendsofthecoalition.html).

<sup>9</sup> For a more detailed discussion of the campaign for an International Criminal Court in the 1950s, see Michael J. Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency* (New York: Palgrave Macmillan, 2008).

<sup>10</sup> William Pace and Jennifer Schense, “The Role of Non-Governmental Organizations,” in *The Rome Statute of the International Criminal Court: A Commentary*, ed. Antonio Cassese, Paola Gaeta, and John RWD Jones (Oxford; New York: Oxford University Press, 2002), 109.

<sup>11</sup> *Ibid.*, 110.

<sup>12</sup> Marlies Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” 146.

<sup>13</sup> The NGOs founding the Coalition included Amnesty International, Fédération International des Ligues des Droits de l’Homme (FIDH), Human Rights Watch, the International Commission of Jurists (ICJ), the Lawyers Committee for Human Rights, No Peace Without Justice, parliamentarians for Global Action (PGA), and the World

Federalist Movement. See Pace and Schense, “The Role of Non-Governmental Organizations,” 111.

<sup>14</sup> Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” 146.

<sup>15</sup> Pace and Schense, “The Role of Non-Governmental Organizations,” 113-14. Pace and Schense note that over the course of that year, the group of Like-Minded-Governments grew from six or seven states to about 20 (p. 112).

<sup>16</sup> Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency*, 105.

<sup>17</sup> See William R. Pace and Mark Thieroff, “Participation of Non-Governmental Organizations,” in *The International Criminal Court: The Making of the Rome Statute—Issues, Negotiations, Results*, ed. Roy S. Lee (The Hague; Boston: Kluwer Law International, 1999), 392. See also Glasius, “How Activists Shaped the Court,” Crimes of War Project: The International Criminal Court: An End to Impunity?, (December 2003), available at [http://www.crimesofwar.org/icc\\_magazine/icc-glasius.html](http://www.crimesofwar.org/icc_magazine/icc-glasius.html).

<sup>18</sup> Marlies Glasius, “How Activists Shaped the Court.”

<sup>19</sup> Ibid.

<sup>20</sup> Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” 150.

<sup>21</sup> Pace and Thieroff, “Participation of Non-Governmental Organizations,” 392.

<sup>22</sup> Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency*, 79.

- <sup>23</sup> Pace and Schense, "The Role of Non-Governmental Organizations," 125-26.
- <sup>24</sup> John Burroughs and Jacqueline Cabasso, "Confronting the Nuclear-Armed States in International Negotiating Forums: Lessons for NGOs," *International Negotiation* 4 (1999): 473.
- <sup>25</sup> *Ibid.*, 474.
- <sup>26</sup> William Pace, "Globalizing Justice," *Harvard International Review* 20, no. 2 (1998): 28.
- <sup>27</sup> Glasius, "Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court," 147.
- <sup>28</sup> Pace and Thieroff, "Participation of Non-Governmental Organizations," 394.
- <sup>29</sup> Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency*, 109.
- <sup>30</sup> *Ibid.*, 110.
- <sup>31</sup> Glasius, "Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court," 151. Glasius notes the potentially problematic position these experts occupy, representing both state governments as well as their own positions. She notes that, overall, that such efforts enhanced the participation of smaller and poorer countries in the Rome Conference. See Glasius, "How Activists Shaped the Court."
- <sup>32</sup> See Advocacy Project's website with links to its coverage of the ICC available at <http://www.advocacynet.org/resource/308>.

<sup>33</sup> Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” 151.

<sup>34</sup> Pace and Thieroff, “Participation of Non-Governmental Organizations,” 392.

<sup>35</sup> Glasius, “How Activists Shaped the Court.”

<sup>36</sup> Some scholars and commentators have criticized NGO involvement in the creation of the court for precisely that reason, arguing that NGOs are not democratically elected representatives and therefore should be limited in their influence on international law-making. For a more detailed discussion, see Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” 161. Similarly, Helen Durham discusses the complex question of NGO legitimacy in the context of geographical representation. Durham notes that the “fact that the ideology and origin of NGOs within the U.N. system is predominantly Western-oriented must not be forgotten.” See Helen Durham, “Women and Civil Society: NGOs and International Criminal Law,” in *Women and International Human Rights Law*, ed. Kelly D. Askin and Dorean M. Koenig (Ardsley, NY: Transnational Publishers, 1999), 3:825-26. For a critical discussion of some of the shortcomings of the NGO campaign in the drafting and negotiation process of the Rome Statute, see Glasius, “Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court,” 162-64.

<sup>37</sup> Coalition for the International Criminal Court, “An Overview of the ICC and the CICC,” CICC, (2006), available at [http://www.iccnw.org/documents/CICCFS-ICC\\_Overview\\_current.pdf](http://www.iccnw.org/documents/CICCFS-ICC_Overview_current.pdf).

<sup>38</sup> Citizens for Global Solutions, “Working Together, Finding Solutions,” Citizens for Global Solutions, available at <http://www.globalsolutions.org/node/34>.

<sup>39</sup> See World Federalist Movement website at <http://www.wfm.org/site/index.php/base/main>.

<sup>40</sup> Citizens for Global Solutions, “Vision and Mission,” available at [http://oldsite.globalsolutions.org/who/vision\\_mission.html](http://oldsite.globalsolutions.org/who/vision_mission.html).

<sup>41</sup> Citizens for Global Solutions, “International Law and Justice,” Citizens for Global Solutions, available at [http://oldsite.globalsolutions.org/programs/law\\_justice/icc/icc\\_home.html](http://oldsite.globalsolutions.org/programs/law_justice/icc/icc_home.html).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Liu Institute for Global Issues at the University of British Columbia, *The Third Vancouver Dialogue: The Communications Gap*, Citizens for Global Solutions, (December 2004), available at [http://oldsite.globalsolutions.org/programs/law\\_justice/vd3-finalreport-feb28.pdf](http://oldsite.globalsolutions.org/programs/law_justice/vd3-finalreport-feb28.pdf) (p.2).

<sup>47</sup> Ibid., 9.

<sup>48</sup> See for instance Stephen H. Browne, “Remembering Crispus Attucks: Race, Rhetoric, and the Politics of Commemoration,” *Quarterly Journal of Speech* 85 (1990).

<sup>49</sup> Liu Institute for Global Issues at the University of British Columbia, *The Third Vancouver Dialogue: The Communications Gap*, 2.

<sup>50</sup> Ibid., 1.

<sup>51</sup> Ibid., 6.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> For a discussion of judicial institutions as rhetorical institutions in a U.S. context, specifically the U.S. Supreme Court, see Katie L. Gibson, “Judicial Rhetoric and Women’s “Place”: The United States Supreme Court’s Darwinian Defense of Separate Spheres,” *Western Journal of Communication* 71, no. 2 (2007).

<sup>57</sup> Liu Institute for Global Issues at the University of British Columbia, *The Third Vancouver Dialogue: The Communications Gap*, 4.

<sup>58</sup> Ibid., 1.

<sup>59</sup> Citizens for Global Solutions, ... *and Justice for All: How to Talk About the ICC in the U.S.*, (Washington, D.C., 2005), 6. The main author of the report is Heather B. Hamilton, Vice President and Chief of Staff of Citizens for Global Solutions.

The report is available at

[http://oldsite.globalsolutions.org/programs/law\\_justice/icc/resources/FINAL\\_ICC\\_Comm\\_Guide.pdf](http://oldsite.globalsolutions.org/programs/law_justice/icc/resources/FINAL_ICC_Comm_Guide.pdf).

<sup>60</sup> Ibid., 8.

<sup>61</sup> Ibid., 6.

<sup>62</sup> Ibid.



<sup>63</sup> Ibid.

<sup>64</sup> Ibid., 7.

<sup>65</sup> Ibid., 5.

<sup>66</sup> Ibid., 5.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid., 3.

<sup>69</sup> Ibid., 6.

<sup>70</sup> For instance, the authors surmise that “It is a truism in public speaking that your listeners will only remember three things from your speech” (13).

<sup>71</sup> Citizens for Global Solutions, ... *and Justice for All: How to Talk About the ICC in the U.S.*, 3.

<sup>72</sup> Ibid., 6.

<sup>73</sup> Ibid., 13.

<sup>74</sup> Ibid., 3.

<sup>75</sup> Ibid., 27.

<sup>76</sup> Ibid., 9. The handbook suggests that the referral of Darfur to the ICC “may have increased public support for cooperation with the ICC” (9).

<sup>77</sup> See Thomas W. Benson, “Rhetoric as a Way of Being,” in *American Rhetoric: Context and Criticism*, ed. Thomas W. Benson (Carbondale and Edwardsville: Southern Illinois University Press, 1989).

<sup>78</sup> Citizens for Global Solutions, ... *and Justice for All: How to Talk About the ICC in the U.S.*, 6.

<sup>79</sup> Ibid., 7.

<sup>80</sup> Ibid., 11.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid., 7. The authors argue that this is partly due to the fact that there often is “no effective feedback loop for many of our advocacy communications” (7).

<sup>83</sup> Ibid., 12.

<sup>84</sup> Ibid., 13.

<sup>85</sup> Ibid.

<sup>86</sup> For an elaboration on this concept of rhetoric as a way of being, see Benson, “Rhetoric as a Way of Being.”

<sup>87</sup> Citizens for Global Solutions, ... *and Justice for All: How to Talk About the ICC in the U.S.*, 11.

<sup>88</sup> Ibid., 12.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid., 16.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid., 30.

<sup>94</sup> Ibid., 31.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., 20.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid., 20; 21.

<sup>100</sup> Ibid., 30.

<sup>101</sup> Ibid.

<sup>102</sup> American Non-Governmental Organizations Coalition for the International Criminal Court (AMICC), “The International Criminal Court: A Case for Conservatives,” (August 30, 2005), available at <http://www.amicc.org/docs/Case%20for%20Conservatives.pdf> (p.1).

<sup>103</sup> Ibid., 2.

<sup>104</sup> Citizens for Global Solutions, ... *and Justice for All: How to Talk About the ICC in the U.S.*, 15.

<sup>105</sup> Ibid., 34.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid., 26.

<sup>109</sup> Ibid.

## Chapter 4

### **Refining the Rome Statute: The Women's Caucus for Gender Justice and the Conservative Coalition that Fought Them**

In my analysis of Citizen' for Global Solutions' advocacy efforts, I established that the International Criminal Court has a supplementary function in which it operates as a site for the formation of new cosmopolitan forms of memory and cosmopolitan subjectivities. By focusing solely on these advocacy efforts and their potential for the emergence of cosmopolitan subjectivities, however, we miss an important part of the story of the ICC involving challenges to the formation of such transnational memory during the earlier stages of the Court's creation. While the previous chapter examined strategies to raise public awareness and influence public opinion of the ICC, this chapter focuses on how advocates worked to influence the Court's architects. Specifically, I focus on the turbulent debates over the inclusion of provisions regarding gender and sexual violence in the months before and during the negotiations of the Rome Statute during the six-week Diplomatic Conference for an International Criminal Court held in Rome in 1998. This focus is crucial because, as legal scholar Doris Buss noted, "the UN conference appears to play an increasingly important role in not only generating international law and policy, but also in defining the scope and nature of 'community' at the international level."<sup>1</sup> The two main players in this debate were women's rights activists, organized as the Women's Caucus for Gender Justice (WCGJ), who argued for the inclusion of a gender perspective in the Rome Statute, and a coalition of conservative

religious organizations challenging such legislation. In my analysis of the inclusion of gender specific rights in the legal foundation of the ICC, I argue that conservative actors operating at the international level pose a significant challenge to cosmopolitan memory, particularly in their efforts to obstruct international human rights legislation.

Since the initial engagement with the proposed Court in the early 1990s focused on the Court's basic structure, the original drafts of a statute for the Court prepared by the International Law Commission (ILC) in 1994 did not include the term "gender" nor did it include articles "that could be characterized as gender sensitive."<sup>2</sup> This reflected the "existing state of humanitarian law and international criminal law" prior to the Rome Statute, as codified in the Hague Conventions, the Geneva Conventions, and the more recently created war tribunals for Yugoslavia and Rwanda.<sup>3</sup> In order for the ICC to divert from the male bias and gender-blindness traditionally codified in international law and to contribute to an emerging jurisprudence that would take into account gender and sexual violence, human rights advocates recognized that the ICC statute needed to reflect a more gender-sensitive international criminal law.

Women's rights activists seized this historic opportunity in the months leading up to the Rome Conference by crafting a rhetorical campaign promoting the inclusion of a gender perspective in the Rome Statute. The document adopted at the end of the six-week conference included a series of express provisions on gender and sexual violence and thus constituted a significant "reconceptualization of women's experiences as requiring legal recognition."<sup>4</sup> In contrast to prior international treaties, Article 8 of the Rome Statute codifies "rape, sexual slavery, enforced prostitution, forced pregnancy...enforced sterilization or any other form of sexual violence" as a "grave breach" of the Geneva

Conventions,<sup>5</sup> making the Rome Statute the first international treaty to codify gender and sexual violence in line with the most serious violations of international law. This shift in perspective was in large part the product of women's rights advocacy efforts centering on the rhetoric of transnational public memory—in this case, on how women's rights are to be remembered in international law.

Despite the successes largely attributed to women's rights groups' advocacy, the negotiation process over the inclusion of gender-specific language in the Rome Statute proved to be a contentious undertaking due to opposition from religious conservative forces. These religious conservative actors represent an emerging alliance of Christian Right organizations that include primarily North-American Catholic, Protestant, and Mormon organizations and that have built powerful alliances with the Vatican and representatives of conservative religious governments in an attempt to influence social policy-making at international political forums including UN conferences. Having emerged in the context of the 1995 Fourth World Conference of Women in Beijing, China to counter what they perceived as an increasing and thus dangerous influence of women's rights organizations at UN-related venues during the 1990s, these religious conservative organizations campaign against women's rights, reproductive rights, abortion, the extension of civil or human rights protections to homosexuals, lobby for the restriction of children's rights, and promote "traditional" gender roles. By their own description, these groups consider themselves advancing "family values" or a "pro-family" perspective at an international level.

Ultimately, women's rights advocacy efforts led to the inclusion of gender-specific crimes in the Rome Statute as well as provisions guaranteeing gender parity in

the institutional set-up of the court. Despite the successes of the women's rights advocacy campaign, however, the influence of conservative NGOs at events including the Rome Conference should not be overlooked. Scholarly attention typically focuses on the work of progressive reformers, rightfully acknowledging the accomplishments of the progressive members of the transnational women's rights movement. There is, however, to date relatively scant scholarship in social movement studies, international relations, and communication studies on those actors opposing reform at a transnational level.<sup>6</sup> The prominent role of religious conservative/Christian Right forces and their rhetorical strategies is only beginning to be analyzed, even though, as legal scholars Doris Buss and Didi Herman have pointed out, the Christian Right "is intent on both internationalizing its domestic concerns and shaping its domestic activism in light of [Christian Right] global understandings."<sup>7</sup> In fact, they even go so far as to say that a nuanced understanding of the Christian Right's "domestic agenda is not possible without understanding how that agenda is intimately locked into a global program of action."<sup>8</sup> The relative dearth of attention these religious conservative activists have garnered is even more surprising given that this well organized conservative alliance opposes the "women's movement at every UN forum that has any relevance to sexual and reproductive issues."<sup>9</sup> Hence, with the deeply divisive discussions over the inclusion of gender provisions, the Rome Conference was not unlike other international UN conferences in which civil society actors were involved in drafting human rights-related legislation. Political scientist Louise Chappell has noted, for instance, that international UN conferences, such as the Rome Conference, have emerged as "key international sites where contentious politics around women's rights take place" because they provide a "structured venue" for

governments and civil society actors to “meet, formulate, express and contest views on women’s rights.”<sup>10</sup> The documents created at these conferences serve as the “battleground over which the framing of women’s rights is fought.”<sup>11</sup> As such, I argue, these venues serve as important sites of transnational memory production.

The lack of attention paid to these conservative actors and their rhetorical discourses may be due to the prevailing notion that transnational civil society or fora such as international UN conferences are the realms of like-minded actors promoting human rights and social justice that embrace so-called “emancipatory” values. That there exists at the same time an influential group of actors challenging this trajectory is demonstrated by this analysis of the discourses of conservative advocacy groups contesting the inclusion of a gender perspective in the Rome Statute. With this analysis then, I respond to a call by Marlies Glasius, research fellow at the Centre for the Study of Global Governance at the London School of Economics, who argues that “there is a clear need for further research into the beliefs, tactics and leadership” of conservative organizations at the transnational level.<sup>12</sup>

The study of the rhetorical discourses of such conservative organizations operating at the transnational level will help us better understand the ways in which conservative actors operating in the international arena have influenced discourses of international law and social policy, in this case the codification of gender and sexual violence. More specifically, it will allow us to gain insight into conservative actors’ understanding of the role and legitimacy of the International Criminal Court and other international institutions. Gaining a deeper understanding of the conservative actors’ rhetorical discourses employed to influence the ICC treaty negotiations is crucial



because, as rhetorical/feminist legal critic Carrie Crenshaw has pointed out, since the “law institutionalizes relations of power, it can authorize and order our conceptions of social justice.”<sup>13</sup> Similarly, Katie Gibson has argued in the context of Supreme Court ruling on women’s rights legislation that “representations of women and gender . . . become part of the Court’s collective rhetorical framework for thinking and reasoning about the legal rights of women,”<sup>14</sup> creating “rhetorical ‘communities’” that “prohibit, constrain, or allow future decisions.”<sup>15</sup> Accordingly, as an international court, the ICC will provide a collective rhetorical framework operating at a transnational level. Moreover, since its legal framework is intended to be incorporated into nation-states’ domestic law, the ICC and the trials it will conduct will function as important sites for constructing subjectivities, meaning, and a transnational memory of what constitutes gender and sexual violence and a transnational memory of the protection of such rights.

With this analysis I also hope to demonstrate the significance of the fact that global civil society is “not the exclusive domain of progressive human rights, environmental, social justice and women’s rights activists; it is a space co-inhabited by conservatives, anti-abortionists and religious fundamentalists.”<sup>16</sup> An analysis of the kinds of discourses progressive reformers are encountering even at the international level of social policy-making will aid advocates for cosmopolitan values to learn how to develop strategies for responding to these kinds of challenges in the future.

My analysis begins with an overview of the conceptualization of sexual violence in international law prior to the establishment of the ICC that served as the background for women’s rights NGOs to advocate for the inclusion of sexual crimes in the Rome Statute. I then introduce a group of progressive members of the Coalition for the

International Criminal Court, namely, the Women's Caucus for Gender Justice (WCGJ). The Women's Caucus, comprised of women's rights advocacy organizations and individuals, crafted a rhetorical campaign for the inclusion of a gender perspective in the legal foundations of the ICC. In the third section, I examine the rhetorical strategies of a set of conservative NGOs involved in the negotiation process at the Rome Conference who attempted to challenge the court's inclusion of provisions criminalizing gender and sexual violence as war crimes and crimes against humanity. These actors had stepped up their campaign in response to pro-women's rights advocates' involvement in the ICC drafting process and specifically targeted the inclusion of the term "gender" anywhere in the Rome Statute and the inclusion of "forced pregnancy" as a crime subject to ICC jurisdiction. Drawing on newsletters, pamphlets, and position papers from religious conservative organizations, I argue that religious conservatives employed a rhetoric of social maintenance in their opposition to the ICC that reflects anxieties over maintaining the social order and the loss of nation-state sovereignty.

### **The Path to Women's Rights Groups' Involvement in the Rome Statute**

Historically, gender and sexual violence had largely been ignored in international law prior to the establishment of the International Criminal Court. For instance, the 1907 Hague Conventions contain only one article that addresses gender violence, but do so by only "vaguely and indirectly" prohibiting sexual violence as a violation of family honor.<sup>17</sup> The Geneva Conventions of 1949 and Additional Protocols to the Geneva Conventions of 1977 included some provisions prohibiting sexual violence but failed to

categorize sexual violence as “grave breaches,” or the most serious violations of international humanitarian law.<sup>18</sup> While the Geneva Conventions included rape and forced prostitution, they “erroneously link rape with crimes of honor or dignity instead of with crimes of violence.”<sup>19</sup> Legal scholar Kelly Askin notes that “even in the twenty-first century, the documents regulating armed conflict either minimally incorporate, inappropriately characterize, or wholly fail to mention these crimes.”<sup>20</sup> Similarly legal scholar Kristen Boon argues that, on the whole, even when sexual violence was explicitly prohibited, it has historically been “dismissed as an inevitable by-product of war and rarely prosecuted.”<sup>21</sup> Moreover, the lack of legal protection from gender and sexual violence in international law before the establishment of the International Criminal Court reflected the male bias of domestic law.

Given that women’s experiences during armed conflict had been largely overlooked, what led to the inclusion of gender and sexual violence in the Statute of the International Criminal Court? The integration of a gender perspective in the ICC owes to a series of developments in human rights politics and international criminal law that set the stage for women’s rights groups’ advocacy during the ICC treaty negotiations. First, the ICC negotiations occurred at a “critical moment in the history of the international women’s human rights movement,” which included women’s rights activists’ involvement in a series of UN conferences prior to the Rome Conference.<sup>22</sup> While women’s rights NGOs had been influential in the campaign for the League of Nations and the drafting of the Universal Declaration of Human Rights,<sup>23</sup> women’s rights advocacy gained momentum particularly in the context of the second wave feminist movement in the 1970s that was itself a “global phenomenon,” and which linked up with

a window of opportunity created by UN-hosted conferences in the 1970s and 1980s.<sup>24</sup> These fora, including the UN Decade for Women in Mexico City 1975, Copenhagen in 1980, and Nairobi in 1985 gave rise to transnational feminist organizing proliferating in the 1990s at the World Conference on Human Rights in Vienna in 1993, the 1994 Cairo Conference on Population and Development, and the Fourth World Conference on Women in Beijing in 1995. Political scientist Elisabeth Friedman concludes that the rise of this transnational feminist movement resulted from a confluence of factors, including the “interaction of the political opportunities of UN Conferences and international politics, the mobilizational structures stemming from national, as well as regional and transnational women’s movement organizations, and increasingly shared frames on women’s oppression.”<sup>25</sup> Through its participation in these conferences, the transnational feminist movement had contributed to a heightened concern for gender mainstreaming, or the recognition and implementation of gender perspectives in policy-making to achieve gender equality in the UN system, and, especially in the 1990s, focused its efforts on including gender-related issues in the final conference documents.<sup>26</sup>

The Vienna and Beijing Declarations and Platforms of Action were particularly important stepping stones for the inclusion of a gender perspective in the Rome Statute because they called for the integration of a gender perspective in armed conflict.<sup>27</sup> However, while the Declarations were significant for their conceptual and promotional contributions, their primary rhetorical function was limited to shaping perceptions of international jurisprudence. Like the documents produced at most UN conferences, the Declaration was a nonbinding plan of action rather than a binding treaty; it thus did not provide the legal basis for enforcement and compliance by states.

A second set of catalysts for women's rights groups' involvement in the ICC treaty negotiations were the experiences with the war crimes tribunals for Rwanda and Yugoslavia. The work of these ad hoc war tribunals strengthened the concern for establishing a permanent institution like the ICC. Moreover, the nature of the crimes, specifically the crimes committed against women in Rwanda and the former Yugoslavia, created a heightened sense of awareness about the prevalence of crimes of gender and sexual violence. Specifically, it was the use of rape "as a component of ethnic cleansing in the former Yugoslavia [that] brought the lack of legal protection [of women] to international attention."<sup>28</sup> The larger outcome of the cases brought before these tribunals was that they provided insight into a more general problem inherent in the relationship between the codification of sexual and gender violence in international law and women's rights in general.<sup>29</sup>

In order to better understand the significance of the achievements made by women's rights activists in including a gender perspective in the ICC, an overview of the traditional construction of gender in international law is in order. First, international law is based on a universalist conception of human rights, which is one reason why the issue of gender has not sufficiently been addressed in the documents regulating armed conflict. Secondly, the system of international law is suffused with patriarchal gender constructions that ascribe distinct gender roles to men and women. As several feminist legal scholars have noted, women were defined in international law not as autonomous individual beings but rather through their relationship with others, usually as mothers to their children or as spouses. Charlesworth and Chinkin argue that

women's presence on the international stage is generally focused in their reproductive and mothering roles that are accorded 'special' protection. The woman of international law is painted in heterosexual terms within a traditional family structure. ....She is constructed as 'the other,' the shadow complement to the man of decision and action.<sup>30</sup>

This implicit understanding of women as dependent rather than autonomous, rights-bearing subjects is manifest for instance in the Hague Conventions and the four 1949 Geneva Conventions. As Afrin and Schwartz note, the Hague Conventions "provided for the protection of women in armed conflict only in terms of their relationship with others, for instance as pregnant women, mothers or valued property of men or family, but not as legal persons themselves."<sup>31</sup>

Thirdly, international law was modeled after a classical distinction between the public and the private sphere. Women's rights in international law were based on "stereotypical concepts of femininity and the 'place' of women in the private sphere."<sup>32</sup> This framework provided jurisdiction of international law over public life including the political and economic realm while leaving "unregulated the private world of home, hearth and the family."<sup>33</sup> The consequence of this framework is that "[m]any of the distinctive harms that women experience are relegated to the private or domestic sphere of States;" thus, these harms do not fall under the jurisdiction of international law.<sup>34</sup> Since crimes of sexual violence were considered to take place within the private sphere, they could not be adequately addressed in international law.

The lack of legal protection from gender and sexual violence under international law was in part due to the underlying focus on men as agents and women as dependents

rather than autonomous subjects inscribed into the international law system. At the same time, it became increasingly clear that the very omission or lack of express gender provisions in international law were part of the problem. Alda Facio, then director of the Women's Caucus for Gender Justice, noted that it is "precisely because the vast majority of laws, legal instruments and institutions have been created without a gender perspective that the everyday violations of women's human rights are invisible to the law and the most atrocious violations have been rendered trivial."<sup>35</sup> The context of the strategic use of sexual violence (mass rape) in Rwanda and Yugoslavia in the early 1990s painfully demonstrated the pitfalls of a system of international law that does not *explicitly* address sexual violence or gender specific crimes. The cases brought before the ad hoc tribunals demonstrated once again that due to "socially-constructed power imbalances and culturally-defined stereotypes," women are particularly vulnerable to certain crimes.<sup>36</sup> It was in part the experiences with the ICTY and ICTR then, that raised greater awareness about the fact that certain crimes are perpetrated against women because of their gender and that an "ostensibly gender-neutral justice system would in fact fail to address gender-specific abuses."<sup>37</sup>

Assessing the history of the treatment of women in international law, Rhonda Copelon, Professor of Law and one of the founding members of the Women's Caucus, notes, there is "an almost inevitable tendency for crimes that are seen simply or primarily as crimes against women to be treated as of secondary importance."<sup>38</sup> The categorization of rape or sexual assault under international law illustrates this point. The Hague Convention of 1907 and the Geneva Conventions categorized rape variously as an "attack against honor" or "humiliating and degrading treatment," rather than acts of violence.<sup>39</sup>

Rape was thus treated differently from other crimes of violence in international law.<sup>40</sup>

The terminology of “honor,” Copelon explains, is problematic because the fact that rape was conceived of as an offense against honor turned women into “the object of a shaming attack, the property of objects of others, needing protection perhaps, but not the subject of rights.”<sup>41</sup> Implicitly, the language of “honor” invokes a proprietary relationship between a man and a woman and “obfuscates the fact that rape is fundamentally violence against women—violence against her body, autonomy, integrity, selfhood, security, and self-esteem as well as her standing in the community.”<sup>42</sup> In the context of the crises in Yugoslavia and Rwanda in the early 1990s, that is at the time when the work on proposals for an international criminal court had just resumed after decades of inaction, Copelon argued that rape, when used as a tool of war, should be considered a “crime of the gravest dimension,”<sup>43</sup> as a form of torture and thus as a “grave breach.” Categorizing rape as a “grave breach” rather than a “lesser crime” would entail the possibility of universal jurisdiction of that crime—that is jurisdiction over crimes regardless of the perpetrator’s nationality or whether the crimes were committed within or outside the boundaries of the prosecuting state. The crimes could then be heard before an international tribunal and would not have to be relegated to the domestic jurisdiction.<sup>44</sup> It would take women’s rights advocates serious work for a similar proposal to become reality.

