Human Rights and the Failure of American Foreign Policy: The Self-Fulfilling Prophecy of Realism

Molly Morrison  
St. John Fisher College

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Human Rights and the Failure of American Foreign Policy: The Self-Fulfilling Prophecy of Realism

Abstract
American foreign policy makers are rejecting international cooperative endeavors in protective human rights treaties because they are committed to a realist philosophy of international relations that suggests that national interest is determined by the accumulation of power and force. Realists do not take into account new dynamics in international relations evolving from globalization such as the growing role of nonstate actors and the ineffectiveness of force. National interest is the first priority of foreign policy, but realists do not recognize the potential benefits of international cooperation because of their focus on power through military strength to the exclusion of any alternatives. Detrimental efforts of realism can be discerned by exploring three human rights treaties that the U.S. has abstained or withdrawn support: the establishment of the permanent International Criminal Court, the Land Mine Ban Treaty and the Anti-Torture Treaty. American foreign policy appears hypocritical because it does not live up to standards that it criticizes others for in human rights. A different approach in foreign policy, such as complex interdependency, would be more effective in dealing with these human rights treaties. Through this approach national interest can be enhanced and damaging international criticism can be avoided.

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Human Rights and the Failure of American Foreign Policy:
The Self-Fulfilling Prophecy of Realism

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By
Molly Morrison

Robert Stein, Ph.D. Advisor

Richard Hillman, Ph.D. Reader

Zhiyue Bo, Ph.D. Program Director

Rochester, New York, The United States of America

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Table of Contents

I. Introduction 1
   A. The Realist Theory 2
      Literature Review
   B. The Globalist Perspective of Complex Interdependency 5
      Literature Review
   C. Table 1 8
      Political Processes Under Conditions of Realism
      And Complex Interdependence
   D. Thesis 9
II. The International Criminal Court 10
III. The Ottawa Treaty/ Landmines Ban 21
IV. Torture and Other Cruel, Inhuman or Degrading Punishment 34
V. Conclusion 42
VI. Bibliography 45
Abstract

American foreign policy makers are rejecting international cooperative endeavors in protective human rights treaties because they are committed to a realist philosophy of international relations that suggests that national interest is determined by the accumulation of power and force. Realists do not take into account new dynamics in international relations evolving from globalization such as the growing role of nonstate actors and the ineffectiveness of force. National interest is the first priority of foreign policy, but realists do not recognize the potential benefits of international cooperation because of their focus on power through military strength to the exclusion of any alternatives. Detrimental efforts of realism can be discerned by exploring three human rights treaties that the U.S. has abstained or withdrawn support: the establishment of the permanent International Criminal Court, the Land Mine Ban Treaty and the Anti-Torture Treaty. American foreign policy appears hypocritical because it does not live up to standards that it criticizes others for in human rights. A different approach in foreign policy, such as complex interdependency, would be more effective in dealing with these human rights treaties. Through this approach national interest can be enhanced and damaging international criticism can be avoided.
Introduction

The United States of America claims to be a world leader in the promotion and protection of human rights, but has refused to sign treaties to ban land mines, to end torture and would not join the International Criminal Court. If America is one of the leading human rights advocates in the world, why are human rights such a low priority in foreign policy? Worldwide treaty advocates have developed a cooperative perspective in foreign policy while American leaders cling to a theory based on assumptions that do not adequately account for new dynamics in international relations. To participate in an emerging global justice system and to take steps toward a peaceful and safer world the U.S. must abandon some of its outdated positions and join the rest of the world by embracing a more effective attitude of international cooperation. The theory of realism is the root of a dilemma in American foreign policy regarding international agreements aimed to protect human rights globally. Treaties based upon complex interdependency will not go far in realist administrations no matter how obvious the benefits are for the global society and, even more significant, national interest. When foreign policy makers choose to follow certain aspects of realism, they are blinded to opportunities to advance national interest and simultaneously promote human rights.

Two diverging theories, realist and globalist, or complex interdependency, typify international politics. The conflict between these two beliefs is an American dilemma. The success of international agreements, such as the International Criminal Court, the Land Mine Ban Treaty and the Anti-Torture Treaty depends upon international cooperation. Yet international cooperation is not an important factor in the realist paradigm guiding American foreign policy.
The Realist Theory

Realism has been the most influential post World War II approach to international relations in the United States. To understand the importance and influence of realist thought we must examine its foundations. Noteworthy realists like Thomas Hobbes, Hans Morgenthau, George Kennan, and Henry Kissinger may have varying opinions on this school of thought but they share several similar core beliefs. Each holds a pessimistic view of human nature, a belief in the conflicting nature of people and their politics, the priority of power and national security, the priority of the state, and morality rooted in consequences.

George Kennan sums up the realist perception by stating,

When it [the state] accepts the responsibilities of governing, implicit in that acceptance is the assumption that it is right that the state should be sovereign, that the integrity of its political life should be assured, that its people should enjoy the blessings of military security, material prosperity and a reasonable opportunity, as the Declaration of Independence put it, the pursuit of happiness. For these assumptions the government needs no moral justification, nor need it accept any moral reproach for acting on the basis of them. ¹

Kennan points out the realists’ emphasis on sovereignty, military strength, and the lack of a need for moral justification. Exploring these ideas in depth shows that realists assume human nature, and therefore society, is motivated by self-interest. Disorder and injustice are natural by-products of public life. Realists are pessimistic about the establishment of a just political order since communal injustice stems from the selfish and morally imperfect nature of humankind. ²

Realist thought also states that political relations are fundamentally and naturally conflictual. International relations are formed, most importantly, from the quest for security and also the intense competition for scarce resources. States are responsible for their protection against foreign aggression and must rely on their resources and capabilities since there is no common authority in the world. Thomas Hobbes describes a "general inclination of all mankind [for], a perpetual and restless desire for power after power that ceases only in death. And the cause of this is not always that a man hopes for a more intensive delight...or that he cannot be content with a moderate power: but because he cannot assume the power and means to love well, which he hath present, without the acquisition of more."³ Essentially, the only effective protection from another state's abuse of power is the comparable power of one's own state.

Thomas Hobbes is best known for his book *Leviathan* in which he describes his pessimistic perspective of human nature. He argues that the natural state of human affairs is one of constant struggle and violence. He articulates, "Where there is no common Power, there is no Law: Where no Law, no Injustice."⁴ Thus, he argued that obedience even to an arbitrary and unpleasant government is necessary to avoid the even greater evils of chaos and anarchy. He adds, "[A] Fundamental Law of Nature; Which is, to seek Peace, and follow it."⁵ His descriptions of the functions of the state are based on how it can overcome chaos and anarchy.

Following Hobbes' assumptions the central argument of realist theory is the importance of power and force. It assumes that the most important issues in international

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affairs revolve around national security, as opposed to nonsecurity issues like economic welfare, human rights, and interdependence. The immediate goal of states is always the maximization of power because survival is the most fundamental interest of the state. Henry Kissinger explains that, "No statesman can entrust the fate of his country to the continued good will of another sovereign state, if only because the best guarantee for the will remaining good is not to tempt it by too great a disproportion of power. Peace, therefore cannot be aimed at directly; it is the expression of certain condition and power relationships." Since the global system is naturally anarchic and there is no common sovereign to defend the interests of states or punish aggression, each state seeks to promote its own interests in the global scene through military force. Nations will strive to build up military capabilities because interests are best protected and promoted through the threat or use of force. In addition, allying with other states also helps to deter aggression and will more effectively promote states' interests. International cooperation is a concept in realism but only when used in the context of war or the threat of war.

Another very significant concept is the priority of the state. Realists recognize the growing role of nonstate actors, especially multinational corporations and international governmental agencies, but the central factor in relations is and will be for the future, states. Realism is a state-centric approach in which the chief actor in the global system is the state.

