

# COMPILATION OF DOCUMENTS ON UN SECURITY COUNCIL RESOLUTIONS 1422 / 1487

*Controversial resolutions proposed by the United States seeking  
immunity from the International Criminal Court*



Photo Credit: UN

A publication of the **Coalition for the International Criminal Court**

May 2004





# **Compilation of Documents on UN Security Council Resolutions 1422 / 1487**

Coalition for the International Criminal Court

May 2004



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## INTRODUCTION

In May 2002, the United States government commenced a number of attacks on the Rome Statute of the International Criminal Court (ICC), including the US' announcement that it would oppose the renewal of UN Security Council mandates for all peacekeeping operations unless the Council granted immunity from prosecution by the ICC for all US peacekeeping personnel. Firing a salvo across the UN bow at the time of the renewal of the East Timor peacekeeping operation, the US threats escalated in June into an intense confrontation at the Security Council.

On June 30, 2002, the US vetoed the renewal of the Bosnia & Herzegovina peacekeeping mission and further threatened to shut down all UN peacekeeping operations unless their demands for ICC immunity were met. The US also suggested that it would cease paying its 25% share of the UN peacekeeping operations budget. With more than 120 nations attending the final ICC Preparatory Commission meetings at UN headquarters, and the Rome Statute slated to enter into force on July 1, the US encountered fierce opposition from many of its closest allies and scores of other nations. These countries were outraged that the US would pit international peacekeeping against international justice. They strenuously objected to the US effort to misuse the Security Council and UN Chapter VII authority to amend a treaty that the US opposed.

UN Secretary-General Kofi Annan sent an extraordinary letter to US Secretary of State Colin Powell, expressing his strong disapproval of US proposals in the Security Council. Secretary-General Annan urged for a solution, stating that the US proposal "flies in the face of treaty law since it would force States that have ratified the Rome Statute to accept a resolution that literally amends the treaty." He also warned that "the Council risks being discredited" if it were to extend its mandate by involving itself in treaty-making.

Special plenaries and open meetings in the Security Council were convened, and despite vocal opposition from representatives of over 100 governments, the Council unanimously adopted Resolution 1422 on July 12, 2002. Resolution 1422 purported to give the Security Council the right to defer the ICC's jurisdiction in cases against personnel of non-States Parties involved in operations established or authorized by the UN. The adoption of Resolution 1422 allowed the UN Mission in Bosnia & Herzegovina to continue uninterrupted, and removed the immediate threat of the US veto of UN peacekeeping operations.

Nearly one year later, on June 12, 2003, the Security Council held another dramatic public meeting on the renewal of Resolution 1422. Government after government from every region of the world took the floor to express their overwhelming support for the ICC and raise their principled objections to the automatic renewal of Resolution 1422, hammering the point that this resolution was both unlawful and unnecessary. While the Security Council voted 12-0 to renew the controversial resolution, three countries abstained (namely France, Germany and Syria), sending a strong signal that this resolution will not simply be renewed each year.

Resolution 1487 continues to be a source of contention within the UN community. Reservations have been expressed by Secretary-General Kofi Annan, who said at the time of the Resolution's June 2003 renewal, "But allow me to express the hope that this does not become an annual routine. [...] If that were to happen, it would undermine not only the authority of the ICC, but also the authority of the Council and the legitimacy of United Nations peacekeeping."

In the controversy surrounding the adoption and renewal of Resolution 1422, a number of inter-governmental bodies, including the European Union and the Non-Aligned Movement, as well as non-governmental organizations, such as Amnesty International, Human Rights Watch, Lawyers Committee for Human Rights (now Human Rights First) and Parliamentarians for Global Action, also expressed their opposition to this resolution as contrary to international law, the UN Charter, and the Rome Statute. Amnesty International issued an in-depth analysis of the legal and political consequences of Resolution 1422, calling a UN Security Council Resolution illegal for the first time.

Both government and NGO representatives have opposed the adoption and renewal of Resolution 1422 on the grounds that these resolutions:

- Amend or misuse Article 16 of the Rome Statute;
- Create an illegitimate role for the Security Council under the UN Charter (*ultra vires*);
- Undermine the integrity of the Rome Statute;
- Wrongly imply that the ICC is a threat to international peace and security; and
- Undermine the principle of complementarity enshrined in the Rome Statute.

Statements by governments and the UN Secretary-General at the public meetings held in the last two years, coupled with the three abstentions in 2003, have demonstrated the widespread opposition to the resolution and sent a strong message against its automatic renewal, thereby preventing the resolution from becoming customary international law. Following the US' call for renewal of Resolution 1487, the CICC expects that a public meeting will be requested again this year which will provide states with another opportunity to voice their concerns about Resolution 1487 and reaffirm their support for the ICC.

## CHRONOLOGY OF THE ADOPTION OF SECURITY COUNCIL RESOLUTIONS 1422/1487

The following timeline tracks the developments of the Security Council negotiations on this resolution:

### **May 2002:**

At the time of the renewal of the UN Transitional Administration in East Timor (UNTAET) and one week before the independence ceremonies for East Timor, the United States threatened to oppose the mission's renewal unless the Security Council agreed to provide immunity from domestic and international courts to US peacekeepers. Lacking enough support, the US relented and the Security Council voted unanimously to renew the peacekeeping mission. The US warned, however, that it would return to this issue, as officials noted that the effort to influence the East Timor mission was part of a broader strategy designed to lock in similar exemptions for US nationals serving in more than a dozen other UN operations around the world.

### **June 19, 2002:**

In relation to the renewal of the UN peacekeeping mission in Bosnia-Herzegovina (UNMIBH), the US presented two proposals in its efforts to obtain complete immunity for its peacekeepers: The insertion of a paragraph into the UNMIBH resolution that would exempt peacekeepers from being “transferred to an international tribunal”; and a general resolution to grant blanket immunity to all peacekeepers by giving all Member States’ “personnel participating in operations established or authorized by the UN Security Council [...] immunity from arrest, detention, and prosecution.”<sup>i</sup> According to reports, all other Members of the Security Council opposed the US proposal.

### **June 27, 2002:**

A revised US proposal specifically referred to the Rome Statute for the first time and recognized that there were different legal obligations for States Parties and non-States Parties. Indeed, governments had pointed out that the previous resolution would have forced those states which had ratified the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) to violate their treaty obligations by creating an exemption from all prosecutions. Though the revised US resolution restricted itself to non-States Parties, it continued to call for blanket immunity, stating that “personnel from a contributing State not party to the Rome Statute “[...] shall have, except in the territory of the contributing State, immunity from arrest, detention and prosecution.”<sup>ii</sup>

French Ambassador to the UN Jean-David Levitte proposed an alternative to the US proposal, stating that the Security Council “expresses its readiness, pursuant to Article 16 of the ICC Statute, to consider on a *case by case* basis requesting the ICC to defer investigations or prosecutions.”<sup>iii</sup> Most experts felt that this proposal, the first to specifically refer to Article 16, was consistent with the UN Charter, international law, and the Rome Statute. US Ambassador to the UN John Negroponte expressed the US resolve to continue pursuing its goal of immunity by warning that “a veto is definitely an option.”<sup>iv</sup>

**June 28, 2002:**

The US rejected the French proposal, renewed its threats to veto the extension, and, in addition, suggested that it would cease paying its 25% share of the UN peacekeeping operations budget.<sup>v</sup>

**June 30, 2002:**

Due to a lack of support for the US draft resolution among Security Council members, the US vetoed the renewal of the Bosnia mandate, 14-1, marking the United States' isolation on the issue. Nevertheless, the US agreed to extend the Bosnia mandate through a technical extension until July 3 (Resolution 1420).