The heightened awareness about such issues led to the inclusion of sexual violence in the statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) established in 1993 and the International Criminal Tribunal for Rwanda (ICTR) established in 1994. These Statutes included the classification of rape as a crime against



humanity, although it was not included in other categories of crimes.<sup>45</sup> The classification of rape as a crime against humanity has far-reaching consequences because the threshold for prosecution of a crime against humanity is higher than the threshold for prosecution of a war crime, the former requiring evidence that the crime was committed on a widespread or systematic basis.<sup>46</sup> Moreover, by not classifying rape as a grave breach of the Geneva Conventions, the ICTY and ICTR failed to acknowledge the seriousness of the crime.<sup>47</sup> Yet, while some advances had been made in the Statutes of the ICTY and ICTR with regards to gender and sexual violence provisions and the interpretation of those provisions,<sup>48</sup> the specific definition of rape under these Statutes and under previous treaties neglected the gendered dimension of how rape has been used as a violent act against women and was thus insufficient. As a whole, Bedont and Martinez argue, the discriminatory and “inferior treatment of gender crimes perpetuated their underinvestigation,” and limited the ability to prosecute such crimes.”<sup>49</sup> The inclusion of rape as a crime against humanity in the ad hoc tribunals was a step in the right direction, though was not enough to prosecute some of the most heinous atrocities committed.

The political developments in Rwanda and Yugoslavia during the 1990s had paved the way for a heightened concern about gender specific crimes and gender representation in international law. Moreover, the jurisprudence of the ICTY and ICTR with adjudicating sexual and gender violence, created the background for women’s rights advocacy in the ICC treaty negotiations. For instance, some of the advances that were made in regards to the integration of a gender perspective in international criminal law have been attributed to the work of specific judges and prosecutors who were committed to such causes.<sup>50</sup> Against this backdrop, women’s rights advocates across the world

“recognized the existence of the ICC negotiations as an opportunity to codify the integration of gender in international law...”<sup>51</sup> With the inclusion of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”<sup>52</sup> as war crimes and crimes against humanity in the Rome Statute, women’s rights advocates’ demands for the recognition of sexual violence “as part of and encompassed by, other recognized egregious forms of violence” were realized.<sup>53</sup> As the first international legal body to “independently enumerate and define a range of sexual and reproductive crimes relating specifically to women and gender,”<sup>54</sup> it laid the groundwork for an alternative approach toward the sanction of gender and sexual violence.<sup>55</sup> The inclusion of express listing of these gender-based crimes ensures that they need not be negotiated on a case-by-case basis.<sup>56</sup> Kristen Boon summarizes the significance of the Rome Statute as reconceptualizing sexual violence in international law. She notes that the Rome Statute

shifts the legal framework of sexual crimes in armed conflict from assuming that the central legal harm is the violation of honor, to considering the harms to the victim’s bodily integrity and infringement of their agency. This structure signals a new paradigm for the international criminalization of sexual crimes—one based on broader principles of human dignity, autonomy, and consent.<sup>57</sup>

As such, the establishment of the International Criminal Court is considered by many a milestone in the codification of international law and human rights.<sup>58</sup>

Feminist legal scholars contend that besides the integration of a gender perspective in international law that holds perpetrators of sexual violence accountable for their past actions, the ICC’s gender perspective has the potential to strengthen women’s

rights more generally at both national and international levels. At the national level, the Rome Statute is thought to be significant because the domestic law of those states that have ratified the Rome Statute should reflect the law enshrined in the international treaty. Since states are “encouraged, though not required” to integrate the Rome Statute into domestic legislation,<sup>59</sup> this does not necessarily forge an immediate advancement for women’s rights at the national level. Still, the inclusion of a gender perspective at the international level, working through domestic law, is conceived of as a means to address not only the effects of gender violence but also the causes that produce such violence in the first place.

At the international level, the inclusion of a gender perspective may contribute to a larger cultural understanding of gender violence and to challenging constructions of masculinity in general that create the climate in which such crimes can be committed. Facio argues that “[S]ince the vast majority of those who commit the crimes or are responsible for them are men, one of the probable causes of these crimes may well be the social construction of the masculine gender and therefore one of the solutions may well lie in creating mechanism that will help construct less violent men.”<sup>60</sup> By implication, the crimes of gender and sexual violence are manifestations of a culture in which gender violence has been normalized. International law, then, represents one of many mechanisms by which gender violence can be challenged, both legally, and, perhaps more importantly, rhetorically.

### **The Women's Caucus for Gender Justice**

The integration of a gender perspective in the Rome Statute is generally attributed to the influence of the Women's Caucus for Gender Justice (WCGJ), an organization of women's rights groups that worked to shape the treaty to include gender-specific language during the final treaty negotiations.

In December 1995, the UN General Assembly had established the first Preparatory Committee on the Establishment of an International Criminal Court to revise the Draft Statute and prepare a final version of the Statute. In addition to delegates who attended the PrepComs, a large number of NGOs were involved, including the Coalition for an International Criminal Court (CICC), an alliance comprising several hundred non-governmental organizations promoting various aspects of the statute including human rights, women's rights, children's rights, peace, international law, humanitarian assistance, the rights of victims, faith-based issues, and disarmament.<sup>61</sup> Based on the conviction that women's concerns were not sufficiently engaged in the Coalition, women's rights groups created the Women's Caucus for Gender Justice during the PrepCom meeting in February 1997.<sup>62</sup> The Women's Caucus' overarching goal was to strengthen women's concerns in the negotiations toward the establishment of the ICC. The Caucus grew from originally 200 organizations to eventually comprising over 300 organizations from around the world, many of which came out of the movement to combat violence against women.<sup>63</sup> In addition to these organizations, the Women's Caucus also included individual members who were not affiliated with NGOs but who were nonetheless crucial for the campaign. With its "high visibility" and a membership

comprised of individuals and organizations with expertise in international law on the one hand and expertise in human rights related issues on the other, the Women's Caucus developed into a powerful voice in the negotiation process at the Rome Conference.<sup>64</sup>

Against the background of international law not having used or defined "gender" in an international treaty before, the inclusion of a gender component in the Rome Statute was the primary concern of the Women's Caucus for Gender Justice.<sup>65</sup> Thus, the Women's Caucus's objective was to ensure that a range of crimes directed against women would be included in the list of crimes under ICC jurisdiction. The Caucus fought to include "what had developed in the customary law and jurisprudence of the tribunals, that sexual violence must be seen as part of, and encompassed by, other recognized egregious forms of violence, such as torture, enslavement, genocide, and inhumane treatment."<sup>66</sup> The *ICC Monitor* summarized the core principles of the Women's Caucus as follows:

For the International Criminal Court to effectively dispense and promote universal justice, . . . it must necessarily incorporate gender perspectives in all aspects of its jurisdiction, structure and operations. To achieve this, the Court must have the capacity to ensure that crimes against women are not ignored or treated as trivial or secondary. It must take account of the disproportionate or distinct impact of the core crimes on women. The Court should be equipped and enabled to eliminate common assumptions about and prejudices against women and their experiences.<sup>67</sup>

In its advocacy campaign, the Women's Caucus pursued three main goals, namely:

- 1) worldwide participation of women's human rights advocates in the negotiations of the ICC treaty to lobby for an effective and independent court
- 2) to educate governments delegations and mainstream Human Rights NGOs on their commitments to women and the need to integrate a gender perspective into the U.N.
- 3) to use this historical event as a means for popular education on women's human rights and raise public awareness of the horrific nature of crimes committed against women<sup>68</sup>

Lastly, the Women's Caucus advocated for a balanced representation of female and male judges and staff, victim and witness protection procedures to ensure their safety and social or psychological support, and a victim reparations fund to aid victims rebuild their lives.

The Women's Caucus' advocacy efforts to integrate a gender perspective into the Rome Statute included producing position papers and commentaries on legal provisions that "contributed greatly to the discussions and variety of options states had to eventually consider."<sup>69</sup> The Women's Caucus lobbied delegates and governments by publicizing press releases and disseminating open letters and petitions to garner support for particular initiatives.<sup>70</sup> Building on its legal network and alliances with a range of organizations and state delegates who were particularly sympathetic to the Women's Caucus' agenda, the Caucus assumed an influential role over the course of the Rome Conference in July 1998. Their advocacy campaign for the inclusion of sexual and gender violence in the Rome Statute culminated in the final weeks of the Rome Conference. When negotiations deadlocked on crucial gender provisions in the final week of the negotiations, the

Women's Caucus felt confident enough to threaten that "if these minimal criteria are not present in the final Statute, the Women's Caucus will not support the resulting weak court and will consider actively lobbying their governments against ratification."<sup>71</sup>

The Rome Statute that was eventually adopted differed substantially from the Draft Statute proposed by the ILC. Key changes included definitions of sexual and gender violence under provisions regarding the court's jurisdiction, specifically under the definitions of war crimes and crimes against humanity. Other successful lobbying efforts included structural safeguards, such as the provision that the court must demonstrate a "fair representation of female and male judges" and that the court must include judges with "legal expertise" on issues involving violence against women and children, as outlined in Article 36(8) of the Rome Statute, so as to guarantee an appropriate investigation and prosecution of victims of sexual and gender violence before the ICC. Having made significant achievements during the negotiations toward the Rome Statute in 1998, the Women's Caucus continued its campaign during the subsequent Preparatory Commission meetings held from 1999-2000 during which supplementary materials to the Rome Statute were negotiated, namely the Elements of Crimes (EOC) and the Rules of Procedure and Evidence (RPE).<sup>72</sup>

### **Religious Conservative NGOs Influence in Rome**

The success of the women's rights groups' advocacy campaign is exemplified by their participation in the negotiation process of the Rome Statute and the eventual adoption of some of their proposals, or versions thereof, in the Rome Statute. Having

assumed a significant role in the drafting process several weeks into the Rome Conference, the Women's Caucus' influence provided the exigency for another set of NGOs to step up their advocacy. Mainly comprising North-American-based conservative, self-declared "pro-life" or "pro-family" organizations, these groups represent a burgeoning movement of religious conservative activists influencing international social policy in international forums. The primary target for these actors' intervention is the UN, including both UN agencies and conferences, where, under the cloak of defending "family values," the movement's global political project is to resist the inclusion and expansion of provisions regarding women's rights, reproductive rights, population control policies, abortion, and children's rights.

Accordingly, conservative organizations were primarily concerned with challenging the proposals for the inclusion of gender-sensitive language and gender-sensitive provisions in the Rome Statute advanced by the Women's Caucus. The main objective religious conservative organizations had in the ICC negotiations consisted of obstructing progressive reform at the transnational level, specifically the expansion of women's rights. Religious conservative NGOs coupled a rhetoric of social maintenance to preserve what they consider an appropriate social order with a language of national sovereignty.

Prominent religious conservative organizations involved in the ICC negotiations included groups such as R.E.A.L. (Realistic, Equal, Active, for Life) Women of Canada, the International Human Life Committee, and the JMJ (Jesus, Mary and Joseph) Children's Fund of Canada, and the Catholic Family and Human Rights Institute (C-FAM), some of whom have made UN activism their primary focus.<sup>73</sup> C-FAM for



instance, has established a permanent office at the United Nations in New York in an attempt to “monitor and affect the social policy debate at the United Nations and other international institutions.”<sup>74</sup> Other vocal participants were the World Family Policy Center (WFPC)—previously known under the name NGO Family Voice—whose mission is to “provide balanced, pro-family input and effectively educate the United Nations System on moral, religious and other value-based” international policy issues.<sup>75</sup> The World Family Policy Center is based at and sponsored by Brigham Young University Law School. The NGO’s founder and director, BYU Professor of Law Richard Wilkins, has published widely and spoken frequently on the International Criminal Court.

Although clearly a minority in terms of numbers, religious conservative NGOs conceive of themselves as influential players in the international arena, as a statement by the World Family Policy Center illustrates. Praising conservative organizations’ advocacy campaigns that lobby against the inclusion of gender-specific provisions in the Rome Statute, the World Family Policy Center argued that “the changes in the ICC statute prompted by Family Voice and the pro-family coalition stand as helpful pro-family international law precedent, particularly in the area of ‘gender rights.’”<sup>76</sup> The statement alludes to the fact that NGO Family Voice is credited with introducing a notorious proposal during the treaty negotiations that expressly limited the definition of “gender” as “male and female.”<sup>77</sup> The notoriety of this proposal is due to its success. The statement illustrates that this organization and its allies are influential enough to shape international legal instruments according to their worldviews.

Religious conservative organizations’ influence on international social policy is in part due to the groups’ ability to build powerful alliances in the international political

arena. Buss and Herman note that while the organizations active at the UN focus on promoting a Christian orthodox worldview and therefore should be considered a “particular subset of the U.S. Christian Right as a whole,”<sup>78</sup> the coalition of religious conservative organizations has built global interfaith alliances on some issues with conservative Muslim and Jewish activists and delegates and are on many issues supported by the Vatican.<sup>79</sup> In the context of the ICC negotiations over the inclusion of a gender perspective in the Rome Statute, conservative NGOs also received support from a number of Arab League states that argued that the inclusion of gender-specific rights “offended their religious standards.”<sup>80</sup>

### **Religious Conservative NGOs’ Tactics and the Concern with Language**

The overarching goal of conservative NGOs operating at the UN level is to block consensus at UN hosted conferences on issues relating to reproductive rights, gay and lesbian rights.<sup>81</sup> To this end, conservative NGOs have made use of a number of distinct tactics in their effort to stifle progressive international reform. Some of these tactics employed in Rome and at other UN conferences include the lobbying of state delegates, publicizing materials via newsletters, the use of intimidation tactics, and breaking UN rules of procedure.<sup>82</sup> Anick Druelle from the University of Montreal identifies similar conservative advocacy strategies employed at the Beijing +5 Conference held in 2000, including the spreading of false information in leaflets and brochures, destroying other progressive NGOs’ information, and displaying visible signs of religion, such as Bibles in hand or ashen crosses on their foreheads.<sup>83</sup>

The most central tactic of religious conservative NGO advocacy involves efforts to wield influence over how publics interpret key linguistic phrases in the documents produced at the international conferences. Underlying these efforts is the acknowledgment of the power of language in shaping attitudes towards policy. The Catholic Family and Human Rights Institute (C-FAM) took language to be one of its central targets during its heavy involvement in the ICC negotiations. On the surface, the group announced itself as being committed to “reestablishing a proper understanding of international law, protecting national sovereignty and the dignity of the human person.”<sup>84</sup> Below the surface, the target was language. Austin Ruse, president of C-FAM, elucidates this point arguing that “Although the game has changed in terms of the depth of experience now possessed by the pro-life side, the fight is the same. It is over language used by the other side to disguise positions that could not carry the day if they were put forth honestly.”<sup>85</sup> Ruse implies that progressive advocates have ulterior motives when putting forth their proposals. With this, he invokes the often waged critique that women’s rights activists aim to influence social policy at the international level because it would have a greater impact and a wider reach than policies introduced at the domestic level.

Ruse casts his organization’s primary work of controlling the language used in international policy in a way that mirrors the work of women’s rights advocates. Ruse explained some of the tactics of his organization at the World Congress of Families II held in Geneva in 1999. In preparation for the Cairo+5 conference (1999), he argued, C-FAM “took the initiative from the other side on a new piece of language. Our side has generally been content with scanning the document which the other side writes and trying to improve their language. This still remains the most important part of our work. But we

will not win until we begin writing language and getting governments to introduce it for us.”<sup>86</sup> This indicates that C-FAM is working behind the scenes trying to get government representatives to mouth their beliefs. Just as the Women’s Caucus for Gender Justice had directly lobbied governments, so too did the religious conservative NGOs. It follows that conservative NGOs’ attempts to copy strategies from women’s rights activists were not limited to the changing the language in the legal document. Rather, it extended to mobilization and lobbying strategies. Drawing on the experiences with conservative NGOs’ advocacy during the Beijing + 5 Conference, Elisabeth Friedman concludes that the conservative movement’s “repertoire of actions drew from the highly successful models of women’s rights advocates,” which included holding their own preparatory meetings, employing communication technology to distribute their materials to supporters, and lobbying delegates with their positions.<sup>87</sup>

Working toward the overarching goal of obstructing the adoption of gender-sensitive language in the final agreement, religious conservative organizations focused on a set of narrowly defined issues in their campaign. Religious conservative advocates worked to block the inclusion of the term “gender” anywhere in the Statute; obstruct the inclusion of a provision defining gender and sexual violence as war crimes and crimes against humanity, specifically the inclusion of forced pregnancy; and impede the inclusion of provisions regarding the gender-expertise as a required qualification of the judges and other personnel. What follows is a discussion of the main themes and underlying concerns that emerged in the controversy around these issues.

## Gender and Homosexuality

Given the nonexistent or inadequate definition and treatment of gender in international treaties prior to the Rome Statute, the inclusion of the term gender in the ICC treaty was known to mark a significant development. The definition of gender has rhetorical consequences. Valerie Oosterveld, a member of the Canadian delegation to the ICC's Preparatory Commission from 1999 until 2002 and the 1998 Rome conference, explains the significance of the definition of "gender" in the Rome Statute:

How the ICC interprets "gender" will have a direct impact on the kinds of cases of persecution that the Court may be able to prosecute, as well as on the law applied, on how the Prosecutor undertakes his/her duties, and on the protection and participation of victims and witnesses. It could also profoundly affect the legal construction of 'gender' under international law.<sup>88</sup>

That the definition would have far-reaching implications was not overlooked by conservative NGOs and several other state delegations, including, but not limited to members of the Arab League.<sup>89</sup> Not surprisingly, then, discussions about the inclusion of the term "gender" quickly turned into a "lightning rod for conservative concerns about sexuality."<sup>90</sup> Recognizing the implications of incorporating the term "gender" into the language of the Rome Statute, anti-women's rights activists initially worked to eliminate the use of or alter the conceptualization of "gender" in the treaty negotiations. They were joined by several state delegations that argued for the elimination of the term "gender" on the grounds that the term would be construed as including rights more widely defined than by many states, such as sexual orientation.<sup>91</sup> Still other delegations rejected the term

“gender” for being too difficult to translate into some languages.<sup>92</sup> REAL Women of Canada considered the term gender “sprinkled throughout” the Draft Statute problematic because gender “does not always mean a male and female but can also be interpreted (especially by a feminist prosecutor) in a way which could provide protection for ‘other genders’ including homosexuals, lesbians, bisexuals, transgendered, etc.”<sup>93</sup> Invoking feminist scholar Anne Fausto-Sterling’s 1993 article “The Five Sexes: Why Male and Female are not Enough,” REAL Women argued that the inclusion of the term “gender” would ultimately require the recognition of homosexuality, which they considered incompatible with their “traditional” view of gender relations.

The articulation of gender to homosexuality illustrated above has become a common trope in religious conservative NGOs’ rhetoric. For instance, C-FAM objected to the inclusion of the definition in the Rome Statute arguing that “gender” could be “interpreted as criminalizing any national laws or policies that favor heterosexual marriage over homosexual couplings, on the grounds that homosexuality is a recognized ‘gender.’”<sup>94</sup> As these statements suggest, religious conservatives’ rhetorical strategy, “had been to equate use of the term ‘gender’ with endorsement of homosexuality.”<sup>95</sup> The conservatives’ campaign to influence the ICC had tapped into a readily available discourse of anti-gay discrimination to stifle women’s rights legislation.

This equation of the concept of gender with homosexuality must be seen in light of the term gender—as opposed to conservative NGOs’ preferred term “sex”—signifying the social construction of gender.<sup>96</sup> Whereas “sex” highlights innate, biologically determined differences, subscribing to the notion of “gender” would entail acknowledging the social construction of gender roles. As such, the concept of gender

undermines the gender essentialism endorsed by the religious conservative NGOs.

Similarly, by drawing on Fausto Sterling's "five sexes" proposition, religious conservative organizations have construed homosexuality as a gender category that poses a threat to the model of two biologically determined sexes upon which much of religious conservative politics is based.

It is important to point out that some of the conservative NGOs' concerns over the definition of gender comprising homosexuality is not inaccurate as such. For progressive activists, sexual orientation was part of the definition of "gender" in the sense that gender highlights the social construction of identity within a society based on the norms and expectations of what constitutes appropriate or inappropriate masculinities or femininities.<sup>97</sup> However, the difference is that, for the religious conservative NGOs, homosexuality is bound up with a moral determinism according to which homosexuality inevitably leads to the degeneration of social and moral values.<sup>98</sup> At the root of the concerns brought forth by religious conservative NGOs in their opposition to the term "gender" is the belief that gender, understood as homosexuality, threatens traditional gender roles and the larger social order.

In this vein, the conflation of the term "gender" with non-heteronormative sexuality was linked to narratives of social decay and the corruption of society in a broader sense brought on by the ICC. The debate over "gender" was characterized by slippery slope arguments that suggested that if the concept of "gender" was introduced into the legal document of the ICC, the ICC would ultimately develop into an institution that could regulate myriads of other areas of social policy. A position paper of REAL

Women of Canada highlights the potential for large-scale manipulation of social behavior if “gender justice” were to be implemented:

If “gender,” as used in the ICC Draft Statute, in fact means something beyond “male” and “female,” the ICC will drastically restructure societies throughout the world. The possibilities include everything from hiring quotas to sexual orientation to abortion—hardly an appropriate agenda for a “criminal” court. The ICC was never intended, nor should it be used, to redefine and regulate all “socially constructed roles” that exist throughout the globe. . . . One might ask what fuels the continual quest for “gender justice.” No one opposes equal treatment of women and men before the law. If “gender justice” means more than this, the concept dramatically expands the role of the International Criminal Court, changing the Court from a Court aimed at the “most serious crimes” of “international concern,” into a potent judicial engine for social engineering.<sup>99</sup>

REAL Women invokes “gender” to invoke apocalyptic visions of the disintegration of society in which the International Criminal Court is depicted as an omnipotent bureaucratic body with the potential to bring about a major transformation of the social order. The position paper painted an Orwellian scenario in which a perceived expansion of the definition of the term “gender” became tantamount to a drastic social reorganization. The underlying anxiety stems from the belief that once gender is defined as something other than two biologically determined sexes, current relations of power will be fundamentally altered.

In the course of the ICC treaty negotiations, conservative organizations shifted their goal from eliminating the word “gender” from the Statute to replacing the term



“gender” with “men, women, and children” or with “sex.”<sup>100</sup> The substitution was an effort to insist on essentialist notions of gender that conservative organizations wanted to see reflected in a biologically-deterministic language in the legal document. By contrast, the Women’s Caucus for Gender Justice and delegates in support of retaining the term “gender” promoted a definition of gender based on the understanding that “differences between men and women are not essential or inevitable products of biological sex differences” but rather “socially constructed differences between men and women and the unequal power relationships that result.”<sup>101</sup> Women’s rights advocates also rejected the proposal to replace “gender” with “sex,” by arguing that it contradicted the language used by the UN system that has used the term “gender” rather than “sex.”<sup>102</sup>

Due to the objections to the inclusion of the term “gender” that were raised by conservative anti-women’s rights groups and some Arab League countries, finding agreement proved to be a difficult undertaking, with the result being a “delicate, hard-fought compromise among delegations.”<sup>103</sup> After a long series of formal and informal negotiations over the definition, those who opted for the definition that emphasized the constructivist dimension of gender roles won.<sup>104</sup> The victory, however, came with concessions. Delegates eventually adopted a definition of gender as “the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.”<sup>105</sup>

The phrase “within the context of society” is the outcome of a series of debates over language that would reflect the commitment to a definition of gender as socially constructed and that would be acceptable to those who opposed the inclusion of “gender.” The phrase codifying that “the term ‘gender’ does not indicate any meaning different

from the above,” Oosterveld explains, “gave comfort to those opposed to ‘gender’ because they saw it as reaffirming the ‘two sexes, male and female,’ while those supportive [of the inclusion of the term gender] felt that it was harmless because it reaffirmed the valuable sociological reference to ‘context of society.’”<sup>106</sup> Even after contentious negotiations, this was “the only definition of ‘gender’ to which the Arab States and others were willing to agree”<sup>107</sup> and in that sense represents a concession to conservative advocates. Nonetheless, the definition expresses the drafters’ concern for “constructive ambiguity,” leaving the definition relatively open to future interpretation.<sup>108</sup>

Richard Wilkins, William Perry, and Marcus Mumford of NGO Family Voice recognized this ambiguity, claiming the agreed upon definition as a victory of religious conservative advocacy efforts: “. . . while the ICC definition is not perfect, advocates can no longer assert (without further explanation) that ‘gender’ is a mere ‘social construct’ unrelated to ‘immutable biological differences.’”<sup>109</sup> At the same time, NGO Family Voice was cognizant that the phrase “within the context of society” could potentially reopen the definitional issues in the future: “Although the precise meaning of this phrase is presently unknowable, it does provide room to argue that ‘gender’ is not limited exclusively to biology. Accordingly, over time, the ICC definition may once again become open-textured enough to accommodate Fausto-Sterling’s ‘five sexes.’”<sup>110</sup> Despite the concessions to conservative advocates, as a whole, the definition of gender in the Rome Statute is significant as it constitutes the first definition of gender in a legally binding international treaty. While not as radical as notions of gender performance, this understanding is clearly the product of informed feminist/women’s rights advocates.