Lastly, realists assume that foreign policy should be judged by its consequences not its motives or goals. However, realists do not go as far to say that any end justifies the use of any means. But sovereignty, national interests and national security are such a

\[5\text{Ibid. p. 190.}\]
high priority in realism that they are deemed to be worth most costs. George F. Kennan
argues that, “[Government’s] primary obligation is to the interests of the national society
it represents, not to the moral impulses that individual elements of that society may
experience.” The emphasis is on the outcomes most beneficial and protective of the
state. As Kissinger said, “While we should never give up our principles, we must also
realize that we cannot maintain our principles unless we survive.”

The Globalist Perspective of Complex Interdependency

Joseph Nye and Robert Keohane address inadequacies in the assumptions of
political realists in their book *Power and Interdependence-World Politics in Transition*.
They begin their critique by summing up the realist perspective into three fundamental
assumptions. First, coherent units of states are the dominant actors in foreign affairs.
Secondly, an effective and usable instrument of policy is force. Lastly, due to the second
assumption, realists rank issues in world politics on a hierarchy guided by military
security. The authors sum up their opinion on realist assumptions:

If we challenge them all simultaneously, we can imagine a world in which
actors other than states participate directly in world politics, in which a
clear hierarchy of issues does not exist, and in which force is an
ineffective instrument of policy.

This perspective characterizes complex interdependency. Under these assumptions the
world of foreign policy appears very different than it does from the realist perspective.

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7 See Kennan, “Morality and Foreign Policy.” p.206.
8 See Kissinger, “Reflections on American Diplomacy,” p. 42. See Amstutz, International Conflict and
Cooperation textbook for all five characteristics of realism, p. 15-17.
9 Robert Keohane and Joseph Nye, *Power and Interdependence World Politics in Transition* (Boston:
10 Ibid., p. 24.
There are three main characteristics of complex interdependence. First, multiple channels create interconnected societies. Multiple channels consist of interstate, transgovernmental, and transnational relations. "Foreign economic policies touch more domestic economic activity than in the past, blurring the lines between domestic and foreign policy and increasing the number of issues relevant to foreign policy. Parallel developments in issues of environmental regulation and control over technology reinforce this trend."\(^{11}\) For example, multinational firms and banks, nongovernmental business organizations, private international organizations, and trade unions are important because of their actions of their agendas but also because their decisions transcend boundaries and impact one another.\(^{12}\)

The second assumption of complex interdependency proposes that there is no clear hierarchy of issues. Military security does not always dominate foreign affairs. "Foreign affairs agendas--have become larger and more diverse. No longer can all issues be subordinated to military security."\(^{13}\) Government policies are increasingly overlapping domestic and foreign policy, for example, with the European Union, the International Monetary Fund, and the World Trade Organization.

Lastly, military force is irrelevant in resolving disagreements on issues such as economics or with members of an alliance. In these circumstances there is a degree of complex interdependence that surpasses military force. "Force is often not an appropriate way of achieving other goals (such as economic and ecological welfare) that are

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\(^{11}\) Ibid., p. 26.  
\(^{12}\) Ibid., p. 26.  
\(^{13}\) Ibid., p. 26.
becoming more important."\textsuperscript{14} Nevertheless, the use of force is very much an important aspect of international relations. When there is little interdependence military force is still important for political and military relations. There is clearly, though, a changing role of force in the world today. Nye and Keohane grant that the realist perspective is applicable and more relevant in particular situations. For example, "When an issue arouses little interest or passion, force may be unthinkable. In such instances, complex interdependence may be a valuable concept for analyzing the political process. But if that issue becomes a matter of life and death – as some people thought oil might become – the use or threat of force could become decisive again."\textsuperscript{15} The authors explain how sometimes realism is more effective and other times complex interdependency is more relevant by stating, "Most situations will fall somewhere between these two extremes. Sometimes, realist assumptions will be more accurate, or largely accurate, but frequently complex interdependence will provide a better portrayal of reality."\textsuperscript{16}

Nye and Keohane neatly organize the two aspects of international theory in the following table:

\textsuperscript{14} Ibid., p. 27-28.
\textsuperscript{15} Ibid., p. 29.
\textsuperscript{16} Ibid., p. 24.
<table>
<thead>
<tr>
<th>Goals of actors</th>
<th><strong>Realism</strong></th>
<th><strong>Complex interdependence</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Military security will be the dominant goal.</td>
<td>Goals of states will vary by issue area. Transgovernmental politics will make goals difficult to define. Transnational actors will pursue their own goals.</td>
<td></td>
</tr>
</tbody>
</table>

| Instruments of state policy | Military force will be most effective, although economic and other instruments will also be used. | Power resources specific to issue areas will be most relevant. Manipulation of interdependence, international organizations, and transnational actors will be major instruments. |

| Agenda formation | Potential shifts in the balance of power and security threats will set the agenda in high politics and will strongly influence other agendas. | Agenda will be affected by changes in the distribution of power resources within issue areas; the status of international regimes; changes in the importance of transnational actors; linkages from other issues and politicization as a result of rising sensitivity interdependence. Linkages by strong states will be more difficult to make since force will be ineffective. Linkages by weak states through international organizations will erode rather than reinforce hierarchy. |

| Linkages of issues | Linkages will reduce differences in outcomes among issue areas and reinforce international hierarchy. | Organizations will set agendas, induce coalition-formation, and act as arenas for political action by weak states. Ability to choose the organizational forum for an issue and to mobilize votes will be an important political resource. |

| Roles of international organizations | Roles are minor, limited by state power and the importance of military force. | |
In short, Nye compares the break down of power in the global information age to a three dimensional chessboard. The top level is made up of traditional military might, in which the U.S. has a monopoly and can act unilaterally. The middle level is economic power and is comprised multipolarly with the U.S., Europe, Japan and eventually China. The bottom level is the realm of transnational relations that transcends borders and governments.\textsuperscript{17} He adds that focusing on one level of this three dimensional game is no longer adequate.

\textbf{Thesis}

It is my contention that the modern world of international relations is moving beyond concepts upon which the realist theory is founded. The nature of foreign affairs is increasingly affected by factors unaccounted for in realism. Realists do not take into account new dynamics in international relations evolving from globalization such as the growing role of nonstate actors, the ineffectiveness of force and the importance of human rights. An approach different from realism is necessary to adequately address these changes. American foreign policy must evolve with the world in order to stay relevant and useful. Specifically regarding human rights treaties, realist paradigms of power, strength in sovereignty, military buildup and alliances do not account for interdependency. Today a trillion and a half dollars flow daily across borders, transnational production chains span the globe and, of course, communication is cheap and instant via the Internet.\textsuperscript{18} Realists cannot continue to make policy based on beliefs that our country should strive to be an individual entity unaffected by the world community. Progression towards peace can be made only through multilateral

\textsuperscript{17} Ibid.

\textsuperscript{18} Ibid.
international cooperation. The benefits of human rights treaties such as the International Criminal Court, the Ottawa Treaty and the Anti Torture Protocol outweigh the limited costs to sovereignty and contribute to national interest by strengthening legitimacy and supporting peace to ensure a safer environment for Americans and others. The cost of resigning or abstaining from these treaties is devastating. Not committing to these treaties while maintaining human rights rhetoric and demanding international support for American activities in the Middle East is hypocritical and far more damaging to American power and prestige than any alleged cost to sovereignty or strength in committing to international human rights treaties. National interest and security are more effectively met through cooperation due to the interdependent nature of the world today. By ignoring national interest benefits of these treaties the realist perspective of the present Bush administration is self-fulfilling because it creates more conflict in the international community by adhering to the realist perspective that prioritizes force instead of working within these human rights treaties to reduce conflict. Membership in cooperative human rights treaties would be a step towards ending the cycle of conflict created by realism.