**July 3, 2002:**

UN Secretary General Kofi Annan sent an extraordinary letter to US Secretary of State Colin Powell, expressing his strong disapproval of US proposals in the Security Council. Secretary General Annan urged for a solution, stating that the US proposal “flies in the face of treaty law since it would force States that have ratified the Rome Statute to accept a resolution that literally amends the treaty.” He also warned that “the Council risks being discredited” if it were to extend its mandate by involving itself in treaty-making.<sup>vi</sup> The ICC Preparatory Commission (PrepCom), meeting in its 10th session, convened an emergency plenary to discuss the anti-ICC US resolutions before the Security Council.

Government delegates at the PrepCom drafted a letter that was sent to the President of the Security Council, expressing the PrepCom's common position on this issue. The letter stated that the PrepCom “is deeply concerned about the current developments in the Security Council regarding the International Criminal Court and international peacekeeping” and called on all states “to safeguard the independent and effective functioning of the ICC that is complementary to national jurisdiction” and “to ensure an outcome of those developments which fully respects the letter and spirit of the Rome Statute.”<sup>vii</sup> A revised resolution was presented at a 3 p.m. session of the Security Council. The first paragraph, widely attributed to a UK proposal, dropped the term “immunity” and instead requested that the “ICC for a twelve-month period shall not commence or proceed with any investigations or prosecutions.”<sup>viii</sup> The second and third paragraphs, which attempt to automatically renew the immunity clause, were authored by the US. These provisions blatantly attempted to override the letter and spirit of Article 16 by requiring a formal, positive vote by the Security Council for a subsequent 12 month deferral. Members of the Security Council opposed this proposal due to its automatic renewal provision. As no compromise had been reached, the Security Council passed Resolution 1421 shortly thereafter, allowing for a further technical extension of the UNMIBH until July 15.

**July 10, 2002:**

In response to requests by the government of Canada, the Security Council convened a special open meeting on the situation in Bosnia-Herzegovina, in which delegations from all regions of the world voiced their views about the US proposals to the Security Council. Most governments opposed the US proposals as contrary to international law, the UN Charter, and the Rome Statute.<sup>ix</sup>

The US proposed another draft resolution requesting, as in the previous proposal, that the “ICC for a twelve-month period shall not commence or proceed with any investigations or prosecutions,” but dropping the automatic renewal provision and replacing it with the expression of the Security Council’s “intention to renew the request [...] each July 1 for further 12 month periods for as long as may be necessary.”<sup>x</sup>

**July 11, 2002:**

France, a leading critic of the US proposal, floated its own draft, under which the ICC would have “to notify the Security Council before commencing or proceeding with any investigations or prosecutions involving current or former officials or personnel from a contributing State not Party to the Rome Statute for acts or omissions relating to UN established or authorized operations, to all the Security Council to take a decision, as appropriate.”<sup>xi</sup> The resolution would thus allow the Security Council to seek a delay before making a possible deferral request under Article 16. Some diplomats said, however, that the US would not accept the proposal. US officials, already under pressure from rightwing members of Congress for abandoning the demand for blanket immunity, said they had no room for flexibility.<sup>xii</sup> A chart based on current UN data on troop-contributions to UN missions, distributed by the Coalition for the ICC and others, demonstrated that US peacekeepers have no exposure to the jurisdiction of the ICC under existing arrangements. The chart showed that, in every UN peacekeeping mission, the US either has no personnel in the mission, the host state is not party to the ICC, or the ICTY has primacy. Thus, total US exposure to the ICC is zero in every case.<sup>xiii</sup>

**July 12, 2002:**

Mauritius presented amendments, reportedly drafted in collaboration with the UK, to the second paragraph of the US proposal, expressing the Security Council’s “intention to renew such a request on a case-by-case basis for a further twelve month period for as long as may be necessary.”<sup>xiv</sup> In addition, the Permanent Representatives of Canada, Brazil, New Zealand and South Africa sent a letter to the President of the Security Council expressing their opposition of the current draft resolution.

After much debate, the Security Council unanimously passed Resolution 1422: it requests that the ICC “shall for a twelve-month period [...] not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise”<sup>xv</sup> and expresses the intention to renew the request for as long as may be necessary. Extreme pressure had been brought to bear by the US and the United Kingdom in order to secure a unanimous decision on the temporary exemption of peacekeepers from the ICC’s reach. The Coalition was dismayed that a number of governments on the Security Council agreed to vote in favor of the resolution. The Coalition, however, appreciated the courage shown by Mexico and Ireland, who were the last to succumb to the US and UK pressure.

Prior to adoption of Resolution 1422, the UN Legal Counsel reportedly met with government delegates in closed session concerning the draft resolution. As noted in the paper by Amnesty International:

“According to various accounts, the opinion emphasized that the Rome Statute would have to be construed by the ICC, not just the Security Council. It noted that this was the first time that the Security Council sought to invoke Article 16, which was more complex than many realized. The opinion stated that any request under this article had to be under Chapter VII, but it did not express any view whether that chapter had been properly invoked. It suggested that the situation envisaged in the draft resolution would almost certainly not happen and concluded that ‘in the present circumstances’ a resolution of the sort envisaged would be consistent with Article 16. The opinion also indicated that the draft resolution would give the Security Council ample time to be able to reconsider the question in less stressful circumstances when it expired in a year’s time. Nothing in the reports about the content of the opinion suggests that the Legal Counsel would necessarily conclude that a renewal of the request in the resolution as adopted would be consistent with Article 16.”<sup>xvi</sup>

**June 9, 2003:** The US introduces Resolution 1422 for renewal without modifying its text.

**June 12, 2003:** At a public meeting of the Security Council, statements were made on behalf of over 70 UN member states that voiced their support for the ICC, and their opposition to the automatic renewal of Resolution 1422. At the time of the Security Council vote on Resolution 1422, three Council members abstained: France, Germany and Syria. The remaining votes were sufficient to renew the Resolution, which was adopted for an additional 12 months as Resolution 1487.

During the 4772<sup>nd</sup> meeting of the Security Council on June 12, Secretary-General Kofi Annan expressed his grave concern about the Resolution, saying, “But allow me to express the hope that this does not become an annual routine. If it did, I fear the world would interpret it as meaning that the Council wished to claim absolute and permanent immunity for people serving in the operations it establishes or authorizes. If that were to happen, it would undermine not only the authority of the ICC but also the authority of the Council and the legitimacy of United Nations peacekeeping. I am sure you understand [...] that such an outcome would cause me grave concern, and I would hope that this concern would be shared by all members of the Council.”

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i Draft Resolution proposed by the US (June 19, 2002)

ii Draft Resolution proposed by the US (June 27, 2002)

iii Alternative proposal by France (June 27, 2002)

iv Remarks by US Ambassador to the UN John D. Negroponte on the situation in Bosnia and Herzegovina at the Security Council ( June 27, 2002)

v Amnesty International, “The unlawful attempt by the Security Council to amend the Rome Statute”

vi Letter from UN Secretary General Kofi Annan to US Secretary of State Colin Powell (July 3, 2002)

vii Letter from the ICC Preparatory Commission to the President of the Security Council (July 3, 2002)

viii Draft resolution proposed by the US and UK (July 3, 2002)

ix Government Responses to US resolutions in the open meeting of the Security Council, as outlined in the CICC country chart (July 10, 2002)

x Draft resolution proposed by US (July 10, 2002)

xi Alternative proposal by France (July 11, 2002)

xii New York Times, “Diplomats say court immunity solution may be in sight” (July 12, 2002)

xiii “Zero US Exposure to the ICC”, CICC analysis with peacekeeping operations chart (July 11, 2002)

xiv Proposed amendment by Mauritius (July 12, 2002)

xv Text of Resolution 1422 (July 12, 2002)

xvi Amnesty International, “The unlawful attempt by the Security Council to amend the Rome Statute”

# Draft and Final Texts of UN Security Council Resolutions 1422 and 1487

United Nations	S/RES/1422 (2002)
 Security Council	Distr.: General 12 July 2002

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**Resolution 1422 (2002)**

**Adopted by the Security Council at its 4572nd meeting, on  
12 July 2002**

*The Security Council,*

Taking note of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute),

Emphasizing the importance to international peace and security of United Nations operations,

Noting that not all States are parties to the Rome Statute,

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

Noting that States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes,

Determining that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security,

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council,

Acting under Chapter VII of the Charter of the United Nations,

1. Requests, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise;
2. Expresses the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary;
3. Decides that Member States shall take no action inconsistent with paragraph 1 and with their international obligations;
4. Decides to remain seized of the matter.