### The Crime of Forced Pregnancy

In addition to the inclusion of the term “gender”—an issue that seeped into other gender-related provisions in the Rome Statute—the negotiations with conservative NGOs largely centered on questions concerning the crimes that should fall under the Court’s jurisdiction. More specifically, there was “no serious opposition” to the inclusion of rape, sexual slavery, enforced prostitution, and enforced sterilization as grave breaches of Article 3 of the Geneva Conventions.<sup>111</sup> For most delegations, the inclusion of these crimes amounted to merely “codifying the current state of international law” and as such enjoyed the consensus of most state delegations.<sup>112</sup> Unlike the crimes listed above, however, the proposal for the inclusion of “forced pregnancy” as a sexual crime turned out to be the “most contentious” and “most emotionally charged” issues of all the gender provisions.<sup>113</sup> The *New York Times* reported one week prior to the end of the Rome Conference that the battle over the issue of “enforced pregnancy” had developed into “one of the most glaring and painful examples of just how contentious and intractable the process of negotiating a treaty on war crimes is.”<sup>114</sup> As the result of a tedious process of negotiations during the final weeks of the Rome Conference over this issue, the Rome Statute defines “forced pregnancy” as the following:

...the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.<sup>115</sup>

The inclusion of this provision makes the Rome Statute the first international treaty to define forced pregnancy as a criminal action.<sup>116</sup> The opportunity to include such a provision emerged within the context of the cases heard before the ICTR and ICTY. Testimony of witnesses heard by the ad hoc tribunals demonstrated that that there had been systematic attempts to forcibly impregnate women and to subsequently deny them the opportunity to terminate their pregnancies with the purpose of having women give birth to children of a different ethnicity, thus changing the ethnic composition of the population—a crime meeting the central definitional criterion of genocide.<sup>117</sup>

The eventual inclusion of the “forced pregnancy” provision came after an intense battle between women’s rights advocates and conservative forces at the Rome Conference that stemmed from conference participants’ “fundamentally different philosophical, legal, and cultural approaches.”<sup>118</sup> Progressive NGOs, including the Women’s Caucus for Gender Justice, for instance, employed a rhetorical discourse that placed crimes of sexual assault, including rape and forced pregnancy “within the international human rights framework by focusing on how these acts infringe upon fundamental rights and freedoms.”<sup>119</sup> Since the recognition of forced pregnancy as a sexual crime is intricately linked to issues of reproductive freedom and sexual autonomy, conservative NGOs, along with some state delegates of the Arab League countries and the Vatican, strongly opposed its inclusion in the Rome Statute. Originally introduced as “enforced pregnancy” by the Women’s Caucus for Gender Justice, the Holy See made an alternative proposal during the PrepCom prior to the Rome Conference in April 1998 in which it labeled the issue as a provision on “forcible impregnation.”<sup>120</sup> Supporters of the “enforced pregnancy” provision, however, dismissed the Holy See’s proposal as

unacceptable because the phrasing was too narrow in that it referred only to the act of making a woman pregnant rather than the act of confining a woman—who had forcibly been made pregnant—during pregnancy in an attempt to make her carry the baby to full term.<sup>121</sup>

Several scholars and participants in the negotiations have noted that the proposal for a forced pregnancy provision was so divisive that it not only temporarily stalled the negotiations during the Rome Conference but also led to the issue of sexual crimes to resurface “as bargaining chips in other debates and controversies during the subsequent Preparatory Commissions” during which state delegations continued to limit the provision by adding supplementary clauses.<sup>122</sup>

Conservative arguments against forced pregnancy during the negotiation process went in two directions: One line of the argument against forced pregnancy put forth that recognition of “enforced pregnancy” as a crime under the Rome Statute would in itself result in creating the universal right to abortion. The other line focused on framing the provision of forced pregnancy as criminalizing the *denial of access* to abortion. Recounting the perceived intentions of progressive NGOs and international lawmakers, Richard Wilkins, director, and Kathryn Balmforth, executive director and legal counsel of NGO Family Voice, claimed:

The thrust of the proposed “crime” of “enforced pregnancy” was clear: Any legal regime that forbade termination of unwanted pregnancies would be guilty of “enforced pregnancy.” The pro-family coalition argued that, while rape or sexual violence properly should be condemned, the status of “pregnancy” should not be criminalized. While rape or other sexual misconduct that could result in

pregnancy might properly be considered criminal, it is straining the bounds of logic to assert that pregnancy (in any circumstance) is itself a “crime.”<sup>123</sup>

Their article exemplifies how conservative NGOs contorted the forced pregnancy provision into absurdity by suggesting that pregnancy itself could be criminalized under the “forced pregnancy” provision. Moreover, Wilkins and Balmforth along with several other religious conservative organizations, cast the provision shorthand as criminalizing the “denial of access to abortion,”<sup>124</sup> which is an omission under criminal law. By contrast, supporters of the provision of forced pregnancy sought to criminalize the acts of making a woman pregnant and to force women to bear children from those rapes. Hence, whereas religious conservatives cast the provision as criminalizing an omission, women’s rights advocates strove to criminalize what would be considered a commission under criminal law, a crucial difference in perspective on this provision.<sup>125</sup> As such, conservative NGOs’ portrayal of enforced pregnancy veils the nature of the sexual crime being addressed—a woman forcibly made pregnant and kept pregnant as a tool of war or as part of a genocidal campaign.

By focusing on the criminalization of the denial of access to abortion and by presenting forced pregnancy as opening “a back door to allow abortion,”<sup>126</sup> religious conservative NGOs co-opted the issue of “enforced pregnancy” as a crime subject to ICC jurisdiction by articulating the issue to a more familiar anti-abortion discourse. The religious conservatives’ campaign against forced pregnancy was then not about defining a crime of sexual violence used as an instrument of war, genocide, or as a crime against humanity. While the issue of sexual violence may have lurked in the background of

conservative NGO discourse, opposition to the right to terminate a pregnancy, despite the origin of pregnancy, was in the fore.

Emphasizing the criminalization of abortion—rather than the criminalization of the act of making and keeping a woman pregnant—religious conservative NGOs also connected the issue of forced pregnancy to a discourse about international population control policies. As a set of programs designed to limit population growth, this area of international social policy is intricately connected to issues such as women’s rights and reproductive rights and has hence received considerable attention from religious conservative organizations targeting the UN.<sup>127</sup> To illustrate the cooptation of forced pregnancy for a discourse about population control policies, a closer look at the rhetoric of the Population Research Institute (PRI) is instructive.

PRI has focused on advancing anti-population control policies and specifically on “objectively presenting the truth about population-related issues.”<sup>128</sup> The organization was founded as part of the conservative Human Life International organization.<sup>129</sup> The cross-semination between it and other organizations targeting the UN is further evident in the fact that Austin Ruse, founder and president of C-FAM occasionally contributes to PRI publications.<sup>130</sup> “Like all truly pro-life organizations,” PRI claims, it combines an agenda of being “against abortion, against euthanasia, in favor of traditional marriage, against artificial contraception, and in favor of family-friendly societies and economies, all of which are essential to maintaining healthy populations.”<sup>131</sup> Echoing fears over the right to abortion coming in “through the back door,” the Population Research Institute casts the ICC’s proposed provision on “enforced pregnancy” as creating the possibility for an international body to “impose ‘anti-natal views’” on states’ domestic law.<sup>132</sup>

PRI argues that the inclusion of “forced pregnancy” in the Rome Statute of the ICC could open the door to prosecuting those “who oppose coercive population-control policies.”<sup>133</sup> At first sight, this general critique of population control policies might sound like a potentially plausible and well-reasoned argument against the more troublesome aspects of global family planning programs, for instance those instituted by the World Bank.<sup>134</sup> This line of critique, however, is eclipsed by a dogmatic anti-abortion policy stance. Scott Weinberg, then PRI’s director of governmental affairs, declared that the “imposition of anti-natal views on the poorest of the poor by corrupt governments or through an international criminal court, and the prosecution of individuals who heroically oppose coercion, is something which must be opposed with the utmost vigilance.”<sup>135</sup> Framing and focusing on population-control programs as coercive measures redirects attention away from the issue at hand and allows PRI to mask its own form of coercion inherent in this discourse, that is its categorical and unwavering anti-abortion stance. Weinberg proceeds by claiming for his organization the position of the benevolent defender of state-sovereignty that aids “poor” countries in their struggle against repressive measures of family planning programs imposed by global institutions. Weinberg argues, “We’re concerned about violations of the sovereign rights of nations, and the inalienable rights of women and families to determine for themselves the timing and spacing of their pregnancies.”<sup>136</sup> The ICC is harnessed here as an intervention into nation-state sovereignty and women’s and families’ autonomy over the timing and spacing of their reproductive choices.

Curiously, according to Weinberg’s logic, the notion of personal autonomy—which he perceives to be threatened by the institution of the ICC—is not compromised by



the categorical pro-life position his organization endorses. Weinberg frames PRI's opposition to the ICC as being predicated on the ICC violating "women's" and "families'" agency and autonomy, thereby invoking a powerful discourse of individual rights. Weinberg's argument obfuscates, however, that if his organization's pro-life agenda became a reality, women would have very little autonomy over their reproductive decisions. While PRI's rhetoric purportedly defends individuals' autonomy in deciding when to become pregnant, it fails to grant individuals agency once pregnancy is established, even if an existing pregnancy is the result of rape used as a tool of war with genocidal intent.

Adopting a powerful rights discourse and casting the PRI specifically as committed to defending the right to autonomy, the organization assumes by default a leadership role, a moral force legitimated to oppose such "coercive" measures. Weinberg positions the PRI as speaking out in the interest of developing countries who are subject to the repressive population control programs. That is, Weinberg assumes for himself and his organization the voice of the world's oppressed. Buss and Herman have noted the insidiousness of the "development-friendly" rhetoric religious conservatives focusing on population control policies have employed:

By arguing that population policy is irredeemably racist and imperialist, and by characterizing feminism as western and single-focused, the CR UN [Christian Right working to influence the UN] has introduced a new question in to the population debate: who speaks most authentically for the third world? Using the language of racism, inequality, and the needs of the poor, the CR UN has laid

claim to a progressive stance that is says is more authentic, more compassionate, and more sensitive than that of feminists.<sup>137</sup>

Having positioned themselves as defending developing countries against the imperialist imposition of population control programs, religious conservatives are competing with feminists over an important rhetorical position at international forums such as the UN. Moreover, by articulating “enforced pregnancy” to the issue of overpopulation and by casting it as a struggle for individual autonomy and against state-sanctioned coercion, PRI obfuscates the definition of “enforced pregnancy” as a war crime or crime against humanity to further the Population Research Institute’s moral agenda.

The rhetorical efforts of conservative actors to influence the law-making process had a significant impact on the definition of the crime in the Rome Statute. The disagreements between those who supported an enforced pregnancy provision and those opposing such a provision (because it would interfere with domestic abortion laws of the respective countries) were eventually resolved by a compromise to change the provision from “enforced pregnancy” to “forced pregnancy” and to include a definition of the crime itself in the Statute. Moreover, the definition of the crime included a clause that protects states from having to make domestic law correspond with the Rome Statute’s provision and thus protects domestic abortion law from the reach of the ICC.<sup>138</sup> This addition, stating that “this definition shall not in any way be interpreted as affecting national laws relating to pregnancy,”<sup>139</sup> was included as a compromise to the Holy See and several Arab League countries that feared that the definition of “forced pregnancy” would undermine domestic abortion law.<sup>140</sup> The very definition of forced pregnancy is thus contradictory. On the one hand, it recognizes forced pregnancy as a punishable crime; on

the other hand, by recognizing the sovereignty of domestic anti-abortion legislations, it does not establish rights for women to terminate pregnancies resulting from rape used as a tool of war. Thus, those believed to have used rape and forced pregnancy as genocidal tools for altering ethnic composition or carrying out other grave violations of international law may be tried for war crimes; however, the victims are not offered any additional medical or legal recourse beyond that which their nation of origin provides.<sup>141</sup>

### **Vilification of “Radical Feminists”**

Conservative organizations’ rhetorical strategies to obstruct the inclusion of a gender perspective in the ICC treaty reached beyond merely challenging the Rome Statute’s content regarding gender-related provisions and, more generally, the inclusion of gender-sensitive language. Conservative organizations contesting the inclusion of a gender perspective additionally relied heavily on vilifying its adversaries, which was accomplished by portraying women’s rights supporters as adherents of the feminist movement and by vilifying feminism as a “radical” movement. For instance, rather than using “Women’s Caucus for Gender Justice”—the official name of the umbrella organization comprising groups that supported the inclusion of a gender perspective—conservative organizations typically refer to the Women’s Caucus as “feminists.”

The label “feminist” is almost exclusively accompanied by the attribute “radical.” The term “radical feminist” of course does not describe a particular theoretical strand of feminism within the larger feminist movement. Rather, conservative organizations employed the label to invoke already existing negative connotations of feminism

circulating in the larger public discourse. These kinds of discourses are prominent and resonate as feminists and feminism continue to be trivialized and demonized in media representations.<sup>142</sup> What is more, with their recurring emphasis on associating feminists with radicalism, suggesting that feminists act outside the realm of reasonable claims, religious conservative organizations echo a common trope employed in coverage of the transnational women's movement. As Danner and Walsh have shown, U.S. print news coverage of the global feminist movement at international conferences has contributed to an image of feminists as disorganized "bickering" women in conflict, as extreme women or as unfeminine "misfits," thereby emphasizing the already pervasively negative image of feminism and contributing to the further discrediting and marginalization of feminism.<sup>143</sup> Given this context of how feminism and feminists have been portrayed for the public, the "radical feminist" label religious conservative NGOs predominantly employed in their statements is not a neutral descriptor but is harnessed as an epithet to invoke fears of extremism and irrationality and deepen conservative constituents' contempt for the Women's Caucus' agenda in particular, and feminist/women's rights activism in general. Without much elaboration, the Women's Caucus seems to have earned the labels "feminist" and "radical" primarily for its divergence from the positions held by conservative advocates.

When the attribute "radical" was not explicitly used to describe the members of the Women's Caucus, conservative groups alternatively depicted the Women's Caucus' actions as aggressive, drastic measures with far-reaching consequences. "Feminists" are perceived as "intend[ing] to utilize the clause [of enforced pregnancy] to criminalize any denial of access to abortion."<sup>144</sup> Alternatively, the Women's Caucus was portrayed as

“aggressively lobbying for the inclusion of ‘enforced pregnancy.’”<sup>145</sup> According to these accounts, the Women’s Caucus’ advocacy was depicted as a disingenuous effort to sway opinion rather than an honest commitment to women’s rights issues—ostensibly unlike the religious conservatives’ advocacy efforts. Moreover, C-FAM cast the Women’s Caucus’ positions as one of a kind in their extremism and thus as untenable when it cautioned against “the kinds of radical proposals that would be floated” by the Women’s Caucus, or, specifically, the “dangerous language on criminalizing ‘enforced pregnancy.’”<sup>146</sup> C-FAM suggested that “radical” feminists are lacking broader support and therefore political legitimacy while posing an imminent threat to the “sanctity of life.” Exaggerating and misrepresenting the goals of the Women’s Caucus, conservative NGOs drew on a common strategy of religious conservatives in their attack on feminism, namely to craft a “caricature of feminism as a movement of man-hating, power-mongering ideologues who do not really represent most women anyway.”<sup>147</sup>

As a result of conservative organizations’ strategies of vilification, “feminist” and “pro-life” (or “anti-abortion”) identities were construed as mutually exclusive. Religious conservative organizations uniformly cast “feminist” Women’s Caucus members or their proposals as “dangerous,” “radical,” and “aggressive,” thereby foreclosing the possibility of finding consensus and reconciliation between “pro-life” rhetors and “feminists” as the following comment from C-FAM prior to the Rome Conference suggests: “Already feminist forces are contacting national leaders around the world to push their own ICC proposals. UN pro-lifers have called for their allies to do the same.”<sup>148</sup> The differences in positions between the Women’s Caucus and conservative organizations is rendered insurmountable and insoluble, which is further underscored by the use of militaristic

language. Invoking images of combat, C-FAM for instance described the negotiations prior to, during, and following the Rome Conference as “battles,” as a “struggle waged . . . between pro-life/pro-family forces and the radical-feminist Women's Caucus,” and as a struggle over which party can claim “victory” for the outcomes of the negotiation process.<sup>149</sup>

### **Social Change, Sovereignty, and a Radical ICC**

Constructing a Manichean world view of “pro-family” advocates versus the “radically feminist Women’s Caucus,”<sup>150</sup> religious conservative organizations projected the radical dimension of the Women’s Caucus—members of which were involved in the Court’s design—onto the ICC as an institution. Religious conservative organizations influencing the International Criminal Court did not solely perceive the ICC as a dangerous institution for the specific crimes it could prosecute. Rather, they depicted the ICC as a vehicle used by the global feminist movement to promote a larger feminist agenda that would expand from the realm of international law into other areas of international social policy. For instance, Real Women of Canada claimed that the institution of the ICC is being instrumentalized as a means to endorse the very concept of “radical feminism:” “Sadly, any hope of achieving an impartial, objective Court to bring the tyrants of this world to justice dissolved in the wake of actions taken by a Canadian delegation determined to turn the ICC into a powerful vehicle to promote world-wide radical feminism, including abortion and homosexual rights.”<sup>151</sup> Elsewhere, Real Women of Canada crafted an image of the ICC as a feminist “weapon” in the struggle over

international social policy: “While an ICC could be a wonderful tool for building true justice and freedom everywhere, in the context in which the court has been established and will be used, we fear it will be an extremely powerful weapon in the hands of the international anti-life, anti-family movement.”<sup>152</sup>

Conservative organizations cast the ICC as a conduit of women’s rights activists’ attempts to solidify their rule, frequently by suggesting that the Women’s Caucus was driven by ulterior motives. Women’s rights groups were depicted as colonizing forces motivated by imperialist intentions maneuvering to shape the international social policy according to their supposedly nefarious views. In its coverage of the ICC treaty negotiations, Real Women of Canada accused the Canadian delegation of having held a private and secret meeting for “30 carefully selected delegates” in the Canadian embassy in Rome, designed to “indoctrinate the delegates on the feminist agenda, and to reach a secret agreement on the proposed court....”<sup>153</sup> The report concluded conspiratorially that the “primary objective of the Canadian delegation was to obtain approval for a feminist-dominated world court.”<sup>154</sup>

The concerns over the Court’s ability to bring about changes in global social relations was typically expressed in broad and generalizing claims about the Court’s dangerous potential to “change the world.”<sup>155</sup> The ICC—perceived to have been shaped by “radical feminist” views—figured prominently as an “engine for radical social change” in religious conservative organizations’ materials.<sup>156</sup> Accordingly, the ICC became the scapegoat for a whole series of religious conservatives’ fears, including, global feminism and its attendant notions of anti-family politics, specifically an increasing development toward secularization, the recognition of homosexuality, and the

decline of traditional gender roles. Conservative organizations' concerns about a subversion of traditional gender roles were particularly pronounced in the proposed inclusion of gender parity provisions in the Rome Statute. With religious conservative organizations arguing against gender equity in the institutional setup of the court, the proposal caused significant debate during the negotiations. The character of this "debate" is summarized succinctly in an article in the online news service LifeSiteNews, which is operated by the Canadian anti-abortion organization Campaign Life Coalition (CLC), one of the first organizations to focus on the "international dimension of attacks on life and family."<sup>157</sup> The article notes that the "general concept of the court could potentially bring about a major advance in international justice and that is what the public is hearing about the ICC."<sup>158</sup> The concession that the Court could potentially be put to good use is immediately followed by a qualification, claiming that under the current stipulations, the court is a far too dangerous instrument, at risk of being abused by interested parties. The article warned that, "unfortunately, most of its instigators may have radical social change agendas as their first priority for the court."<sup>159</sup> Echoing the slippery slope arguments of other religious conservative organizations, the organization depicted the ICC as a potentially "powerful instrument" that could bring about "forced social change by feminist, homosexual and other radical social change groups."<sup>160</sup> In its logical conclusion, the article ended by exhorting readers to action, cautioning against co-optation of the court by women's rights advocates.

Pro-family activists should spread the word around the world about the dangers of this court and influence governments to NOT ratify the ICC agreement as currently worded. Failing that, they should urge governments to influence the



implementation of the court to strictly ensure that its staffing and direction are not manipulated to serve any radical social change movements.<sup>161</sup>

In an attempt to stifle social change, the article argued against the ICC altogether, encouraging other pro-family organizations to join in lobbying against the ratification of the Court.

The anxiety over the decline of traditional gender roles that could potentially lead to more than modest changes in the social order was often coupled with a discourse about the ICC being the brainchild of an influential but undemocratic elite operating at the international level. NGO Family Voice of the David M. Kennedy Center for International Studies depicted the ICC as a project conceived by an intellectual elite whose values are supposedly out of touch with and unrepresentative of the rest of society. The organization claimed that the crimes defined under the ICC “pose a chilling potential for misuse: rather than deterring horrendous atrocities and vindicating mankind's just vengeance on mass murderers, the ICC could well become an engine for eliminating all cultural, ethnic and religious values that dare to stray from the modern convictions of the ICC's judicial elite.”<sup>162</sup> Casting the drafters and judges of the ICC as a privileged minority with illegitimate social, political, cultural, and religious world views, NGO Family Voice constituted its own identity as one of tradition and therefore supported by and representative of a broad base.

In another position paper, the conservative Mormon David M. Kennedy Center for International Studies cast the values inscribed in the ICC as not being representative, thereby defending its own self-perceived non-ideological position.

Millions of women find support, opportunity for growth and protection within the structure of the traditional family. Millions of women find distinctions between gender roles to be a workable and satisfactory mechanism for division of labor and enhancement of productivity. The fact that these women are typically too busy with their own full and productive lives to become involved in international politics is no justification for subjecting them to the jurisdiction of judges selected for views and ideologies that are utterly foreign to the experience and the desires of these women.<sup>163</sup>

Here, a static view of traditional gender roles was thinly veiled behind the charge of the ICC being an “ideologically skewed” court.<sup>164</sup> The argument against a gender-sensitive Court and thus for the maintenance of traditional gender roles was presented by religious conservative advocates to seem neutral and universally acceptable by turning the charge of ideological predisposition against supporters of gender provisions in the ICC, a strategic move not unusual for conservative rhetors. The David M. Kennedy Center for International Studies claimed the position of speaking as the neutral protector of “tradition,” while associating feminism with “ideological extremism” that could promote “total autonomy, personal gratification and non-accountability for women...”<sup>165</sup> This radical agenda associated with feminists was contrasted with values of traditional societies. The latter have to be protected by “pro-life and pro-family lobbyists” from “feminist activists” who want to use the ICC not only as a permanent legal authority but also “as a tool for imposing their anti-life and anti-family agendas on traditional-minded societies.”<sup>166</sup> While painting their adversaries as closed-minded and malevolent

ideologues, religious conservative organizations cast their own members as the humble protectors of convention. They are, de-facto, the voice of “traditional-minded” societies.

In addition to framing the ICC (and for that matter, other UN-related institutions) as vehicles for a global feminist, pro-choice movement—even in the limited context of discussions about gender and sexual violence during war or as large-scale attacks against a population—conservative organizations have used the ICC to conjure up fears about social change and a shifting role of the nation-state in international politics in a broader sense. The ICC negotiations provided religious conservative organizations with an opportunity to reinforce broader but related discourses of anti-cosmopolitanism that religious conservatives have labored to influence over the last decade and a half at other UN-related events. Thus, while the rhetorical discourse of religious conservative organizations advocating issues concerning the ICC ignited around and were couched in criticisms of specific provisions in the Rome Statute, underlying these charges was a broader rejection of internationalism. At the core of religious conservative organizations’ discourse about the ICC are concerns over the nation-state’s loss of sovereignty to the authority of global institutions, because religious conservatives will have a more difficult time to influence the international community than domestic policies at the level of the nation-state.

In the context of the ICC-related discourse, much of religious conservative organizations’ rhetorical discourse revolved around limiting the definition of human rights. Specifically, religious conservative NGOs challenged to consider reproductive rights (mainly referring to abortion in this context) as human rights. In December 1997, months before the Rome Conference convened, C-FAM alarmed its like-minded

community about the attendance of feminist activists, fueling concerns with its constituents over the impact women's rights advocates could have on solidifying reproductive rights in the international legal system:

Of grave concern to the pro-family activists is the strong presence of many feminist NGOs in the preparation for the upcoming ICC conference. Feminists look longingly at the equation of "reproductive rights" with human rights. They may not suggest it yet, but the question is obvious; will these feminist NGOs, who will be allowed to make official presentations to the conference next summer, one day push to make pro-life crimes against humanity.<sup>167</sup>

Similar to PRI's rhetoric, which presents itself as defender of "natal" rights speaking for developing countries that have been coerced into population control programs, reproductive rights are discussed as being of secondary importance. Richard Wilkins of the World Family Policy Center argued in a speech delivered to the World Family Policy Forum that "key among fundamental human rights are the rights to democratic self-governance and self-determination, the right to maintain diverse cultural and religious practices, and even the right, if people so choose, to "vote their conscience" and to establish governments based on religious principles."<sup>168</sup> Reproductive rights, if considered human rights at all, are sidelined by select human rights that preserve a nation's self-determination, sovereignty and religious freedom.<sup>169</sup>

Along with the ICC, religious conservatives have cast the human rights system as just another channel through which the feminists work to achieve their goals. In her speech "Hijacking Human Rights," delivered before the World Congress of Families II, Kathryn Balmforth argued "The anti-family faction has targeted the human rights system

because it is a direct path to power. The power they seek is the power to curtail the freedom of most of humanity and to do it, ironically, in the name of ‘human rights.’”<sup>170</sup>

Balmforth cast the inclusion of a certain set of rights—arguably women’s rights or rights for previously underprivileged communities—as the product of a (feminist) elitist discourse alienated from the experiences and needs of the majority of the people:

The hijacking of the human rights system by the anti-family movement must be rejected by nations and people who value their families and their sovereignty. It is undemocratic when judges—who are part of a sovereign government with jurisdiction over its people—invent new rights and impose them on the majority. However, it is far, far worse and, I believe, completely illegitimate when committees of “experts”—whatever that word means—invents new rights, and attempt to force them on sovereign nations who have not and would not consent to them.<sup>171</sup>

The statement illustrates how religious conservative discourse over the ICC redirects the debate over human rights. Rather than attending to women’s rights as codifications of internationally recognized norms of conduct in conflict situations, Balmforth’s discourse of human rights focuses on women in need of protection from alleged judges’ ideologies. Balmforth’s claim illustrates how religious conservative NGOs have crafted for themselves an identity of being victimized by feminist lawmakers who have supposedly created the possibility for the ICC to criminalize what conservatives perceive as marginalized pro-life views. Similarly, Wilkins argued, that “The often-difficult debates surrounding many newly established and/or emerging human rights such as family rights, abortion and same-sex marriage should not be resolved by giving an international court

the power to declare that its ideological opponents are criminals.”<sup>172</sup> We see in this discourse a retreat to the nation-state and national sovereignty that are portrayed, along with the family, as a bulwark against the global reach of reproductive and certain other human rights.

Religious conservative organizations’ discourse articulates anxieties over (radical) social change brought about by the transnational women’s movement to concerns over the concentration of power located in international institutions, such as the ICC. The David M. Kennedy Center for International Studies at Brigham Young University, for instance, decries the connection between feminist influence and the ICC: “The ICC is potentially too important and far too powerful to be appropriated as a propaganda machine for radical social experimentation. The idea of an autonomous international body that can reach across national boundaries to individuals is unprecedented enough.”<sup>173</sup> REAL Women of Canada expressed similar concerns over the far-reaching powers of the Court, lamenting that “What should have remained solely a criminal court has, in effect, been transformed into a human rights ombudsman as well.”<sup>174</sup> The statement reveals the organization’s fears over the extensive function of the Court to implement human rights since human rights are seen to enact social change at an international scale. Such authority given to an international institution would amount to a violation of the sovereignty of the nation-state and its ability to determine its domestic politics. How a Criminal Court could exist without being based on the general concept of human rights is left unclear.