The International Criminal Court

To understand why the present Bush administration has chosen to follow a strict realist policy and overlook any benefits of a permanent International Criminal Court we must explore the evolution and events that led to this critical period in history. The precedence for the International Criminal Court can be traced back to the close of World War II, to the establishment of the Nuremburg and Tokyo military tribunals. President

Clinton declared in signing the Rome Treaty, “The United States has a long history of commitment to the principle of accountability, from our involvement in the Nuremberg tribunals that brought Nazi war criminals to justice to our leadership in the effort to establish the International Criminal Tribunals for the former Yugoslavia and Rwanda. Our action today sustains that tradition of moral leadership.”¹⁹ The victorious Allies used the tribunals to prosecute and punish the major Nazi and Imperial military officers accused of violating fundamental norms of international law known as war crimes, crimes against humanity and crimes against peace. The Allies used international law as retribution instead of the typical reprisals.²⁰

The United Nations General Assembly first recognized the need for a permanent international court to deal with the kinds of atrocities seen in the Second World War. Drafting an agreement proved to be very difficult, but the Assembly did succeed in ratifying a Convention of the Prevention and Punishment of the Crime of Genocide in 1948. The United States’ policymakers supported and played an integral role in establishing the Nuremberg and Tokyo Tribunals in addition to the recent tribunals of Rwanda and the former Yugoslavia. Drafts for a statute for an International Criminal Court were submitted in 1951 and again in 1953. The General Assembly could not reach an agreement due to its inability to effectively define aggression. The drafts were very moderate, specifying jurisdiction only if jurisdiction was conferred by the state or states

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of which the accused is a national and by the state in which the crime was allegedly committed.\textsuperscript{21}

The drafts were discussed off and on, but Cold War tensions made further development unfeasible. In part because of the scope and scale of atrocities that have taken place in the past twenty years, there has been a renewed impetus for creating a permanent court to bring to justice the perpetrators of crimes such as genocide, ethnic cleansing and sexual slavery. Focus has also been brought to ending the impunity of those in power guilty of these atrocities.\textsuperscript{22} The direct action spurring the revisitation of the issue came in December of 1989 when the General Assembly was asked by representatives of Trinidad and Tobago to allow the International Law Commission to resume work on the International Criminal Court and to include jurisdiction over drug trafficking.\textsuperscript{23}

The conflict in the former Yugoslavia erupted in 1993 and international attention was brought one again to genocide, ethnic cleansing policies and crimes against humanity. The Security Council of the United Nations, including the U.S., established ad hoc International Criminal Tribunals to prosecute perpetrators of war crimes in Rwanda and the former Yugoslavia. United Nations Secretary-General Koffi Annan expressed the need for the court by stating,

For nearly half a century – almost as long as the United Nations has been in existence – the General Assembly has recognized the need to establish such a court to prosecute and punish persons responsible for crimes such as genocide. Many thought... that the horrors of the Second World War –


the camps, the cruelty, and the exterminations, the Holocaust – could never happen again. And yet they have. In Cambodia, in Bosnia and Herzegovina, in Rwanda. Our time – this decade even—has shown us that man’s capacity for evil know no limits. Genocide... is now a word of our time, too, a heinous reality that calls for a historic response.\(^{24}\)

The awareness of such atrocities drove the international community to support and strive to establish once and for all a permanent court.

The International Law Commission completed a draft and submitted it in 1994 to the General Assembly, which in turn established an ad hoc committee on the Establishment of the International Criminal Court. Their report was then considered by the General Assembly, and the newly created Preparatory Committee on the Establishment of the International Criminal Court consolidated and resubmitted a completed draft in 1998. In July of 1998 the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court met in Rome with full U.S. representation.\(^{25}\) Koffi Annan expresses the importance of this meeting:

In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through to the end. We ask you...to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice: that they, too, have rights, and that those who violate those rights will be punished.\(^{26}\)

Member states of the United Nations did as Annan requested by finalizing and adopting the convention and established the first permanent International Criminal Court in history. The convention came into force sixty days after sixty of the 120 member states ratified the treaty.

\(^{24}\) Ibid.
\(^{25}\) Ibid.
Despite differences, the Rome Statute was passed in the final hours of the meeting, although with many reservations attached. The areas addressed were, genocide, crimes against humanity, war crimes and aggression. The United States initially did not vote in favor of the statute but did sign later in order to work with other governments to shape the court and address any issues as a member. Bill Clinton approved the treaty with reservations but did not submit it for ratification. Most recently President Bush withdrew the original signature. How and why was there such a turn around?

Worldwide and domestic benefits of the court are clear and numerous. A permanent court with a mandate to bring to justice individuals responsible for crimes against humanity will operate more efficiently and effectively than ad hoc tribunals. The court will fill a debilitating void in international criminal law. Ad hoc tribunals are more lengthy and expensive to maintain. In addition, they are established after the fact and are limited to time and place. The permanent court will be able to respond quickly and be able to limit or prevent the duration of the violence occurring. Proponents add that a permanent court would be a stronger deterrent especially because there is no impunity for heads of states. The court is an independent entity separate from the Security Council and can act in the best interest of all members. The court will also relieve pressure from states that are unable to prosecute directly. Many nations believe it to be the most

\[\text{26 Ibid.}\]
\[\text{27 Ibid.}\]
\[\text{29 See http://www.un.org/law/icc/general/overview.htm.}\]
effective means of enforcing international law and the pursuit of justice around the world.\textsuperscript{30}

Opponents of the court rely on realist fundamentals to support their position. Some quote Thomas Hobbes, "only law backed by force is law."\textsuperscript{31} Since the court is based upon cooperation they believe it is impossible for it to have any actual power. Others find fault with its excessive jurisdiction. They add that the court extends beyond immediate national self-interest and threatens sovereignty. The concern is that the court will possess a supranational judicial review power. It will become an unavoidable participant in the national legal process because it will set precedence regarding which cases are tried effectively on the domestic level. Opponents of the court fear that criminal cases assumed to be tried ineffectively would be called up to the International Criminal Court, thus eroding sovereignty.\textsuperscript{32}

President George W. Bush cited many of these concerns when he withdrew American support for the International Criminal Court in May of 2002. He did not submit the treaty for ratification and will not continue participation in its formation. He even went a step further to proclaim that U.S. will not respect the jurisdiction of the court over U.S. nationals.\textsuperscript{33} The administration is actually attempting to diminish the court’s legitimacy and resources by isolating it.\textsuperscript{34}

The administration’s specific realist concern is that the court poses a threat to U.S. nationals. Since the court has unchecked power, the fear is that the U.S. would be

\textsuperscript{31} See Amstutz, \textit{International Conflict and Cooperation}, p. 334.
targeted for politically motivated charges due to its superpower status. At first the hesitation was because American armed forces would be at risk. But, notably, a recent shift in the reasons for the Bush withdrawal center on protecting the country’s top leaders from being indicted, arrested or extradited to the court on war crimes charges. For example, former Secretary of State Henry A. Kissinger, a leading realist, was accused of aiding the 1973 coup in Chile and the ensuing seventeen-year dictatorship of General Augusto Pinochet. Whether the true reason for ‘unsigning’ the treaty is to protect the military or top civilian leaders, the administration is no longer participating in the development of the court.

Realists attempt to justify recent trends in American foreign policy by the unique position of the state. Court challengers contest that it would undermine American ability to defend its military and participate in peacekeeping missions for fear of prosecution. To treat the U.S. like any other country would be impractical since it is the world’s lone superpower and is increasingly the main guarantor of global security and economic well being. Also, since so many nations depend on U.S. power for security and well being it must remain free to act unilaterally. Therefore, the court would affect the U.S. like no other state.