—————

02-47761 (E)  
\*0247761\*



**Draft Proposal by the U.S.**  
June 19, 2002

ICC Resolution

The Security Council,

Recalling its primary responsibility for the maintenance of international peace and security,

Noting that operations established by the Security Council are deployed under United Nations Status-of-Mission Agreements to maintain or restore international peace and security,

Noting that established UN practice, as reflected in United Nations Status-of-Mission Agreements, generally creates immunity from the jurisdiction of third-parties with respect to criminal offenses committed during such operations and that Article 98 of the Rome Statute creating an International Criminal Court recognizes and accommodates to such practice,

Noting further that the existence of such immunity facilitates the ability of Member States to contribute to, and participate in, UN mandated operations and emphasizing that participation by a substantial number of States is important to strengthening the role of the United Nations with respect to the maintenance of international peace and security,

Determining that operations established or authorized by the UN Security Council are deployed to maintain or restore international peace and security,

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the UN Security Council,

Acting under Chapter VII of the Charter,

1. Decides that Member States contributing personnel participating in operations established or authorized by the UN Security Council to promote the pacific settlement of disputes or to maintain or restore international peace and security shall have the responsibility to investigate crimes with respect to which they have jurisdiction and, as appropriate, prosecute offenses alleged to have been committed by their nationals in connection with the operation;
2. Decides that persons of or from contributing states acting in connection with such operations shall enjoy in the territory of all Member States other than the contributing State immunity from arrest, detention, and prosecution with respect to all acts arising out of the operation and that this immunity shall continue after termination of their

participation in the operation for all such acts;

3. Decides that the contributing state may waive such immunity whenever and to the extent that, in its judgment, the interests of justice will be served;

4. Decides further that in the absence of a waiver by the contributing state, the Security Council shall have the exclusive authority to waive the immunity in the interests of justice;

5. Notes that the immunity referenced in the above paragraphs is without prejudice to any other privileges or immunities the individual may otherwise enjoy.

**Draft Proposal by the U.S.\***

*[For inclusion into draft resolution on UNMIBH mandate renewal  
(Ch VII resolution)]*

June 27, 2002

Taking note of the entry into force, on 1 July 2002, of the Statute of the International Criminal Court, done at Rome on 17 July 1998,

Emphasizing the importance to the establishment and maintenance of international peace and security of UN Security Council mandated operations,

Determining that it is in the interests of international peace and security to facilitate Member States' ability to contribute to UN Security Council mandated operations,

Noting that not all States are parties to the Rome Statute of the International Criminal Court (1998) (the Rome Statute),

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

1. Emphasizes that Member States contributing personnel to UNMIBH or SFOR have the primary responsibility to investigate and to prosecute in their national systems as appropriate crimes over which they have jurisdiction alleged to have been committed by their nationals in connection with UNMIBH or SFOR,
2. Notes that States Parties to the ICC Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,
3. Notes that States not Party to the ICC Statute will continue to fulfill their responsibilities in their national jurisdictions in relation to international crimes.
4. Decides that current and former officials and personnel from a contributing State not a party to the Rome Statute acting in connection with these operations shall have, except in the territory of the contributing State, immunity from arrest, detention and prosecution with respect to all acts arising out of these operations and that this immunity shall continue after termination of their participation in the operation for all such acts;
5. Decides that nothing in this resolution shall affect compliance by Member States with orders of the International Criminal Tribunal for the Former Yugoslavia.

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\* Reportedly a proposal from the USA



**Draft Proposal by France\***

June 27, 2002

The Security Council,

Taking note of the entry into force, on July 1 2002, of the Statute of the International Criminal Court, done at Rome on 17 July 1998 (the ICC Statute),

Emphasizing the importance to the establishment and maintenance of international peace and security of UN Security Council mandated operations,

Determining that it is in the interests of international peace and security to facilitate Member States' ability to contribute to UN Security Council mandated operations,

Noting that not all States are parties to the ICC Statute,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Noting that States Parties to the ICC Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

Noting that States not Party to the ICC Statute will continue to fulfill their responsibilities in their national jurisdictions in relation to international crimes.

1. Emphasizes that Member States contributing personnel to operations established or authorized by the Security Council have the primary responsibility to investigate and to prosecute in their national systems as appropriate crimes over which they have jurisdiction alleged to have been committed by their nationals in connection with these operations, and urges them to take prompt action to discharge this responsibility and to assist each other in that regard,

2. Expresses its readiness, pursuant to Article 16 of the ICC Statute to consider on a case by case basis requesting the ICC to defer investigations or prosecutions involving personnel participating to operations established or authorized by the UN Security Council to promote the peaceful settlement of disputes or to maintain or restore international peace and security, who have been contributed to these operations by a State not Party to the ICC,

3. Decides that nothing in this resolution shall affect the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda,

4. Decides that this resolution shall be without prejudice to the rights and obligations of States Parties to agreements and conventions establishing jurisdictions over international crimes.

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\* Reportedly a proposal from France



**Draft Proposal by the U.S.\***

July 1, 2002

*[Governments indicated that the 1<sup>st</sup> paragraph was drafted or supported by the United Kingdom.]*

Acting under Chapter 7 of the UN Charter

1. Requests pursuant to Art. 16 of the Rome Statute, that the ICC defer for a twelve month period investigations or prosecutions involving current and former officials and personnel from a contributing state (not a party to the Rome Statute) for acts arising out of UN established or authorized operations, and decides that, for such acts occurring during such 12 month period, such states shall have and retain jurisdiction to investigate and prosecute.

2. Decides by this resolution, in accordance with the requirements of Article 16, that on July 1<sup>st</sup> of each successive year, the request for the referral and the decision, as contained in paragraph 1, shall be renewed and extended to include acts that occurred during successive 12 month periods thereafter, unless the Security Council decides otherwise, and directs the Secretary General to communicate these requests to the ICC.

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\* As read to the CICC by a reliable governmental source.



**Draft Proposal by U.S.**  
July 3, 2002

The Security Council;

Taking note of the entry into force, July 1, 2002, of the Statute of the International Criminal Court (ICC), done at Rome July 17, 1998 (the Rome Statute),

Emphasizing the importance to international peace and security of United Nations operations,

Noting that not all States are parties to the Rome Statute,

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

Noting that States not Party to the Rome Statute will continue to fulfill their responsibilities in their national jurisdictions in relation to international crimes,

Determining that operations established or authorized by the UN Security Council are deployed to maintain or restore international peace and security,

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the UN Security Council,

Acting under Chapter VII of the Charter,

1. Requests, consistent with the provisions of Article 16 of the Rome Statute, that the ICC for a twelve-month period shall not commence or proceed with any investigations or prosecutions involving current or former officials or personnel from a contributing State not a Party to the Rome Statute for acts or omissions relating to UN established or authorized operations;
2. Decides by this resolution, acting consistent with Article 16 of the Rome Statute, that, on July 1 of each successive year, the request not to commence or proceed with investigations or prosecutions as set forth in paragraph 1 shall be renewed and extended during successive twelve-month periods thereafter unless the Security Council decides otherwise and directs the Secretary General to communicate these annual requests of the Security Council to the ICC;
3. Decides that Member States shall take no action, such as arrest or surrender inconsistent with the requests set forth in paragraphs 1 and 2.