Much of religious conservative NGOs’ discourse, then, expresses fears that international institutions like the ICC can influence social policy, a realm that they,

however, perceive as the prerogative of domestic legislation. The fear is that a social policy agenda set by international institutions like the ICC would lead to a universalization of social values that would not be able to take into consideration national or cultural differences—that is, ones not subject to local religious influence. The David M. Kennedy Center for International Studies tellingly wrote:

The ICC statute purports to establish a judicial mechanism with jurisdiction over every individual on the face of the earth, whether or not that individual resides in (or is a citizen of) a country that has ratified the statute. Family Voice's participation was provoked by serious concern that the ICC, as initially proposed, would establish new international norms that could intrude upon traditional culture and religion while at the same time creating a powerful, world-wide judicial engine for the prosecution of organizations and individuals perceived to be in violation of those new norms.<sup>175</sup>

Accordingly, the organization rejects the ICC on the grounds that it imposes a social policy agenda that would violate the sovereignty of the nation-state to determine its own values and norms. With this view on the Court, the NGO was in the company of many other pro-life organizations, who considered “the court as a crucial step in the abandonment of national sovereignty, and the establishment of a tyrannical world government.”<sup>176</sup> Richard Wilkins reiterates these concerns in a language that invokes a rights discourse of freedom and autonomy: “These human rights and individual freedoms are best served if countries preserve their sovereignty and the right to govern their own domestic affairs. An autonomous international court will *not* be responsive to the culturally diverse peoples of the world. Moreover, governance by judges is inherently

undemocratic. The power to determine the contours of domestic policies must be kept close to home—close to the people being governed.”<sup>177</sup> As such, the anti-women’s rights movement represented at the conference in Rome largely reflected the fears and concerns of U.S. conservatives and U.S. opposition to the ICC more generally.

### **Concluding Remarks**

As a whole, the outcome of the advocacy efforts to influence the Rome Statute with regards to the inclusion of a gender perspective is ambiguous. In many respects, the treaty functions as a landmark development for the recognition of gender in international law. The United Nations Special Rapporteur on violence against women, Radhika Coomaraswamy, noted optimistically:

The Rome Statute’s gender provisions are an encouraging example of how the development of the international women’s rights movement is positively impacting international human rights and humanitarian law despite the strong influence of conservative political forces.... While much remains to be done, the progress made since 1994 is extraordinary.”<sup>178</sup>

At the same time, as my analysis has shown, religious conservative NGOs, with the backing of several state delegations, have left their imprint on a long-fought over international treaty like the Rome Statute. While their advocacy efforts have not been successful on all fronts, these organizations’ advocacy in the context of the Rome Statute negotiations attests to the growing influence of a movement comprised of relatively few actors. This is no small feat. More than UN conference documents that function primarily



as manifestations of international values and aspirations an international treaty like the Rome Statute that serves as the basic legal foundation for the International Criminal Court will play a profound role in the ways in which we remember human rights, crimes, the responsibility for such crimes, and for the community that emerges from that memory. In this sense, religious conservative organizations have influenced and will continue to alter the way in which human rights, women's rights, and crimes of sexual and gender violence will be adjudicated and remembered at a global scale.

Whereas the Women's Caucus also saw the creation of the ICC as an opportunity to shape an International Criminal Court and international criminal law according to universal human rights, including women's rights, religious conservative organizations' discourse promoted a parochial understanding of rights in which the nation-state is summoned as a safeguard against the intrusion of universal rights. At the core of religious conservative organizations' rhetoric of social maintenance lies the desire to preserve a traditionalist view of the social order. In the context of the ICC negotiations, religious conservative organizations focused on a rather narrowly defined realm of issues: the potential expansive interpretation of the term gender, the right to abortion under the stipulation of forced pregnancy, and ideological bias of the court and its staff. In their preoccupation with those issues, religious conservatives have employed a rhetorical discourse that systematically ignores questions of how to establish safeguards to protect women from war crimes and crimes against humanity. Moreover, given that the ICC is designed to bring to trial and hold accountable perpetrators who have committed some of the most heinous crimes on a mass scale, religious conservatives' discourse that emphasized the illegitimacy of expanding rights for marginalized communities is not

only disproportionate to the *benefits* a system of legal protection from gender and sexual violence would provide for large numbers of people. What is more insidious of the religious conservative ICC-related discourse, however, is that it reveals the conviction that women and marginalized communities do not deserve legal protection from being targeted for war crimes or crimes against humanity. Having succeeded in eliminating crucial provisions relating to sexual and gender violence and potentially limiting the scope of the definition of the term “gender,” religious conservative actors operating at a transnational level have shown that their campaigns cannot be denied. Their campaign demonstrated that they pose a significant danger to the future of cosmopolitan rights and memory even in political arenas that are generally thought of as the territory of advocates embracing progressive visions of the future. Since international legal institutions, such as the ICC, form the basis for a set of shared values and norms that function as a type of transnational memory for (gender) justice, the discursive strategies of religious conservative organizations challenging such institutions and notions of cosmopolitanism need to be further examined to guarantee the future of gender justice.

### Notes

<sup>1</sup> Doris Buss, “Robes, Relics, and Rights: The Vatican and the Beijing Conference on Women,” *Social and Legal Studies* 7, no. 3 (1998): 342.

<sup>2</sup> Marlies Glasius, *The International Criminal Court: A Global Civil Society Achievement*, Routledge Advances in International Relations and Global Politics (Milton Park, Abingdon, Oxfordshire; New York, NY: Routledge, 2005), 89-90.

<sup>3</sup> *Ibid.*, 85.

<sup>4</sup> Zakia Afrin and Amy Schwartz, “A Human Rights Instrument That Works for Women: The ICC as a Tool for Gender Justice,” in *Defending Our Dreams: Global Feminist Voices for a New Generation*, ed. Shamillah Wilson, et al. (New York: Zed Books, 2005), 154.

<sup>5</sup> United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, (July 15-17, 1998), U.N. Doc. A/CONF. 183/9, available at [http://www2.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www2.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf). Article 8(2)(b)(xxii). The four Geneva Conventions of 1949 and Protocol 1 of 1977 include definitions of what constitutes a grave breach. While the various conventions provide varying specific details, what the definitions of these texts share, is the definition of “grave breaches” as involving “wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and

appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” See *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, adopted August 12, 1949, Article 50; *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, adopted August 12, 1949, Article 51. See also *Convention (III) Relative to the Treatment of Prisoners of War*, adopted August 12, 1949, Article 130 as well as *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, adopted August 12, 1949, Article 147. The texts of the Geneva Conventions are available at the website of the International Committee of the Red Cross (ICRC) at <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView>.

<sup>6</sup> There has recently emerged some discussion of the rise of the influence of conservative forces in the context of women’s rights, especially in the context of the Beijing Conference in 1995 and its successor conference Beijing +5 in 2000. See Elizabeth Jay Friedman, “Gendering the Agenda: The Impact of the Transnational Women’s Rights Movement at the UN Conferences of the 1990s,” *Women’s Studies International Forum* 26, no. 4 (2003); Buss, “Robes, Relics, and Rights: The Vatican and the Beijing Conference on Women,”; Didi Herman, “Globalism’s ‘Siren Song’: The United Nations and International Law in Christian Right Thought and Prophecy,” *The Sociological Review* 49, no. 1 (2001); Jennifer S. Butler, *Born Again: The Christian Right Globalized* (London; Ann Arbor, MI: Pluto Press, 2006).

<sup>7</sup> Buss and Herman, *Globalizing Family Values: The Christian Right in International Politics* (Minneapolis: University of Minnesota Press, 2003), xv.

<sup>8</sup> Ibid.

<sup>9</sup> Marlies Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 78. See also Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, (Ithaca, N.Y.: Cornell University Press, 1998), 189.

<sup>10</sup> Louise Chappell, "Contesting Women's Rights: Charting the Emergence of a Transnational Conservative Patriarchal Network," *Global Society* 20, no. 4 (2006): 495.

<sup>11</sup> Ibid., 496. Similarly, children's rights have emerged as an area in which conservative forces have been particularly active.

<sup>12</sup> Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 78.

<sup>13</sup> Carrie Crenshaw, "The Normality of Man and Female Otherness: (Re)Producing Patriarchal Lines of Argument in the Law and the News," *Argumentation and Advocacy* 32, no. 4 (1996): 183.

<sup>14</sup> Katie L. Gibson, "United States v. Virginia: A Rhetorical Battle between Progress and Preservation," *Women's Studies in Communication* 29, no. 2 (2006): 136.

<sup>15</sup> Ibid., 135.

<sup>16</sup> Ibid.

<sup>17</sup> Kelly D. Askin, "Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles," *Berkeley Journal of International Law* 21 (2003): 294. Askin's article offers a historical account of the recognition of sexual violence in international law.

<sup>18</sup> Cate Steains, "Gender Issues," in *The International Criminal Court: The Making of the Rome Statute—Issues, Negotiations, Results*, ed. Roy S. Lee (The Hague, Boston: Kluwer Law International, 1999), 361-62.

<sup>19</sup> Askin, "Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles," 304.

<sup>20</sup> *Ibid.*, 295.

<sup>21</sup> Kristen Boon, "Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent," *Columbia Human Rights Law Review* 32 (2001): 628.

<sup>22</sup> Pam Spees, "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscape of Justice and Power," *Signs: Journal of Women in Culture and Society* 28, no. 4 (2003): 1237.

<sup>23</sup> Helen Durham, "Women and Civil Society: NGOs and International Criminal Law," in *Women and International Human Rights Law*, ed. Kelly D. Askin and Dorean M. Koenig (Ardsley, NY: Transnational Publishers, 1999), 3:824. See also Lois West, "The United Nations Women's Conferences and Feminist Politics" in *Gender Politics in Global Governance*, ed. Mary K. Meyer and Elisabeth Prügl (Lanham, MD.: Rowman & Littlefield Publishers, 1999), 178.

<sup>24</sup> Friedman, "Gendering the Agenda: The Impact of the Transnational Women's Rights Movement at the UN Conferences of the 1990s," 317.

<sup>25</sup> *Ibid.*

<sup>26</sup> West, "The United Nations Women's Conferences and Feminist Politics," 184.

<sup>27</sup> Steains, "Gender Issues," 360.

<sup>28</sup> Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 79.

<sup>29</sup> In addition to these larger outcomes, the ICTR ruled in the landmark Akayesu judgment that rape is a form of genocide. The ICTY ruled in two cases that rape can be a form of torture.

<sup>30</sup> Hilary Charlesworth and C. M. Chinkin, *The Boundaries of International Law: A Feminist Analysis, Melland Schill Studies in International Law* (Manchester: Juris Pub.: Manchester University Press, 2000), 308.

<sup>31</sup> Afrin and Schwartz, “A Human Rights Instrument That Works for Women: The ICC as a Tool for Gender Justice,” 151.

<sup>32</sup> *Ibid.*, 153.

<sup>33</sup> Judith Gardam, “Women and the Law of Armed Conflict: Why the Silence?,” *The International and Comparative Law Quarterly* 46, no. 1 (1997): 65.

<sup>34</sup> *Ibid.*, 66.

<sup>35</sup> Alda Facio, “A Word (or Two) About Gender,” *ICC Monitor*, no. 6 (November 1997): 10.

<sup>36</sup> Marsha A. Freeman, “International Institutions and Gendered Justice,” *Journal of International Affairs* 52, no. 2 (1999): 529.

<sup>37</sup> Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 79.

<sup>38</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” *McGill Law Journal* 46, no.1 (2000): 234.

<sup>39</sup> Ibid., 221. Article 27 of *Geneva Convention (IV)* reads: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

<sup>40</sup> Rhonda Copelon, “Surfacing Gender: Re-Engraving Crimes against Women in Humanitarian Law,” *Hastings Women’s Law Journal* 5, no. 2 (1994): 248-49. See also Louise Chappell, “Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court,” *Policy and Society* 22, no. 1 (2006): 7.

<sup>41</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” 221.

<sup>42</sup> Copelon, “Surfacing Gender,” 249.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid., 250-53.

<sup>45</sup> Steains, “Gender Issues,” 362.

<sup>46</sup> Ibid., 361-62.

<sup>47</sup> Barbara Bedont and Katherine Hall Martinez, “Ending Impunity for Gender Crimes under the International Criminal Law,” *The Brown Journal of World Affairs* 6, no. 1 (1999): 71.

<sup>48</sup> For a discussion of the crime of rape under the ICTY and ICTR, see Mark Ellis, “Breaking the Silence: Rape as an International Crime,” *Case Western Reserve Journal of International Law* 38 (2006-2007).

<sup>49</sup> Bedont and Martinez, “Ending Impunity,” 71.



<sup>50</sup> See Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law.” See also Chappell, “Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court,” 10. Steains notes that the Office of the Prosecutor in the ICTY was able to overcome certain obstacles with regards to the rape provisions laid out in the Statute “through creative interpretation of the Statute in a manner reflecting development of the law.” Steains, “Gender Issues,” 362-63.

<sup>51</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” 233.

<sup>52</sup> United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*. See Articles 7(1)(g) referring to crimes against humanity; 8(2)(b)(xxii) referring to war crimes in international armed conflict; (8)(2)(e)(vi) referring to war crimes in non-international armed conflict..

<sup>53</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” 234.

<sup>54</sup> Boon, “Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent,” 630.

<sup>55</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” 234.

<sup>56</sup> Freeman, “International Institutions and Gendered Justice,” 529.

<sup>57</sup> Boon, “Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent,” 630.

<sup>58</sup> It should be noted here that while the gender provisions included in the Rome Statute have generally been considered a positive development, some feminist legal scholars have argued that these provisions do not go far enough. For instance, Charlesworth and Chinkin have pointed to the continuing challenges women’s rights face in international law. They argue that despite the fact that advancements were made in several ICC provisions, the construction of women still emphasizes their reproductive identities. See Charlesworth and Chinkin, *The Boundaries of International Law: A Feminist Analysis*, 334.

<sup>59</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” 239.

<sup>60</sup> Facio, “A Word (or Two) About Gender,” 10.

<sup>61</sup> The CICC started with 25 members in 1995 and has grown to include more than 2,500 legal and civil society organizations. Coalition for the International Criminal Court CICC, “An Overview of the ICC and the CICC,” CICC, available at [http://www.iccnw.org/documents/CICCFS-ICC\\_Overview\\_current.pdf](http://www.iccnw.org/documents/CICCFS-ICC_Overview_current.pdf).

<sup>62</sup> Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 80. Glasius notes that although the Women’s Caucus initially evolved out of the Coalition, the Coalition strongly supported the Women’s Caucus’ campaign and made it a member of the Coalition’s Steering Committee.

<sup>63</sup> *Ibid.*, 86.

<sup>64</sup> Ibid., 80-81.

<sup>65</sup> Valerie Oosterveld, "The Definition of 'Gender' in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?," *Harvard Human Rights Journal* 18 (2005): 55.

<sup>66</sup> Copelon, "Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law," 234.

<sup>67</sup> *ICC Monitor*, "Core Principles of the Women's Caucus," *ICC Monitor*, no. 8 (June 1998): 13.

<sup>68</sup> Women's Caucus for Gender Justice, "About the Caucus," Women's Caucus for Gender Justice, available at <http://www.iccwomen.addr.com/caucus/about.htm>, see also <http://www.iccwomen.org/wigjdraft1/Archives/oldWCGJ/aboutcaucus.htm>.

<sup>69</sup> Durham, "Women and Civil Society," 829.

<sup>70</sup> Chappell, "Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court," 14.

<sup>71</sup> Women's Caucus for Gender Justice, "No More Compromises: Bring the Issues of Justice to a Vote," The Advocacy Project, (July 13, 1998), available at [http://www.advocacynet.org/resource/375#Women\\_s\\_Caucus\\_for\\_Gender\\_Justice\\_in\\_the\\_International\\_Criminal\\_Court](http://www.advocacynet.org/resource/375#Women_s_Caucus_for_Gender_Justice_in_the_International_Criminal_Court). Advocacy Project (AP) provided detailed coverage of the negotiations and texts distributed. "AP was established in June 1998 at the request of the NGO Coalition for an International Criminal Court (CICC). The Coalition asked for help in covering the Rome conference to draft an ICC statute and AP produced an online newsletter (*On the Record*) from the conference which was sent out to CICC members

worldwide. AP continued on a project-by-project basis until July 2001, when the project acquired 501c3 (nonprofit) status, registered in Washington, DC.” See Advocacy Project, “Frequently Asked Questions,” Advocacy Project, available at [http://advocacynet.org/page/questions#When\\_was\\_the\\_Advocacy\\_Project\\_established\\_\\_and\\_why\\_\\_](http://advocacynet.org/page/questions#When_was_the_Advocacy_Project_established_and_why__).

<sup>72</sup> The Women’s Caucus for Gender Justice dissolved in March 2003 after the drafting of ICC-related documents were completed. Since 2004, the women’s rights organization Women’s Initiatives for Gender Justice has been monitoring and advocating gender justice in the work of the ICC. See <http://www.iccwomen.org/>.

<sup>73</sup> Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” 233. See also Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 82-83.

<sup>74</sup> C-FAM, “About C-FAM,” available at [http://www.c-fam.org/about\\_us/](http://www.c-fam.org/about_us/). C-FAM’s mission is to “publish” and “[promote] scholarship related to the proposition that the UN and other international institutions harm a true understanding of international law and in the process undermine the family and other institutions man requires for a just, free and happy life.” C-FAM was established in response to the organization Human Life International having been denied accreditation for consultative status with the UN Economic and Social Council in the 1990s. See Jennifer Butler, “For Faith and Family: Christian Right Advocacy at the United Nations,” *Public Eye* 14, no. 2-3 (2000): 4.

<sup>75</sup> World Family Policy Center, “About the World Family Policy Center,” World Family Policy Center, available at <http://www.law2.byu.edu/wfpc/about.htm>.

<sup>76</sup> Richard Wilkins, William Perry, and Marcus Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court,” World Family Policy Center, (1998), available at [http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About\\_the\\_WFPC/papers/ICC\\_Report.html#N\\_5\\_](http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About_the_WFPC/papers/ICC_Report.html#N_5_).

<sup>77</sup> Ibid. See also “‘The Two Sexes’ in the Various Versions of the Draft Statute: The Need for Conformity,” position paper prepared by the David M. Kennedy Center for International Studies. Position paper in Wilkins, Perry, and Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court,” Appendix F.

<sup>78</sup> Buss and Herman, *Globalizing Family Values: The Christian Right in International Politics*, xxi. Buss and Herman prefer the label Christian Right (or CR)—even though the movement does comprise non-Christian advocates and delegations—because the movement remains spearheaded by the Christian Right and is largely based on the worldviews of the Christian Right. See Buss and Herman, *Globalizing Family Values: The Christian Right in International Politics*, xiv.

<sup>79</sup> The Vatican, or Holy See, is the only state that is not a member of the United Nations and therefore does not have the power to vote in UN decisions. It does, however, have permanent observer status at the UN. In my analysis, I am mainly interested in the rhetoric employed by conservative NGOs. These NGOs, did, however find a relatively powerful ally in the Vatican that converged with many of their positions. For a more detailed discussion of the rhetorical discourse the Vatican employed at the UN Beijing

Conference in 1995, see Buss, “Robes, Relics, and Rights: The Vatican and the Beijing Conference on Women.” For a discussion of the rhetorical discourses employed by the Vatican on issues of sexual reproduction and sexuality during the UN-sponsored International Conference on Population and Development in Cairo in 1994, see Palena R. Neale, “The Bodies of Christ as International Bodies: The Holy See, Wom(b)an and the Cairo Conference,” *Review of International Studies* 24 (1998).

<sup>80</sup> Afrin and Schwartz, “A Human Rights Instrument That Works for Women: The ICC as a Tool for Gender Justice,” 152.

<sup>81</sup> Butler, “For Faith and Family: Christian Right Advocacy at the United Nations,” 10.

<sup>82</sup> Jennifer Butler, “300 Religious Right Participants Attend Beijing Prepcom: The Religious Right at the Beijing+5 Prepcom,” Global Policy Forum Policy Paper, no. 16, (June 2000), Global Policy Forum, available at <http://www.globalpolicy.org/ngos/ngo-un/access/2000/beij5-2.htm>. Jennifer Butler describes additional tactics employed by the conservative NGOs used at the Beijing +5 PrepCom Conference in 2000, including the specific targeting of youth and health caucuses; intimidation tactics, such as wearing large red buttons with the words “motherhood” or “family” written on it; and refusing to make their own materials openly available.

<sup>83</sup> Anick Druelle, “Right-Wing Anti-Feminist Groups at the United Nations,” Institut de recherches et d’études féministes, Université du Québec à Montréal, Centre de documentation sur l’éducation des adultes et la condition féminine (CDÉACF), (May

2000), available at <http://netfemmes.cdeacf.ca/documents/Anti-Feminist%20Groups-USLetter.pdf> (p. 10-16).

<sup>84</sup> See C-FAM, “About C-FAM,” C-FAM, available at [http://www.c-fam.org/about\\_us/](http://www.c-fam.org/about_us/).

<sup>85</sup> Austin Ruse, “Un-Pro-Life Lobbying: Full Contact Sport,” *Human Life Review* 26, no. 1 (2000): 23.

<sup>86</sup> Austin Ruse, “Toward a Permanent United Nations Pro-Family Bloc. Remarks to the World Congress of Families II,” World Congress of Families, (1999), available at [http://www.worldcongress.org/wcf2\\_sprks/wcf2\\_ruse.htm](http://www.worldcongress.org/wcf2_sprks/wcf2_ruse.htm). Other tactics Ruse cited as particularly successful was the publication and distribution of a daily newspaper (rather than fliers) during the conference.

<sup>87</sup> Friedman, “Gendering the Agenda: The Impact of the Transnational Women’s Rights Movement at the Un Conferences of the 1990s,” 326.

<sup>88</sup> Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 57.

<sup>89</sup> Governments that opposed the inclusion of the term “gender,” included “Qatar, Libya, Egypt, Venezuela, Guatemala (but flexible), United Arab Emirates, Saudi Arabia, Kuwait, Syria, Turkey, Sudan, Bahrain, Iran, Yemen, Brunei, and Oman.” See Bedont and Martinez, “Ending Impunity,” 85.

<sup>90</sup> Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 56.

<sup>91</sup> Steains, “Gender Issues,” 372.

<sup>92</sup> Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 63.

<sup>93</sup> REAL Women of Canada, “Canada Courts Disaster with World Court,” Newsletter XVI, no. 10 (July/August 1998), REAL Women of Canada, available at [www.realwomenca.com/html/newsletter/1998\\_July\\_Aug/Article\\_1.html](http://www.realwomenca.com/html/newsletter/1998_July_Aug/Article_1.html).

<sup>94</sup> Austin Ruse, “Feminists Refuse to Define Their ‘Gender Agenda’ for the International Criminal Court,” C-FAM, (June 26, 1998), available at [http://www.c-fam.org/publications/id.46/pub\\_detail.asp](http://www.c-fam.org/publications/id.46/pub_detail.asp).

<sup>95</sup> Glasius, *The International Criminal Court: A Global Civil Society Achievement*, 90.

<sup>96</sup> See Buss, “Finding the Homosexual in International Politics,” 268-71.

<sup>97</sup> For a more detailed discussion of more or less probable interpretations of the term “gender” in the Rome Statute and the term’s implications for the recognition of sexual orientation and transgendered individuals, particularly in the context of gender-based persecution, see Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 78.

<sup>98</sup> See for instance a paper delivered by Farooq Hassan at the World Congress in 2004 in which he employs a language invoking deviance and evil when referring to “certain lifestyles that violate all accepted canons of decent living.” Specifically, Hassan voiced concerns over ICC provisions posing a threat to “traditionalists of Family values” in the context of gender persecution. With the ICC having jurisdiction over persecution looming large, he painted apocalyptic scenarios in which “teaching or forceful dissemination of



the moral and realistic evils about the actions of the sexual deviant community of a group may be sufficient for having infringed the law relating to ‘prosecution.’” See Farooq Hassan, “International Criminal Court: Family Related Issues.” Synopsis of Paper Presented at the World Congress of Families III Mexico City, Family and the UN Mexico, World Congress of Families, (March 30, 2004), available at [http://www.worldcongress.org/wcf3\\_spkrs/wcf3\\_hassan.htm](http://www.worldcongress.org/wcf3_spkrs/wcf3_hassan.htm).

<sup>99</sup> REAL Women of Canada, “What’s the Argument for ‘Gender Justice?’” Position paper prepared by the David M. Kennedy Center for International Studies. Position paper in Wilkins, Perry, and Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court,” Appendix G, World Family Policy Center, (1998), available at [http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About\\_the\\_WFPC/papers/ICC\\_Report.html#N\\_5\\_](http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About_the_WFPC/papers/ICC_Report.html#N_5_).

<sup>100</sup> Steains, “Gender Issues,” 372-73.

<sup>101</sup> Women’s Caucus for Gender Justice, “Clarification of Term ‘Gender’,” Women’s Caucus for Gender Justice, available at <http://www.iccwomen.org/wigjdraft1/Archives/oldWCGJ/resources/gender.htm>.

<sup>102</sup> Steains, “Gender Issues,” 373. For a comparison to the use of “gender” in other UN documents, see Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 66-71.

<sup>103</sup> Steains, “Gender Issues,” 371.

<sup>104</sup> There is some debate amongst scholars about whether the definition adopted in the Rome Statute emphasizes social construction rather than biological essentialism.

<sup>105</sup> United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, Article 7(3).

<sup>106</sup> Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 65.

<sup>107</sup> Steains, “Gender Issues,” 374-75.

<sup>108</sup> Oosterveld, “The Definition of ‘Gender’ in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?,” 57.

<sup>109</sup> Wilkins, Perry, and Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.”

<sup>110</sup> *Ibid.*

<sup>111</sup> Steains, “Gender Issues,” 365.

<sup>112</sup> *Ibid.*

<sup>113</sup> Steains, “Gender Issues,” 366.

<sup>114</sup> Alessandra Stanley, “Semantics Stalls Pact Labeling Rape a War Crime,” *New York Times*, July 9, 1998, A3.

<sup>115</sup> United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, Article 7(2)(f).

<sup>116</sup> Boon, “Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent,” 656.

<sup>117</sup> See Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace, Division of International Law, 1944), 79.

<sup>118</sup> Boon, “Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent,” 637.

<sup>119</sup> *Ibid.*, 640.

<sup>120</sup> Steains, “Gender Issues,” 366.

<sup>121</sup> *Ibid.* Steains further notes that some countries argued that the inclusion of the “forced pregnancy” provision was altogether unnecessary because it would be covered in the Rome Statute under the crimes of rape and unlawful detention. See Steains, “Gender Issues,” 367.

<sup>122</sup> Boon, “Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent,” 638. See also Steains, “Gender Issues,” 365-69.