Some applaud the withdrawal for its tough-minded practicality that has been a tradition in foreign policy. "There is also a long historical tradition in the United States of viewing alliances with suspicion. Robert Kagan [senior associate with the Carnegie

international rules as all great powers have done through history.\textsuperscript{40} As noted earlier, realism does not stress the ways and means but the outcomes of actions.

Supporters of the court counter the Bush administration’s excuses for withdrawal. It is unlikely U.S. officials would be prosecuted because the stipulations and definitions of genocide and other crimes against humanity are based on precedence that the U.S. helped to establish. To fall under this category the action would have to be demonstrably systematic, widespread and with intent to cause harm. It is important to stress that this is a court of last resort and acts only when a national court is unwilling or unable to try the case. The county of the accused has the right to try the case first, guaranteeing the sovereignty of U.S. courts.\textsuperscript{41}

It is also in the courts best interest to establish its credibility with careful investigations and prosecution able to withstand the toughest legal scrutiny. Therefore it would not be logical for the court to adjudicate politically motivated frivolous and time-consuming charges. Indictments go through several review phases providing checks against illegitimate charges. Judges are well credentialed and on nonrenewable terms. They do not hold any other offices during their appointments and are protected by stipulations against political pressure. Trials are heard by a panel of five in which no two are from the same country and no judge from any of the countries involved in the case.\textsuperscript{42}

Contrary to critic’s belief, there are ample protections for American peacekeeping soldiers. The international community criticizes this American foreign

\textsuperscript{40} Ibid.
stipulations against political pressure. Trials are heard by a panel of five in which no two are from the same country and no judge from any of the countries involved in the case.  

Contrary to critics belief, there are ample protections for American peacekeeping soldiers. The international community criticizes this American foreign policy as being outdated and made by unilateralists of blind confidence. The court only has power to try actions occurring on or after July 1, 2002 and has safeguards that would help protect American officials. So, officials like Kissinger would be protected and America can show its commitment to preventing such crimes in the future. It is beneficial to American national interest to commit to this treaty to show accountability for its policies and to prevent future injustices.

Furthermore, if top civilian leaders, like Kissinger, are accused of crimes against humanity why should they remain protected while American military and government agencies seek out leaders from other countries accused of the same crimes? Perhaps it is time to defend against the accusations or show accountability for them in court, which would enhance American credibility internationally.

There are many repercussions for the present and the future surrounding the U.S. rejection of the court. To begin with, it places the U.S. out of step with most of the world including its closest allies. All North Atlantic Treaty Organization (NATO) members, excluding Turkey, and all of the EU have signed and ratified the treaty.Interestingly, along with the U.S., Iraq, North Korea, and Iran, Bush’s ‘axis of evil’ have not ratified the treaty. While Bush insists on confronting the ‘axis of evil’ with the war on terrorism,

he associates with the same ‘evil empires’ in rejecting this treaty. This issue exposes the hypocrisy of U.S. foreign policy.

This type of institution could potentially be used to peacefully bring to justice terrorists by bringing them to justice in an international court. Currently the court does not cover terrorism but there is a near universal agreement that acts of terrorism would be covered under crimes against humanity. Through this approach perhaps the U.S. and coalition forces could avoid using military force, which aggravates already hostile conditions. Moreover, problems of aggression could thus be dealt with diplomatically and with greater international support. The long-term benefits of this court to the U.S. will only be as much as the support and effort put into its formation and evolution. American support could contribute to the growth of the court into an important instrument in the international community to aid in promoting and maintaining justice for the future.

It is naïve to suggest that the U.S. can exempt itself from standards they impose on others without doing massive damage to an already failing credibility and prestige. Other nations see the U.S. conducting military tribunals for the Taliban and Al Qaeda while not allowing its own citizens to be subjected to judicial proceedings. The International Criminal Court will exist with or without U.S. support. The administration’s foreign policy is short sighted and fosters a perception around the world of American arrogance and lack of regard for global concerns.45

Because of its withdrawal the U.S. will have no influence in selecting judges and prosecutors. Therefore war criminals like Slobodan Milosevic, former Yugoslavian dictator, can argue that he is a victim of a legal process that would never be applied to his

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adversaries. The U.S. appears hypocritical as it claims devotion to law and human rights and yet abandons one of the most important projects of the last century.\textsuperscript{46}

The confrontational way in which Bush ‘unsigned’ the treaty also has proven to be counterproductive. Clinton signed the treaty so that concerns would be more effectively addressed from within the court.\textsuperscript{47} Critics of recent American foreign policy accuse the U.S. of being above international law and promoting double standards. President Bush’s treaty refusal comes at a time when the country is seeking support for a war on terrorism. The U.S. is sending a message to the world that it will act alone whenever it deems it necessary without regard for the interests of other nations. Yet, the Bush administration is seeking military bases, airspace rights, oil, airfields and multilateral support while alienating America’s closest and most distant allies in one move. It may appear as a short-term win but the reality is it is a long-term loss.\textsuperscript{48} For example, “The military success in Afghanistan dealt with the easiest part of the problem, and Al Qaeda retains cells in some 50 countries. Rather than proving the unilateralists’ point, the partial nature of the success in Afghanistan illustrates the continuing need for co-operation.”\textsuperscript{49}

The perceived costs of signing or at least supporting a permanent court are far less than the benefits to American security and image. Backing out of the International Criminal Court may appear to the Bush administration as protective of the realist values that will secure the dominant position of America in the world, but in the long run the

\textsuperscript{48} Ibid.
way he has rejected the treaty will undermine any progression American foreign policy
had made toward contributing to international cooperation and the safeguarding of human
rights. To secure the American position in the world foreign policymakers must turn
away from the overly pessimistic, suspicious, and protectionist tones of realism and
embrace cooperation and shared power that is more relevant in the interdependent world
system of today.

Even if one cannot completely abandon realist values it is logical that realist goals
of power balance and stability could be better served working through International
Criminal Court rather than against it, especially when seeking cooperation in actions
against terrorism and nuclear weapons threats. A cooperative attitude would build on
national strength to combat threats and even prevent terrorism. It is logical to look
forward to the evolution of the court that would defray the burden of the U.S. as the
world’s policeman. The court would be an alternative outlet to try war criminals and
preserve peace. By adhering to a strict realist perspective American foreign policy
appears hypocritical, shortsighted, and arrogant.

The Ottawa Treaty

The American foreign policy position towards the permanent International
Criminal Court is not an isolated occurrence. Power heavy realist perspectives that led to
the withdrawal from that treaty have also impacted a human rights treaty intending to
eliminate the use of landmines. Another example of U.S. hypocrisy is evident in its
rhetoric to eliminate landmines, in addition to its contributions to relief and demining
funds while opposing efforts to eliminate landmines through an international treaty.

49 Joseph Nye, “The New Rome Meets the New Barbarians,” see
To understand the debate over the Landmine Ban Treaty we must first comprehend what anti-personnel landmines are and how they are used. An anti-personnel, or AP, landmine is a military weapon designed to detonate when a person steps on, handles or triggers a tripwire. The root of the dilemma is that mines are indiscriminate since they not distinguish between a civilian, a friendly soldier or an enemy. Even more problematic, landmines are long lasting, difficult to find and expensive remove after a conflict has been resolved. Mines used in World War II are still maiming or killing victims today.\(^50\) "According to the UN, each year 2-5 million new mines are put in the ground, adding to ‘one of the most widespread, lethal and long-lasting forms of pollution’ the world has ever known."\(^51\)

Landmines proliferate because they are easy to make and use, cheap to buy and extremely hard to detect and remove. According to Vermont Senator Patrick Leahy’s website, “A mine can cost as little as $3 to make, and hundreds of dollar to locate and remove.”\(^52\) AP mines are appealing to use in conflicts of all levels from third world militias to the U.S. armed forces because they are so cheap and brutal. “Since 1940 an extraordinary proliferation of anti-personnel landmines has taken place around the world. By the 1990s almost every conflict had seen the use of AP mines, with serious longer-term humanitarian, economic, and environmental consequences.”\(^53\)

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\(^{52}\) See [http://leah.senate.gov/issues/landmines/fm-fact.html](http://leah.senate.gov/issues/landmines/fm-fact.html).

