

The Future of Gender Justice: The Work of the ICC & Other Bodies

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The Women's Initiatives for Gender Justice was very happy to work with Africa Legal Aid and the International Criminal Tribunal for Rwanda (ICTR) in arranging this event as we review the progress, consider the challenges and assess the most strategic opportunities to advance gender justice and its integration in international criminal law.

As we have heard over the past two days, the jurisprudence of the ICTR has taken forward many issues, their work has been historic and ground-breaking. It provided the first decision for rape as genocide and several other important decisions regarding gender-based crimes. The ICTR also brought the first charges before an international tribunal against a woman for genocide. Of the seven women indicted for international crimes, five relate to the Rwandan genocide; one, the former Minister of Family and Women's Development, is being prosecuted by the ICTR as part of the Butare trial — she is charged, amongst other crimes, with genocide and rape as a crime against humanity. Of the four remaining women, two were prosecuted by Belgium under the principle of universal jurisdiction; one was prosecuted by the Gacaca Court in Rwanda; and, lastly, Agathe Habyarima, the first Lady of Rwanda during the genocide, is currently under investigation in France.

The ICTR is also significant because of the appointments of nationals from African states to lead and administer the process of justice and accountability. This leadership has enhanced and shaped the practice of international criminal law and given us both a body of jurisprudence and new methodologies for the administration of justice. Currently at the ICTR two of the three organs of the Tribunal are led by Africans. At the ICC none of the organs of the Court — nor its related bodies, [including] the Assembly of States Parties ... — are led by an African, despite Africa being the region with the largest number of States Parties to the Rome Statute. Although the ICC lacks sufficient appointments from Africa in key decision-making positions, it does have a better record than the ICTR on gender statistics, with 30% of organs led women, compared with none at the ICTR, and 44% of judges at the ICC are women, compared with 28% at the Tribunal.

Jurisprudential success for gender justice doesn't start with the final decision. It begins with having the institutional competence, the staff and policies to ensure effective investigations, sound charging and prosecution strategies, support and protection measures for witnesses and victims — to create the environment where visionary and solid jurisprudence can flourish. So the staff profile of the Court matters both for principles of equality and representation but also for building a competent institution capable of delivering gender-inclusive justice.

Despite the millions of women "victims" of gender-based crimes in war, there have only ever been around 40 cases with decisions convicting perpetrators of these crimes, and almost all of this jurisprudence has been produced in the last 15 years by the ad hoc tribunals and Special Court for Sierra Leone and the Special Unit for East Timor. As such, the jurisprudence for gender-based crimes is relatively new in the field of international criminal law.

Women's rights advocates, through a series of UN conferences in the early to mid-1990s, firmly put women's rights and violence against women on the international political agenda. This momentum, followed by the work of feminist advocates, individual allies, and the courage of women victims and witnesses before the ad hoc tribunals,

helped put sexual violence on the prosecution radar. But in some ways feminists have become victims of our own success, in that having worked so hard to get crimes of sexual violence and rape on the table, they are now often seen as “women’s issues” or “women’s crimes” with the consequence of being taken less seriously, and the breadth of gender-based violence is too often confined to charges of rape. It is not that sexual violence should be seen as a “women’s crime”, it is that the gendered nature of sexual violence must be understood.

This is very important, because understanding the gendered nature of violence against women means investigations will be more effective and prosecutions will charge these crimes more forcefully, more accurately and more widely. In other words, it is important that the specificity of charges is included, such as sexual violence and rape being charged as such (as crimes against humanity or war crimes), but they should also be charged as torture and as mutilation — crimes historically taken more seriously, and, in combination with the specific sexual violence charges, more adequately reflect[ing] the use, purpose and impact of sexual and gender-based violence as a weapon of war.

To prosecute gender-based crimes effectively, there needs to be an understanding of the underlying, pre-existing conditions of gender inequality which provide the context for violence against women including during armed conflict.

But is it really possible or even realistic to hope that we can address pre-existing gender or racial discrimination underlying violent crimes through jurisprudence? No, or at least not by jurisprudence alone. But it is possible and necessary for an institution like the ICC to understand the discriminations embedded in the gender violence and other crimes under its investigation. Because by understanding the intention of these acts the Court will be able to bring charges which address not just the acts themselves but their power, purpose and impact.

Rape is an effective weapon of war, precisely because it relies on pre-existing

norms, standards & belief-systems regarding gender inequality to create a breakdown within the community; to fracture individual and family networks; to splinter social and cultural connections and assert ethnic dominance through the use of acts already legitimized as the means of expressing dominance — that is, through sexualized violence, most commonly rape, predominantly against women.

It isn’t of course possible to end gender discrimination and violence against women through prosecutions, but it is surely only possible to prosecute gender-based crimes effectively *when* an analysis of gender discrimination and violence against women is applied.

Since 2006, the Women’s Initiatives for Gender Justice has conducted four documentation missions in the DRC, interviewing victims and survivors of gender-based crimes. This documentation was carried out in collaboration with local women’s right and human rights partners. In total we have documented 112 interviews with women survivors and witnesses of sexualized violence. The documentation relates largely to the 4 primary militia groups indicted by the ICC for crimes committed in the Ituri region. Our analysis shows that:

- 95% interviewees experienced rape in some form, either as a gang rape, and/or rape, and/or as “wives” of militia; this includes male interviewees who were forced to rape women.
- 62% said they saw rapes committed against other women and girls, in most cases without specifying who the other persons raped were.
- 37% of victims/survivors who suffered sexual violence experienced gang rape — a few on more than one occasion by the same perpetrators or members of the same militia group. For an additional 40% of interviewees, gang rape could be inferred, but it is not clear and this should be further investigated.
- Of the 37% who were gang-raped, 57% specified the number of perpetrators: the average number of perpetrators in the gang rapes was 4; numbers rang[ed] from 2–10 perpetrators.
- 74% of victims/survivors of sexual violence were abducted. Of these

70% were abducted and subsequently enslaved in a camp and 12.8% were abducted and subsequently enslaved in a house outside a camp. Of the remaining 16.7% uncategorized interviewees.

- 20% indicated that they became pregnant as a result of the sexual violence they endured.
- Only 35% received some form of medical assistance.

We can see from this example that the violence committed against women is extensive and multi-faceted, systemic and gendered.

The *Akayesu* decision¹ is so powerful because it is the decision which most closely reflects the experience of women victims/survivors of gender-based crimes and most accurately captures the power dynamics, meaning and purpose of rape in armed conflict, and it gave criminal law another way of understanding rape and sexualized violence.