<sup>123</sup> Richard G. Wilkins and Kathryn O. Balmforth, “The International Criminal Court, Human Rights and the Family,” in *Fifty Years after the Declaration: The United Nations’ Record on Human Rights*, ed. Teresa Wagner and Leslie Carbone (Lanham, Md.: University Press of America; Family Research Council, 2001), 101-02.

<sup>124</sup> Patrick Goodenough, “Pro-Family Groups Worry About Effects of International Court,” *Cybercast News Service*, (February 11, 2002), available at <http://www.cnsnews.com/public/content/article.aspx?RsrcID=11692>. The article was

published on [cns.news.com](http://cns.news.com) (Cybercast News Service), a conservative news site that is a subsidiary of the conservative Media Research Center.

See also the response to Goodenough's article by Anne Heindel, Deputy Convener, American Non-Governmental Organizations Coalition for the ICC (AMICC), available at [http://www.amicc.org/docs/Feb11\\_02.pdf](http://www.amicc.org/docs/Feb11_02.pdf).

<sup>125</sup> See Bedont and Martinez, "Ending Impunity," 74.

<sup>126</sup> *Terraviva*, "Africa Pushing Gender Concerns," Inter Press Service News Agency, (June 30, 1998), available at <http://www.ips.org/icc/tv300602.htm>.

<sup>127</sup> This issue has become a principal issue for religious conservatives as the issue is able to subsume a number of related causes, including women's rights, abortion, and questions regarding the waning sovereignty of the nation-state. For a more detailed discussion of how population control figures in conservative organizations' rhetoric at the international level, see Buss and Herman, *Globalizing Family Values: The Christian Right in International Politics*, ch. 4.

<sup>128</sup> The Population Research Institute (PRI), available at <http://www.pop.org/>.

<sup>129</sup> See Population Research Institute, "PRI FAQ's (Frequently Asked Questions)," Population Research Institute, available at <http://www.pop.org/0000000094/pri-faqs-frequently-asked-questions>.

<sup>130</sup> See Ruse, "UN-Pro-Life Lobbying: Full Contact Sport."

<sup>131</sup> Population Research Institute, "PRI FAQ's (Frequently Asked Questions)."

<sup>132</sup> Goodenough, "Pro-Family Groups Worry About Effects of International Court."

<sup>133</sup> *Ibid.*

<sup>134</sup> These family planning programs have been criticized for the implicitly operating assumptions about women's reproductive roles, for the focus on medical interventions rather than larger structural changes, and for the potential instrumentalization of such programs for political purposes. For an insightful discussion of the assumptions operating in transnational family planning programs and women's resistance to such policies in the case of World Bank-funded family planning programs in Indonesia, see, for instance Leslie K. Dwyer, "Spectacular Sexuality: Nationalism, Development and the Politics of Family Planning in Indonesia," in *Gender Ironies of Nationalism: Sexing the Nation*, ed. Tamar Mayer (London: Routledge, 2000).

<sup>135</sup> Goodenough, "Pro-Family Groups Worry About Effects of International Court."

<sup>136</sup> Ibid.

<sup>137</sup> Buss and Herman, *Globalizing Family Values: The Christian Right in International Politics*, 77.

<sup>138</sup> See Boon, "Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent," 656-66.

<sup>139</sup> United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, Article 7 (2)(f).

<sup>140</sup> Boon notes that the clause is "meant to ensure that forced pregnancy will not be used to supplant anti-abortion laws or endanger Catholic hospitals that refuse to provide abortions to women who become pregnant through rape." See Boon, "Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent," 659.

<sup>141</sup> Despite this clause that limits the reach of the ICC provision on forced pregnancy, the clause may be less restrictive as it may seem. Boon notes that even in countries with strict abortion laws on the books, these laws are not always categorically applied. *Ibid.*, 666.

<sup>142</sup> See Rebecca Ann Lind and Colleen Salo, “The Framing of Feminists and Feminism in News and Public Affairs Programs in U.S. Electronic Media,” *Journal of Communication* 52, no. 1 (2002).

<sup>143</sup> See Lauren Danner and Susan Walsh, “‘Radical’ Feminists And ‘Bickering’ Women: Backlash in U.S. Media Coverage of the United Nations Fourth World Conference on Women,” *Critical Studies in Mass Communication* 16 (1999).

<sup>144</sup> Austin Ruse, “Feminists Challenge National Sovereignty in International Criminal Court Negotiations,” C-FAM, (April 3, 1998), available at [http://www.c-fam.org/publications/id.33/pub\\_detail.asp](http://www.c-fam.org/publications/id.33/pub_detail.asp).

<sup>145</sup> Austin Ruse, “‘Enforced Pregnancy’ Is Key Concern at International Criminal Court Negotiations,” C-FAM, (March 20, 1998), available at [http://www.c-fam.org/publications/id.29/pub\\_detail.asp](http://www.c-fam.org/publications/id.29/pub_detail.asp). My emphasis.

<sup>146</sup> Austin Ruse, “Last Minute Holy See Proposal May Guarantee Debate On ‘Enforced Pregnancy’ In Rome,” C-FAM, (April 6, 1998), available at [http://www.c-fam.org/publications/id.34/pub\\_detail.asp](http://www.c-fam.org/publications/id.34/pub_detail.asp).

<sup>147</sup> Sara Diamond, *Not by Politics Alone: The Enduring Influence of the Christian Right* (New York: Guilford Press, 1998), 127.

<sup>148</sup> Ruse, “Last Minute Holy See Proposal May Guarantee Debate On ‘Enforced Pregnancy’ In Rome.”

<sup>149</sup> See Austin Ruse, "International Criminal Court Debate Begins in Rome: Feminists Face First Setback," C-FAM, (June 19, 1998), available at [http://www.c-fam.org/publications/id.45/pub\\_detail.asp](http://www.c-fam.org/publications/id.45/pub_detail.asp); Austin Ruse, "Aggressive Campaign Planned for Speedy Ratification," C-FAM, (October 9, 1998), available at [http://www.c-fam.org/publications/id.61/pub\\_detail.asp](http://www.c-fam.org/publications/id.61/pub_detail.asp); Austin Ruse, "Rome Conference Ends without Consensus for Creating International Criminal Court," C-FAM, (July 18, 1998), available at [http://www.c-fam.org/publications/id.49/pub\\_detail.asp](http://www.c-fam.org/publications/id.49/pub_detail.asp).

<sup>150</sup> Austin Ruse, "Protection for Families Dropped from New International Criminal Court," C-FAM, (December 17, 1999), available at [http://www.c-fam.org/publications/id.120/pub\\_detail.asp](http://www.c-fam.org/publications/id.120/pub_detail.asp).

<sup>151</sup> REAL Women of Canada, "Canada Courts Disaster with World Court."

<sup>152</sup> *Interim*, "ICC: Promise of Justice or Threat of Tyranny?," *Interim*, (August 1998), available at <http://www.theinterim.com/august98/4ICC.html>.

<sup>153</sup> REAL Women of Canada, "Canada Courts Disaster with World Court."

<sup>154</sup> *Ibid.*

<sup>155</sup> LifeSiteNews, "International Criminal Court Approved," LifeSiteNews, (July 19, 1998), available at <http://www.lifesitenews.com/ldn/1998/jul/980719b.html>.

<sup>156</sup> Austin Ruse, "New International Court Nears Reality/Pro-Lifers Claim Small Victories," C-FAM, (July 7, 2000), available at [http://www.c-fam.org/publications/id.149/pub\\_detail.asp](http://www.c-fam.org/publications/id.149/pub_detail.asp).

<sup>157</sup> LifeSiteNews, "About LifeSiteNews.com," LifeSiteNews, available at <http://www.lifesitenews.com/aboutlifesite/index.html>.

<sup>158</sup> LifeSiteNews, “International Criminal Court Approved.”

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> NGO Family Voice, “The ICC’s ‘New International Crimes:’ A Call for Caution.”

Position paper in Wilkins, Perry, and Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court,” Appendix D, World Family Policy Center, available at

[http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About\\_the\\_WFPC/papers/ICC\\_Report.html#N\\_5\\_](http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About_the_WFPC/papers/ICC_Report.html#N_5_).

<sup>163</sup> NGO Family Voice, “Judges and prosecutors must be professionally qualified and ideologically neutral,” Position paper in Wilkins, Perry, and Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an

International Criminal Court,” Appendix D, World Family Policy Center, available at [http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About\\_the\\_WFPC/papers/ICC\\_Report.html#N\\_5\\_](http://web.archive.org/web/20040628194703/http://www.worldfamilypolicycenter.org/wfpc/About_the_WFPC/papers/ICC_Report.html#N_5_).

<sup>164</sup> Austin Ruse, “Catholic, Muslim Nations Unite Against ‘Enforced Pregnancy’ And ‘Gender Justice,’” C-FAM, (July 10, 1998), available at [http://www.c-fam.org/publications/id.48/pub\\_detail.asp](http://www.c-fam.org/publications/id.48/pub_detail.asp).

<sup>165</sup> NGO Family Voice, “Judges and prosecutors must be professionally qualified and ideologically neutral.”



<sup>166</sup> Ruse, “International Criminal Court Debate Begins in Rome: Feminists Face First Setback.”

<sup>167</sup> Austin Ruse, “International Criminal Court Takes a Giant Step in UN General Assembly,” C-FAM, (December 19, 1997), available at [http://www.c-fam.org/publications/id.18/pub\\_detail.asp](http://www.c-fam.org/publications/id.18/pub_detail.asp).

<sup>168</sup> Richard Wilkins, “Doing the Right Thing: The International Criminal Court and Social Engineering,” Address to the 2nd Annual World Family Policy Forum, Provo, Utah, (July 11, 2000), in *Proceedings of the World Family Policy Forum 2000*, available at <http://www.worldfamilypolicy.org/New%20Page/forum/2000/wfpf2000.pdf> (p.93).

<sup>169</sup> *Ibid.*

<sup>170</sup> Kathryn O. Balmforth, “Hijacking Human Rights. Remarks to the World Congress of Families II,” World Congress of Families, (November 17, 1999), available at [http://www.worldcongress.org/wcf2\\_spkrs/wcf2\\_balmforth.htm](http://www.worldcongress.org/wcf2_spkrs/wcf2_balmforth.htm).

<sup>171</sup> *Ibid.*

<sup>172</sup> Wilkins, “Doing the Right Thing: The International Criminal Court and Social Engineering,” 93.

<sup>173</sup> NGO Family Voice, “Judges and prosecutors must be professionally qualified and ideologically neutral.”

<sup>174</sup> REAL Women of Canada, “Canada Courts Disaster with World Court.”

<sup>175</sup> Wilkins, Perry, and Mumford, “The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.”

<sup>176</sup> *Interim*, “ICC: Promise of Justice or Threat of Tyranny?”

<sup>177</sup> Wilkins, “Doing the Right Thing: The International Criminal Court and Social Engineering,” 93.

<sup>178</sup> United Nations Special Rapporteur on Violence against Women, *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women*, Report E/CN.4/2003/75/Add.1, UN Economic and Social Council, (February 27, 2003), available at

[http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/A9C6321593428ACFC1256CEFF0038513E/\\$File/G0311304.pdf?OpenElement](http://www.unhchr.ch/huridocda/huridoca.nsf/AllSymbols/A9C6321593428ACFC1256CEFF0038513E/$File/G0311304.pdf?OpenElement) (p. 10).

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<http://www.amnesty.org/en/library/asset/IOR40/006/2005/en/dom-IOR400062005en.pdf>.

## Chapter 5

### **Before Crises make it to the ICC: Cultural Texts Remembering and Promoting Intervention in Darfur**

*“Never again” we said after the Holocaust. And after the Cambodian genocide in the 1970s. And then again after the Rwanda genocide in 1994. And then, just a year later, after the Srebrenica massacre in Bosnia. And now we’re asking ourselves, in the face of more mass killing and dying in Darfur, whether we really are capable, as an international community, of stopping nation-states murdering their own people. How many more times will we look back wondering, with varying degrees of incomprehension, horror, anger and shame, how we could have let it all happen?”*

“Crimes against Humanity: Overcoming Global Indifference,” 2006

Gandel Oration for B’nai B’rith Anti-Defamation Commission by Gareth Evans, President of International Crisis Group, University of New South Wales, Sydney, 30 April 2006

Each of the chapters of this project has discussed aspects of the ICC including the development, the U.S.’s unsigning, the struggle for increasing public support, and the negotiations over the inclusion of women’s rights. The rhetorical discourses pertinent to each of these areas were discussed in terms of their function as sites of potential transnational memory production. While the previous chapters centered on efforts to create a transnational memory (and the challenges toward it), this chapter’s focus is on

the employment of already existing transnational memory discourses evident in existing human rights norms.<sup>1</sup> Specifically, I examine the rhetoric of a set of advocacy campaigns promoting intervention in the humanitarian crisis in the Darfur region of Sudan. The focus of this chapter is on how genocide—as an already established human rights norm and thus a form of transnational memory—is invoked in a number of mediated texts arguing for an intervention in Darfur, Sudan and how and with what consequences these texts promote public activism and intervention. Although intervention is the explicitly desired outcome of the advocacy efforts discussed in this chapter, the critical focus of this chapter are questions concerning how humanitarian responses evoke and constitute transnational subjectivities and communities. As such, the focus is on the consequences these advocacy texts have for the solidification of cosmopolitan values and the cultivation of cosmopolitan communities.

This chapter continues the trajectory of work set out in the earlier chapters by focusing on how advocacy groups generate a sense of urgency, raise public awareness, and mobilize publics to take action. By looking at advocacy campaigns focused on the atrocities committed in the Darfur region of Sudan, we are able to see how advocacy groups may influence the international agenda once an institution like the International Criminal Court has entered into force. In the case of the atrocities in Darfur, the response of the international community was largely one of inaction or at least ineffective action. Though the ICC began to investigate the situation earlier, it was only in 2009 that arrest warrants were issued for principal perpetrators of the atrocities. The media campaigns addressed in this chapter thus represent voices seeking to influence international attitudes and, consequently, shaping the work of the ICC.

As discussed in the introduction of this project, the realities of globalization have made international codependency a fact of life, not something to be opted in or out of. Whereas human rights discourses often emerge out of particular (national, local) historic situations, human rights/memory discourses have become increasingly universalized. Vice versa, discourses of universal human rights must be translated to particular situations to promote intelligibility and efficacy for particular audiences. Accordingly, the veracity of transnational co-dependence has not freed advocates for cosmopolitan values from the strictures of the nation-state and the discourses it engenders. On the contrary, issues that are explicitly of international concern are rendered into a language of national interest and translated to audiences of particular nation-states.

Both official and unofficial advocates parallel the crisis in Darfur to the Holocaust—using the mantra of Holocaust remembrance, “never again,” to legitimate various modes of intervention. By invoking the Holocaust, advocates tap into larger human rights norms already rooted in a kind of transnational collective memory. At the same time, the discourses produced by advocacy texts calling for an intervention in Darfur, I argue, are marked by a heavy reliance on the paradigm of the nation-state. While the employment of an anti-genocide discourse invokes a type of transnational memory and cosmopolitanism, these discourses are simultaneously characterized by a rhetoric of domestication and, by extension, a depoliticization of the conflict. I argue that advocates and artists in the culture industries stand at the vanguard for publicizing and publicly adjudicating the crisis in Darfur, however, they are doing so at the cost of depoliticizing the conflict as their discourses decontextualize and overly personalize the conflict in the hopes of building support for their causes. In this sense, the advocacy

campaigns employ transnational memory discourses while simultaneously domesticating norms and conceptualizations of transnationalism.

In my analysis, I draw on several mediated texts representing the main modalities for producing and circulating knowledge and public opinion about the conflict in Darfur. I begin with mtvU's (Music Television University) multimodal advocacy on the issue, including their public service announcement on Darfur, the short documentary *Translating Genocide*, and the Flash game *Darfur is Dying*. While attempting to advocate for a termination of human rights violations in the crisis region, these discourses also trivialize and depoliticize the crisis.

As a counterpoint to the documents provided by mtvU, I turn towards a set of texts that are potentially more productive in mobilizing public support to end the genocide in Sudan. I examine Brian Steidle's photographic witnessing of human rights violations and genocide in Darfur depicted in the feature length documentary film *The Devil Came on Horseback*. Like *Darfur Diaries*, a film used by human rights advocates to educate about Darfur, *The Devil Came on Horseback* is a highly acclaimed documentary film intent on shaping public opinion in hopes of expediting an international intervention to end the genocide in Darfur. Next, I discuss the strategies presented in the manuscript *Not On Our Watch*, co-authored by Don Cheadle, an Academy Award nominated actor, and John Prendergast who was formerly an advisor in the Clinton administration. They too, I argue, overly focus on domestic concerns in the advocacy campaign, but do so in a way that provides room for cosmopolitanism as they invite audiences to re-member themselves as part of both national and international communities. I continue by discussing a new modality of technological witnessing

offered by the Google Genocide Mapping Project. The mapping project is produced by a collaboration between Google and the United States Holocaust Memorial Museum's Committee on Conscience. This tool makes an innovative use of the Google Earth platform to circulate information about and direct involvement for individuals to help intervene in the crisis. I conclude with some reflection on political advocacy expressed cynically in the phrase "save the puppy."

### **Background: The Darfur Conflict**

Since 2003 a conflict between an Arab-dominated government and an African minority in the western region of Sudan has beset the area in the western region of Sudan known as Darfur. The conflict began in February 2003 when two African rebel movements, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), revolted claiming more rights for the Darfuri people who, they argue, have been neglected by the Sudanese government. Lacking military resources to stifle the upsurge, the Sudanese government drew upon local tribes to help fighting the rebels, amongst them the Arab militia referred to as "Janjaweed" or the "evil horsemen."<sup>2</sup>

In January 2008, Amnesty International released a report indicating that the total number of casualties was nearing 300,000 with 90,000 believed to have been killed as a direct result of the conflict and approximately 200,000 considered to have died from conflict related causes.<sup>3</sup> With the destruction of thousands of villages, 2.5 million civilians have been internally displaced from their homes and are now seeking refuge in camps for internally displaced people in Darfur and the neighboring Chad. This report

was just a recent estimate of the death toll in a conflict that has long been on the radar of the international community. In 2004, the United States labeled the crisis in Darfur a “genocide” and was in favor of moving peacekeeping troops into the region. Still, the joint effort between the United Nations and the African Union to send peacekeeping troops in 2008 moved ahead only slowly.<sup>4</sup>

While the crisis is often depicted as an ethnic conflict, it began primarily as a struggle over land rights and resources. Before the conflict broke out in 2003, Arab tribes, who were predominantly semi-nomadic herders, lived alongside predominantly sedentary African farmers. With the region having experienced decades of drought, however, nomadic Arab tribes saw themselves increasingly forced to move into the areas populated by African farmers in search for water and land. A struggle for scarce resources quickly devolved into what Gérard Prunier, Research Professor at the University of Paris and expert on East-Africa, describes as *the* global perspective on African crises. He states that “for the world at large, Darfur was and remained the quintessential ‘African crisis’: distant, esoteric, extremely violent, rooted in complex ethnic and historical factors which few understood, and devoid of any identifiable practical interest for the rich countries.”<sup>5</sup> As such, the situation initially did not deserve the attention it deserved.

Increased global awareness about the conflict is widely credited as emerging from UN Secretary Kofi Annan’s speech commemorating the tenth anniversary of the genocide in Rwanda (April 7, 2004). On that date, Annan launched his Action Plan to



Prevent Genocide, which focused on the humanitarian crisis happening in Darfur. Annan announced that the UN would

send a high-level team to Darfur to gain a fuller understanding of the extent and nature of the crisis, and to seek improved access to those in need of assistance and protection. It is vital that international humanitarian workers and human rights experts be given full access to the region, and to the victims, without further delay. If that is denied, the international community must be prepared to take swift and appropriate action.<sup>6</sup>

Exactly what swift and appropriate action was or could be was not made explicitly clear, but the resolve and force of Annan's message suggests that the international community was designated to intervene with humanitarian aid on behalf of the victims and, if the victims could not be reached, that the international community would intervene by other means. The articulation of the crisis in Darfur to both the Rwandan genocide and the Action Plan to Prevent Genocide clearly directed his global audience to begin interpreting the crisis in Darfur as "genocide." Remembering the event under this term, as we will see later, comes with requisite consequences. The situation was described in explicit terms by UN Security Council President Ambassador John Danforth in November 2004. He stated that "the problem in Darfur is that people are killing, raping, pillaging and removing people from one place to another without their permission."<sup>7</sup> It was in this context that the United Nations Security Council passed several resolutions in 2004 calling for action in the Darfur region of Sudan including the disarmament of nomadic militants known as the Janjaweed and the opening of peace negotiations to end years of violence in the region.

In September 2004, the Security Council established a Commission to investigate the human rights abuses in Darfur that are widely recognized as genocide. While the Commission's report, released in January 2005, demonstrated that crimes against humanity and war crimes had been committed in Darfur, the Commission did not suggest that the Government of Sudan (GoS) had pursued a policy of genocide as the GoS had not acted with the intent to destroy "in whole or in part [...] an ethnical group [...]"<sup>8</sup> Rather, the report concluded, the GoS objective was to relocate the uprooted black African tribes of the Darfur region in camps where they could be kept under government control. Nonetheless, according to the report, some crimes may have been committed with genocidal intent and suggested to the UN Security Council to refer the situation to the ICC. While the label "genocide" was reluctantly avoided, it is important to note that the UN Commission of Inquiry explicitly stated that the "crimes against humanity and war crimes [that] have been committed in Darfur [ . . . ] may be no less serious and heinous than genocide."<sup>9</sup> Thus, the Commission interpreted the violence as heinous and severe although not necessarily fitting under the heading of the UN Convention on the Prevention and Punishment of the Crime of Genocide.

On March 31, 2005, the UN Security Council responded to the Commission Report. Since the Commission suggested that some of the crimes may have been committed with genocidal intent, the UN Security Council passed Resolution 1593 referring the Darfur situation to the International Criminal Court. This Court was authorized to investigate and prosecute individuals for atrocities committed in Darfur. Keeping with its official stance on the Court, the United States abstained from the resolution. A formal investigation by the Office of the Prosecutor started in response to

the resolution. Based on allegations of war crimes and crimes against humanity, the Court issued its first arrest warrants for Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of Sudan and current Minister of State of Humanitarian Affairs, and Ali Muhammad Ali Abd-Al Rahman, a leader of the Janjaweed militia on May 2, 2007. Although Sudan is required to transfer the two suspects for indictment, the Sudanese government's response to the arrest warrants has been to refuse to surrender the suspects to the Court.<sup>10</sup>

The most recent developments in the referral of Darfur to the ICC were initiated when ICC Prosecutor Luis Moreno-Ocampo requested an arrest warrant for Sudanese President Omar Hassan Ahmad Al Bashir on July 14, 2008. The warrant called for Al Bashir's arrest on the grounds of his bearing individual responsibility for committing crimes of genocide, crimes against humanity, and war crimes in Darfur. According to the Prosecution, there is evidence that Al Bashir has orchestrated the systematic persecution and destruction of approximately 2.5 million civilians by mobilizing and controlling the entire state apparatus in his intent to destroy them on account of their ethnicity. The indictment of the Sudanese president shifts the focus of the case from mass atrocities committed by loosely affiliated militants to mass atrocities additionally promoted by a State.<sup>11</sup> After having reviewed the evidence, the Pre-Trial Chamber announced its decision to issue an arrest warrant of President Al Bashir on March 4, 2009. The president is suspected of being criminally responsible for murder, extermination, forcible transfer of large numbers of civilians, torture, rape, intentionally directing attacks against a civilian population, and pillaging.<sup>12</sup> The warrant does not, however, include charges of

genocide. This is the first warrant of arrest ever issued for a sitting Head of State by the ICC.

Despite earlier objections to the court, outlined in chapter two, members of the Bush Administration have spoken positively about the work of the Court and publicly expressed willingness to cooperate with it on Darfur. U.S. Republicans including Senator John McCain and former Senator Bob Dole have also advocated U.S. cooperation with the Court. The U.S. Department of State established an official channel to assist the ICC Prosecutor. The decision to refer the situation to the Court without opposition from the United States is considered a slight softening of the U.S. approach toward the Court. While the United States is still officially opposed to the court, in practice, the referral of Darfur suggests that the U.S. recognizes the Court as a viable means to intervene in crisis situations. The American NGO Coalition for the ICC (AMICC) similarly notes that “growing domestic and international concern and calls for accountability have induced greater flexibility in the U.S. stance towards the Court and provided a more conducive environment for cooperation.”<sup>13</sup> While this newfound support may be limited to the Darfur case, advocates are hopeful that this “collaborative relationship between the U.S. and the Court would not only be a positive step in addressing the situation in Darfur but also in affirming U.S. commitment to international justice.”<sup>14</sup>

### **mtvU brings the Genocide in Darfur to College: *Translating Genocide and Darfur is Dying***

MTV (Music Television) hit the airwaves on August 1, 1981 with a music video for the song “Video Killed the Radio Star” by pop artists The Buggles. This ironic

beginning led to a massive restructuring of the music industry and has led to MTV having a central and enduring presence in popular culture with branded stations broadcasting worldwide. The station recognized its transformative potential in a broader political context as early as 1992 when it began its “Choose or Lose” campaign encouraging voter registration. The station expanded its market share onto college campuses with the creation of mtvU, which is a twenty-four hour channel available on American college campuses, specifically targeting college-age audiences. The channel is a for-profit enterprise but the channel has taken great strides towards providing outlets for student activism. MtvU has devoted a considerable amount of energy and consequently has received two Emmy Awards for its coverage of the crisis in Darfur. This coverage has included the online game *Darfur is Dying*, the short documentary *Translating Genocide*, and public service announcements, and coverage of Save Darfur rallies.

The mtvU documentary *Sudan: Translating Genocide: Three Students' Journey to Sudan* traces three American college students travelling to a refugee camp in Sudan in 2005.<sup>15</sup> Along with some general background information on the crisis in Darfur and the viral video game *Darfur is Dying*, the film is featured as one principal component of mtvU's Sudan campaign. The purpose of the students traveling to Sudan was to “witness the unfathomable human rights abuses suffered there in recent years” and “to see what it is like to live in the wake of such human destruction.”<sup>16</sup> The film is accompanied by brief biographies of the participating students, Stephanie Nyombaryire from Swarthmore College, junior Nate Wright from Georgetown University, and Andrew Karlsruher, a freshman at Boston University.