\(^{53}\) See Cameron, To Walk Without Fear, p. 133.
Civilians face a much greater risk in modern warfare. In the early 20th century, 90% of wartime casualties were soldiers, by the end of the century 90% were civilians.  

The changing nature of warfare puts more civilians at risk. AP landmines cannot be blamed entirely for this astounding statistic but they do contribute greatly to the devastating effect felt by non-combatants. Former Canadian Foreign Minister Lloyd Axworthy explains the nature of modern war,

In ‘traditional’ wars among states, injury or death of civilians was seen as ‘collateral damage’: a by-product of war that was acceptable as long as it was minimized. Now civilians have become the primary, often the intentional, victims of warfare. In identity-based conflict, the battlefield extends to homes and playgrounds, with individuals targeted because of their affiliation with a specific group. Some analysts have estimated that the civilian casualty rate in today’s internal conflicts is around 90 percent, compared with 50 percent in World War I and 10 percent in the 19th century.

Landmine victims reflect these statistics since it is estimated that 80% are civilians.

Annually there are 15,000-20,000 casualties. Landmine casualties are especially horrific by nature and design.

When a mine is stepped on, a chain reaction is set in motion. It begins with the mechanical pressure that triggers the detonator, igniting a booster charge of high-quality explosive material. The booster charge then sets off a more powerful explosion of trinitrotoluene, better known as TNT. Shock waves explode outward faster than high-velocity bullets, often at speeds of around 6,800 metres per second, driving metallic garments, broken bones, bacteria, earth and burning plastic into the victim’s body.

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\(^{54}\) Ibid., p. 188. John F. Troxell, "Landmines: Why the Korea Exception Should be the Rule," *Carlisle Barracks* 30, no. 1 (spring 2000): 83.

\(^{55}\) Ibid., p. 83.

\(^{56}\) See Lloyd Axworthy, "Towards a New Multilateralism," in Cameron, *To Walk Without Fear*, p. 450.


\(^{58}\) See Cameron, *To Walk Without Fear*, p. 2.
Between 60 and 85 million unexploded landmines are estimated in the ground in 60 countries like Cambodia, Afghanistan, Israel and Bosnia.\footnote{See http://leahy.senate.gov/issues/landmines/Im-facts.html.}

Physical and mental trauma is severe for those ‘lucky’ enough to survive a blast. Because most landmine casualties occur in underdeveloped countries, getting adequate and timely care for injuries is difficult. The Red Cross estimates from their records that of the 757 cases that received medical attention a vast majority were between six and twenty-four hours after being wounded.\footnote{See Cameron, To Walk Without Fear, p. 4.} Even when treatment is found the wounds are difficult to attend to due to the nature of the explosion. After amputation infection often sets in from tiny pieces of hard to detect shrapnel. Child victims have to undergo several rounds of surgeries throughout their lives due to growing limbs.\footnote{Ibid.} Psychological damage is also a major factor in treating landmine victims. Amputees not only have physical but mental trauma to overcome. They face low self-esteem, depression, anxiety, often accompanied by job loss and social isolation to name just a few of the afflictions.\footnote{Ibid.}

AP landmines also take their toll on economic and environmental conditions, which can be especially devastating in a recovering war torn society. Mines were designed to channel enemy forces into disadvantageous positions and reduce their mobility along with protecting forces from attack. Mines were also used to destroy anything of value to the enemy even long after the enemy is no longer a threat. Landmines even inhibit reconstruction and aid. The cost of economic devastation from loss of land for farming and development is debilitating.\footnote{Ibid., p.5.}
Because of these devastating effects on civilians, often occurring after the end of hostilities or when no fighting is taking place, humanitarian organizations began to collaborate in advocating against the use of AP mines. The International Committee of the Red Cross and the International Committee to Ban Landmines, an international coalition of non-governmental organizations, began to campaign for awareness and against their use in earnest by 1990. These organizations believed that the existing prohibitions set forth by the Convention on Conventional Weapons (CCW) were weak and not being followed. The CCW was established in 1980 by the UN, under Protocol II there are specific mine regulations. This international legal agreement applies only to countries that agreed to be bound to its terms. Thus, while the U.S. is a signatory of the CCW, it does not automatically require adherence to the new protocol. Terms impacting landmine use are classified as international humanitarian law, which establishes a distinction between civilians and combatants and specifically bans any attack on civilians. Humanitarian law also prohibits the use of any weapon that is designed to cause more injury than necessary to take the combatant out of duty even if the weapon is solely directed towards combatants. These concepts and events were all in harmony with American laws and values.\textsuperscript{64}

France formally requested in 1993 to review and strengthen the CCW provisions and a review committee met in 1995. The committee was deadlocked on the AP mines issue and concluded with no new developments. More measures were agreed upon in an additional conference in 1996 but international non-governmental organizations deemed

them too complex and inadequate. At this time the Canadian government took the initiative and called for pro-ban countries, organizations and agencies to meet and come up with strategy to ban AP mines globally. This is the start of the Ottawa Process that would yield the Ottawa Treaty. Meanwhile interested parties met again in Brussels and finally in Oslo in 1997 which resulted in the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, or in short The Ottawa Treaty.65

The United States’ actual role in this international movement to ban the mines has been difficult to reconcile with its political rhetoric. On both sides of the debate there is agreement that there are obvious problems with AP landmines and their effects on civilians. Why then has the ban been so controversial in the United States?

In fact, the United States has been committed to ending the devastation caused by antipersonnel landmines since President Clinton called for the eventual global elimination of these mines in a 1994 speech before the UN General Assembly. Despite intense political pressure and in seeming disregard to stated policy, however, the United States has not yet become a signatory to the Ottawa treaty banning all antipersonnel landmines.66

A moratorium on AP landmine exports was signed by President Bush in 1992 and extended by President Clinton to the present. President Clinton’s speech to the General Assembly was an unprecedented call to eventually eliminate AP mines globally. Presidential Decision Directive 48 in 1996 by President Clinton prohibited the use of non-self destructing AP landmines, except for the defense of Korea, and committed the US to pursue a ban on production, transfer and use of non-self destructing AP mines by

1999.\textsuperscript{67} Senator Leahy initiated a program at the Defense Department to train deminers and fund improved technology development.\textsuperscript{68} He also called for the ratification of the 1980 CCW, which passed in 1996 and placed the U.S. as the first country to enact domestic legislation on landmines and set a clear example for the international community to follow.\textsuperscript{69} Also in 1996, UN ambassador Madeline Albright returned from a trip to Angola and, "bluntly stated that US policies on the issue would not see the elimination of landmines ‘within our lifetimes’ and concluded that a new policy was urgently needed."\textsuperscript{70} President Clinton, UN Ambassador Madeline Albright and Senator Leahy all addressed the UN in 1996 calling for bans on the use, stockpiling and transfer of AP mines.