Like the ICTR, the Statute for the ICTY provided a limited codification of gender-based crimes; the jurisprudence from the tribunal established historic benchmarks for the prosecution of these crimes in international criminal law. It was not deterred by a narrow statute from bringing expansive prosecutions. The reverse appears to be true for the ICC. The Rome Statute contains the most advanced articulation of gender-based crimes in history in relation to international criminal law. And yet the practice of the Court does not yet match this potential. Despite having an expansive Statute, the prosecutions at this stage appear to be narrow and cautious.

In our new publication – *Making a Statement* – we review the charges and prosecutions of gender-based crimes by the ICC [from] its beginning until June 2008. 58% of those charged are charged with gender-based crimes. In truth it should be all those indicted so far, because, as either leaders, founders, or senior commanders of militia groups, they bear the greatest responsibility for the ordering and carrying out of these crimes. Although charges for sexualized violence exist to some extent in all four conflicts under investigation,

there are no comprehensive charges for these crimes against any of the individuals or in any of the situations — meaning, there [is] a range of gender-based crimes committed for which there are no charges, and there are charges for crimes that lack texture and fullness. In the first case before the ICC, there are no charges for gender-based crimes and, although the charges are for the enlistment and conscription of child soldiers, no girl soldiers have been recognized as victims and able to participate in the proceedings.

For the DRC, many local and international NGOs have documented widespread commission of sexual violence [as have] several bodies of the United Nations, including the Special Rapporteur on Violence Against Women, who described the situation in eastern DRC as the worst crisis of violence against women that she had encountered in her work. But it wasn't until June 2008, the 5th year of investigations in the DRC, that someone was charged by the ICC with any form of sexual violence.

Yes, there are charges for gender-based crimes in some of the indictments before the ICC. But the field of international criminal law and women victims & survivors of these crimes need more than the optics of gender charging, more than gender visibility in indictments. It is important that the Court progresses from gender visibility to purposeful prosecutions — prosecutions which intend to advance the jurisprudence, which reflect the impact of these crimes, which understand the purpose of gender-based crimes in the context of a conflict or specific incident, and which contribute to the deterrence of violence against women. The Office of the Prosecutor (OTP) doesn't need to feel timid in its charging of violence against women — it has the Statutory basis, the distinct mandate, and the positive obligation to do so.

Women are looking for the Court to prosecute these crimes with vision and direction, with determination and purpose, and *with clarity* about its intention to contribute to international criminal law in relation to justice for women.

I would like to propose 4 strategies that may assist the OTP to meet the current and future challenges in this area:

1. First - to appoint a Gender Legal Advisor, as mandated by the Statute, to support the development of investigation and prosecution strategies regarding gender-based violence for each investigation and every case.

2. Develop more effective legal strategies and better case planning. Many of the fundamental challenges before the Court today could have been avoided or resolved ahead of time with more effective planning and anticipation of foreseeable problems. The OTP should be seen to be developing practices which advance rather than re-visit fundamental legal principles.

3. The need to strengthen community relationships — not only to manage expectations, but to address the proximity of victims to justice. Victims don't get to shape or own the process of justice, but they should be able to own the outcomes of the justice process. Community relationships would also give the court greater access to community information and knowledge regarding incidents, attacks and massacres. The Court has a tendency to undervalue the importance of credible and respectful relationships with local NGOs and other community structures that sustain communities during conflicts.

4. Lastly - to support the Election of a new Deputy Prosecutor as Head of Investigations, [a] post [that] has been unfilled since it became vacant with the departure of Serge Brammertz in January 2006.

Others Responsible

Of course the ICC is not the only international institution with a responsibility for advancing gender justice. The UN and its bodies have a key responsibility; the Security Council, Peacebuilding Commission, UNIFEM, and Peacekeeping Division are some of the crucial bodies to address and advance gender justice. On 19 June UN Secretary General Ban Ki-moon announced [that he would] appoint a UN envoy tasked with advocating for an end to violence against women.

We are all aware of **Resolution 1325** on the participation of women in peace-building. The resolution calls for an increase in the participation of women in all decision-making levels in conflict resolution; it calls for the Secretary General to appoint more women as special envoys, and for the UN to incorporate a gender perspective in peace keeping operations; it calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. It emphasizes the responsibility of all States to put an end to impunity; it stresses the important role of women in the prevention and resolution of conflicts and in peace-building, and the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.

But nowhere does Resolution 1325, or any other UN resolution, call for the appointment of women as Chief Mediators to peace talks — a role crucial for the successful resolution of conflicts.

We recently reviewed the post of Chief Mediator in 11 conflicts (Burundi, East Timor, Sierra Leone, Palestine/Israel, Northern Ireland, Liberia, Kenya, Uganda, Bosnia, Georgia, and Angola) and none of the Chief Mediators were women. There were women involved on the teams of the parties to the peace talks and, in the case of Northern Ireland, women formed their own political party to be able to participate directly in the negotiations. In some of the conflicts we reviewed, women have been present on the mediation teams, as in Kenya and Burundi. Women activists have been involved in some conflicts advocating for parties to support gender-inclusive provisions in the Peace Agreements, such as in Uganda. Women Special Representatives of the Secretary General have been involved in post-resolution mediation, as in Bosnia, Angola and Georgia, but there has never been a woman as a Chief Mediator for any of these peace talks.

So today, 8 July 2008, the Women's Initiatives for Gender Justice is announcing the start of a campaign for the appointment

of women as Chief Mediators to peace talks and we begin by calling for the UN to pass a resolution [that] explicitly recognizes the need for, and states its commitment to, appointing women as Chief Mediators of peace talks. This should be accompanied by quotas for the numbers of women who should be appointed and a timeframe for when such appointment milestones will be met.

With the UN and the positive interplay between a range of regional and national actors, gender-based violence can be addressed. But no institution has a greater, more direct role to play internationally in championing accountability for gender-based crimes than the ICC. Its role is unique, irreplaceable, significant and necessary. Without the ICC, we cannot progress.

So it must take steps now to re-direct its efforts, to reconsider the policy and strategic framework currently guiding its investigations and prosecutions. The process of revising or correcting its legacy is lost time for an institution [such as] the ICC. The time to act is now while its legacy is still being created, before it loses ground,

before practices become institutionalized, before confidence is diminished.