The documentary begins with footage from a New York airport before the three college students take off for Sudan and is interspersed with scenes in which the protagonists describe their prior knowledge and motivations to go to Sudan. Andrew explains that he had “no concept of what to expect,” and admits that his expertise was limited to what he had seen on TV. In combination with the brief biographies of the students, the viewer learns that Stephanie Nyombaryire, the female student featured in the film, serves as the Outreach Director for the Genocide Intervention Fund (GIF) and speaks on college campuses about genocide. Stephanie has a personal connection to what is happening in Darfur. A native of Rwanda, Stephanie has a personal connection to the situation in Darfur. She mentions that “lots of my family members were in the genocide in Rwanda.” Her motivation to participate in the documentary is thus “to bring a voice to people’s stories, a voice Rwandans did not have.”<sup>17</sup> Stephanie explains that at the time when the genocide occurred in Rwanda, she was too young to do anything. Now, she wants to “mobilize” people. She assumes the role of the witness who turned activist: “For me to imagine that somebody is living through it now, that I can do something about it, it’s impossible for me to just sit here and not do anything.”<sup>18</sup>

The viewer, however, receives much less information about the male participants, Nate and Andrew. Over the course of the documentary, the viewer learns that Andrew’s desire to make this movie has to do with his frustration over how the Darfur crisis has been covered in the U.S. media. He claims that “I don’t think what is being shown in the news right now is doing a good enough job. It’s all broken down into sound bites and clips. I haven’t seen anything but a couple of minutes....”<sup>19</sup> Andrew is correct in his complaint about the quality of coverage of the Sudan conflict. By the time the

documentary was produced in March 2005, he would not have had much exposure to the conflict as an analysis of the network and cable news coverage of the Darfur crisis reveals.<sup>20</sup> Andrew's allegation implies, however, that his own documentary will offer an alternative to the superficial, slogan-like coverage of the conflict that he has been exposed to.

Indeed, there is a type of cavalier, if not fashionable, quality attributed to indifference and ignorance. Andrew states that he wanted to be part of the project because of the new coverage being so poor. He admits that his own "knowledge of Africa," was "basically, like, a Discovery Channel Special and *The Lion King*."<sup>21</sup> Andrew is, as the title of the documentary suggests, one of the students selected to be a "translator" of genocide for an audience of American university students. Since no additional information is given about how he prepared himself for the trip to Sudan, the argumentative logic of the documentary suggests that he did not, even after being selected to visit the region and make a documentary film. Even so, Stephen Friedman, general manager of mtvU, considers his decision to send student to produce a documentary film "one of his greatest accomplishments."<sup>22</sup> Friedman claimed to be particularly proud of sending Andrew because, unlike Stephanie and Nate, at the time of the shooting of the film in March 2005, Andrew was not yet an activist, "but there was a willingness to explore in him, and you need to give that a chance."<sup>23</sup> In fact, Friedman considers Andrew "most important" for that very reason. Friedman continues that "For a kid who may not know anything about it, it is a great, eye-opening experience."<sup>24</sup> Friedman's focus on the youth's opportunity for self-exploration, may also raise some doubts with regards to the sincerity of the undertaking.

The overriding message of the film is that preparation and knowledge alone cannot compete with the actual experience of the conflict, and, by extension, that genocide cannot be understood from a distance but must be experienced firsthand. Nate seconds this notion, when he notes “There’s a lot of anticipation... none of it can really prepare you for having it right there in front of you.”<sup>25</sup> At the same time, genocide is presented as an evil defying any category of explanation and which therefore must be opposed. In this sense, the project shifts from an act of translation to a non-artistic invocation of vague devil-terms intended to provoke agreement and coherence without promoting understanding or knowledge.

The three students face several obstacles to coming closer to understanding and translating while in Sudan. Upon their arrival in the refugee camp, the first barrier they have to overcome is language. They realize that while they can see for themselves, the details and the significance of the events is revealed to them only by an interpreter who can translate the refugees’ experience into the three American students’ language. Their knowledge of the crisis is thus always already mediated through an Other’s eyes and language. The students decide to work with 32-year old Solomon, a refugee living in the camp, with whose help they highlight several aspects of life in the refugee camp. They visit the portion of the camp where food is rationed and talk with groups of men and groups of women separately about their experiences during the armed conflict.

Not surprisingly, the three students highlight the affinities and similarities they experience with the refugees in Sudan. In one sequence the three students visit “some guys that are closer to us in age.”<sup>26</sup> When the refugees are asked what they like to do, Solomon translates “They listen to American discos. They dance American style.”<sup>27</sup> The



women liked to watch “Sudanese soaps.” Most of the men that they interview in the refugee camp report that they want to be doctors. This is followed by a sequence in which Nate communicates that he has just realized that the refugees are just like him—they are “thousands of miles away, listening to the same kinds of music, interested in the same kinds of things.”<sup>28</sup> The film creates opportunities for identification between the students visiting the camps and the refugees by acknowledging that they share music tastes and preferences for TV shows. By extension, that extent of identification is modeled for audiences at home to emulate. While these sequences could be strategic means employed by the filmmakers to create empathy and identification with the viewers of the film, given the visitors’ self-avowed lack of knowledge and preparation for the trip, these moments suggest that such similarities came as a real surprise and that they did not know how to respond other than by talking about their *own* experiences. For instance, for Nate hearing about one of the interviewees having studied history “struck home” because he, too, is a history major. When being shown photographs of a student gathering, one of the American students exclaims “This looks like my prom.”<sup>29</sup> Nate’s ability to identify with the refugees is circumscribed by his ability to put their experiences into his own frame of reference. The refugees’ experiences are not considered on their terms but rather in how they fit into the categories and experiences of the visitors.

The third part of the documentary takes on a slightly more inquisitive and political tone. Andrew explains that he would like “to get more answers as to how everything is happening.” He continues, stating “We started asking how it had happened, how they had gotten here, and what had happened to their villages and what they told us was really a frightening story.”<sup>30</sup> Even at this point, the film does not offer even

rudimentary information about the history or causes of the conflict in Darfur. Instead, the students ask a group of refugees to share their stories about “what had happened.” In response, several refugees show them their scars and mutilated and contorted limbs. Their bodies are thus meant to attest to the happening of genocidal violence. While allowing for the victims to speak for themselves is laudable, in the conspicuous absence of information about the context in which such suffering occurred, it is unlikely that genocide can be “translated” meaningfully.

That which is being translated is not made any clearer when rendered into words. When asked about whether or not to call it a genocide, Solomon responds that the current situation is a “political agenda.” Solomon continues by posing a different question: “Why Iraq not Darfur?”<sup>31</sup> implying that the socio-political interests involved are the reason why for the international community some crises take priority over others. Having included Solomon’s voice in the footage seems to offer a valuable opportunity to explore the conflict from the perspective of a refugee in more depth and to offer a voice to those who might not always get sufficient space in other news outlets. However, despite the expressed wish to provide a different kind of coverage of the conflict, the mtvU filmmakers chose not to elaborate on the implications of Solomon’s statement in more detail. Since the film does not offer its viewers any contextual information or analysis to elucidate, let alone evaluate Solomon’s views, the audience is left alone with Solomon’s allusions to the complexity of the conflict. Rather than providing information about the power structures and competing interests involved in the conflict, the reasoning process in justifying intervention is short-circuited. The protagonists’ engagement with the conflict happens in a way that places the conflict outside of its larger historical and

political context. Failing to provide any substantive account of the conflict, the film ignores the multiple levels of interconnectedness that are crucial to understanding the conflict itself as well as to developing cosmopolitan attitudes.

Wendy Brown's recent work on tolerance provides useful insights into how such discourses of depoliticization operate. She argues that depoliticization "involves removing a political phenomenon from comprehension of its historical emergence and from a recognition of the powers that produce and contour it. No matter its particular form and mechanics, depoliticization always eschews power and history in the representation of its subject."<sup>32</sup> Brown claims that "when these two constitutive sources of social relations and political conflict are elided, an ontological naturalness or essentialism almost inevitably takes up residence in our understandings and explanations."<sup>33</sup> In *Translating Genocide*, Stephanie captures the emergence of an "ontological naturalness" succinctly when she claims that "you shouldn't have to explain why to take action. It should be a given."<sup>34</sup> The reasons for a possible intervention are dearticulated from the current situation. Instead, action or humanitarian intervention is imbued with an inevitability that effaces the history, character, and context of both the conflict and the intervention. The reasons to intervene in Darfur are considered self-evident, or at least, by implication, are thought of as sufficiently expressed through the visual imagery of the documentary depicting life at the camps. Anthropologist Liisa Malkki has demonstrated that the rhetorical force of these images is predicated on universalized or transnationalized patterns of representation that typically rely on constructions of the refugee as a helpless, speechless figure, a "bare" life with "raw human needs"<sup>35</sup> rather than a "politically qualified life."<sup>36</sup> These discursive practices

allow for the emergence of a rhetoric of rescue, making intervention a “natural” solution to the problem rather than a historically and legally produced one, or one that is contested.

Furthermore, viewers with the same lack of knowledge and understanding as Nate and Andrew are given no hint as to what they are to take action for or against, how they should go about taking such action, let alone why, specifically, they should become involved. As such, the argumentative structure of the film might be hard to argue against, but it eschews the possibility to further explore the complex interplay of the multiplicity of factors that play a role in the existence and perpetuation of the conflict.

The incapacity to “know” or understand the situation in Darfur becomes the central trope of the film. The theme is foreshadowed early in footage of burnt down villages from above accompanied by a children’s choir singing “Lord, it’s so hard, living this life of constant struggle each and every day. Sometimes I wonder why, I’d rather die than to continue living this way. Any old life and cannot find this truth that no one really seems to know.”<sup>37</sup> The inability to know or understand is compounded by the inability to express or articulate genocide. As the students walk through different parts of the camp and meet several different groups of refugees, they come to the realization that that they are unable to describe genocide. At one point, Nate explains that “You wish you could say something...it’s one of the most frustrating things, you have no control over the situation....”<sup>38</sup> Even though the documentary is ambitiously titled *Translating Genocide*, the film becomes an example of unsuccessful attempts at “translating” genocide into language. In a sequence in which the interpreter Solomon leads the three American students to his female cousin, who, it is initially only implied, was raped by the militia

forces. The documentary shows Solomon sitting next to his cousin, covering his eyes with a handkerchief, breaking into tears when he is asked to translate what happened to her. Nate's voice over explains "Solomon was completely unable to translate to us what had happened to her. He would just break down and cry every time he would try to tell us that she was raped."<sup>39</sup> Again the film does little more than offer fragments of complex connections in the crisis, either in its historical development or its current manifestations. For instance, the film fails to provide any context about the dilemma the women are likely to face when their having being raped becomes public knowledge in the community. Nor does the documentary provide any warrant that links the claim of "genocide" to the crime of sexual assault. As we saw in the previous chapter, this claim is important, not just for the people of Darfur, but for women's rights on an international scale. The film ultimately documents the students' own inability to know or understand, express, articulate, and translate genocide to the audience.

While Andrew and Nate's experiences are often presented through an inarticulate concernedness, Stephanie is slightly more analytical in her assessment of the situation in Darfur. In one sequence we find Nate standing on a hill from which he oversees the dimensions of the camps, a moment he describes as the point when it "started to hit home, just how massive these refugee camps are."<sup>40</sup> "Hitting home" here becomes the shorthand expression for being moved, for having empathy for those suffering, for catching a glimpse of the immensity of the situation. Stephanie, however, recognizes that "without the UN, without UNICEF, these refugees really would be nowhere."<sup>41</sup> She is also the one who is aware of the psychological mechanism of creating distance through

laughter, explaining that “You laugh about it, it’s not funny but it’s your only way to cope with it.”<sup>42</sup>

Although the students’ activist efforts are laudable insofar as fighting genocide is self evidently praiseworthy, the documentary did not fulfill the task of translating genocide in its multifaceted dimensions. The film fails to provide either a sustained discussion of, or even a rudimentary introduction to, the historical and political background of the conflict. Instead, the documentary functions primarily by offering a type of coming-of-age story about three college students “getting involved.” The documentary does provide a harrowing glimpse of the current situation of refugees in Darfur, but it does not offer a substantive alternative to the lack of coverage that Andrew set out to redress. The strength of the students’ documentary is its ability to create empathy with the refugees. Seeing Solomon cry several times in the documentary over what he and his people had to endure is likely to arouse empathy among the viewers. Similarly, the sight of images of mutilated and scarred refugees who were asked if they were willing to show their bodily scars into the cameras, is likely to stir viewers’ conscience, which may be subsequently motivate the audience to act on behalf of the victims. That audiences are likely to identify with the refugees is further accomplished by the narratives that draw attention to the refugees’ lifestyles in the period before the armed conflict broke out and by underscoring how similar they are after all to young Americans.

Moreover, the process of identification is established not only between the Darfur refugees and the audience of the film but also between college students and the students visiting Sudan. Starting with lacking or rudimentary knowledge of the conflict, the students are likely to strike a chord with audience members for whom such ignorance

might not be troublesome or could even be fashionable. Furthermore, highlighting that their interests, knowledge of the conflict, and background reflect that of the average college student, it is plausible that Stephanie, Andrew, and Nate will function as role models for similarly inclined student activists within the college student community. This could help catalyze events discussing Darfur in the future and may cause others to join their efforts.

Although one does not necessarily need additional information to “understand” the documentary, audiences learning about the crisis in Darfur are unlikely to go beyond any assessment of the crisis besides that genocide is something we ought to oppose. The documentary’s overwhelming message is that genocide is an evil to be eradicated, and that we must raise awareness about it. The film fails to explain what specifically “genocide” entails. Providing this message is crucial as the images of scars and mutilated limbs as well as the horrific personal accounts alone do not necessarily prove that genocidal violence has occurred or that crimes against humanity with genocidal intent have been committed. The context in which the term is used is significant because the continual reference to genocide “in so many new contexts of barbarism,” rhetorical scholar Zelizer notes in *Remembering to Forget*, “flattens the original term’s resonance and denies the complexity of the events to which it refers.”<sup>43</sup> As a result, “the media may fail to clarify the meaning of each new instance of brutality they cover.”<sup>44</sup> Offering some explanation of the term “genocide” is even more important because the very categorization of the Darfur crisis as “genocide” has been itself a matter of contention.<sup>45</sup>

The general message of opposing genocide comes at the cost of eschewing a deeper engagement with the causes of the crisis, and thus the lessons that can be learned

from this case by analogy to similar cases. Mahmood Mamdani, Professor of Anthropology and Political Science, has called attention to the responses the newspaper coverage of the Darfur crisis is likely to yield. Mamdani criticizes that the coverage has created “a simple moral world, where a group of perpetrators face a group of victims, but where neither history nor motivation is thinkable because both are outside history and context.”<sup>46</sup> Moreover, the coverage has turned the situation into a “moralistic discourse whose effect is both to obscure the politics of the violence and position the reader as a virtuous, not just a concerned observer.”<sup>47</sup> Mamdani suggests that this kind of coverage of genocide, perhaps most importantly, serves audiences’ ego-functions by allowing readers to establish a satisfying identity for themselves that is marked by a kind of “moral indignation” about conflict.

Despite the film’s overall message that the three students cannot translate genocide, the students become increasingly aware that their efforts offer a glimpse of hope for many of the refugees. At the end of the documentary, Stephanie, Andrew, and Nate come to realize the power of their voice. The documentary announces that “Right now, as a college student, my voice is louder than any of those people in Darfur, simply because of where I was born.”<sup>48</sup> The message that resonates in the context of no matter how imperfect your knowledge and understanding of the situation in Darfur may be, the status as a privileged outsider comes requisite with the demand to speak for those in need. Thus, while failing at “translating genocide,” the documentary may be considered most successful at helping activists realize the power of speaking out.

The documentary and PSA are accompanied by a new medium of advocacy represented by the interactive video game *Darfur is Dying*. The game won the “Darfur



Digital Activist Contest” sponsored by mtvU. Designed by a group of students from the University of Southern California, the game is announced as a “viral video game for change that provides a window into the experience of the 2.5 million refugees in the Darfur region of Sudan.”<sup>49</sup> By playing the game, the user is promised, he or she will experience a “faint glimpse of what it’s like for the more than 2.5 million people who have been internally displaced by the crisis in Sudan.” Highlighting the theme of being exhorted to “experience” the life of a displaced Darfurian, the user has to click on a button that urges “Start your experience.”

Before the start of the actual game, “users” have to choose their avatar’s identity. To begin the “experience,” the user takes on the “perspective of a displaced Darfurian,” assuming the identity of a 10, 11, 12, 13 or 14-year old boy or girl or a female or male adult to forage water from the well back to the refugee camp located some 5,000 meters away. The refugee-avatar has to fetch water needed for survival by running across a desert landscape marked by isolated bushes or dried up trees, trying to “out-manuever militia forces” that are chasing the refugee across the screen in SUVs. By the push of the space bar, the player is instructed, he or she can make their refugee hide. Moving the avatar closer to the camp via the arrow function, the player can see the continuously decreasing distance to the refugee camp on a meter. Depending on the skill level of the user, the game ends the attempted escape from the militia more or less quickly, which is visualized by the militia forces catching up with the refugee.

At the moment when the militia forces converge upon the refugee, the screen shows a brief description of the scenario that is likely to happen to the refugee the user’s avatar represents. For all characters, the game explains that “You will likely become one

of the hundreds of thousands of people already lost to this humanitarian crisis.”<sup>50</sup> The next line changes according to the avatar’s gender and age the user had chosen. If the user’s avatar is a girl, the user is told that “Girls in Darfur face abuse, rape, and kidnapping by the Janjaweed. If she succeeds, the girl can bring more water back than a smaller boy, but less than an adult.”<sup>51</sup> For those users who chose the identity of a boy, the player learns that “Boys face abuse, capture and possible death if caught by militias. A little body is fast and agile, but carries less water than his seniors.”<sup>52</sup> So one of the first dilemmas that gamers are faced with is deciding whether to choose the fast but weak that may be captured, abused, and killed or the slower and strong that may be kidnapped, abused, and raped.

The game was designed with the help of humanitarian workers that “advised the students throughout the development process, helping to ensure the game accurately captured and was sensitive to the refugees’ plight.”<sup>53</sup> In this sense, the videogame represents a quick and easy means to educate about some of the hardships refugees are facing. While some educational value, albeit modest, is imparted when the game provides a short explanation of the situation of refugees in Darfur, the act of playing the game offers little to educate the players about the crisis of Darfur. In the game itself, the primary goal is to get from point A to point B and back as fast possible while avoiding the adversary, here represented by armed Janjaweed militia forces riding on a camouflaged SUV. Having invoked the setting of a Darfuri refugee being hunted down by an Arab-led militia, the game follows the typical videogame pattern of the hunter and the hunted. For the rest of the game, the effect of the assumed identity appears negligible despite the desire to create identification and empathy that are presumed to lead to action.

What limited experience the game is able to offer is underscored when, upon the implied murder of the refugees by the militia, the game—culturally sensitive to the conditions that allow those fortunate enough to simulate such a scenario at the computer rather than actually live through it—asks at once brazenly and diffidently “As someone at a far off computer, and not a child or adult in Sudan, would you like the chance to try again?”<sup>54</sup> The user can then choose between entering the camp or foraging for water again. Upon successfully having shielded the refugee camp from harm, the user is rewarded by the message that “You kept the camp safe for X days. Unfortunately, this is only a game, but the people of Darfur are experiencing this crisis day in and day out.”<sup>55</sup> The user is then instructed about the objective of the game, which is to “experience” the Darfur crisis: “This game was meant—however temporarily—to put you in the shoes of the 2.5 million refugees from Darfur, now living in camps in Sudan and Chad.”<sup>56</sup>

While the level of education, experience, and identification might be limited, the game does offer additional ways to become more actively involved. In fact, when players click on in-game links they are taken to external websites offering other ways to get involved. This action lowers the “threat meter,” which is used to warn of an incoming militant attack on the camp, hence helping the player be victorious in the game. The game concludes by calling its player to widely distribute the message and by pointing to the significance of popular support in this process: “Send this game to your friends to spread the word about the crisis in Sudan. The tide can be turned on this crisis. Our elected representatives want to help end this genocide but they need to hear our voices.”

For those players interested in more detailed information, the site offers a range of background materials on the creation of the videogame, the situation in Darfur, the

documentary *Translating Genocide*, and opportunities for users to get engaged. In fact, “Calls to action are a fundamental part of the game and the user is presented with several opportunities during game play to become involved: write or e-mail the President, petition Representatives to support the Darfur Peace and Accountability Act, start a divestment movement on campus, and most importantly, spread word of the genocide in Darfur to others.”<sup>57</sup> Under the rubric “Who is playing,” users can read about artists who are playing the game. Here, the user finds out that “Kanye West, Matisyahu, Serj Tankian from System of a Down...” among others are “participating in the online launch of Darfur is Dying and are encouraging their families, friends and fans to play the game.”<sup>58</sup>

The method, form, and level of engagement implicitly working in *Darfur is Dying* is that the mere act of playing the game becomes synonymous with getting involved, as the user is exhorted to “mak[e] your impact by playing Darfur is Dying.” The next step that users are expected to do is “[pass] it on to your family and friends.”<sup>59</sup> Potential skeptics who consider such efforts negligible in the grand scheme of things are disabused by the website’s message that “No matter how large or small, every action taken to increase awareness about the severe human rights abuses happening in Sudan is an important step. Educate yourself, support the Darfuri people, advocate for an end to the crisis, and inspire others to be active on the issue as well. Do something now to stop the genocide in Darfur.”<sup>60</sup> What we see here is thus a method of enticing users into action accomplished mainly through the distribution of slogans.

In sum, mtvU’s coverage of the crisis in Darfur is of mixed value. It surely is part of a much needed program of publicizing the existence of a problem in the region. Additionally, it is motivating youth generations to take up a political issue the resolution

of which may in large part depend on civil society advocacy. At the same time, however, the explicit content of the mtvU sponsored texts, *Translating Genocide* and *Darfur is Dying*, offer little relevant information concerning the genocide in Darfur. The texts could be read as effecting persuasion through base forms of identification founded on first-world imperialism or naïve connections based on musical or cultural taste amongst youths. In this sense, they cheapen the message by greatly reducing or eliminating the context and complexity to reach broad and largely ignorant publics. At the same time, the texts can be powerful tools in putting at least the general idea of the problem into the vocabulary of many audiences who otherwise may remain wholly unaware of the problem.

### **The Devil Came on Horseback**

The previous section discussed a series of cultural texts advocating to intervene in the crisis in Darfur produced by mtvU that could be experienced in a relatively short period of time (a short documentary film, a video game) and come with a great deal of limitations. This section deals with an additional cultural text advocating action in Darfur—the award-winning feature-length documentary film *The Devil Came on Horseback*. The film recounts the coming of age story of former U.S. Marine Corps Captain Brian Steidle in the context of his experiences in Darfur. Steidle arrives in Sudan to document the conflict as part of a job monitoring a ceasefire in Sudan for the African Union. The documentary tells the story of how Steidle, after being thrust into witnessing

the atrocities, gradually became an activist committed to publicizing the events and advocating for humanitarian intervention.

The documentary begins with Steidle providing an account of the strong military tradition of his family which provided the motivation for him to join the Marine Corps. After an injury during his service, he became an “unarmed military observer with the African Union in Darfur, Sudan” where his task was to monitor a ceasefire from October 2004-January 2005. All he had, he claims, “was a camera, a pen, and paper.”<sup>61</sup> Echoing the lack of preparation of the protagonists in mtvU’s *Translating Genocide*, and despite having “read a couple of books on Sudan,” Steidle reports that he “was totally unprepared for what [he] would see.”<sup>62</sup> The documentary then traces Steidle’s transformation from an “unarmed military observer” earning a wage for taking photos of atrocities to a committed witness and activist.

Steidle’s journey begins with his unwitting act of documenting the ceasefire, claiming that the photos he had taken “were the most disturbing thing that I’ve ever seen.”<sup>63</sup> He remembers his initial inclination to send them, confiding in an email to his sister Gretchen, the founder of a grassroots organization advocating on behalf of women victims of conflict and genocide.<sup>64</sup> He wrote, “If these photos were seen by the public, there would be troops in here in a matter of days.”<sup>65</sup> This belief that broad-based witnessing would provoke immediate action will persist throughout the film, most notably when the belief proves false. The film documents Steidle’s initial misgivings about circulating the information he had collected while he was in Sudan, in fear of retaliation from the Sudanese government. Meanwhile, Steidle’s sister Gretchen told Nicholas Kristof, staff writer for the *New York Times*, about the existence of this photo

documentation. Kristof, who himself had devoted time to covering the Darfur conflict in his column, urged Steidle to publicize his photos.

The narrative develops as it recounts several stages of Steidle's attempts to circulate the evidence he has gathered. Similarly to the assumption underlying mtvU's *Translating Genocide*, we also see Steidle subscribing to the notion that if only people see the pictures, everyone, everywhere would call for an immediate cessation of the violence. What Steidle thinks he intuitively understands about the power of the visual image, Susan Sontag carefully delineated in *Regarding the Pain of Others*, where she discusses the purposes and functions of war photography. There, Sontag argues for letting the "atrocious images haunt us."<sup>66</sup> For Sontag, the purpose of such images is to create a space to halt and a space for thought and reflection about what humans are capable of doing: "Such images cannot be more than an invitation to pay attention, to reflect, to learn, to examine the rationalizations of mass suffering offered by established powers."<sup>67</sup> These images invite us to ask such pragmatic and ethical questions as "Who caused what the picture shows? Who is responsible? Is it excusable?"<sup>68</sup> Sontag recognizes that "Even if they are only tokens, and cannot possibly encompass most of the reality to which they refer, they still perform a vital function. The images say: This is what human beings are capable of doing—may volunteer to do, enthusiastically, self-righteously. Don't forget."<sup>69</sup> Where Steidle and Sontag differ is in their view of the consequences of war photography. Unlike Steidle, who believes that the dissemination of his photos will inevitably lead to action and intervention in Darfur, Sontag expresses skepticism about the notion that such haunting images alone, even those that spark moral indignation, prescribe a specific course of action. Atrocious images, she argues, do "All this, with the

understanding that moral indignation, like compassion, cannot dictate a course of action.”<sup>70</sup>

Steidle’s belief in the inevitability of action is exemplified in two sequences. In the first sequence, Steidle follows an invitation to present his photographs at an event hosted by the United States Holocaust Memorial Museum (USHMM). Steidle presents the photographs he had taken while in Sudan, calling attention to the violence that has occurred in the region. In response to his talk, several audience members, announcing themselves as associated with the Sudanese government, discount Steidle’s evidence, arguing that the pictures he documented did not prove that genocide or war crimes had happened. Steidle offers the naysayers access to his complete portfolio of photographs, claiming that they would be convinced if they were to look through the thousands of additional photographs that he did not have time to show. This is followed by a scene depicting an encounter between Steidle and former Secretary of State Condoleezza Rice after the disheartening response to his photographs at the USHMM event. Steidle recounts his meeting with Rice during which he showed her his photographs in the following words: “I didn’t know really know what to expect but what we got was a completely political answer: ‘Thank you, you are doing a really good job, we really appreciate what you’ve done, it must be really hard, you know, here’s your photos back. We’re doing whatever we can do.’” To which, Steidle reportedly said, “well that’s great, just keep the photos.”<sup>71</sup> His encounter with Rice turns out to be another futile attempt to goad into action those who have witnessed the atrocities committed in Darfur.