Separately the U.S. committed to stop using AP mines outside of Korea by 2003 and in Korea by 2006.\textsuperscript{71} However, the 1997 Ottawa Treaty went unsigned by the U.S. because it does not allow for land mines in Korea. The U.S. abstained from the UN vote on the Ottawa Convention that passed with 127 in agreement 0 against and 19 abstentions.\textsuperscript{72}

The Clinton administration was often questioned for its inconsistent and confusing policies on AP mines. The administration was torn over the Korean issue, which resulted in an inability to sign the treaty until alternative weapons were developed. Clinton’s record has shown that he was motivated to work towards a solution to eliminate

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\textsuperscript{67} Ibid.
\textsuperscript{68} See http://leahy.senate.gov/issues/landmines/im-facts.html.
\textsuperscript{70} Ibid., p. 223.
\textsuperscript{71} Except in mixed systems
\textsuperscript{72} See Cameron, \textit{To Walk Without Fear}. http://leahy.senate.gov/issues/landmines/im-facts.html.
the mines but, "It is evident, however, that the US Department of Defense is not motivated to make a serious effort to find alternatives to AP mines."73 The Joint Chiefs of Staff's office, the Pentagon and the Department of Defense have watered down Clinton's stance against AP mines.74

The apparent duality of policy towards land mines revolves around the attempt by the former President to balance humanitarian and security concerns. He said he could not sign the treaty because, "I will not send our soldiers to defend the freedom of our people and the freedom of others without doing everything we can to make them as secure as possible."75 Presidential Decision Directive 64 of 1998 exemplifies this duality by opening with a statement of commitment to humanitarian goals but also includes that whatever steps necessary to protect US military will be taken. The directive proposes to aggressively search for alternatives to mines in violation of the convention and also once this is found will sign by 2006.76 The George W. Bush administration is ambivalent about any AP mine ban measures and has made no efforts to move on any measures to work on banning land mines. Reports that claim the Pentagon will use mines in a war with Iraq

American leaders began as initiators in the AP mines ban movement in the 1990's but since the movement has stagnated and any momentum to work toward complying with the treaty has dissipated. The U.S. is the only western country not part of the Ottawa Treaty. What is the reality of the situation in Korea that is prohibiting participation?

While there are obvious safety concerns for that area, the real issue is much larger than the demilitarized zone. Once again American foreign policy is being shaped by realism. Unilateralist and militaristic advisors were able to temper the Clinton administration’s stance and have found strength in the George W. Bush administration.

What exactly is the issue regarding mines in Korea? Is it a militaristic myth or necessity? The security situation in Korea has been singled out as an exception. The Korean exception that prohibits signing the Ottawa Treaty was formally established after the Joint Chiefs of Staff informed President Clinton that a Pentagon computer war game had concluded that the removal of US AP landmines from Korea would be catastrophic since Seoul is a short distance from the Demilitarized Zone. The size of North Korean forces compared to allied defenders is also a major factor. “With approximately one million active duty forces and a reserve force of more than five million, North Korea is the most militarized nation on earth, and its army is currently the third largest in the world.”77 William Perry, former Secretary of Defense advised that, “If we simply remove these anti-personnel landmines, it is likely that North Korea could overrun Seoul before we could finally turn the invasion around. Overrunning Seoul would entail the loss of tens of thousands of soldiers and perhaps hundreds of thousands of civilians.”78 This position stated in 1996 was modified in 1997 by the Pentagon to include the idea that Seoul would be captured with or without the AP landmines but still tens of thousands of

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76 Ibid.
casualties could be averted with their use. This was concluded after new runs of the Pentagon’s military computer game.

“The Pentagon’s claim surprised many independent military analysts, who consider APLs to be of marginal importance in Korea.”

Lt. Gen. James F. Hollingsworth, a retired Army Commander who served in Korea, adds, “If we are relying on these weapons to defend the Korean peninsula, we are in big trouble.”

The premise is that the landmines would slow an advancing attack and allow a counter attack. “This barrier system serves as a significant deterrent to any North Korean attack. Long-duration active mines along the DMZ help deter the third largest army in the world from resuming an attack with little or no notice.”

But, Hollingsworth points out that North Korea’s disciplined troops would most likely move through minefield despite casualties as they did in the Korean War.

Faults with the pro-mine theory are numerous. To start, in the event of an attack allied fighters would be operating in a condition of complete air superiority. Also, weapons systems sold to South Korea greatly enhance their capabilities of defense that would offset the computer scenario used to formulate their premise. In addition, the computer program itself has been run with faulty and ever changing data such as the Korean advancement rate, a monsoon factor, no warning of attack and assuming the AP landmines will cause significant delays. Lieutenant General James F. Hollingsworth states,

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79 Ibid.
80 Ibid., p. forward.
There is indeed a military utility to APLs, but in the case of US forces in Korea it is minimal and in some ways even offset by the difficulty our own APLs pose to our brand of mobile warfare. The loss of this utility is a small and acceptable price to pay for moving the world toward a complete ban on APLs. Not only for civilians, but US armed forces, will benefit from a ban on landmines. US forces in Korea are no exception.83

Most importantly the Canadian Draft allows for a ten-year period for the removal of currently embedded weapons. This gives time to develop alternatives.84 It is in the absence of alternatives that the U.S. keeps itself out of any ban treaty.

It is important not to oversimplify this complex situation in Korea. The terrain and the massive North Korean military leads to an the increasing possibility that combat would be less like Desert Storm and more like World War I.85 Any deterrent or defensive weapon that is possible to use seems logical to use in this tense area. Here we can start to discern the true fears of a landmine ban. The apprehension is over the domestification of foreign policy.

Traditionally foreign policy has been based on the sole consideration of national interests. Realism does not account for the NGO’s in a role of power or of any real significance. The Ottawa Treaty can be attributed to the cooperation and determination of international non-governmental agencies. “In the United States, calls for the elimination of antipersonnel landmines have been tempered with concerns about maintaining the ability to deter conflict and reduce risk to US armed forces. Pursuing the parallel tracks of addressing humanitarian concerns and security requirements has been a

83 Ibid.
84 Ibid.
challenging balancing act.” Therefore, to tilt the balance towards the humanitarian

demands of these international NGO’s would erode the power over choosing U.S.’s

national interests and tilt the balance towards an organizational movement unaccounted

for in realism.

A core concept of realist ideology is to maintain national interest at all times. In

addition, realism adheres to a strong military presence and build up and the unimportance

of non-governmental agencies and humanitarianism. For the first time countries have

agreed to completely ban a weapon already in widespread use through international

humanitarian law. In direct competition with realist thought, international opinion is

increasingly placing humanitarian values above military interests and non-governmental

agencies are becoming key components in international politics.

Axworthy sums up the

new dynamic in international relations that is not addressed in realism by stating,

I believe that the campaign to ban landmines not only produced a

significant victory in international disarmament, but also epitomized

broader changes that have shaken the foundation of international relations.

Driven by global change, new forms of multilateralism are emerging, with

new concepts, new tools, new actors and even new institutions. As both

product and exemplar of these changes, the landmine ban campaign

deserves to be studied in it broader context. This context is defined by

issues and actors new to international relations: issue such as threats to

human security and new form of conflict based on ethnic or religious

identity, and sectors such as non-governmental organizations (NGOs), the

private sector, and new alliances of states.

These groups strive to make foreign policy decisions based on values rather than military

security interests.