More than anything else there are two things the ICC needs to do to address justice for women:

1. Develop greater institutional competence regarding the investigation and prosecution of gender based crimes; and
2. Demonstrate courage:

the courage to lead, the courage to bring comprehensive charges, to make bold judicial decisions, to be visionary not only pragmatic, to embrace the ambiguity in the Statute allow[ing] room to advance rather than retreat from the provisions, the courage to give meaning and application to the extensive provisions in the Statute for gender justice.

To adapt the words of Rebecca Solnit,² there will always be destruction, there will always be some type of conflict, there will always be violence against women; we cannot eliminate it altogether — but with the ICC we can reduce it, we can prosecute it, we can insist on accountability for it, we can marginalize it, and we can address the underlying discriminations embedded in gender-based violence.

FOOTNOTES:

1 *Prosecutor v Jean-Paul Akayesu* Case No. ICTR-96-4-T, 2 September 1998, International Criminal Tribunal for Rwanda.

2 Rebecca Solnit, *Hope in the Dark: Untold Histories, Wild Possibilities*, 2004

Wasana Punyasena, Legal Officer for the Coalition for the International Criminal Court, reports that the resolution passed by the UN Security Council after its 19 June 2008 debate on Women, Peace and Security “stressed that ‘sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security’, and affirmed that ‘effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence’.”

“The resolution also recalled ‘the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court’ and noted that ‘rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide’. It called upon ‘Member States to comply with their obligations for prosecuting persons responsible for such acts’ and stressed ‘the importance of ending impunity ... as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation’.”

On that occasion, **Secretary General Ban Ki-moon** said: “I am eager to deploy more women worldwide, not just as police, military and civilian personnel, but also at the highest levels of mission leadership. And here is where I need Member States to come forward with more women

candidates. Send me your female troops, your police, your civilian personnel and your senior diplomats, and I will ensure that they are all considered; that qualified candidates are rostered; and that the maximum number is deployed to the field as quickly as humanly possible. ...

“By creating a culture that punishes violence and elevates women to their rightful role, we can lay the foundation for lasting stability, where women are not victims of violence, but agents of peace. ...

“Above all, we must do far more to involve women in conflict prevention, peace negotiations and recovery after the guns fall silent. More women must participate in searching for justice, in fostering reconciliation, in supporting disarmament and demobilization, and in shaping development policies and rebuilding institutions.”

Analysis of “The New Humanitarian Order” by Mahmood Mamdani

Veronica Glick

This response to an article by Mahmood Mamdani in *The Nation* (“The New Humanitarian Order”, 10 September 2008) was prepared for the American Non-Governmental Organizations Coalition for the International Criminal Court (www.amicc.org)

by **Veronica Glick**, a recent law graduate of the London School of Economics, who is serving as a volunteer professional associate with AMICC, and was updated on 30 September 2008.

Mahmood Mamdani’s article is available at <http://www.thenation.com/doc/20080929/mamdani>.

Citizens for Global Solutions is a member of AMICC.

Mahmood Mamdani’s *The Nation* article is based on a theory of what he characterizes as the “new humanitarian order”. This new order “claims responsibility for the protection of vulnerable populations”. Mamdani asserts that this responsibility is effectively monopolized by the ‘great powers’ through the Security Council. As a consequence, he states that sovereignty remains in some parts of the world but is suspended in countries in Africa and the Middle East. The result is a system which “once again is bifurcated”, that is, the West retains rights for its citizens through sovereignty, and states in Africa and the Middle East become ‘failed’ states whose citizens are passive beneficiaries of humanitarian intervention. Mamdani argues that it is through humanitarian intervention that the West is gaining control over ‘failed’ states. Thus, he claims, we are approaching a system somewhat reminiscent of early twentieth-century colonialism. He then presents an argument that the International Criminal Court is an instrument of the West in the advancement of this “international humanitarian order”. This argument exhibits misunderstandings of the fundamental purpose of the Court which is to punish originators of atrocity crimes: those with ultimate responsibility.

Mamdani specifically claims that the US eventually used the Court as a “useful tool”. He submits that the US now uses the Court through the Security Council, and the Court itself. This misunderstands the nature of the International Criminal Court and its relationship with the Security Council. Finally, throughout Mamdani’s proposed theory there are specific criticisms of the Court and the case against Bashir.

For more on these Rome Statute articles, see pages 73 & 74.

Many Africans are proud of their path-breaking role with the ICC; see Luck and **Boutros Boutros-Ghali**, page 42; also see *Minerva* #32 interview with the Honorable Mrs **Fatou Bensouda**, of The Gambia, ICC Deputy Prosecutor of the International Criminal Court, who has served as Attorney-General and Secretary of State for The Gambia and as Senior Trial Lawyer at the International Criminal Tribunal for Rwanda. Rejecting “black-mail” by perpetrators of terrible crimes ostensibly under the banner of untrammelled culture or the continually undelivered promise of peace, she said: “We also need citizens and political leaders from all over the world requesting the arrest of Ahmad Harun and Joseph Kony as a first step ... for any agreement and I think it will make a difference for peace. It will make a difference for the Ugandans, for the Darfuris. What is simply at stake is the life or death of millions”

The Rome Statute is a self-contained treaty which, among other things, instructs the ICC judges. It did not confer on the Security Council any additional powers in the creation of the ICC nor is the ICC accountable to the Security Council. The Security Council’s relation to the Court is limited by the Rome Statute to two possible actions. Firstly, if the Security Council chooses to refer a case, the Prosecutor may accept it or reject it (Article 13(b)). Secondly, the Security Council, under Chapter VII of the UN Charter powers, may request that the court defer action on a case for 12 months and the judges have to accept that request (Article 16). It is most peculiar to claim that the US “uses” the Court as under the Bush administration the policy towards the ICC was one of hostility. While outwardly hostile actions have generally subsided, current policy remains one of detachment from the Court. When the question of a referral on the situation with Darfur was raised, the US abstained from the decision altogether. It is hardly the case that, as Mamdani claims, the US aims to “capture the ICC” when the most it did was abstain from this decision.

Further to this, the Court’s accountability is not to the Security Council but to its own Assembly of States Parties (ASP) to which the US does not belong. Accountability is firmly established in the Rome Statute: the ASP is composed of the States Parties to the Rome Statute and exercises oversight over all aspects of the Court’s work.