In the narrative logic of the film, the scene serves as another step in tracing Steidle’s development from an observer to a witness and committed activist. Instead of



being motivated solely by the thought of the suffering of others, viewers are motivated to act at the encouragement of Steidle as a heroic figure. The documentary depicts Steidle eagerly attempting to use both formal and informal channels to raise awareness about the situation in Sudan. Despite his frustrations with the officials' negligence and indifference toward the issue, he remains vigilant. Steidle slowly but gradually comes to terms with the operations of the political machinery that have no interest in publicizing this issue. He recounts the incident of receiving a phone call from the State Department asking him to not show the photos on the day Nicholas Kristof's article, entitled "An American Witness" about Steidle was published in the *New York Times*. Steidle comes to realize that there is a "huge tidal wave of information and then it just kind of dies out."<sup>72</sup> Nonetheless, in an interview before he testifies "on the Hill," he explains that he hopes to "continue to spread the word about what's happening there and hopefully, people continue to listen. I'm going to talk until no one will listen anymore."<sup>73</sup> With this, Steidle's transformation from neutral observer to witness and activist is complete. The logic of the film invites viewers to identify with and enact the same transformation. Viewers vicariously gain Steidle's experience as an observer and internalize memories of atrocities to bear witness as they watch the film and view the photographs.

Disappointed by the politicians' apathy and indifference about the crisis in Darfur, Steidle decided to work with his sister and her NGO "Global Grassroots" that works with survivors of genocide in Africa. Steidle travels to Rwanda to learn about the aftermath of the genocide:

There's this grassroots movement in the United States around Darfur, but still no concrete difference had been made on the ground, so I chose to go to Rwanda to

learn about their genocide and to learn how they had ended that genocide and what they are doing now to rebuild their lives. It's been twelve years since their genocide and there's still a lot of healing to do.<sup>74</sup>

The journey to Rwanda becomes a cathartic moment for Steidle. After an interview with a man from Rwanda who had lost several family members in the Rwandan genocide, Steidle reflects on his own complicity in the conflict:

It makes me feel hopeless, really. The fact that I had to stand around and watch these things happen. The fact that I'm sitting around watching these things, you know, the aftereffects of these . . . (pause). You know, I'm like, man in twelve years I'm going to be standing in Darfur doing the same thing, you know. I don't know, I mean watching is nothing, it's just watching. Me and all the other people that are here that didn't experience it, weren't necessarily taking part in it, they're there to grieve, to support those people, to support them in their pain. You know, to basically say, I'm compassionate for what you've gone through. I have no idea what it's like, but, I'm here to support you. And that's that.<sup>75</sup>

Steidle begins to cry and confesses that "I stood there for six months, watched people die, [pause] and I took pictures of them."<sup>76</sup> What Steidle recognizes in experiential terms, Chief Prosecutor of the ICC, Luis Moreno-Ocampo, identifies later in the film as one of the typical psychological effects on those who witnessed crimes of such dimensions: "... they were shocked with their inability to stop the crime."<sup>77</sup> Moreno-Ocampo then argues that such trauma may become partially resolved when witnesses become actively involved in bringing the perpetrators to justice. In this sense, he notes that "We [the ICC] are empowering them [the witnesses of atrocities]."<sup>78</sup> At this point, viewers are invited to

recognize their own inaction as complicity. Insofar as complicity would involve a devaluation of the self and other and action would serve a positive ego-function, getting involved becomes an increasingly viable and desirable option.<sup>79</sup>

The narrative proceeds by discussing Steidle's participation in bringing those responsible for the atrocities in Darfur before the International Criminal Court. This may be understood as the solution to Steidle's previous attempts to publicize the events and, at a more personal level, to come to terms with his traumatic experience. Steidle comments on his motivation to work with the ICC claiming that "If I can't convince the public and our government to do anything, maybe the International Criminal Court will do something."<sup>80</sup> Steidle recounts that he went to The Hague to "testify about what I had seen," and to share "all my information, every day that I was in Sudan, I shared with them—what I saw, everybody's name, my photographs, reports, everything. So hopefully, using that information, they'll be able to arrest some people."<sup>81</sup> The ICC becomes Steidle's last resort in his quest to communicate what he had witnessed in Darfur. Thus, in addition to provoking support to stop the genocide in Darfur, this film may also be encouraging U.S. citizens to support the ICC.

The last sequence of the documentary shows Steidle reflecting on his conversion from an innocent and ignorant bystander into an "enlightened" activist who has seen and witnessed the atrocities: "I definitely think of the world differently now. I mean, I knew that bad things happened. I didn't know the world would stand by and allow them to happen..." He continues: "I honestly thought, as I wrote an email home that, if the people of America could see what I've seen, there would be troops here in one week. That's what I wrote. Because we'll be here to stop these things, because they are so horrendous.

And I was just like, ‘man, I’m so naïve, because that’s not true at all.’ I’ve seen it now and we’ve still done nothing.”<sup>82</sup> When asked if he ever thought of himself as a “whistleblower,” Steidle thinks for a moment, then replies, “I’m just some guy that tried to wake up the conscience of a bunch of people. That’s all.”<sup>83</sup> Steidle’s story consequently ends by opening up the possibility for identification by depicting himself as ordinary, as typical in his initial ignorance, naïveté and, perhaps indifference. By the same token, the story of his own conversion from a passive bystander who “took pictures” of the violence into a passionate activist suggests that witnessing or experiencing the violence can and will provoke action by individuals and nations.

The film ends by presenting snippets from a televised discussion between Senator Barack Obama, Democrat, Illinois and Nicholas Kristof. Kristof asks “Why isn’t Congress... doing more on this issue?” Obama responds saying that “... there has been almost a single-minded focus on Iraq with respect to our foreign policy. We need greater pressure from the American public to tell their senators, ‘this is something that we are paying attention to and we want you to prioritize it.’”<sup>84</sup> The film attempts to do just that: it provides a richer historical context than we saw in the mtvU materials, and invites viewers to continue Steidle’s work of witnessing in hopes of creating a broader knowledge and support for U.S. and/or international intervention via the ICC.

*The Devil Came on Horseback* is a film designed as a means to promote the Darfur advocacy campaign. Announcing that the moviemakers “are committed to using this film as a catalyst for social change and are supporting several endeavors in partnership with a wide range of groups to educate and advocate for peace in Darfur,”<sup>85</sup> the film’s website (announced in the film) includes a host of materials on how to use the

film for activist purposes. Following the theme that education will turn bystanders into witnesses and consequently bring about action, the handbook for activists who want to use the film to raise awareness about the issue is labeled the “Watch. Learn. Act. An Event Guide.” It includes “suggestions for planning your event, a classroom discussion guide and post-film advocacy ideas.”<sup>86</sup>

Additional documents suggest modes of action and methods of becoming better informed. For instance, the Study Guide for the Documentary offers a list of forty questions for prompting discussions, analyses, and interpretations of the documentary, a primer on how to read a photograph, and guidelines for using the “internet as a resource for further study.”<sup>87</sup> These materials suggest that Brian Steidle was “completely unprepared” before he went to Sudan—a theme that echoes mtvU’s *Translating Genocide*. In the case of *The Devil Came on Horseback*, however, this lack of preparation is not fashionable. Instead, it is presented as a deficit that must be overcome for meaningful discussions and engagements to occur. The premise underwriting the documentary and its complementary materials, as well as the mtvU materials discussed above is that visual texts such as films, photography, and videogames are able to create such firsthand experience for audiences. The addition offered by the extra material on *The Devil Came on Horseback* is the insistence that such firsthand experience is not enough to promote understanding or to provoke action.

**“Crisis in Darfur”—*Not on Our Watch* and The Google Genocide Mapping Project**

A different approach toward advocacy than the one suggested by mtvU’s materials is advanced in the book *Not on Our Watch*, written by Academy Award nominated actor Don Cheadle and John Prendergast, who was a former advisor in the Clinton administration. Like mtvU materials, the volume’s target audience is a broad, but young audience. The volume combines generic elements of a journal, eyewitness account, and activist handbook that serves as a guide for advocates to become more effective agitators for change. The authors’ personal accounts of their motivations and experiences in Darfur are joined by sections on the historical and political background of the conflict. The most important feature of the book is its focus on advocacy strategies. The book provides an overview of the history of the campaign to raise awareness about Darfur and offers pragmatic strategies for becoming involved in the campaign. In that sense, the book serves as a handbook for activists comparable to the activist guide published by Citizens for Global Solutions on the workings of the International Criminal Court discussed in chapter three.

The book culminates in practical advice on how to launch successful advocacy initiatives, proposing the “KIS” framework. KIS refers to five fundamental advocacy guidelines, including “keep it simple,” “keep it short,” “keep it sound,” “keep it smart,” and “keep it special.”<sup>88</sup> Here, Cheadle and Prendergast teach advocates how to “translate genocide” to national audiences, to use mtvU’s metaphor: “Don’t be too random! To a U.S. government policy maker or an American audience, we need to remain focused somewhat on what the United States can do. So make sure you focus your audience or

interlocutor on the two or three most important things the American government can do, and how that person or group can help make it happen. Be focused.”<sup>89</sup> The overarching idea is that genocide must be translated to national experience for the public to act upon it.

Coupled with this notion to articulate the experience of genocide to a national audience is the idea that presenting the complexities of the specific crisis situation is not necessarily useful to effect change. This advice echoes the lessons provided by Citizens for Global Solutions. Instead of discussing the complex and specific elements of the crisis, Cheadle and Prendergast advise advocates to create and circulate simple messages that target national audiences:

Don't be too touchy-feely! We have to match our advocacy agenda to the big picture. We can't just rely on the "because it's the right thing to do" argument, or simply hope that for humanitarian reasons people will respond. We also have to connect our issue to larger national interest and what politicians and Americans care about. For example, if our longer-term counter-terrorism agenda is being undermined by the way in which the United States pursues this agenda in the short term, we need to shout that from the rooftops. If our promotion of freedom is going to be a central objective, then we need to demonstrate how these freedoms are being undermined and not promoted by our counterterrorism policies. Be relevant.<sup>90</sup>

In Cheadle and Prendergast's efforts to educate about rhetorical strategies for advocacy, "effectiveness" becomes the key concern. Cheadle and Prendergast do recognize that the

audience's self-interest does play a role in the choices about intervention, even for the public at large that may not experience the immediate effect of an intervention.

Harkening back to mtvU's *Translating Genocide* and the film's rhetoric of "do the right thing" without knowing why, Cheadle and Prendergast take issue with the notion that people would become activists because fighting genocide "is the right thing to do." In *Translating Genocide* we saw the campaign to end genocide as precisely this, without any clarification of why this is "the right thing" or what the right thing would entail. There, fighting genocide was imbued with a moral obligation *per se* that did not call for or promote exploration of the larger context (thus it advocated a "thin" rather than a "thick" memory of genocide). The way *Translating Genocide* presents at least two of the protagonists' coming of age story, suggests that to them, fighting genocide just "feels right," no justification necessary. Much like the "never again" slogan so often invoked in calls for humanitarian intervention, supporting the fight against genocide on mtvU's terms sounds much like a shallow declaration devoid of meaning as the crisis loses its historicity. On the contrary, even though Cheadle and Prendergast foreground efficacy, they do so in hopes that advocates may learn to package their arguments and goals in manageable and concise formats that may have a better chance of gaining support. This simplification, however, is different from what we encountered in *Translating Genocide*. For Cheadle and Prendergast, the context of the crisis may be simplified for purposes of effective argumentation and mobilization, but it still emerges from a context. The challenge faced by advocates is how to present substantive information that meets the needs of a broad audience in terms that they understand.



This is precisely the task that the Google Genocide Mapping Project has taken on. The Google Genocide Mapping Project, also known as the Crisis in Darfur Project, offers yet another approach in its invocation of genocide. While it also focuses on the notion of witnessing, it ups the stakes by linking interactivity to documentary evidence in an unprecedented format. In collaboration with Google Earth, the Genocide Prevention Mapping Initiative of the United States Holocaust Memorial Museum has created “animated maps” to raise awareness about humanitarian issues.<sup>91</sup> The Google Genocide Mapping project software consists of a set of maps or “layers” on Google Earth—Google’s interactive virtual globe program—documenting different aspects of the genocide in Darfur. The layers can be downloaded from Google Earth under the rubric “Global Awareness” and include satellite photos of the Darfur region with icons that indicate sites of destroyed villages, atrocities, and refugee camps. The layers also link to additional content such as aerial photographs of refugee camps in Eastern Chad, photos of life in the camps, short pieces of text that include eyewitness accounts from survivors and refugees of the conflict, and background information on the conflict from the UN and U.S. State Department. Launched in January 2005, the Crisis in Darfur project was the first of a series of proposed collaborative projects (between Google and the Committee on Conscience/USHMM) focusing on humanitarian issues.

Echoing mtvU’s themes in its Darfur campaign as well as Steidle’s *The Devil Came on Horseback*, the pedagogical value of the Museum Mapping Initiative is explained by reference to the potential power of the act of witnessing. The site offering a general introduction to the mapping projects exhorts to “be a witness” to humanitarian crises in general and to the “visual evidence of the destruction in Darfur” in specific.<sup>92</sup>

Unlike the other texts discussed so far, the mapping project makes explicit reference to genocide in a global context, since it is conceived as a means to “enable citizens to understand Holocaust history and to bear witness to current threats of genocide across the globe.”<sup>93</sup>

Offering a combination of multiple forms of information, the project offers opportunities for a more nuanced mode of engagement to prevent genocide. The visual evidence to bear witness is provided by photographs and is enhanced by testimonials collected by Amnesty International from 2003 to 2006 that offer “a few of the personal stories from survivors of the genocide; what they saw and heard during attacks and what happened to them and their families after.”<sup>94</sup> Combining visual and textual materials, the project attempts to compensate for some of the problems inherent with solely visual rhetorics. Like Susan Sontag, Barbie Zelizer has warned about the potentially dangerous boomerang effects of photography depicting atrocities. Zelizer is rather doubtful about photography’s potential to provoke action. Asking why there have been only “insufficient responses” to situations in which atrocities were depicted, such as Rwanda and Bosnia,<sup>95</sup> she comes to the conclusion that “photography may function most directly to achieve what it ought to have stifled—atrocities’ normalization.”<sup>96</sup> Becoming aware of atrocities, then, she claims, “may not move us to respond so much as to forget, and bearing witness is undoing the public’s ability to respond at all.”<sup>97</sup> Sontag adds to this, arguing that photographs alone, are not sufficient in promoting the prevention of genocide. She claims that there is a fundamental difference between provocative narrative and provocative photographs. “Harrowing photographs,” she argues, “do not inevitably lose their power to shock. But they are not much help if the task is to understand. Narratives can make us

understand. Photographs do something else: they haunt us.”<sup>98</sup> Thus, while the photographs in the project are designed to haunt us, the attending narratives offer meaningful suggestions on how to make use of the specters and to use them to promote understanding. Employing a new technology to intensify witnessing through supplementary materials, the Crisis in Darfur Genocide Mapping Project is thought to produce a kind of witnessing that will provoke understanding, agreement, and action.

The combination of multiple modes of experiencing genocide is underscored on USHMM sites featuring Brian Steidle’s photography of the Darfur crisis. The collection of Steidle’s photographs documenting the conflict in Darfur is announced by enticing viewers to “Learn about what he witnessed in Darfur and see the evidence he gathered.”<sup>99</sup> Bearing witness via the visualization tool of interactive maps, so USHMM’s assumption, will turn viewers to action against such crimes as it will allow “citizens, governments, and institutions to access information on atrocities in their nascent stages and respond.”<sup>100</sup> The assumption underwriting the trope of witnessing in the Google Genocide Mapping Project is that the act of witnessing together with learning about the specific contexts will function as a catalyst for education and action, and will thus, ultimately, lead to intervention into currently evolving crises and prevention of future ones. The tacit idea is that as outsiders become firsthand witnesses of the genocide in Darfur they will band together as an international community to stop the genocide.

### Concluding Remarks

In this chapter I have outlined the challenges and prospects for human rights advocacy in a global community. Each of the artifacts discussed in this chapter have helped in translating genocide—as a transnational form of memory—into knowledge, understanding, and action. Each of these artifacts discussed have been an attempt to translate the genocide, or, to use Google and USHMM’s Genocide Mapping Project as a metaphor, they were an act to “map” the genocide by taking a foreign experience and making it a local and palpable one upon which we would then be more likely to act. In that sense, these advocacy efforts seem to reflect an understanding of the fleetingness of empathy or compassion Sontag described when she wrote that “Compassion is an unstable emotion. It needs to be translated into action, or it withers.”<sup>101</sup> Regarding mtvU’s materials, I have argued, the texts have the potential to offer a meaningful opportunity to mobilize the public into advocacy to stop genocide. By the same token, the packaging of the crisis in Darfur into an easily digestible product or commodity runs the risk of cheapening not only the cause itself but also political advocacy in general.

Cheadle and Prendergast’s *Not on Our Watch* makes this risk more explicit. They use rhetorical strategies that draw on national interests. The authors argue that in order to be effective, advocates not only “have to keep it simple,” but also have to address primarily national audiences and the specific concerns and interests of that national interest. While their recommendations do suggest that they seem to have a more nuanced understanding of the pragmatics of effective advocacy, they also run the risk of cheapening political knowledge of international or transnational crises by translating

them into a language of national concerns for purposes of rhetorical efficacy. This risk is realized in the mtvU materials discussed.

Steidle's documentary offered two additional lessons. First, it demonstrated naïve assumptions we may carry with regards to humanitarianism. Steidle believed that his photographs of atrocities would prompt precipitous action to end the violence. His photos were circulated widely and were directed personally into the hands of the U.S. Secretary of State. The subsequent lack of action proved his belief to be overly optimistic and naïve. Second, *The Devil Came on Horseback*, like mtvU texts and *Not on Our Watch*, recognized that naïveté (whether it be a blind optimistic faith in an innate desire to end atrocities or the basic problems of ignorance and indifference) is the starting point for activism. Unlike the mtvU texts, the other texts discussed in this chapter presented such naïveté as an obstacle that must be overcome.

The texts discussed serve as representative examples of how advocates articulate the resources of the rhetoric of public memory to audiences in hopes of developing knowledge, understanding, agreement, and activism. They take a humanitarian issue of international concern and show how advocates have worked to translate it to audiences far removed from the immediacy of the violence. By packaging the crisis in Darfur as a commodity and disseminating the narrative broadly, these cultural texts are doing the work of manufacturing a collective memory that could serve as the catalyst for intervention. At the same time, the move toward a collective memory that expands beyond the nation-state is stifled by advocates' recourse to a rhetoric of domestication.

In May 2007, Nicholas Kristof wrote in an op-ed piece in the *New York Times* that "Finally, we're beginning to understand what it would take to galvanize President Bush,

other leaders and the American public to respond to the genocide in Sudan: a suffering puppy with big eyes and floppy ears.”<sup>102</sup> At first glance, Kristof’s cynicism here might be off-putting. However, the example of the baby polar bear Knut’s rise to stardom suggests that this is not so farfetched. The infant polar bear Knut was rejected by his mother after his birth in December 2006 and was instead reared by a caretaker in the Berlin Zoo. The polar bear cub became the source of an unprecedented interest in polar bears, the Berlin Zoo, and has become a symbol for environmentalism. Knut captivated hundreds of thousands of people, generated an unprecedented amount of media publicity dedicated to one particular animal, and attracted an additional 500,000 visitors to the Berlin Zoo during the first year of his life. Ticket sales and license income from the sale of merchandise have brought the zoo an additional income of 1,3 million Euros in the first six weeks after his first public appearance in March 2007, a phenomenon referred to as “Knutmania.”<sup>103</sup> Perhaps more importantly, the recently released movie *Earth* concludes with the notion that the polar bear has become the “symbol of the vulnerability of our planet” and became a useful rhetorical trope for explaining global warming.<sup>104</sup> It was in this sense that Knut, an abandoned polar bear with big eyes and a fluffy coat, became Germany’s poster-bear in public discourse about global warming.

What might sound as a cynical or mocking commentary on political mobilization has been supported by research. Paul Slovic, professor of psychology at the University of Oregon, has found that people are more likely to be affected by and thus respond to individual suffering than to mass suffering.<sup>105</sup> Slovic had asked people to donate money for several millions suffering from hunger. Juxtaposed against donation campaigns in which people were asked to donate money for an individual child, the campaigns

focusing on individual stories and characters always generated more funds. Commenting on Slovic's studies, Kristof polemically concludes that "If President Bush and the global public alike are unmoved by the slaughter of hundreds of thousands of fellow humans, maybe our last, best hope is that we can be galvanized by a puppy in distress."<sup>106</sup> Slovic offers an additional conclusion. He argues that we cannot solely rely on the compassion and sense of ethical responsibility to take on issues of such immensity like the Darfur crisis. He implies that these rhetorical means may be useful to galvanize general public support for a cause but they may not be sufficient to tackle war crimes or crimes against humanity. Instead, he advises to strengthen political and legal mechanisms and institutions to prevent genocide, such as the institution of the International Criminal Court.

## Notes

<sup>1</sup> See Daniel Levy and Natan Sznaider, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” *European Journal of Social Theory* 5, no. 1 (2002).

<sup>2</sup> See Gideon Copple and Amitis Khojasteh, “The Current Investigation by the ICC of the Situation in Darfur,” AMICC, (August 2, 2007), available at <http://www.amicc.org/docs/Darfur%20Investigation.pdf>.

Gérard Prunier explains the derivation of the term *Janjaweed*. The term derives from “*jinn*” or “spirit” and “*jawad*” (horse). Taken together, the term means something akin to “ghostly riders” or “evil horsemen.” This is the name given to the “Arab” militiamen who started to operate in Darfur in the 1980s and whom the government unleashed to commit the 2003-4 genocidal attacks. Prunier explains that the term “first appeared in September of [2003] when the attack on the small town of Kadnir in Jebel Marra was reported.”

See Gérard Prunier, *Darfur: The Ambiguous Genocide, Crises in World Politics* (Ithaca, NY: Cornell University Press, 2005), 125.

<sup>3</sup> Amnesty International, *Displaced in Darfur: A Generation of Anger*, Amnesty International, (January 2008), available at <http://www.amnesty.org/en/library/asset/AFR54/001/2008/en/f2b06a31-caa3-11dc-b181-d35374267ce9/afr540012008eng.pdf>.

<sup>4</sup> See Lydia Polgreen, “Peacekeeping in Darfur Hits More Obstacles,” *New York Times*, March 24, 2008, A1.



<sup>5</sup> Prunier, *Darfur: The Ambiguous Genocide*, 124.

<sup>6</sup> United Nations, Press Release, SG/SM/9197 AFR/893, HR/CN/1077. Speech by Kofi Annan to the UN Commission on Human Rights in Geneva, Prevent Genocide International, (April 7, 2004), available at <http://www.preventgenocide.org/prevent/UNdocs/KofiAnnansActionPlantoPreventGenocide7Apr2004.htm>. In the speech, UN Secretary General Kofi Annan announced his action plan to prevent genocide.

<sup>7</sup> USUN Press Release. Statement by Ambassador John C. Danforth, U.S. Permanent Representative to the United Nations, United States Mission to the United Nations in New York, (November 4, 2004), available at [http://www.usunewyork.usmission.gov/press\\_releases/20041104\\_226.html](http://www.usunewyork.usmission.gov/press_releases/20041104_226.html). For a discussion of Danforth's speech, see Prunier, *Darfur: The Ambiguous Genocide*, 146-47.

<sup>8</sup> Copples and Khojasteh, "The Current Investigation by the ICC of the Situation in Darfur."

<sup>9</sup> See United States Holocaust Memorial Museum, "Genocide Emergency: Darfur, Sudan," United States Holocaust Memorial Museum, (October 2007), available at <http://www.ushmm.org/conscience/alert/darfur/pdf/darfur.pdf>.

<sup>10</sup> See Copples and Khojasteh, "The Current Investigation by the ICC of the Situation in Darfur."

<sup>11</sup> ICC Press Release, "ICC Prosecutor presents case against Sudanese President, Hassan Ahmad Al Bashir, for genocide, crimes against humanity and war crimes in Darfur," International Criminal Court, (July 14, 2008),

available at <http://www.icc-cpi.int/press/pressreleases/406.html>.

<sup>12</sup> ICC Press Release, “ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan,” International Criminal Court, (March 4, 2009), available at <http://www.icc-cpi.int/NR/exeres/0EF62173-05ED-403A-80C8-F15EE1D25BB3.htm?tr=y&auid=4585208>.

<sup>13</sup> Amitis Khojasteh, “Darfur, the International Criminal Court and the United States,” AMICC, (August 2, 2007), available at <http://www.amicc.org/docs/Darfur%20the%20ICC%20and%20the%20US.pdf>.

<sup>14</sup> Ibid.

<sup>15</sup> *Translating Genocide* (2005) is available at mtvU’s website at <http://www.mtvu.com/video/?id=1525734&vid=77502>.

The film was first aired on March 12, 2006.

<sup>16</sup> *Translating Genocide*.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Sherry Ricchiardi reports that “Serious reporting on the subject largely has been absent on the networks and on cable. Last year the three network nightly newscasts aired a meager total of 26 minutes on the bloodshed, according to the Tyndall Report, which monitors network news. ABC devoted just 18 minutes to Darfur, NBC five and CBS three. By contrast, Martha Stewart's woes received 130 minutes, five times as much.”

Sherry Ricchiardi, "Déjà Vu," *American Journalism Review*, (Feb./March 2005), available at <http://www.ajr.org/Article.asp?id=3813>.

<sup>21</sup> *Translating Genocide*.

<sup>22</sup> Cheadle and Prendergast, *Not on Our Watch: The Mission to End Genocide in Darfur and Beyond*, 145.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> *Translating Genocide*.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2006), 15.

<sup>33</sup> Ibid.

<sup>34</sup> *Translating Genocide*.

<sup>35</sup> Liisa Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization," *Cultural Anthropology* 11, no. 3 (1996). For a similar account of representation of famine and the kinds of humanitarian responses it evokes, see especially

chapter 5 of Jenny Edkins, *Whose Hunger?: Concepts of Famine, Practices of Aid* (Minneapolis: University of Minnesota Press, 2002).

<sup>36</sup> Edkins, *Whose Hunger?: Concepts of Famine, Practices of Aid*, 37.

<sup>37</sup> *Translating Genocide*.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Barbie Zelizer, *Remembering to Forget: Holocaust Memory through the Camera's Eye* (Chicago: University of Chicago Press, 1998), 205.

<sup>44</sup> Ibid.

<sup>45</sup> I am not contesting that the violence was committed with genocidal intent but am rather pointing to the initial unwillingness of the international community to explicitly label the Darfur crisis a “genocide” as I have outlined in the beginning of the essay. My point is that that the concept of “genocide” is not as unproblematic as mtvU’s *Translating Genocide* suggests it is.

<sup>46</sup> Mahmood Mamdani, “The Politics of Naming: Genocide, Civil War, Insurgency,” *London Review of Books* 29, no.5 (March 8, 2007).

<sup>47</sup> Ibid.

<sup>48</sup> *Translating Genocide*.

<sup>49</sup> The flash game *Darfur is Dying* is available at <http://www.darfurisdying.com/>.

<sup>50</sup> *Darfur is Dying*.

<sup>51</sup> *Darfur is Dying*.

<sup>52</sup> *Darfur is Dying*.

<sup>53</sup> Simon Carless, "USC, mtvU to Launch Darfur is Dying Activism Game," Serious Games Source, (April 27, 2006), available at <http://seriousgamesource.com/item.php?story=9081>.