86 Ibid., p.82.
88 See Axworthy, “Towards a New Multilateralism,” in Cameron, To Walk Without Fear, p. 448.
89 Ibid.
90 Ibid., p.451.
The high priority realists place on military might and sovereignty is not reflected in the international drive to wipe out landmines. The movement has been strong and has succeeded without the aid of the US, which is another example of the changing nature of international relations. This should not be challenged but embraced by the U.S. This is not to say that the U.S. should throw out all its precautions, but it should try to work within this new evolving system instead of being ambivalent. Yes, the U.S. has a unique position as the money and might of the world but to maintain this status humanitarian issues must be incorporated into foreign policy. “In terms of military power, the United States is the only country with both nuclear weapons and conventional forces with a global reach. American military expenditures are greater than those of the next eight countries combined...In economic size, America’s 31% share of the world product is equal to the next four countries combined.”91 But this power is not always a reliable force in the interdependent world. “Today there is a much bigger payoff in ‘getting others to want what you want’, and that has to do with ideology, along with agenda-setting and economic incentives for co-operation. Soft power is particularly important in dealing with issues arising from the bottom chessboard of transnational relations.”92 As Nye concludes, “Those who recommend a hegemonic American foreign policy based on such traditional descriptions of American foreign power are relying on woefully inadequate analysis. When you are in a three-dimensional game, you will lose if you

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92 See Nye, “Military Deglobalization?,” Foreign Policy, p. 82. See Nye www.economist.com/displaystory.cfm
damage to civilians after the battle than to opposing forces during the conflict.” Bacon
who was the Pentagon spokesman in the Clinton administration, added that, “the use of
mines could turn world opinion against the United States.” American military use of the
weapon would appear to undermine a global effort that is moving without U.S. aid.

The Land mine debate can be broken down to a struggle between sovereignty and
internationalism, unilateralism and multilateralism, realism and complex
interdependency. U.S. policymakers are blinded by specific realists concepts that do
not allow policymakers to see the necessity of cooperation on an international level that
would enhance national interest and security. Efforts should focus on finding alternatives
to AP landmines and de-mining instead of continued use. The US does have a difficult
position balancing humanitarian and military concerns but should use this position to lead
by example towards a safer world.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The formation of the permanent International Criminal Court has been driven by
government agencies worldwide; and the land mine ban treaty has evolved through the
collaboration of NGO’s and governmental agencies. A human rights treaties regarding
torture has also been stimulated by NGO’s and multilateral cooperation among nations.

The Convention Against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment is the most important UN treaty for controlling and prohibiting
torture. The first draft was initiated by the Commission on Human Rights in 1978 and
adopted by the UN General Assembly in 1984. Precedence for the treaty had been

95 Ibid.
96 See Nye www.economist.com/displaystory.cfm
collaboration of NGO’s and governmental agencies. A human rights treaties regarding torture has also been stimulated by NGO’s and multilateral cooperation among nations.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the most important UN treaty for controlling and prohibiting torture. The first draft was initiated by the Commission on Human Rights in 1978 and adopted by the UN General Assembly in 1984. Precedents for the treaty had been established by Article 5 of the Universal Declaration of Human Rights that states, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”\(^97\) Article 7 of the International Covenant on Political and Civil Rights, Article 5 of the American Convention on Human Rights and Article 99 of the 1949 Geneva Convention all reiterate similar precedents.

The process that led to the final Convention against Torture can be accredited to the non-governmental organization (NGO) Amnesty International (AI), founded in 1961. Amnesty International worked to create a grassroots-based global initiative to support the work of the UN. Their monitoring of torture on a worldwide basis provided the foundation and support for the adoption of the Declaration on Protection of All Persons from Being Subjected to Torture and other Cruel, Inhumane or Degrading Punishment by the General Assembly in 1974 and later in 1984 with the Convention Against Torture. The support of these initiatives is a result of the pressure AI helped to build in the world community.\(^98\)


\(^{98}\) Ibid.
Amnesty International keeps track of and publicizes statistics relating to torture and ill treatment, which motivates the international community to continue work against torture. Torture is still a major problem and is far from being erased from practice. All released information 1998 at least 35 nations reported torture practices. In addition, torture or ill treatment, lack of medical care, and cruel, inhuman, or degrading prison conditions resulted in deaths in fifty-one countries. Even more recently in 2001, Amnesty International reported torture or ill treatment by security forces, police or other state authorities in 111 countries. It is important to keep in mind that the nature of torture as a government initiated secret act leads us to believe that these statistics only touch upon the actual depth of the problem.

Since the U.S. ratified the Convention against Torture in October 1994, Amnesty International has raised concerns on numerous human rights violations including torture and ill treatment. "Ironically, the United States, which claims to promote human rights throughout the world, has been the subject of torture allegations at home." The 1998 report issues include:

- Beatings, excessive force and unjustified shootings by police officers
- Physical and mental abuse of prisoners and detainees by prison guards, including use of electro-shock equipment to inflict torture or ill treatment, and cruel use of restraints
- Sexual abuse of female prisoners by guards
- Ill-treatment of children in custody
- Failure to protect prisoners from abuses by staff or other inmates
- Inadequate medical or mental health care and overcrowded and dangerous conditions in some facilities
- Cruel conditions on death row and violation of human rights standards in the

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99 Ibid., p.87.
application of the death penalty.\textsuperscript{102}

As a treaty member the U.S. has maintained its commitment to the protection of human rights. The inadequacies listed previously were addressed by President Clinton in his 1998 Executive Order on the Implementation of Human Rights Treaties in which he pledged full commitment to respect and abide by treaty obligations. However, more distressing to Amnesty International is that the United States, although a member of the treaty does little to enforce or comply with it. According to a 2000 report, there is a lack of effective entities to monitor prison conditions and police departments. In addition, reservations, declarations, and interpretations by the U.S. have diluted the treaty.\textsuperscript{103}

The Convention Against Torture was a milestone in human rights but had little actual power. Like many international treaties it is solely dependent on state’s voluntary cooperation. In signing, a country shows the world their commitment to end torture but measures were needed in order to make them prove it as well. Therefore, an additional protocol was negotiated to give the original treaty some tangible power. After ten years of difficult negotiations the UN Generally Assembly voted on December 18, 2002 to adopt the new Optional Protocol by a vast majority of 127 in favor, 4 against (including the U.S.), and 42 abstentions.\textsuperscript{104}

Eleven international NGO’s campaigned for many years for this adoption. This Protocol allows independent international and national experts to conduct regular visits to places of detention within signatory states. The aim of these visits will be to assess the treatment of persons deprived of their liberty and their conditions of detention and make

\textsuperscript{102} See Amnesty International Briefing for the UN
\textsuperscript{103} Ibid.
concrete recommendations for improvements. Members will be required to co-operate with the visiting mechanisms and to take steps to implement their recommendations.

The Protocol represents an innovative approach within the UN human rights system by focusing upon preventive rather than retroactive measures. It also establishes, for the first time in international human rights instruments, a complementary inter-relationship between preventive efforts at the international and national level.105

This protocol, which strengthens the original treaty with some substantial measures, is opposed by the United States for several reasons. The U.S. Department of States official explanation of the rejecting the protocol,

The current text of the Draft Optional Protocol before the ECOSOC [Economic and Social Council] has serious flaws. In some respects, its overall approach and certain specific provisions are contrary to our Constitution, particularly with respect to matters of search and seizure. Furthermore, in view of our Federal system of government, the regime established by the draft would be overly intrusive.106

But in the same draft the State Department claims,

The United States unequivocally condemns the abhorrent practice of torture. We are a Party to the Convention against Torture and are the largest contributor to the UN Voluntary Fund for the Victims of Torture. Our Federal and state laws prohibit constituting torture and impose heavy penalties on violators.107

U.S. support for the anti-torture movement has been inconsistent at best. In the past the U.S. has supported and initiated measures to combat torture. But, even when participating in the Convention against Torture treaty the Department of State did not so whole-heartedly. In fact,

No government had previously asserted such an extensive list of reservations, declarations and understandings as that proposed by the U.S. State Department’s letter of December 10, 1989. Among the most

105 Ibid.
106 See www.state.gov/draft.org
107 Ibid.
disquieting reservations were proposed declaration that the provisions of Article 1 through Sixteen of the Convention not be self-executing.\textsuperscript{108}

In addition, it took the United States almost twenty years to ratify the Convention.