**Draft Proposal by U.S.**  
July 10, 2002

The Security Council,

Taking note of the entry into force, July 1, 2002, of the Statute of the International Criminal Court (ICC), done at Rome July 17, 1998 (the Rome Statute),

Emphasizing the importance to international peace and security of United Nations operations,

Noting that not all States are parties to the Rome Statute,

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

Noting that States not Party to the Rome Statute will continue to fulfill their responsibilities in their national jurisdictions in relation to international crimes,

Determining that operations established or authorized by the UN Security Council are deployed to maintain or restore international peace and security,

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the UN Security Council,

Acting under Chapter VII of the Charter,

1. Requests, consistent with the provisions of Article 16 of the Rome Statute, that the ICC for a twelve-month period shall not commence or proceed with any investigations or prosecutions involving current or former officials or personnel from a contributing State not a Party to the Rome Statute for acts or omissions relating to UN established or authorized operations;
2. Expresses the intention to renew the request in paragraph 1 each July 1 for further 12 month periods for as long as maybe necessary and directs the Secretary General to communicate these annual requests of the Security Council to the ICC;
3. Decides that Member States shall take no action inconsistent with paragraphs 1 and 2.



**Draft Proposal by France\***  
July 10, 2002

Acting under Chapter VII of the Charter,

1. Requests [consistent] in **accordance** with the provisions of Article 16 of the Rome Statute, that the ICC for a twelve-month period shall [not commence or proceed] **notify the Security Council before commencing or proceeding** with any investigations or prosecutions involving current or former officials or personnel from a contributing State not a Party to the Rome Statute for acts or omissions relating to UN established or authorized operations, **to allow the Security Council to take a decision, as appropriate;**
2. Expresses the intention to renew the request in paragraph 1 each July 1 for further 12 month periods for as long as may be necessary and directs the Secretary General to communicate these annual requests of the Security Council to the ICC;
- [3. Decides that Member States shall take no action inconsistent with paragraphs 1 and 2.]

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\* Reportedly a proposal drafted by France



**DRAFT PROPOSAL BY MAURITIUS**  
12 July 2002

*[Reportedly drafted by the United Kingdom]*

1. Requests, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing state not a party to the Rome Statute over acts or omissions relating to a UN established or authorized operation, shall for a twelve month period starting from 1 July 2002 not commence or proceed with investigation or prosecution of any such case;
2. Expresses its intention to renew such request on a case-by-case basis for further twelve month periods for as long as may be necessary.



**Security Council**

Distr.: General

12 July 2002

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**Resolution 1422 (2002)****Adopted by the Security Council at its 4572nd meeting, on  
12 July 2002**

*The Security Council,*

*Taking note* of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute),

*Emphasizing* the importance to international peace and security of United Nations operations,

*Noting* that not all States are parties to the Rome Statute,

*Noting* that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

*Noting* that States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes,

*Determining* that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security,

*Determining further* that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Requests*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise;

2. *Expresses* the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary;

3. *Decides* that Member States shall take no action inconsistent with paragraph 1 and with their international obligations;

4. *Decides* to remain seized of the matter.





## Security Council

Distr.: General  
12 June 2003

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### Resolution 1487 (2003)

**Adopted by the Security Council at its 4772nd meeting,  
on 12 June 2003**

*The Security Council,*

*Taking note* of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute),

*Emphasizing* the importance to international peace and security of United Nations operations,

*Noting* that not all States are parties to the Rome Statute,

*Noting* that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

*Noting* that States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes,

*Determining* that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security,

*Determining further* that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Requests*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a 12-month period starting 1 July 2003 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise;

2. *Expresses* the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary;

3. *Decides* that Member States shall take no action inconsistent with paragraph 1 and with their international obligations;

4. *Decides* to remain seized of the matter.



## Statements by the UN Secretary General



*Photo Credit: UN*

UN Secretary General Kofi Annan expressed caution on the renewal of Security Council Resolution 1422. Pictured here with Russian Ambassador to the UN Sergei Lavrov (front) and UN Legal Advisor Hans Corell (12 June 2003).





**Letter by  
UN Secretary General Kofi Annan  
to US Secretary of State Colin Powell  
July 3, 2002**

His Excellency Mr. Colin L. Powell  
Secretary of State of the United States of America  
Washington, D.C.

Excellency,

I am writing to you because I am seriously concerned at the development in the Security Council with respect to the extension of the United Nations Mission in Bosnia Herzegovina (UNMIBH) and the issue that the United States has raised in that connection following the entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court (ICC).

The United States has put forward a proposal invoking the procedure laid down in Article 16 of the Rome Statute of the ICC. This provision means that the Security Council can intervene to prevent the Prosecutor of the ICC to proceed with a particular case. The article, which is meant for a completely different situation, is now proposed to be used by the Security Council for a blanket resolution, preventing the Prosecutor from pursuing cases against personnel in peacekeeping missions. Contrary to the wording of Article 16, which prescribes that such resolutions by the Council can be adopted for a period of 12 months, which period is renewable; it is proposed that the resolution is automatically prolonged, unless the prohibition is lifted. Any decision to this effect is subject to the necessary majority in the Council.

I think that I can state confidently that in the history of the United Nations, and certainly during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC. The issue that the United States is raising in the Council is therefore highly improbable with respect to United Nations peacekeeping operations. At the same time, the whole system of United Nations peacekeeping operations is being put at risk.

It is of course for the United States to decide what is in its interest. But let me offer the following thoughts.

First, the establishment of the ICC is considered by many, including your closest allies, as a major achievement in our efforts to address the impunity that is also a major concern for the United States. The development of this matter is followed by many and, in particular, the States that have ratified the Rome Statute and by non-governmental organizations. I fear that the reactions against any attempts at, as they perceive it, undermining the Rome Statute will be very strong.

Secondly, the method suggested in the proposal, and in particular its operative paragraph 2, flies in the face of treaty law since it would force States that have ratified the Rome Statute to accept a resolution that literally amends the treaty.

My concern is that the only real result that an adoption by the Council of the proposal would produce - since the substantive issue is moot - is that the Council risks being discredited. The purpose of this letter is to ask you to consider this aspect. I am confident that you share my view that it is not in our collective interest to see the Council's authority undermined.

The members of the Council do realize - as indeed I do - that the United States has a problem to which a satisfactory solution must be found. I am also aware that this may take some time. As a matter of fact, on 30 June, I pleaded with the members of the Council to give themselves sufficient time find such a solution.

In order to create additional time to solve the overarching issue, may I suggest that the United States at the present juncture relies on the fact that the jurisdiction of the ICC, as a matter of law, is overtaken by the jurisdiction of the International Tribunal for the former Yugoslavia. In reality, the situation with respect to international criminal jurisdiction in the territory of the former Socialist Federal Republic of Yugoslavia is the same after 1 July 2002, as before that date.

One solution may be for the Security Council to reconsider the extension of UNMIBH as proposed on 30 June, adding this time a preambular paragraph, in which the Council notes that the International Tribunal for the former Yugoslavia, which is established under Chapter VII of the Charter of the United Nations as a subsidiary organ of the Security Council, has primacy to exercise, on behalf of the international community, international jurisdiction over genocide, war crimes and crimes against humanity committed in the territory of the former Socialist Federal Republic of Yugoslavia.