<sup>54</sup> *Darfur is Dying*.

<sup>55</sup> *Darfur is Dying*.

<sup>56</sup> *Darfur is Dying*.

<sup>57</sup> Simon Carless, "USC, mtvU to Launch Darfur is Dying Activism Game."

<sup>58</sup> See "Who's Playing" on the game's website at <http://www.darfurisdying.com/whois.html>.

<sup>59</sup> *Ibid.*

<sup>60</sup> See "Take Action" on the game's website at <http://www.darfurisdying.com/takeaction.html>.

<sup>61</sup> *The Devil Came on Horseback*, DVD, directed by Annie Sundberg and Ricki Stern, 2007.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> The organization's website is available at <http://www.globalgrassroots.org/index.htm>.

<sup>65</sup> *The Devil Came on Horseback*.

<sup>66</sup> Susan Sontag, *Regarding the Pain of Others* (New York: Farrar Straus and Giroux, 2003), 115.

<sup>67</sup> *Ibid.*, 117.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, 115.

<sup>70</sup> *Ibid.*, 117.

<sup>71</sup> *The Devil Came on Horseback.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> The “ego-function” refers to a concept in social movement studies, namely the idea that protestors create their own identities in the performative act of employing protest rhetoric. Richard Gregg argued that protest rhetoric primarily serves the construction of selfhood and is only secondarily directed outward. For a more thorough discussion, see Richard B. Gregg, “The Ego-Function of the Rhetoric of Protest,” *Philosophy and Rhetoric* 4 (1971).

<sup>80</sup> *The Devil Came on Horseback.*

<sup>81</sup> *Ibid.*

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> See “Film Impact” on the film’s website at

<http://thedevilcameonhorseback.com/action/impact.html>.

<sup>86</sup> See “Tools for Learning and Action” on the film’s website at

<http://thedevilcameonhorseback.com/action/tools.html>.

<sup>87</sup> Karen Hinkes Levine et al., “Watch. Learn. Act.: A Study Guide for the Documentary *The Devil Came on Horseback*,” available at

<http://www.thedevilcameonhorseback.com/action/downloads/DevilCameonHorsebackStudyGuide.pdf>.

<sup>88</sup> Cheadle and Prendergast, *Not on Our Watch: The Mission to End Genocide in Darfur and Beyond*, 250-51.

<sup>89</sup> Ibid., 252.

<sup>90</sup> Ibid.

<sup>91</sup> United States Holocaust Memorial Museum, “Mapping Initiatives,” United States Holocaust Memorial Museum, available at <http://www.ushmm.org/maps/>.

<sup>92</sup> United States Holocaust Memorial Museum, “Mapping Initiatives: Crisis in Darfur,” United States Holocaust Memorial Museum, available at <http://www.ushmm.org/maps/projects/darfur/>.

<sup>93</sup> United States Holocaust Memorial Museum, “Mapping Initiatives.”

<sup>94</sup> United States Holocaust Memorial Museum, “Mapping Initiatives: Crisis in Darfur.”

<sup>95</sup> Zelizer, *Remembering to Forget: Holocaust Memory through the Camera's Eye*, 207.

<sup>96</sup> *Ibid.*, 213.

<sup>97</sup> *Ibid.*, 207-08.

<sup>98</sup> Sontag, *Regarding the Pain of Others*, 89.

<sup>99</sup> United States Holocaust Memorial Museum, "Committee on Conscience: Photos" available at <http://www.ushmm.org/conscience/photos/>.

<sup>100</sup> United States Holocaust Memorial Museum, "Mapping Initiatives."

<sup>101</sup> Sontag, *Regarding the Pain of Others*, 101.

<sup>102</sup> Nicholas D. Kristof, "Save the Darfur Puppy," *New York Times*, May 10, 2007.

<sup>103</sup> Andrea Zammert, "Knut Mania Sweeps the Globe," *Business Week*, May 8, 2007,

available at

[http://www.businessweek.com/globalbiz/content/may2007/gb20070508\\_938768.htm?campaign\\_id=twxa](http://www.businessweek.com/globalbiz/content/may2007/gb20070508_938768.htm?campaign_id=twxa).

<sup>104</sup> *Earth*, DVD, directed by Alastair Fothergill and Mark Linfield, 2007.

<sup>105</sup> For a discussion of how presidential war discourse employs narrative descriptions of atrocities as rhetorical devices to garner support when other justifications for entering into war are insufficient. See Eran N. Ben-Porath, "Rhetoric of Atrocities: The Place of Horrific Human Rights Abuses in Presidential Persuasion Efforts," *Presidential Studies Quarterly* 37, no. 2 (2007).

<sup>106</sup> Kristof, "Save the Darfur Puppy."



## Chapter 6

### Epilogue

#### *Memory beyond Borders?: The Rhetoric of Cosmopolitanism and the*

*International Criminal Court* traces several public memory discourses in transnational contexts. The International Criminal Court—as an international legal institution that emerged out of the international human rights system and designed to bring to justice perpetrators of war crimes, crimes against humanity, and genocide—figures as a key site for rhetorical inquiry into the study of transnational memory discourses. Specifically, the study examined the kinds of political subjectivities and rhetorical communities produced by discourses about the signing/unsigned of the Court's treaty (chapter two), advocacy promoting ratification (chapter three), advocacy over the Court's design (chapter four), and the application and invocation of its principles in contemporary advocacy campaigns (chapter five). My analysis of these discourses provides insight into the rhetoric of advocacy campaigns that seek to produce more cosmopolitanism and those that attempt to resist it.

This study is informed by Levy and Sznajder's claim about the emergence of cosmopolitan memory against which I juxtaposed four instances that document not only the emergence or existence, but also the resistance to such transnational memory discourses at various levels. With this approach I do not intend to discount their position. Rather, I intend to add to Levy and Sznajder's analysis by illustrating that while the formation of transnational memories is very real at certain sites and locations, we are

simultaneously witnessing a stronghold of forces counteracting the transnationalization of memory discourses and the formation of transnational or cosmopolitan subjectivities.

The primary means through which the development of transnational subjectivities and transnational memory is being contested is by domesticating discourses of international justice. The political subjectivities produced by the discourses around the International Criminal Court and a humanitarian intervention in Darfur include the citizen of the globe and the citizen of the nation-state. To varying degrees, each of these discourses, even the ones most explicitly linked to cosmopolitanism, invite us to see ourselves as a subject primarily associated with the nation-state rather than a “global” or cosmopolitan citizen. Thus, rather than merely producing a transnational memory culture, I have argued, the discourses discussed here serve as representative examples of how the formation of transnational memory is being hindered by social advocates both for and against cosmopolitan values.

In chapter two, I analyzed the U.S. policy discourse over the creation of and opposition to the International Criminal Court with a focus on the rhetorical dimension of “unsigned” the Rome Statute of the International Criminal Court. The formation of transnational memory, embodied by an international juridical institution that would hold accountable some of the worst perpetrators for crimes against humanity, I argued, was impeded by a discourse that frames such concerns primarily as an issue of nation-state sovereignty. What emerged in this discourse over the ICC was an idiosyncratic “American internationalism” manifest in the unprecedented act of unsigned an international treaty. Here, resistance to the formation of a “genuine” international community was hindered by a rhetoric of strengthening national identification and claims

to national sovereignty in dealing with international crime. The act of unsigning the Rome Statute, I argued, has both domestic and international consequences for the character and possibility of cosmopolitanism or internationalism as well as consequences for how U.S. citizens are invited to think of their role with respect to the international community, global responsibility, and justice.

In chapter three, I illustrated similarly how the memory work of transnational NGOs laboring to produce more cosmopolitan communities only marginally rely on the rhetoric of transnational memory and instead explicitly appeal to audiences of the nation-state. While organizations like Citizens for Global Solutions embrace and support cosmopolitan values, their persuasive strategies are mostly drawing on a rhetoric that invokes national interests that would be met with an institution like the International Criminal Court. As such, I argue, an important opportunity to educate and inform about cosmopolitan values was missed in these discourses. The opportunities are missed when the advocates of cosmopolitanism forgo deeper and more genuine communication of their goals for pragmatic communication and tangible accomplishments.

In chapter four, I discussed and analyzed advocates' intervention in the development of the ICC. My focus was on both the successes of the Women's Caucus for Gender Justice that culminated in the unprecedented inclusion of a series of gender provisions in an international treaty, and the conservative backlash that their success sparked. My analysis of the rhetoric of NGOs operating at the UN level showed how advocates rendered the legal institution into a public memorial that will influence how women's rights, and gender and sexual violence can and will be remembered. Moreover, I illustrated how the strengthening of a cosmopolitan community is resisted by

conservative anti-women's rights advocates in the codification process of international justice. Focusing on the institutional framework of the ICC as a framework for legal and non-legal memory production, I argued that the ICC serves an important role in codifying what human rights and violations thereof will be remembered and which will be overlooked. Conversely, social conservative NGO rhetoric, I argued, influences decisions about the ways in which women in the world over are invited to remember themselves as bodies that matter. In this instance, the creation of an international community driven by cosmopolitan principles was obstructed by conservative forces that employ a rhetoric of social maintenance with a particularistic notion of human rights in an attempt to protect national sovereignty. In such discourses, international justice is being "domesticated" by rejecting a commitment to the international criminal court.

In chapter five, I discussed several mediated forms of activism regarding the Darfur crisis situation, including mtvU's activist materials to stop the genocide in Darfur, the widely released and highly acclaimed *The Devil Came on Horseback* featuring Brian Steidle, the Genocide Mapping Project, and the activist handbook *Not on Our Watch*. The rhetorical trope that guides these discourses, I have argued, is one of efficacy. With efficacy being the primary rhetorical trope, there are certain consequences. First and foremost, I have argued, some of these discourses regarding activism on behalf of Darfur have produced facile understandings of the conflict in the sense that they depoliticize the conflict for the purposes of a quick mobilization. The privileging of efficacy and a general sense of engagement leads to a dilution of the historical context of the crisis and the larger purpose, that is to stop genocide itself. While the youth activism sponsored by mtvU is laudable for raising awareness about the issue, the means through which this

occurs should cause concern. The invocation of the trope of “doing the right thing” without knowing what the “right thing” is and for what purposes it needs to be done might be understood as capturing the youth’s political imaginary. In this sense, the materials could be understood as indicating that an energetic yet apolitical movement is replacing a well informed populace brought together by sound and coherent argumentation and a shared sense of purpose.

*The Devil came on Horseback* and *Not on our Watch* by Cheadle and Prendergast were presented as promising alternatives. While they each introduced a unique challenge to democratic deliberation, both called for activism founded on principles of circulating information, creating spaces for discussion in hopes of securing agreement, a minimum of understanding and hopefully agreement and action. In short, these memory sites invite viewers, readers, and activists to see themselves as participants in democratic cultures and as intelligent interlocutors that need to vigilantly keep themselves informed and active in matters of international concern. If they are effective, not only might some type of solution be forged for the victims in Darfur, but also stronger foundations for future activism might be laid.

Moreover, my analysis of the advocacy sites showed that there is a conspicuous absence of explicit attempts to create an international community for responding to the crisis. As was the case in chapters two, three, and four, the formation of an international community via the production of transnational memory is resisted primarily through a rhetoric of domestication. While public discourse tends to frame the Darfur crisis in the context of genocide and invoking parallels to the Holocaust—thereby invoking a transnational memory discourse—activists’ and the culture industry’s strategies for

mobilization for support and intervention in the Darfur crisis were simultaneously heavily “domesticated” by overly relying on establishing what is to be gained from such activism for local supporters. What differentiates this case from the others is that the domestication of memory discourses is perpetuated by some of the progressive advocates for intervention in the Darfur crisis, rather than by conservative advocates fighting against cosmopolitan issues. Here, the rhetoric of domestication serves to foster a utilitarian rationale, one that leaves its audiences in an impoverished position to make informed decisions.

### **The Path from Knowledge to Understanding and Support: A Military Postscript**

Throughout this manuscript we have borne witness to several advocacy attempts to produce or restrict cosmopolitanism through managing the resources of the rhetoric of public memory on national and international scales. Many of the advocates were quite effective. On the one hand were the progressive advocates. The Women’s Caucus for Gender Justice helped codify women’s rights into international law for the first time. Citizens for Global Solutions developed a rhetorical program for disseminating a positive view of the ICC to U.S. audiences. Several organizations developed highly publicized advocacy projects to draw attention to the crisis in the Darfur region of Sudan. The ICC has since issued warrants for the arrest of principle perpetrators of the violence there. On the other hand were the conservative anti-cosmopolitan activists. The Bush administration made the unprecedented move of *unsigned* an international treaty, indicating a systematic effort to frame national sovereignty as a “new American

internationalism” while turning away from the extant international community. A group of affiliated religious-conservative anti-women’s rights organizations successfully coalesced to undermine the efficacy of the inclusion of gender provisions in the Rome Statute. These cases show how cosmopolitan advocacy is not conducted in a vacuum.

The news is not, however, that there are advocates sitting on both sides of an issue with some negotiation needed in order to move forward as a genuine international community. As seen in this project, those opposing the type of cosmopolitanism that the ICC represents do not appear to desire some form of open political dialogue. By weighing the court down with their own devil issues of abortion and homosexuality, threats to national sovereignty and identity, such advocates play on fear and promote ignorance to the faithful.

The Stimson Center published a report in 2006 that provides documentary evidence that a little knowledge can go a long way to changing the attitudinal tides towards cosmopolitanism and the ICC. Entitled *On Trial: The US Military and the International Criminal Court*, the report suggests that the military has recently shown a larger degree of acceptance regarding the ICC. Traditionally, the military—concerned with issues of national security and thus more concerned with the implications of the ICC—strongly opposed the idea of an International Criminal Court. The premise of the 92-page report is that in the context of U.S. forces in Iraq and Afghanistan and the fact that the ICC has taken on its first cases, “an improved understanding of the military concerns” regarding the ICC is “increasingly urgent.”<sup>1</sup> Accordingly, the study conducted by Future of Peace Operations Program (FOPO) co-director Victoria K. Holt and Elisabeth Dallas sought to identify U.S. military views regarding the ICC. Based on

interviews with U.S. military personnel, politicians and policymakers and a workshop on the ICC held by the Center in January 2006, the study suggested that the military's long-established staunch opposition to the ICC has been waning.

The rationale for the project stemmed from a realization that, while there has been a “vigorous” debate over the ICC “among policymakers and non-governmental organizations, academics and legal scholars,” in the United States,<sup>2</sup> the views of military personnel have been “largely absent from this public discussion.” As a result, the views of military personnel “are not well-known or well-understood” even though they “are directly relevant and important to US policy considerations.”<sup>3</sup> In the context of the ICC having begun its hearings and US armed forces active “in places such as Afghanistan and Iraq where insurgents do not heed international humanitarian law or the laws of war,”<sup>4</sup> the authors conclude that there are “important reasons for a fresh assessment of US interests as it relates to the Court, today, as a non-state party.”<sup>5</sup> The larger goal of the study was then to “move beyond the debate over whether or not to join the International Criminal Court” and “to identify current thinking within military circles and common interests—if not agreements—among experts and non-experts, critics and advocates of the Court.”<sup>6</sup> The message that emerged from the year-long project was the imperative for the United States “to move from studied distancing to constructive engagement with the Court.”<sup>7</sup>

Holt and Dallas point to a number of important findings in their study. Most of the military interviewees reported that their knowledge of the Court was largely based on public sources as opposed to specific courses or professional briefings on the Court. Most interviewees had little more than “rudimentary knowledge” about the Court and that their



views of the ICC were mostly “based on a minimal understanding of how it was designed to operate.” Moreover, the study showed a direct correlation between knowledge, understanding, and support of the court as it demonstrated that “those most familiar with the Court were generally the least fearful of its implications for the US military and its operations.”<sup>8</sup> These findings suggest that an informed citizenry, including citizen-soldiers, might be all that is necessary to develop a more cosmopolitan attitude amongst Americans. This conclusion is further supported by the finding that few of those who were interviewed “argued against the need for criminal accountability for those who commit systematic and grave violations of international humanitarian law...”<sup>9</sup> The implication is that if the knowledge gap were closed, U.S. audiences would more or less automatically become more open-minded about the ICC, given that, on the whole, “detering and punishing” crimes such as genocide and crimes against humanity were “seen as laudatory.”<sup>10</sup> Given this generally favorable disposition of military personnel to the larger aims of the ICC once they are better informed, it is imperative that we develop an understanding of the rhetoric of conservative actors who continue to shape public and expert opinion by providing factually incorrect information.

The Stimson Report identifies several main recommendations for a stronger support of the ICC among military personnel, including that military anxiety about the court must be reduced, which is likely to be accomplished by developing “educational tools” for military leaders. Furthermore, the report urged the United States to participate in the preparatory meetings prior to the 2009 Review Conference for the ICC. A trope repeatedly invoked is the notion that there is a necessity to move forward from the current state of immobility by establishing a new kind of attitude toward the ICC. For

instance, the report talks about offering “a way ahead,”<sup>11</sup> and of opening up “ways forward for the United States in developing a relationship with the Court.” Similarly, the report attests to the existence of a “a genuine interest within military circles to develop a way forward to protect US interests and to relate to the Court better,” suggesting that the current U.S. view is considered an impasse and a situation in need of rectification.<sup>12</sup>

The suggested step for the United States to propel itself out of this state of anti-ICC inertia is to gain “a better understanding of what concerns are central to US military personnel.”<sup>13</sup> As we have seen in the context of Marc Grossman’s speech and Bolton’s call for an “American internationalism,” as well as in the promotional material offered by Citizens for Global Solutions, these issues are approached in terms of how the ICC relates to U.S. interests. The justification to change U.S. attitudes toward the ICC is offered via a recourse to national interests. Here we find again, perhaps not surprisingly, that for this particular audience, the creation of a stronger international community plays an insignificant role. The report concludes that the United States should engage in further defining the court by acting according to its own interests by “leaving aside the polarized domestic and international political debates about the US joining the Court, the United States should consider what is in its best interests today, and what role it should play in forming the Court.”<sup>14</sup> Thus, the consensus amongst both supporters and critics of the ICC that “American interests would be best served by participating in discussions about the Court’s development,”<sup>15</sup> could be read as primarily motivated by “develop[ing] a way forward to protect US interests.”<sup>16</sup>

At this point, the type of attitudinal shift detailed by the Stimson Report might seem bittersweet. Once again we see support for international law predicated on the

support of national interests. Nonetheless, I am concluding with this report as indicative of good news. There are two key elements of this case that make it so. First, the specific audience addressed by this report was U.S. military personnel, a group with a mission of protecting U.S. national interest through the show or implementation of force. That this group of people who one might reasonably expect to be most resistant showed significant attitudinal change after becoming slightly better informed is good news for progressive advocates who wish to shape a more cosmopolitan world. Second, even though the attitudinal shift was expressed in conjunction with the desire to protect U.S. interests, the new position required a more genuine expression of internationalism. While not necessarily coded in a desire for cosmopolitanism, the position expressed by the military personnel acknowledged the interdependency of commitments to state interests and the international community. Rather than a retreat to the paradigm of the nation-state, this position advertises the necessity for cosmopolitan ideas and practices.

Adding to the good news, the times are changing. Much of the NGO advocacy work discussed in this project was done in the context of the Bush administration's staunch opposition to the ICC. The attitude of the Obama administration toward the ICC seems to be guided by a more cooperative stance. It remains to be seen how these issues will be resolved over the next few years.<sup>17</sup> It is, however, likely that, as in the case of the military personnel addressed in the Stimson Report, the shift in attitude and public discourse will influence the experience of the ICC in specific and cosmopolitanism in general.

Since the start of its operation in 2002, the Court has investigated situations in the Democratic Republic of the Congo (DRC), Uganda, the Central African Republic and the

situation of Darfur, Sudan.<sup>18</sup> On July 17, 2008 the international community celebrated its 10-year anniversary of the signing of the Rome Statute. As an instrument of international justice, the ICC offers, in the words of William Pace, Convener of the Coalition for the International Criminal Court, “‘root-cause’ relief across the entire peace and security spectrum—prevention, deterrence, cessation of conflict, peace-building and reconciliation.”<sup>19</sup> There is some evidence to suggest that the existence of the ICC has affected how state leaders act. While it is difficult to establish how the existence of the ICC has influenced the use of force, the ongoing public debates about the Guantánamo prisoners, and the public outcry after the notorious Haditha incident of November 2005 during which more than a dozen unarmed civilians, among them women and children, were killed, suggest that these issues are becoming a more pressing concern. Still, challenges lie ahead, some of which will be addressed in the 2010 Review Conference of the International Criminal Court.

### **Obstacles to a Cosmopolitan Political Imaginary**

While the Stimson Report suggests that basic knowledge is the key to attitudinal shifts promoting at least a rudimentary set of cosmopolitan values and commitments, in this manuscript I showed how particular groups are devoting significant amounts of time and energy to derailing such reforms. Specifically, I have shown how several conservative organizations have claimed an influential position in framing political subjectivities at the international level. These groups have created their own idiosyncratic understanding of internationalism that is at fundamental odds with cosmopolitan values.

The stated purpose of this conservative rhetoric is to undermine the possibility of a more solidarist, cosmopolitan community. Since it was the rhetorical discourse of a relatively small group of actors that left its mark on important international treaties like the Rome Statute of the International Criminal Court with consequences beyond borders, the significance of their rhetoric that strictly upholds the nation-state paradigm should not be underestimated.

This focus on national interests and nation-state sovereignty in the conservative rhetoric detailed in this project is deeply troubling. This is not only because of the immediate material consequences their advocacy campaigns have for advances made in international law over the last 60 years. Their rhetorical discourses undermine the very goals of an institution like the International Criminal Court—that is to punish and hold accountable those who violate standards of humanity. Moreover, as we saw in the discourse about the inclusion of gender and sexual violence in the Rome Statute, given that international law ought to be integrated into national law, conservative rhetoric at the UN level serves the status quo and sets a precedent by limiting the recognition of the relationship between gender and violence in domestic contexts.

But the focus on the nation-state paradigm is also profoundly disconcerting because it evidences a lack or failure of imagination. What is emerging in many of the discourses discussed in this study is a resistance to cosmopolitan ideals. Even those groups seeking to promote cosmopolitanism resign to a belief that direct appeals to cosmopolitanism would not have much clout. But the problem seems to lie deeper, that is at the very level of the imagination. Cosmopolitanism as an ethic or an ideal to aspire to is not given either the due recognition it deserves or its status of a principle needed to

create a more just world order. The tendency to resort to the nation-state as an easily harnessed rhetorical trope rather than fostering cosmopolitan values in public discourse figures as the most significant obstacle standing in the way of imagining ourselves as part of an emerging cosmopolitan community. As such, the failure to *discourse about* cosmopolitanism and a cosmopolitan community represents a failure to *imagine* it as both a real and desirable community. In sum, what each of these discourses offers is a memory of what it means to be a citizen at the trans/national level. My analysis of the rhetoric of advocates for and against cosmopolitan reforms (with a focus on the ICC and the crisis in Darfur) shows how each attempt to influence an attitude towards the ICC or intervention into international disputes invites audiences to remember themselves in different ways. Both the target and consequence of such advocacy is public memory both in and beyond borders.

## Notes

<sup>1</sup> Henry L. Stimson Center, “Understanding US Military Concerns Regarding the International Criminal Court,” Henry L. Stimson Center, (2006), available at [http://www.stimson.org/fopo/pdf/Descript\\_FOPO\\_ICC\\_Project.pdf](http://www.stimson.org/fopo/pdf/Descript_FOPO_ICC_Project.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Victoria K. Holt and Elisabeth W. Dallas, *On Trial: The US Military and the International Criminal Court*, Henry L. Stimson Center, (March 2006), available at [http://www.stimson.org/fopo/pdf/US\\_Military\\_and\\_the\\_ICC\\_FINAL\\_website.pdf](http://www.stimson.org/fopo/pdf/US_Military_and_the_ICC_FINAL_website.pdf) (p. 4).

<sup>5</sup> Ibid.

<sup>6</sup> See Henry L. Stimson Center, “On Trial: The US Military and the International Criminal Court,” Henry L. Stimson Center, (March 2006) available at <http://www.stimson.org/pub.cfm?id=278>.

<sup>7</sup> Ibid.

<sup>8</sup> Holt and Dallas, *On Trial: The US Military and the International Criminal Court*, 32.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., 69.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 13.

<sup>14</sup> Ibid., 60.

<sup>15</sup> Ibid., 8.

<sup>16</sup> Ibid.

<sup>17</sup> In March 2009, the American Society of International Law's Task Force on U.S. Policy toward the International Criminal Court recommended that President Obama review the past U.S. policy toward the court and pursue a "policy of positive engagement" and with the ICC. See American Society of International Law, "ASIL Task Force: U.S. should adopt policy of positive engagement with International Criminal Court," Press Release, ASIL, (March 27, 2009), available at [http://www.asil.org/files/ICC\\_Task\\_Force\\_Report\\_09.03.24.pdf](http://www.asil.org/files/ICC_Task_Force_Report_09.03.24.pdf).

<sup>18</sup> ICC, "Situations and Cases," International Criminal Court, available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>.

<sup>19</sup> William Pace, "The Rome Statute System: Future Perspectives and Challenges," Statement on the occasion of the 10 Years' Celebration of the Adoption of the Rome Statute for the Coalition for the International Criminal Court, The Hague, CICC, (July 3, 2008), available at <http://www.iccnw.org/?mod=rome>.



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Chicago: University of Chicago Press, 1998.

## Curriculum Vitae

**Jennifer Biedendorf**

Department of Communication Arts and Sciences  
The Pennsylvania State University  
234 Sparks Building  
University Park, PA 16802  
jxb952@psu.edu

### **EDUCATION**

Ph.D. Communication Arts and Sciences, The Pennsylvania State University, 2009  
Dissertation: *Memory Beyond Borders? Cosmopolitanism and the International Criminal Court*  
Minor: Women's Studies

M.A. Communication Arts and Sciences, The Pennsylvania State University, 2004  
Thesis: *Challenging Citizenship and Social Action in Transnational Critical Globalization Movements: An Analysis of ATTAC*

B.A. (equivalent), Freie Universität Berlin, Germany, 1997 - 2002  
Areas: American Studies, Political Science, Latin American Studies

### **RELEVANT AWARDS, FELLOWSHIPS, GRANTS, AND SERVICE**

Carroll C. Arnold Award for Academic Excellence, Department of Communication Arts and Sciences, The Pennsylvania State University, 2007

Alumni Association Dissertation Award, The Pennsylvania State University, 2007

Dissertation Fellowship, Institute for the Arts and Humanities, The Pennsylvania State University, Spring 2007

Dissertation Fellowship, Department of Communication Arts and Sciences, The Pennsylvania State University, Fall 2006

Fulbright Travel Grant for study at Indiana University, Bloomington, Indiana, 2000-2001

Indiana University Graduate Exchange Fellowship through Freie Universität Berlin, Germany, 2000-2001

Erasmus Fellowship (European Academic Exchange Program), Università Ca' Foscari, Venice, Italy, Spring 2000

Member of Organizing Committee of Memorialization, Community, and Justice Conference, The Pennsylvania State University, April 2008