Mamdani also considers that the Court, in the cases before it, has become subservient to US interests. He argues that, as all the cases before it are from Africa, the Court is turning into a “Western court to try African crimes against humanity”. Looking at the Court and its foundations proves this is not the case. A substantial number of people within the Court are from African states, including the Deputy Prosecutor and the First Vice President who is the presiding judge over Bashir’s case in the Pre-Trial Chamber. Furthermore, the ICC has 139 signatories, 108 are full states parties and around

one third of these are African states. The majority support the court in its dealings with the cases presented before it.

Darfur, as Mamdani notes, was a visible point of concern internationally for many years. Its referral by the Security Council was, therefore, not entirely arbitrary nor was it generally opposed by African countries. The other three of the four situations before the Court were referrals by the governments of the countries concerned and therefore they were not brought about by the Security Council or the Prosecutor. These three countries in question, Uganda, The Central African Republic and the Democratic Republic of the Congo, Mamdani labels as "US adversaries". He argues that they are before the Court because they were "targeted". They all, however, have good relations with the US. There is no evidence that the acceptance of the referrals by the ICC represent accommodation with the US.

Mamdani suggested that accountability for 'genocide' is a further factor which favors the West, arguing that other crimes which occur in 'insurgencies' and civil wars may go unpunished. The latter sort of violence, he claims, has been labeled as "normal violence" whereas genocide is "bad violence" which calls for "humanitarian intervention". This intervention, in line with the theory, leads to a form of "indirect rule". In the Rome Statute, however, war crimes are emphasized as much as genocide and, in fact, most cases have tended to charge crimes other than genocide.

Mamdani's suspicions about the crime of genocide are shown through his criticism of Prosecutor Moreno-Ocampo's request for an arrest warrant for Bashir. He argues that the language of genocide was first employed in the conflict in Darfur and that the Prosecutor used this language as an opportunity to submit insufficient evidence to the Court. He accuses the Prosecutor of attributing too much responsibility over everything that occurred in Darfur to Bashir. The Prosecutor's arrest warrant request presents voluminous and substantial evidence of Bashir's individual responsibility for specific acts.

The Prosecutor, therefore, is not charging Bashir for the historical circumstances, but for these specific acts which constitute crimes. This evidence must convince the judges and they will determine if there is something inadequate in the evidence.

Furthermore, factors such as the drought in Darfur or historical situations that occurred before the court came into being are not immediately relevant to the guilt or innocence of the accused. It is important to note that historical or ecological factors may lead to friction between groups, but this alone cannot necessarily be used as evidence of a person's individual criminal responsibility. In the case put forward by the Prosecutor it is stated that Bashir exploited "real or perceived grievances between the different tribes". There was most certainly conflict between Muslims and Christians in the former Yugoslavia before Milosevic, as was there anti-Semitism in Germany before the Nazis. There may have been racialization in Darfur before Bashir came to power, but that does not relate to the question the court must consider which may be whether he exploited this racialization to pursue a criminal aim.

The familiar international law principle that only signatory countries are bound to a treaty they have signed is raised by Mamdani to challenge the legitimacy of the Court. This principle, however, does not shield a non-signatory's nationals from the treaty's provisions on the territory of a State Party. When an individual commits a crime within a state's territory, that state has jurisdiction over the individual. A state's ability to bring to justice individuals within its territory is central to state sovereignty. A state may, therefore, decide justice would best be served by passing a case on to the ICC. Thus, it follows that limiting this ability would be limiting a state's sovereignty.

Mamdani's view of the role of the court has led to the adoption of two false conceptions of the Court. Firstly he sees the structure of the court from a "victor's justice" model rather than reconciliation. Although the Court focuses on formal trials, it is confined to dealing with those bearing

the greatest responsibility, leaving the rest of those involved to what Mamdani calls "survivor's justice", but might more accurately be described as peace and justice processes. Secondly, the court is not an instrument of humanitarian intervention. It deals with crimes that the international community has agreed are some of the most serious crimes of concern to mankind. These crimes may result in human rights violations. It is important to make this distinction, because not all human rights violations are the result of crimes within the jurisdiction of the court. Mamdani states that the ICC would not have been suited to dealing with situations surrounding the human rights violations which occurred in apartheid South Africa. Not all aspects of the human rights violations, however, would have been under the jurisdiction of the court. In spite of this, the Chairman of the South African Truth and Reconciliation Commission, Archbishop Desmond Tutu, and Deputy Chairman Dr Alex Boraine agreed that it was a mistake not to prosecute senior people involved in the apartheid regime. Ultimately, for Sudan, there has been no use of such alternatives or indeed any viable alternatives for justice.

To conclude, Mamdani has misrepresented the role of the Court in describing it as an instrument of the West, and a model of "victor's justice". This leads to false assumptions of the powers of the Security Council and the Court itself which can be corrected by considering the relevant provisions of the Rome Statute and the make-up of the Court and its signatories. Specifically, although the case in Sudan is undoubtedly complex, the Prosecutor has presented evidence for the individual responsibility of Bashir. This evidence will be evaluated through the Court proceedings. This does not preclude the option that further perpetrators of violence in Darfur whose crimes may not be under the jurisdiction of the Court may be brought to justice through other means should they be established.

The ICC represents an internationally agreed method of bringing perpetrators of the most serious crimes to justice. This, alone, is its scope and its mandate.

With relevance to the previous article, the following blog post (IntLawGrrls, 10 September 2008) refers to an item posted earlier about escape by ‘unsignature’.

On Seeking Shelter from the ICC

Diane Marie Amann

Diane Marie Amann (J.D., Northwestern University School of Law; Dr.h.c. in law, Utrecht University the Netherlands) is a Professor of Law at the University of California-Davis School of Law. Her scholarship examines the interaction of national, regional, and international legal regimes in efforts to combat atrocity and cross-border crime. In addition to her courses and publications, her professional service includes the Board of Advisors of the National Institute of Military Justice and the Executive Council of the American Society of International Law. Professor Amann is an expert member of *Réseau ID*, a network of French and American scholars and judges studying the internationalization of law, and she wrote the US national report as an expert member of a Paris-based comparative study of military and special tribunals. She helped advise the Serbian government on establishing a special war crimes court, and serves as an expert on a project, cosponsored by the US Institute of Peace and the Irish Centre for Human Rights, to draft transitional criminal codes for use in postconflict situations.

The fact [that] “‘unsignature’ affords Bashir no refuge” from prosecution by the International Criminal Court provokes an obvious question: Where else might Sudan’s President sing “Gimme Shelter”?

The answer, of course, is the Security Council of the United Nations. Set up 6 decades ago to promote states’ collective advancement of international peace and security, often as not the Council has been immobilized by states’ disagreement, thus permitting conflict and insecurity to continue.