However, there might also be other solutions to avoid that the Council is precipitated into adopting a resolution, the effects of which may soon be deeply regretted by all.

Please accept, Excellency, the assurances of my highest consideration.



**Press Release**  
**SG/SM/8749**  
**SC/7790**

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**IN STATEMENT TO SECURITY COUNCIL, SECRETARY-GENERAL VOICES CONCERNS**  
**OVER EXTENDING UN PEACEKEEPERS' IMMUNITY FROM ICC ACTION**

Following is the text of a statement, as delivered today, by Secretary-General Kofi Annan to the Security Council:

Last year, in resolution 1422, this Council requested that the International Criminal Court (ICC) should, "for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution" of any case "involving current or former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation", unless the Security Council decided otherwise.

The Council also expressed the intention to renew this request each 1 July for further 12-month periods for as long as it might be necessary. This is what you are now about to do.

In making this decision, you will again rely on article 16 of the Rome Statute. I believe that that article was not intended to cover such a sweeping request, but only a more specific request relating to particular situation.

But I accept that you are acting in good faith, and that your purpose is to make it possible for peace operations to continue, whether established or only authorized by this Council, and for all Member States to take part in them, whether or not they are parties to the Rome Statute. Indeed, I fervently share that hope, and I am grateful to you for giving priority to the continuation of this Organization's vital peacekeeping work.

I wish to place on record, however, that, in addition to my concern about its conformity with article 16 of the Rome Statute, I do not believe this request is necessary.

In the first place, I believe I can state confidently that in the history of the United Nations, and certainly during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near committing the kind of crimes that fall under the jurisdiction of the ICC. Your request, therefore, deals, not only with a hypothetical case, but also with a highly improbable one.

Secondly, people serving in United Nations peacekeeping missions remain under the jurisdiction of their home States. Whenever one of them is accused of committing a crime during a mission, that person is immediately repatriated and is dealt with by the national courts of his or her own country.

And thirdly, under article 17 of the Rome Statute, no case is admissible in the ICC if it already has been or is being investigated or prosecuted by a State which has jurisdiction over it, unless that State is unwilling or unable genuinely to investigate or to prosecute.

I assume that, in the case where a person serving in an operation established or authorized by this Council were to be accused of the kind of crime that falls under the jurisdiction of the ICC — a case which we must all hope and expect would never occur — the home State of that person would be the most anxious to investigate that accusation and, if the investigation showed that there was a prima facie case, to prosecute that person. The case would then not be admissible in the ICC.

We must all hope, therefore, that this resolution will be without effect, since the situation it is designed to guard against will never arise.

I felt it was reasonable last year to adopt this resolution for 12 months, to give Member States more time to study the Rome Statute — which was only then entering into force — and to digest its implications. And I can accept that you feel it is necessary to renew the request now for a further 12 months, since the Court is still in its infancy and no case has yet been brought before it.

But allow me to express the hope that this does not become an annual routine. If it did so, I fear the world would interpret it as meaning that this Council wished to claim absolute and permanent immunity for people serving in the operations it establishes or authorizes. And if that were to happen, it would undermine not only the authority of the ICC but also the authority of this Council, and the legitimacy of United Nations peacekeeping.

I am sure you understand, Mr. President, that such an outcome would cause me grave concern, and I would hope that that concern would be shared by all members of this Council.

\* \* \* \* \*

## Statements by Governments



*Photo Credit: UN*

France and Germany were among the three countries to abstain from the vote, along with Syria, on renewal of Security Council Resolution 1422 (12 June 2003).





**Statement by:**  
**H.E. Ambassador John D. Negroponte**  
United States Permanent Representative to the United Nations,  
In the Security Council in Explanation of Vote on Renewal of the Mandate for the UN  
Mission in Bosnia and Herzegovina  
June 30, 2002

*Explanation of Vote by Ambassador John D. Negroponte, United States Permanent Representative to the United Nations, on the Renewal of the Mandate for the United Nations Mission in Bosnia and Herzegovina, in the Security Council, June 30, 2002*

The longstanding commitment of the United States to peace and stability in the Balkans is beyond question. We have also been clear and consistent about our concerns on the ICC, in particular the need to ensure our national jurisdiction over our personnel and officials involved in UN peacekeeping and coalition-of-the-willing operations.

As you are well aware, this is not the first time we have raised this issue in the Council. I explained these concerns when we dealt with UNMISET in May. The United States voted in favor of the East Timor resolution with the expectation that the Council would address our concerns before the ICC came into effect July 1. In East Timor only three U.S. soldiers participate in the UN peacekeeping mission; we intend to withdraw them absent a solution to the ICC issue.

It is with great regret that the United States finds itself on the eve of that date, despite our best efforts, without a solution.

The United States has contributed – and will continue to contribute – to maintaining peace and security in the Balkans and around the globe. Contributing personnel to peacekeeping efforts demonstrates a commitment to international peace and security that, as you all know, can involve hardship and danger to those involved in peacekeeping. Having accepted these risks, by exposing people to dangerous and difficult situations in the service of promoting peace and stability, we will not ask them to accept the additional risk of politicized prosecutions before a court whose jurisdiction over our people the Government of the United States does not accept.

Some contend that our concerns are unwarranted. With our global responsibilities, we are and will remain a special target and cannot have our decisions second-guessed by a court whose jurisdiction we do not recognize.

With the court coming into being, this problem must be resolved – but in a way that takes account of two hard facts: the United States wants to participate in international peacekeeping; but the United States, a major guarantor of peace and security around the

globe and a founding member of the United Nations, does not and will not accept the jurisdiction of the ICC over the peacekeepers that it contributes to UN-established and-authorized operations.

The failure of the Security Council to act to preserve an appropriate legal status for the U.S. and other non-ICC party peacekeepers can only end in damage to international peacekeeping generally.

None of this is of our making.

We have offered a practical solution to this problem that would preserve everyone's interests, protect international peacekeeping, and strengthen the hand of this Council to maintain international peace and security.

We have scrupulously sought to find a way forward that is both consistent with others' obligations to the Rome treaty and with UN peacekeeping practice. Furthermore, we have accepted the principle that this solution should apply only to states not party to the ICC.

Let me repeat: There is no inherent reason why states that have signed or even ratified the Rome treaty cannot also support our proposed solution.

Our proposal calls for establishment of immunity for UN peacekeeping. It builds on immunities that are already recognized in the UN system and reflected in SOFAS and SOMA's. The Rome treaty itself recognized the concept of immunity. If the Security Council decides that its ability to maintain international peace and security will be enhanced by providing immunity to UN peacekeeping, it may provide such immunity. The framers of the ICC Treaty surely could not limit the authority of the Security Council in this regard. The consequence of providing UN peacekeepers with such immunity would be the creation of a legal obligation on States to observe that immunity. Pursuant to Article 98 of the ICC Treaty, the compliance of ICC parties with such obligations is entirely consistent with the Treaty.

It strikes us as more than perplexing that others who are parties to the ICC can use the provision of the treaty to exempt their forces for an extended period from the purview of the court for war crimes and then suggest that our attempt to use other provisions of the treaty similarly to provide protection for our forces either violates their treaty obligations or does unacceptable damage to the spirit of the treaty.

The United States will vote against this resolution with great reluctance. This decision is not directed at the people of Bosnia. We will stand by them and by our commitment to peace and stability in the Balkans. The fact that we are vetoing this resolution in the face of that commitment, however, is an indication of just how serious our concerns remain about the risks to our peacekeepers.