"Although the United States may have been a lead player in the development of the International Bill of Rights, right-wing interests in the U.S. Senate view any surrender of U.S. sovereignty, even to international instruments of human rights law, with considerable suspicion."\textsuperscript{109} Here we can begin to understand the truth of the controversy over this protocol.

To further shed light on this situation we must also take in account conditions in current events. The United States argued that language in the protocol could allow for international visits to prisons and terror suspects being held by the U.S. military at Guantánamo Bay Naval Base in Cuba.\textsuperscript{110} There are more than 600 detainees of 40 nationalities held in Guantánamo Bay.\textsuperscript{111} Recent reports suggest that up to 10 percent appear to be victims of circumstance. They were already found to be of no intelligence value by interrogators in Afghanistan.\textsuperscript{112}

Not only did the U.S. abstain from voting on the Protocol but also tried, without success, to block the U.N. vote on the plan to enforce the treaty. The United States tried to reopen the proposal after 10 years of negotiations on the document. This move was highly criticized. "Denmark, which read a statement on behalf of the European Union,

\textsuperscript{109} Ibid., p.99.
\textsuperscript{112} Ibid.
accused the United States of intentionally stalling in order to kill the proposal.” Human Rights Watch warned that the U.S. proposal to re-open negotiations would be a kiss-of-death for the treaty. Abusive governments, many of which have not even signed the Convention Against Torture, would use further negations to water down or block the adoption of the protocol.

The U.S. did not have to oppose or delay the adoption even if it chose not to ratify the treaty itself. In fact, as legal expert Ian Seiderman, of International Commission of Jurists in Geneva says, the American opposition is puzzling,

We’re somewhat uncertain about why they are so strenuously opposed it. They have said it’s too intrusive for their own places of detention, that the treaty allows the experts unrestricted access to places of detention; however, there are exceptions in the treaty. A state does not have to allow visitors in for reasons of national security, or if there would be a threat to the security of the people detained.

Even the explanations for not supporting the treaty appear hypocritical. The U.S. claims to be protecting states’ rights but in reality,

The U.S. government has objected to the proposal, claiming that prison visits by an international body would be too intrusive. But the system of visits has many checks and balances, ensuring consultation with governments, prior notification of visits and the confidentiality of reports. It can be adapted to different legal cultures, including federal systems. And if the U.S. government didn’t ratify the new treaty, it would not face any inspections at all.

Once again the U.S. position on human rights treaties has alienated much of the rest of the world. The protocol was widely maintained by western European and Latin American

114 Ibid.
countries. Countries such as Nigeria and Iran, both accused of torture by AI, supported the United States. In addition, support came from Japan, China, Cuba, Cyprus, India, Pakistan and Egypt.\textsuperscript{118} Ironically, the U.S. has criticized China, Cuba and Sudan for their human rights abuses in the past.\textsuperscript{119}

When it comes time to make a commitment it is apparent that U.S. foreign policy makers are not prepared to support their rhetoric with action. American traditional realist attitudes are guiding these confusing unilateralist stances against human rights treaties today. Not only do policy makers cling to sovereignty and protectionism to ensure domestic strength, they also try to stall and sabotage those progressive countries willing to compromise to end torture. The repercussions for these actions are disturbing. Not only does the U.S. lose the human rights benefits of this treaty, but also compromises its credibility in the world community, damaging prestige.

Ian Seiderman makes another important point, “One has to be somewhat suspicious about why they would not want to allow places of detention to be looked at by international scrutiny...I think there’s just a lack of openness and transparency with regard to Guantánamo.”\textsuperscript{120} Amnesty International is quick to point out that President Bush stated in the State of the Union address in 2002 that "the USA will lead by defending justice everywhere." Amnesty counters, "that it is time his government looked to its actions with regards to Guantánamo detainees.”\textsuperscript{121}

\textsuperscript{120} Ibid.
\textsuperscript{121} See http://web.amnesty.org/a/ntf/print/AMR510022003?OpenDocument. (press release 1/10/03)
Overall, the campaign of NGO's, such as Amnesty International, have empowered society to influence foreign relations. Power and authority of domestic governments are compromised in order to lend strength to international human rights treaties. It is this fact that holds lawmakers back from full participation. Realism has convinced certain lawmakers that above all sovereignty is the most important aspect in foreign relations. They are fixated on maintaining power and authority that could be eroded by multilateral human rights treaties. Instead of recognizing how much more important it is to maintain and protect human rights globally and in turn boost security and interests they choose to abstain from this agreement. The strength of the treaty without U.S. support shows a trend towards the importance of the NGO's and the world community. Realism does not account for the influence of non-state actors and NGO's in foreign affairs. The United States should work with these organizations to best represent the needs of Americans and citizens of the world and secure national interest by working as a signatory.

**Conclusion**

Because of globalization, the rise of NGO's, and in general interdependency, realism in American foreign policy has exceeded its usefulness in the area of human rights. Foundations of realism including unilateralism, militarism and sovereignty are no longer contributing to the strength and stability of the worlds remaining superpower. By addressing human rights treaties with distrust and uncooperativeness more disagreement is bred. In order to break the cycle of conflictual realism cooperative measures must be pursued. Instead, by committing to these realist concepts the United States appears hypocritical because it initiates, promotes and contributes to human rights movements domestically and internationally. However, American leaders do not commit to treaties
that give real strength to the human rights movements they claim to support. It is extremely important to examine American foreign policy toward human rights treaties today because of this glaring double standard. President George W. Bush’s Address to the Nation on March 17, 2003 chastised Iraq for using torture chambers and he asks for support to bring Saddam Hussein to justice as a war criminal. But, the U.S. is one of a handful of countries that has not committed to the International Criminal Court that would handle such a case and has also abstained from the Anti-Torture Protocol that would attempt to regulate and prevent torture globally. In fact Bush’s ‘axis of evil’ are among the few countries that have chosen to reject these treaties as well. Even more devastating to American reputation is not only that these treaties have been neglected but at times American leaders have worked to stall or sabotage them as well. For example, the International Criminal Court and the Anti-Torture Treaty were blocked by U.S. actions. The international community is rightfully disappointed by American actions and enraged by its indifference toward the Land Mine Ban Treaty. In a challenging time of terrorism and hostile regimes it is difficult to grasp why distinct actions have been taken to alienate the international community. Reliance on particular realists’ concepts are alienating the international community and unraveling any progressive movements made in protecting human rights globally.

National interest and security would be better served by embracing these cooperative endeavors. “Under the influence of the information revolution and globalisation, world politics is changing in a way that means Americans cannot achieve all their international goals by acting alone.”122 American national interest would be

122 See Nye www.economist.com/displaystory.cfm
enhanced through these three treaties by fostering prestige and cooperation in the international community. America has the opportunity to set an example for the rest of the world to follow in the pursuit of human rights protection and also send a message to those abusing human rights that this will no longer be tolerated. Through international cooperation, torture, genocide, landmines and other issues can be dealt with in a more effective and powerful multilateral manner. This would increase national security by aiding in the protection of Americans against the three specific humanitarian concerns addressed in the treaties but also would promote cooperation against terrorism and other threats. “[I]n a world where borders are becoming more porous to everything from drugs to infectious diseases to terrorism, America must mobilize international coalitions to address shared threats and challenges.”123 Moreover, not only would these treaties enhance national interest and security as intended by eliminating human rights threats, but also the alternative to participating in these treaties threatens national security and works against national interest. “[T]he new conventional wisdom that America is invincible is equally dangerous if it leads to foreign policy that combines unilateralism, arrogance and parochialism.”124 By rejecting these treaties we are missing out on the benefits of the treaties and also the benefits of cooperation that would enhance national interest and national security.

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123 Ibid. 83.
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