For years Darfur has proved an issue rife with disagreement. And as our colleague, Northwestern University Law Professor David Scheffer, notes in his recent *Jurist* op-ed, the request of ICC Prosecutor Luis Moreno-Ocampo for an arrest warrant against President Omar al-Bashir has by no means abated disagreement. The Security Council has divided into 2 camps, Scheffer writes:

- 1st, “those members willing to permit justice to run its course against President Bashir”, and
- 2d, “those members seeking to derail Mr. Moreno-Ocampo’s move ... for the ostensible purposes of advancing peace objectives in Darfur ...”.

How might the Council take the case away from the ICC judges now mulling whether to grant the warrant application?

The proffered mechanism is this provision of the Rome Statute of the ICC:

Article 16 - Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

But in the view of Scheffer — who, as US Ambassador at Large for War Crimes Issues led the US delegation at the 1998 treaty-drafting conference in Rome — Article 16 can’t carry the weight that opponents of the Bashir prosecution want it to bear. Tracing the negotiating history, Scheffer explains that the provision was intended solely to permit a Security Council check on “premature” referrals by nation-states or the independent prosecutor — and not on the prior decision of the Security Council itself to refer a matter to the ICC. He adds:

It would have astonished my colleagues and me in 1997 and 1998 to be told that Article 16, which was conceived as a compromise procedure to use at the infancy of a situation before the ICC, would be applied some day to short-circuit a Security Council referral lodged more than three years ago ... If that scenario had been presented to the negotiators more than a decade ago, Article 16 never would have been approved

See appended excerpts from Human Rights Watch Q&A (www.hrw.org).

Scheffer bolsters this conclusion with policy reasons against deferring the Darfur case. (Reasons also are set forth in [an] Article 16 Q&A posted by Human Rights Watch.) Before so doing, however, he includes a host of questions that he says would have been debated at Rome had states believed that Article 16 might operate in this manner.

[It] strikes me that such questions themselves point to a structural argument against construing Article 16 to allow a Security Council short-circuit. Security Council referral is authorized as follows:

Article 13 - Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

...

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations ...

Nothing in the structure of the Rome Statute connects Article 13(b) to Article 16. The two are disjunctive, separate. In between them are Article 14 and 15, which detail conditions for the state party referral and prosecution action, respectively. The absence of any provision detailing Security Council referral indicates that Article 16 pertains only to the methods discussed in Articles 14 and 15. By this reading, the Rome Statute contains no clawback of the 3d method, Security Council referral.

Time will tell how the Council itself chooses to read the Statute.

In several respects, Africa can be seen to be in the forefront of the development of international criminal law — from early use of the ICC to experimentation with mixed levels and traditions of justice systems. What they learn from the process can become instructive for others. Issues raised by Professors Amman, Scheffer, and Mamdani, and by Veronica Glick, will become increasingly important as the International Criminal Court moves beyond seeking justice for its “early adopters” in Africa into the wider world.

**Excerpts from Human Rights Watch
Article 16 Q&A:**

Question 8 - Does the current situation in Sudan merit a deferral by the Security Council under Article 16?

There is no indication that the ICC investigations are detrimental to the maintenance of international peace and security or that suspending the court’s activities would contribute to peace in Sudan. The peace process in Darfur has been stalled for more than nine months on grounds wholly unrelated to the ICC investigations or to the requested warrant for President al-Bashir.

A deferral of an ICC investigation risks legitimizing political interference with the work of a judicial institution and could set a dangerous precedent for accused in other situations. Any exception must be extremely rare.

Human Rights Watch believes that the situation in Sudan does not meet the threshold set out under Chapter VII to warrant a deferral.

When the Security Council referred the situation in Darfur to the ICC prosecutor in 2005, it recognized that the situation in

Sudan constituted a threat to international peace and security. On June 16, 2008, the Security Council reaffirmed its commitment to this referral in a unanimous presidential statement calling on the government of Sudan and other parties to the conflict to cooperate with the ICC.

Question 9 - Do threats of retaliatory action against civilians or danger to peacekeepers warrant a Security Council deferral of the ICC investigation of President al-Bashir?

The implicit threats of retaliatory action against civilians and peacekeepers made by the government of Sudan should not be the basis of a Security Council deferral of the ICC’s investigation in Darfur. Yielding to intimidation of this kind would set a dangerous precedent and would make the international community susceptible to blackmail.

A deferral by the Security Council on this basis would only work to reinforce the current climate of impunity in Sudan and to embolden those responsible for the crimes in Darfur. Indeed, in the three years since the Security Council referred

the situation in Darfur to the ICC, the Sudanese government has continued to violate international humanitarian law as well as numerous Security Council resolutions with impunity.

The government of Sudan is obliged by international law and Security Council resolutions to allow the deployment of the United Nations – African Union Mission in Darfur (UNAMID) to provide full, safe, and unhindered access of relief personnel to all those in need in Darfur and to protect civilians. The actions of the ICC have no impact on those obligations. Threats by the Sudanese government that it cannot guarantee the safety of peacekeepers, humanitarian workers, and civilians should not be rewarded by suspending the ICC’s efforts towards accountability.

Instead, the Security Council should send the message that such acts constitute criminal behavior and that the Sudanese government will only ensure its own political isolation if it permits retaliatory attacks. In addition, those responsible could also become the target of criminal investigation.

Notes & Resources

Anyone who thinks we no longer have to fear another Holocaust, Rwanda, Srebrenica or Kosovo just hasn't been concentrating.

~ **Gareth Evans**,
President of the International Crisis Group

If there is any indication of the need to make R2P operational, it is Darfur. Resolution after resolution, the UN members have failed to follow through on their commitments — whether to impose a no-fly zone, to act when the Government of Sudan failed to disarm the Janjaweed, to take over ... from the African Union full operational control of the peacekeeping force, to establish unity of command and, last, to fully deploy the ... UN force with the troops needed, whether or not the Government of Sudan approves. This was not a failure of the doctrine of R2P but the failure of will of the members of the UN to enforce the authority of the Security Council.

What is disturbing is that the willingness to use the full range of other instruments and to maintain unceasing pressure to achieve an end to the crisis has been lacking. Making R2P fully operational remains an ongoing challenge. In the 21st century, surely we are at a stage where norms should protect human life and people rather than the absolutist definitions of state sovereignty coming out of the 17th century.