**Excerpts from the Special Plenary of the 10<sup>th</sup> Preparatory Commission  
for the ICC  
3 July 2002**

Below are excerpts from statements made at a special plenary today (as part of the 10th Preparatory Commission for the ICC), convened in order to discuss the proposals before the Security Council with regard to immunity for peacekeepers.

Delegations unanimously opposed the proposals by the United States, to grant blanket immunity to all peacekeepers in the Bosnia mission. In addition to the remarks included below, representatives of Mexico, Argentina, Samoa, Venezuela, Sierra Leone, Ivory Coast, Brazil, Peru, Democratic Republic of Congo, Trinidad and Tobago, and Kuwait took the floor to make statements in support of the Court.

A second special plenary has been convened this afternoon, in order to discuss and adopt a resolution on the Preparatory Commission's position on the proposals before the Security Council.

**Delegate from Australia, on behalf of the Like-Minded Group**

“As chair of Like-Minded Group, we have serious concerns about the development in the Security Council. Members of the Link-Minded Group are, in particular, committed to the principle of fully safeguarding the integrity of the Rome Statute.  
...The Like-Minded Group expects the Security Council to resolve this matter in a way that fully respects this Statute and international law.”

**Delegate from Fiji**

“The Security Council should remain steadfast in its role to maintain international peace and security.  
...This resolution [before the Security Council] will effectively kill the Court before it is born...We ask countries on the Security Council to vote against these proposals, and maintain the integrity of the Rome Statute and international law.”

**Delegate from Switzerland**

“We do not want to see the Security Council be a legislature.  
...How is it possible that the International Criminal Court would jeopardize international peace and security?  
...The Security Council does not have the competence to adopt law that runs contrary to a treaty that is in full compliance with the United Nations Charter.”

**Delegate from New Zealand**

“It is not open to the members of the Security Council to hijack Article 16 of the Statute.

...It would damage the moral authority of UN forces,... and protect them from taking responsibility for their actions.

...To exempt peacekeepers is a double-standard.

...The gains made in Rome should not be sacrificed, only three days after it's entry into force.”

### **Delegate from Denmark, on behalf of the European Union**

The EU deeply regrets that [these proposals] has placed the members of the Security Council in a difficult situation with regard to support for UN peacekeeping and adherence to their commitment to the Rome Statute. The EU welcomes and affirms the positions set out in the statements made in explanation of vote in the Security Council by EU members France, Ireland and the United Kingdom, concerning immunity of peacekeepers.

The EU hopes that members of the Security Council will adhere to strong appeal of the Secretary General. The EU would accept any solution that respects the Statute and does not undermine the effective functioning of the Court...”

### **Delegate from Liechtenstein**

“The issues [being debated] are not new. Indeed, they have been discussed in a legally-sound and politically-circumspect manner [in Rome].

... We find these resolution unacceptable for two reasons: For one, concerns regarding frivolous and politically-motivated cases were addressed in the Rome Statute in a substantive manner; ... and second, the mandate of the Security Council, clearly laid down in the UN Charter, does not include competence in treaty-making.

...We expect the Security Council to act in its mandate and keep the integrity of the Rome Statute.”

### **Delegate from Canada**

“What is now at stake is not the ICC versus peacekeeping; the fundamental principles of international law and international relations are at jeopardy.

...[Adoption of this proposal in the Security Council would represent] inappropriate political interference in a judicial process...

...This proposal would send the message that peacekeepers are above the law.

...To block the ICC is to allow impunity.

...We appeal to the members of the Security Council that the fundamental principles of international law are not compromised.”

### **Delegate from Syria, on behalf of Arab countries**

“... [The inclusion of Article 16 in the Rome Statute] did not grant the Security Council the automatic right to grant exemptions.

...We appeal to the Security Council to assume it responsibility and not accept these exemptions because that might damage the credibility of the Court before it is born. We oppose this resolution.”

**Delegate from United Arab Emirates**

“The principle of granting immunity is an exception to the application of the Rome Statute, and this is a violation of the principles agreed upon when we established the Court.

...We recognize the need to prosecute criminals regardless of their origin and without discrimination.”

**Delegate from Burundi, on behalf of the African Group**

“The African Group believes that the adoption of such a proposal would be a violation of the letter and spirit of the Rome Statute.”

**Delegate from Malawi, on behalf of the Southern African Development Community**

“The Southern African Development Community regrets the developments in the UN Security Council, which are clearly aimed at undermining the integrity of the International Criminal Court.”

[This is an unofficial record of the statements made at the Special Plenary on 3 July 2002, prepared by the NGO Coalition for the International Criminal Court. The full text of the official statements was not yet available, but has been requested and will be distributed as soon as possible.]



**Country Chart of Statements Made in the Special Plenary of the Preparatory Commission for the International Criminal Court in Repose to the US-proposed Security Council Resolution on Peacekeeping  
3 July 2002**

[Prepared by the NGO Coalition for the International Criminal Court]

Country	Against US proposals introduced July 2	US proposals amend Article 16	US proposals create illegitimate role for SC under UN Charter, <i>ultra vires</i>	US proposals undermine the integrity of Rome Statute	US proposals wrongly imply that ICC is threat to international peace and security; ICC and peacekeeping complementary not in conflict	There are sufficient safeguards in Rome Statute	US proposals undermine not only ICC jurisdiction but also national, customary and international jurisdiction
Algeria	X	X	X	X	X	X	X
Andorra	X			X			
Angola	X	X	X	X	X	X	X
Argentina	X	X	X	X			
Australia	X			X	X	X	
Austria	X			X			
Bahrain	X	X	X	X	X	X	X
Belgium	X			X			
Benin	X	X		X			
Bosnia and Herzegovina	X			X			
Botswana	X	X	X	X	X	X	X
Brazil	X	X	X	X			
Brunei	X			X			

\*Endorsed statement of regional grouping and presented individual statement

Bulgaria	X						X			
Burkina Faso	X		X				X			
Burundi	X		X				X			
Cameroon	X		X				X			
Canada	X		X		X		X		X	X
Cape Verde	X		X				X			
Central African Republic	X		X				X			
Chad	X		X				X			
Chile	X						X			
Comoros	X		X		X		X		X	X
Congo	X		X				X			
Congo (Brazzaville)	X						X			
Costa Rica	X						X			
Cote d'Ivoire	X		X			X	X			
Croatia	X						X			
Czech Republic	X						X			
Denmark	X						X			
Djibouti	X		X			X	X		X	X
DRC	X		X			X	X		X	X
Egypt	X		X			X	X		X	X
Equatorial Guinea	X		X			X	X			
Eritrea	X		X			X	X			
Estonia	X						X			
Ethiopia	X		X				X			
Fiji	X		X				X			
Finland	X						X			
France	X						X			
Gabon	X		X				X			
Gambia	X		X				X			
Germany	X						X			
Ghana	X		X				X			

\*Endorsed statement of regional grouping and presented individual statement



Oman	X	X	X	X	X	X	X	X	X	X	X	X
Peru	X											
Poland	X											
Portugal	X											
Qatar	X	X	X	X	X	X	X	X	X	X	X	X
Rep. of Korea	X											
Romania	X											
Rwanda	X	X										
Samoa	X	X	X									
San Marino	X											
Sao Tome & Principe	X	X										
Saudi Arabia	X	X	X	X	X	X	X	X	X	X	X	X
Senegal	X	X										
Seychelles	X	X	X	X	X	X	X	X	X	X	X	X
Sierra Leone	X	X										
Singapore	X											
Slovakia	X											
Slovenia	X											
Solomon Islands	X											
Somalia	X	X	X	X	X	X	X	X	X	X	X	X
South Africa	X	X	X	X	X	X	X	X	X	X	X	X
Spain	X											
Sudan	X	X	X	X	X	X	X	X	X	X	X	X
Swaziland	X	X	X	X	X	X	X	X	X	X	X	X
Sweden	X											
Switzerland	X	X	X	X	X	X	X	X	X	X	X	X
Syria	X	X	X	X	X	X	X	X	X	X	X	X
Tanzania	X	X	X	X	X	X	X	X	X	X	X	X
The Netherlands	X											
The Philippines	X											
Togo	X	X										
Trinidad and Tobago	X											