~ **Mark Schneider**, Vice President of the International Crisis Group, in testimony given to the US Senate on 12 September, 2008

AMERICA & WORLD

Zbigniew Brzezinski's assessment quoted on page 3 is from *America and the World: Conversations on the Future of American Foreign Policy*, by Zbigniew Brzezinski and Brent Scowcroft; moderated by David Ignatius (2008, Basic Books), partly sponsored by the New America Foundation/American Strategy Program.

RESPONSIBILITY TO PROTECT

Edward Luck, Special Advisor to the Secretary General on R2P (page 41), participated in the first of several autumn events — in New York, London, Brussels, and Washington DC — launching *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, by **Gareth Evans**, President of the International Crisis Group, and former Foreign Minister of Australia. Published by Brookings Institution Press, the book presents the emergence and scope of the Responsibility to Protect as a major break from the past.

ACTUALIZING R2P

The R2P analysis by **Edward Luck** reprinted in this issue is one of two new Stanley Foundation reports on “steps needed to make R2P an operational reality”. The other (*Actualizing the Responsibility to Protect*, August 2008) sets out the findings of the 43rd conference of the United Nations of the Next Decade, which included ambassadors and other national government representatives, senior UN Secretariat officials, and independent scholars and experts (www.stanleyfoundation.org/resources.cfm?id=343).

RISING POWERS

“Rising Powers: The New Global Reality” — evolving at www.risingpowers.org — is “a new **Stanley Foundation** project designed to raise awareness, motivate new thinking, and ultimately improve US foreign policy regarding this global transformation. [Its] aim is to discuss several of the countries challenging the global order, major issues which cut across national boundaries, and how all of this will impact American lives.”

GLOBAL PEACE INDEX

The Center for Strategic International Studies presents its Global Peace Index at visionofhumanity.org.

UN MILLENNIUM DEVELOPMENT GOALS

The *Millennium Development Goals Report 2008* (http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2008/MDG_Report_2008_En.pdf) is “a comprehensive global assessment of progress to date”, based on work of the Inter-Agency and Expert Group on the official MDG Indicators. It also outlines what the world still needs to do to succeed by 2015.

The *MDG Gender Equality and Women's Empowerment Progress Chart 2008*, also produced by that Group and available from the UN Statistics Division, “provides an assessment of progress towards some key targets related to women's empowerment and gender equality”. Trends are assessed on the basis of data between 1990 and the most recent year for which information was available as of June 2008.

From UN-ESCWA, *Gender in the Millennium Development Goals: Information Guide for Arab Millennium Development Goals* summarizes the principal gender issues & concerns in the region in the context of each Millennium Goal. It also provides a detailed assessment of the availability of sex-disaggregated data and gender sensitive indicators in the Arab region for gender-responsive monitoring and reporting of MDGs.

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PROGRESS OF WOMEN

Stronger accountability measures are needed to track progress that governments and multilateral organizations make in implementing their commitments to enhancing women's rights, including the Millennium Development Goals, according to the latest edition of *Progress of the World's Women*, from the UN Development Fund for Women. The September 2008 UNIFEM report (accessible at www.unifem.org/progress/2008), "provides an assessment of each of the Millennium Development Goals from a gender perspective and focuses on five key areas where the need to strengthen accountability to women is urgent: politics and governance, access to public services, economic opportunities, justice, and finally the distribution of international assistance for development and security". The report notes that "accountability to women begins with increasing the number of women in decision-making positions, but it cannot stop there".

"As world leaders convene to discuss the Millennium Development Goals, Progress 2008/2009 shows us that backing international commitments made to women with stronger accountability measures would bring us a lot closer to achieving the MDGs," said UNIFEM Executive Director Inés Alberdi at the report launch on 18 September. "This report highlights the challenges that remain for gender equality to be realized in practice, but it also draws attention to the efforts of millions of women who expose discrimination, demand redress and have changed the meaning of accountability. It emphasizes the important role that multilateral organizations must play in improving their own accountability and in tracking investments in gender equality," she added.

"Good governance needs women, and women need good governance," said Anne Marie Goetz, lead author of the report. "Women have a different perspective on accountability because they often experience accountability failures differently from men. This report argues that good governance needs women's engagement — just as gender equality requires

states that are accountable and capable of delivering on promises of women's rights."

If any man asks why I support better accountability to women, here's my response: because a government that answers to women will answer to you too.

~ UN Secretary-General
Ban Ki-moon

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WOMEN & FOOD

On International Women's Day 2008, the FAO announced publication of *Women and the Right to Food — International Law and State Practice*, which considers the right to food in the context of gender discrimination, identifying controversies and "gaps in law and practice". It may be downloaded (free) at http://www.fao.org/righttofood/publi08/01_GENDER-publication.pdf.

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CLIMATE & JUSTICE

Oxfam's new report, *Climate Wrongs and Human Rights* (September 2008), presented to the UN High Commissioner for Human Rights, states that ensuring basic human rights was essential to lift people out of poverty and injustice. Its author, **Kate Raworth**, says: "Climate change was first seen as a scientific problem, then an economic one. Now it is becoming a matter of international justice." The global impacts of climate change mean that nations must be held accountable for the consequences of their actions, but "litigation is seldom the best way to solve a dispute. That is why we need a strong UN deal in 2009 to cut emissions and support adaptation," Ms Raworth adds. "However, vulnerable countries do need options to protect themselves. Rich country polluters have been fully aware of their culpability for many years." Oxfam has called for a twin approach of mitigation and adaptation to ensure that human rights form "a central pillar of climate policies".

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HEALTH, MORALITY, SECURITY

In his *Nature Medicine* (2005) review of *Global Health Challenges for Human Security* (Studies in Global Equity, Harvard University Press, 2004), by Lincoln Chen, **Jennifer Leaning** and Vasant Narasimhan, **Tony Barnett**, of the London School of Economics, comments that "Human security requires maintenance of 'normality' in a world where abnormality — war, poverty, displacement — is often the norm. Leaning and her co-authors show how people experiencing epidemic violence have an impaired 'capacity to re-enter what they vaguely remember to have been a normal moral universe'. This is the 'collapse of trust into communal violence', where state failure transforms group proximity from a positive resource to a threat and — in Bosnia-Herzegovina, Rwanda, Kosovo, and so many places — where 'survival was the best that could be achieved. Survival with meaning was too much to ask for.' Leaning *et al.* suggest that health is one of the most important components of security, along with attachments to home and community. In the absence of these, meaning is put to flight; people seek desperate remedies, from exchanging sex for food to enclosure in hermetically sealed oppositional ideologies which compromise re-entry into an interconnected world."

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PEACEKEEPING

On the International Day of Peace (19 September), when UN system attention "turns to the role of peacekeepers in promoting and strengthening human rights", the **UN International Research & Training Institute for the Advancement of Women** (INSTRAW) again emphasized the crucial role that gender equality plays in making peacekeeping more effective, sustainable and just. Visit UN-INSTRAW's Gender Training for Peacekeepers website (www.un-instraw.org) to find a charts of UN peacekeeping missions and peacekeeping training centers (including annexes to the paper on page 59), and tools & materials for training on gender and peacekeeping.



ARMS PROLIFERATION

In partnership with the UN Department of Disarmament Affairs, **International Alert** is engaged in follow-up to its 2005 report, *Putting a Human Face to the Problem of Small Arms Proliferation: Gender Implications for the Effective Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, available at <www.international-alert.org/security/>. The paper “gives a background to the interrelationship between the PoA [2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons] and gender as well as recommendations on how arms controls can be better implemented by taking into account the different roles of men, women, girls and boys in society. It also highlights the inconsistency of UN small arms policy with existing UN and international policies on gender, peace and security, which endorse and recommend the importance of integrating gender-specific protection needs into all policy and practice.” Its authors lament that the PoA preamble, where the only reference to gender is found, “makes the common mistake of identifying women only as victims, whereas in reality women and girls play diverse and multiple roles as combatants or combatant associates, weapons carriers for traffickers, and in a more positive sense as peacebuilders

A first in the history of UN peace-keeping: Seema Dundia (right), Commander of an all-female, 103-strong Police Unit from India (with logistics support from 22 men), arriving in Monrovia on 30 January 2007 to help strengthen the rule of law and maintain peace as part of the United Nations Mission in Liberia (UNMIL).

UN Photo/Eric Kanalstein

and agents of change. ... Understanding the gender dimensions of small arms proliferation and misuse is essential to help clarify the challenges and opportunities for disarmament and address specific issues such as supply and demand. At most levels, security is regarded as an issue that exclusively involves men and boys – and so as a result, security policy and practice debates rarely involve women in any significant way, but disarmament programmes that benefit only certain sectors of society will not be effective.”



INDIGENOUS PEOPLES' RIGHTS

On the first anniversary of the UN Declaration on the Rights of Indigenous Peoples (13 September). Les Malezer of the Cultural Survival board, former chair of the Global Indigenous Peoples Caucus on the Declaration, said in an anniversary statement: “It is pleasing to report that during the past year there has been rapid growth in the awareness of the Declaration and the expectation that change must occur. Indigenous Peoples everywhere are citing the Declaration as a standard to be met. The rights contained in the Declaration are being used by Indigenous Peoples as benchmarks for outcomes. Many governments are also responding in a positive way. In Latin America in particular we can see governments are taking steps to incorporate the standards into laws and are distributing copies of the Declaration to the Indigenous communities.”



GLOBAL AFFAIRS

The *Journal of Global Change and Governance* is an e-journal (available at www.jgcg.org) “dedicated to advancing the academic discipline of global affairs. It serves as a medium for scholars and professionals to exchange views on the relationships among globalization, the post-cold war realignment of great-power relations, traditional interstate politics, and the growing prominence of international institutions, transnational corporations, non-governmental organizations, and social movements.” Its Summer 2008 special issue is on “Imagining the Unimaginable: Innovation and New Forms of Counterterrorism”.



UTOPIAN AFFAIRS

Editions Peter Lang (Bern, Switzerland), presents the first two volumes in a new series, “**Ralahine Utopian Studies**”, from an Irish research center purportedly devoted to showing that utopian theory need not always be dismissed as either hopelessly vaporous or doomed to authoritarianism. The first volume, *Utopia Method Vision - The use value of social dreaming*, edited by Tom Moylan & Raffaella Baccolini, offers the results of a 12-scholar, 2-year research seminar, setting forth new fields of study & application and material for future debate. The second, *Exploring the Utopian Impulse - Essays on utopian thought and practice*, edited by Michael J. Griffin & Tom Moylan, reflects on political, ideological and literary (including science fictional and “post-punk”) views of “the nature and expression of Utopia”.



EDGES & ASYMMETRIES

Two items of interest from the Editions Presses Interuniversitaires Européennes / Peter Lang (1 av. Maurice, B-1050 Brussels; www.peterlang.com):

Deceiving (Dis)Appearances: Analyzing Current Developments in European and North American Border Regions (“Regionalism & Federalism” series, No. 12. 2007), edited by Harlan Koff, traces

aspects of the history of border regions as “the places where politics is done” — differentiating self-defined peoples from “barbarians” (or “illegal” migrants today), drawing and re-drawing boundaries of national sovereignty, sometimes experimenting with cross-border cooperation outside national policies or developing autonomous region-like characteristics, succeeding or failing at shared resource management in suggestive ways, and serving as loci of (alleged) security.

Political Asymmetries in the Era of Globalization results from the Institut pour les Sciences Humaines et Sociales looking at the title issue from “social, humanist, and political-military viewpoints”. Its editor, Colonel Josef Schrödl, organized a symposium on “asymmetrical threats in the age of globalization” in 2005 where discussions of “uneven relations” mostly centered on various wars, crimes, and financial crises & other economic shocks.



DEVELOPMENT

The *Washington Post* reports (30 September 2008) that the Japan International Cooperation Agency, headed by former UN High Commissioner for Refugees **Sadako Ogata**, 81, has become the world’s largest bilateral development agency.



SECURITY SOLUTIONS FUNDS

The Women’s Funding Network, with \$450 million in working assets, encompasses 132 organizations that fund “women’s solutions” across the globe, “at the forefront of investing in solutions for some of the world’s most pressing social justice issues”. It seeks to build security from individual women, to families, to communities, to countries, to the world.



PUBLIC POLICY INVESTMENTS

Promoting his new book, *Common Wealth* (March 2008), **Jeffrey Sachs** offers many suggestions for making public policy investments that pursue a “new economic paradigm” that is global, inclusive, cooperative, environmentally aware, science-based, and makes the world safe for diversity. His lengthy list of recommendations to the next US administration includes, aside from matters of taxation, technology, trade and war: commit to international treaties, such as the Convention of Biological Diversity and the UN Convention on Law of the Sea, and comply with the Geneva Convention; contribute to the re-financing of the UN Population Fund; and make the MDGs an important US global policy objective.