\*Endorsed statement of regional grouping and presented individual statement

Tunisia	X	X	X	X	X	X	X	X	X	X
UAE	X	X	X	X	X	X	X	X	X	X
Uganda	X	X	X	X	X	X	X	X	X	X
United Kingdom	X	X	X	X	X	X	X	X	X	X
Venezuela	X	X	X	X	X	X	X	X	X	X
Yemen	X	X	X	X	X	X	X	X	X	X
Zambia	X	X	X	X	X	X	X	X	X	X
Zimbabwe	X	X	X	X	X	X	X	X	X	X

\*Endorsed statement of regional grouping and presented individual statement



**EXCERPTS FROM THE SECURITY COUNCIL PUBLIC MEETING  
ON UNITED NATIONS PEACEKEEPING  
10 JULY 2002**

Below are excerpts from statements made at a public meeting in the Security Council, convened in order to discuss recent US proposals to exclude peacekeepers from the jurisdiction of the ICC. The issue is most recently being considered in the context of the UN mission in Bosnia & Herzegovina.

Delegations from all regions of the world voiced their views about the current proposals before the Security Council, many opposing the proposals as contrary to international law, the UN Charter and the Rome Statute of the ICC.

In addition to the remarks included below, representatives of Argentina, Bulgaria, Cameroon, Colombia, Cuba, Mauritius, Singapore, Syria, Ukraine, United States, and Yugoslavia also took the floor to make statements about this important issue.

**Representative of Bosnia and Herzegovina (H.E. Ambassador Mirza Kustjugic)**

"I speak on behalf of the country that has experienced genocide and war crimes during the past decade, for which the Security Council, this very body, has established an Ad Hoc Tribunal in order to process the suspects for the most horrendous crimes committed on the territory of the former Yugoslavia. Consequently, Bosnia and Herzegovina has signed and ratified the Statute of the permanent court, the International Criminal Court, understanding well the consequences of war crimes and need for justice, as well as prevention of future atrocities.

...For any country concerned about the possible extradition of their nationals participating in UNMIBH, we hereby state our readiness to consider, bearing in mind the Rome Statute, modalities for transfer, surrender or extraditions of their nationals suspected of committing crimes under the jurisdiction of the Rome Statute, during the period of the next six months, in order to reach commonly acceptable agreement on this issue."

**Representative of Brazil (H.E. Ambassador Gelson Fonseca, Jr.)**

"[I]n our view this predicament is based on a false dilemma. Maintenance of international peace and security and the repression of heinous crimes committed against humanity are not - and by all means cannot be viewed as if they were - two conflicting objectives.

...Brazil has already taken its own decision with respect to the ICC and fully respects what others may decide in accordance with their own interest and perceptions. We were nevertheless struck by the very unusual decision to "unsign" an international legal instrument negotiated in good faith.

... The United Nations cannot intervene (nor authorize military intervention) in any specific situation just to end up by denying the very values upon which the Organization is founded.

...The Security Council cannot alter international agreements that have been duly negotiated and freely entered into by States-Parties."

...[W]e believe that renewal of peacekeeping mandates should not be made hostage to any country's individual perceptions and that a provisional 'modus operandi' should be established."

**Representative of Canada (H.E. Ambassador Paul Heinbecker)**

"My government is deeply worried by discussions that have taken place in Security Council concerning sweeping exemptions for peacekeepers for the most serious crimes known to humanity.

...The current debate has been mischaracterized as a choice between peacekeeping and the ICC. In fact, the stakes are actually different and even higher. Fundamental principle of international law and the place of those principles in the conduct of global affairs are in question.

...We appeal to members of the UN Security Council to ensure that essential principles of international law, and the spirit and letter of the Rome Statute, not be compromised.

...We have just emerged from a century that saw the works of Hitler, Stalin, Pol Pot, Idi Amin and Slobodan Milosevic, and the Holocaust and Rwandan genocide. Surely, we have all learned the fundamental lesson of this bloodiest of centuries, which is that impunity from prosecution for grievous crimes must end."

**Representative of China (H.E. Ambassador Wang Yingfan )**

"Although China is not yet a state party to the International Criminal Court, we support the independence, impartiality, and competence of the ICC that enjoys universality. We have continued to actively participate in the establishment of the ICC and will continue to follow closely its operation.

...The ultimate goal of the ICC is to solve the problem of impunity of serious international crimes. As far as the ICC is concerned, the most important aspect is to bring the perpetrators of such crimes to justice. A very important principle is complementarity, that is to say that the jurisdiction of the ICC complements national jurisdiction. Therefore, if the country concerned has brought the person concerned to justice through national jurisdiction, then the ICC jurisdiction does not exist.

...China does not want to see the peacekeeping operations affected in any negative way."

**Representative of Costa Rica (Charge d'affairs Maria Elena Chassoul), on behalf of the Rio Group (which includes Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Rep., El Salvador, Guatemala, Honduras, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela and Guyana) and on behalf of the Caribbean States**

"Member States of the Rio Group cannot accept the undermining of the Rome Statute. We consider it more than necessary to maintain the integrity of the Rome Statute's provisions. It is our position that any proposed amendments to its provisions have to respect the rules and procedures established under general principles of International Law, Treaty Law and in the Rome Statute itself. In this respect, we are concerned of any initiative that attempts to modify substantially the provisions of the Rome Statute through a Security Council resolution. The adoption of this kind of proposal is beyond the mandate of the Security Council and will seriously affect its credibility and legitimacy.

...The Rio Group urges the Security Council to find a solution to the current impasse that respects the letter and the spirit of the Rome Statute that assures the efficacy and legitimacy of this institution."

**Representative of Denmark (H.E. Ambassador Ellen Margrethe Loj), on behalf of the European Union**

"It is understandable that the United States is seeking protection from politically motivated accusations. The EU however believes that these concerns have been met and that sufficient safeguards against politically motivated accusations have been built into the Statute."

...Let me stress that the European Union attaches great importance to the continued and major contributions of the United States to peacekeeping missions around the world. It is not least in the Balkans that the United States plays an indispensable role; we are well aware that the United States and the European Union share the view that the people of Bosnia do not deserve to pay the price of this unfortunate situation.

...We strongly urge all members of the Security Council to do their utmost in order to reach a solution that does not harm the integrity of the Rome Statute of the International Criminal Court and which ensures the uninterrupted continuation of UN peacekeeping operations."

**Representative of France (H.E. Ambassador Jean-David Levitte)**

"As [the Rome Statute] stands, it offers the United States much more substantial safeguards than the ICTY statute, which, however, has never initiated any concern in Washington.

...France has made a precise proposal concerning Article 16. We are ready to discuss it, within the limits allowed by law. However, it cannot accept a modification, through a resolution by the Security Council, against the disposition of the treaty.

...If Washington were, at the end of the week, to confirm its veto countering the UNMIBH, and then, from renewal to renewal, utilize vetoes against other missions, who would take over these [peacekeeping] efforts and forces?

...We must not hold [these peacekeepers] hostage. We must think of all those people for whom they represent the only hope for peace and progress.