UN REFORM

ReformtheUN.org, a project of WFM-IGP, offers a free e-mail service, “Latest Developments” at <<http://reformtheun.org/mailman/listinfo/latestdevelopments>>.



LEAGUE OF DEMOCRACIES

During her visit to the European Parliament on 10 June 2008, former UN High Commissioner for Human Rights **Mary Robinson**, promoting her Ethical Globalization Initiative, said she is not in favor of giving the proposed “league of democracies” an institutional context as “there are a lot of double standards and ambiguity about what constitutes strong democracy”. Noting that “every country has human rights problems”, she said “the strength of the UN is that it includes all countries and that UN membership can be a learning experience” (EP website).



RULE OF LAW

Jane Perlez reported for the *New York Times* (28 March 2008) that, during Deputy Secretary of State **John D. Negroponte**’s visit to Pakistan after the disputed firing of the Chief Justice by then-President Musharraf, miffed lawyers gathered around him on the lawn of a diplomatic residence in the spring evening, and the chairman of the Supreme Court Bar Association, **Aitzaz Ahsan**, “gave Mr Negroponte a 10- to 15-minute discourse on why an independent judiciary was important to fight terrorism, arguing that “an independent judiciary was ‘a middle ground’ between the military and religious fanatics. ... ‘I told him that the most effective weapon on the war against terror is a people who have enforceable rights — then they have a stake in the system,’ Mr Ahsan said of his conversation with Mr Negroponte.”

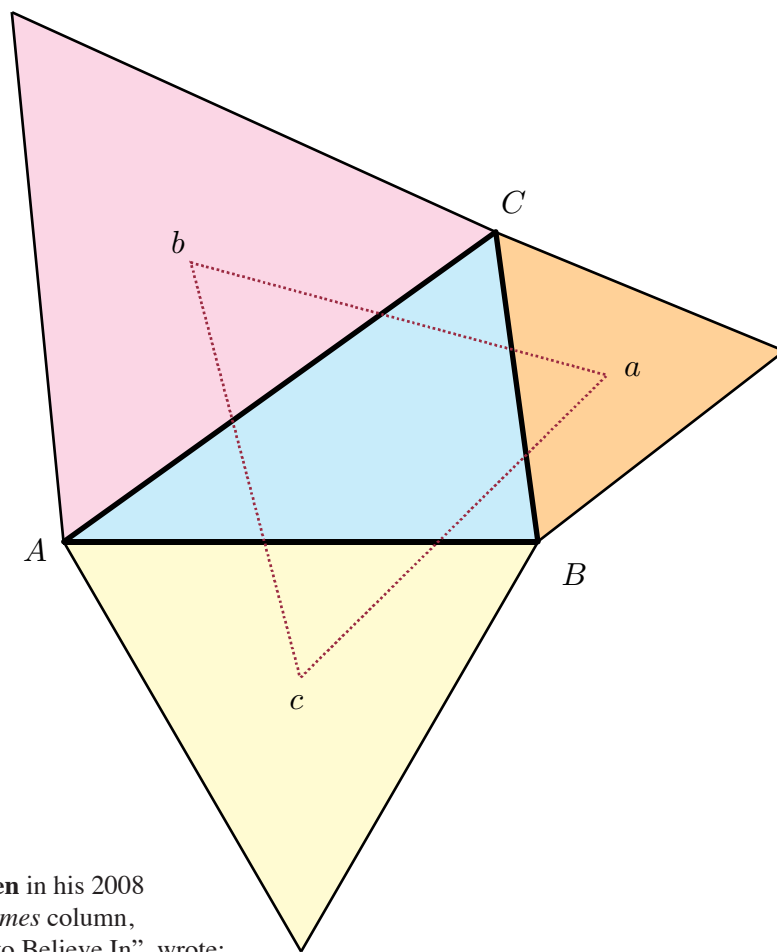
Letter to the editor:

It seems to me that the Responsibility to Protect (R2P) principle is even more central to the concerns of Citizens for Global Solutions (CGS) and the World Federalist Institute (WFI) than the International Criminal Court (ICC) because of the fact that the jurisdiction of the ICC is limited to three kinds of crimes (genocide, war crimes, and crimes against humanity with the crime of aggression to be included once a good definition is worked out) while R2P marks a very **general** and **universal** restriction on national sovereignty. It is not limited to a few kinds of crimes and the protection of a limited range of human rights but requires national governments to protect **all human rights of all their citizens**. It includes **all countries**, not only those who have ratified a particular treaty, the Rome Statute. The validity of the R2P principle has been acknowledged by both the General Assembly and the Security Council.

Furthermore, the big problem of implementing R2P **impartially** requires some of the other important changes advocated by CGS and WFI such as a more democratic global system. If R2P were implemented fairly, we would have gone a long way toward a democratic world federation where the sovereignty of national governments is limited by global values, by “humanitarian” concerns as some of the enemies of R2P are describing it. A major cause of wars *within* countries and wars *between* countries would be eliminated. Providing for the **impartial** and **effective** implementation of R2P will not be easy, but some people may be more energized by viewing the goal that way than by envisioning a democratic world federation.

Ronald J. Glossop
St. Louis, Missouri, September 2008

Ronald Glossop, Professor Emeritus at Southern Illinois University-Edwardsville and author of *World Federation?* (1994) and *Confronting War* (4th ed., 2001), is Chair of the Steering Committee of the World Federalist Institute of Citizens for Global Solutions.



Roger Cohen in his 2008 *New York Times* column, “A Change to Believe In”, wrote:

I believe the tide will eventually turn. R2P will be a reference. It is part of what Lawrence Weschler has called “the decades-long, at times maddeningly halting, vexed, and compromised effort to expand the territory of law itself”.

The “territory of law” is now also the universal territory on which human life is protected. Westphalian principles meet R2P. An R2P generation is coming.

2nd CALL FOR R2P ESSAYS

If you are part of an “R2P Generation”, how does that principle characterize your views, intentions, and expectations? What might a world governed by such a generation look like? How should the Responsibility to Protect be expressed in global citizenship?

Send your thoughts on these and any related questions to the address on page 3 by 1 April 2009. Essays may be selected for publication in future editions.

This page: Illustration of Napoleon’s Theorem - Start with any (acute) triangle ABC, construct equilateral triangles on each side, then connect the center of these three equilateral triangles to form a new triangle abc. Surprisingly, this new triangle is equilateral! One can use this to construct a “wonderful tessellation” of the plane (hint: repeat the original triangle twice, but rotated by 120 degrees): back cover.