...Concerning the UNMIBH, if we do not come to a good agreement on the ICC by the end of the week, we should decide to extend, for a last time, its mandate until December 31, as is projected by the resolution presented by Bulgaria. In answer to the American concerns, we could, as suggested by the Secretary General, add to this text a paragraph underlining the primacy of jurisdiction of the ICTY over that of the ICC."

**Representative of Germany (H.E. Ambassador Hanns Schumacher)**

"The Security Council has been asked to invoke Chapter VII of the UN Charter beyond the extension of the UNMIBH mandate to obtain immunity for peace mission personnel. Chapter VII of the UN Charter requires the existence of a threat to the peace, breach of the peace, or an act of aggression - none of which in our view are present here.

...It is the strong belief of Germany that - beyond the case-by-case possibilities clearly contained in Article 16 of the ICC Statute - the Security Council would do itself and the world community a disservice if it passed a resolution under Chapter VII of the UN Charter to, in effect, amend an important treaty ratified by 76 States.

...It is only a theoretical possibility that [peace mission personnel] would commit crimes falling under the jurisdiction of the ICC. To assert the necessity to exclude this merely theoretical possibility in our view is tantamount to compromising both the Rome Statue and the integrity of mission personnel."

**Representative of Iran (H.E. Ambassador Mohammad H. Fadaifard)**

"My delegation regrets the one-sided approach by one member of the Security Council, which frequently resorts to veto to serve its own national interests, is, inter alia, putting in jeopardy the future of the UN peacekeeping. The threat to do the same with regard to other peacekeeping mandates that come up for renewal is all the more troubling. Undoubtedly, such an approach runs counter to the spirit and letter of the UN Charter, especially Article 24, which maintains that the Council acts on behalf of the general membership."

**Representative of Ireland (H.E. Ambassador Richard Ryan)**

"While we understand the concerns of the US, we do not feel that they are well-founded. Nor can we agree to the mechanism that it has proposed, hitherto, to allay them.  
...We are disturbed by the possibility that the present exercise could have adverse effects on the credibility and prestige of the Security Council itself, if it is not handled adroitly.  
...There are a number of important, essentially free-standing, but now politically intertwined factors involved here: the role of the Security Council and how it functions; the primacy and integrity of international law; the future of United Nations peace operations; and the crucial role that the United States has to play in support of these operations."

**Representative of Jordan (H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein)**

"In the Holocaust museum in Washington, D.C., there exist images and artifacts of a time, falling well within the lifespan of many around this table, where the breadth of human brutality found its full expression, a time which showed shamefully just how primordial we, human beings, still are... If we are ever to change all of this, to offer some sort of permanent juridical deterrent to the most vile criminals of the future, the only discussion we should be having now, one week after the statute of the ICC has entered into force, is on how best we can assist the Court.  
...It is almost inconceivable, given the obligations conferred upon the Security Council by Article 24 of the UN Charter, that the Council could ponder putting at risk the lives, potentially, of millions of people by placing existing peacekeeping operations in jeopardy, because of differences of opinion over the International Criminal Court.  
... And it would surprise no one here today were we to note that more innocent people have lost their lives violently by way of genocide, war crimes and crimes against humanity, over the last century, than all previous centuries combined stretching back two millennia. By not supporting the Court, it will not so much be a matter of failing generations - in the same way that former generations failed the victims of yesteryear - but whether, by the end of this century, there will be any generations left to fail."

**Representative of Liechtenstein (H.E. Ambassador Claudia Fritsche)**

"Peacekeeping and international justice are, to our minds, complementary concepts [...] There can be no choice between one or the other, when the international community so obviously needs both. The progressive development of international law and the respect for the rule of law as well as the maintenance of international peace and security are core activities of the United

Nations and they both must be treated as such."

**Representative of Malaysia (H.E. Ambassador Hasmy Agam)**

"Malaysia views the entry into force of the Rome Statute and the establishment of the ICC as significant to the development of international law to address impunity of war crimes, genocide, crimes against humanity and crimes of aggression which is a major concern for all member states, without exception. Therefore we consider it inappropriate that the future of UNMIBH, and possibly other UN peacekeeping operations, is being linked to the issue of the jurisdiction of the ICC.

.. Malaysia believes that giving immunity to the peacekeepers would send the message that they are above the law - which is wrong and unacceptable. No category of persons serving in UN peacekeeping missions should be above the law.

...Consistency and universality are essential elements in ensuring the success of UN peacekeeping operations, in as much as they are essential in the operationalisation of international law.

...What is at stake, Mr. President, is a fundamental principle of international law. It is vitally important for the Council not to take a decision that would have the effect of changing or amending the terms of an international treaty, which the United States draft resolution sets out to do in respect of the Rome Statute. Such changes or amendments could only be effected in accordance with procedures elaborated by the treaty with the full consent of the States parties, as provided for by the Vienna Convention on the Law of the Treaties."

**Representative of Mexico ( Mr. Aguilar Zinser )**

"The Mexican government finds serious difficulties in reconciling the proposals which seek to establish these exceptions, given not only for their implications in the functioning of peacekeeping operations, but also for the integrity of the entire system of international law.

.. My delegation wished to have seen the United States as one of the States Parties to the Rome Statute, in accordance with the leadership which the US has assumed in promoting other international criminal tribunals. While we regret the recent clear expression of intent by the US to not ratify the Rome Statute, we remain respectful of its decision."

**Representative of Mongolia (H.E. Ambassador J. Enkhsaikhan)**

"Logically and legally, the two bodies, i.e. the Security Council and the ICC are expected to work together, and not one to the detriment of the other. No State should be placed in a situation when it is forced to breach its international obligations either under the Charter or the Statute. We believe that both the Security Council and the ICC should work together to strengthen international peace and security, the rule of law and international justice."

**Representative of New Zealand (H.E. Ambassador Don MacKay)**

"To purport to provide blanket immunity in advance in this way amounts to an attempt to amend the Rome Statute, without the approval of its States Parties. It would represent an

attempt by the Council to change the negotiated terms of a treaty in a way unrecognized in international law or international treaty making practice. Member States would have to question the legitimacy and legality of this exercise of the role and responsibility entrusted to the Council. ...We believe that there are adequate protections within the Rome Statute that address the concerns raised by the United States. In particular, we note that the Rome Statute is built on the principle that national courts have primary responsibility for the prosecution of crimes by their nationals. The ICC is a court of last resort. It may conduct a prosecution only if impunity would otherwise result. There are safeguards built-in to prevent decisions on prosecutions being taken based on political rather than legal grounds."

**Representative of Norway (H.E. Ambassador Ole Peter Kolby)**

"Hence, the issue for discussion today has repercussions extending beyond Bosnia-Herzegovina. If we do not reach a solution, the whole system of United Nations peacekeeping operations may be put at risk, with serious effects for those millions people around the world already threatened by armed conflicts or in post-conflict areas.

Like many other speakers today, Norway wishes to take this opportunity to reaffirm our full commitment to the new reality of international criminal justice. The establishment of the International Criminal Court on July 1<sup>st</sup> is indeed a historic step forward in the efforts to build peace through rule of law.

...We recognize that particular concerns have been expressed against the exposure of UN peacekeepers for unwarranted prosecutions. The Statute contains, as already mentioned, a system of safeguards against any unwarranted action. Moreover, it is worthwhile to recall the statement by the Secretary General, that in the history of the United Nations, no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC."

**Representative of Russian Federation (Envoy Extraordinary Gennady M. Gatilov)**

"We understand the US concerns about this and the position of those that defend the spirit and letter of the Rome Statute, which is one of most authoritative treaties of our time. And there are more than 75 states parties and that number will continue to grow. We hope that, on this item of discussion, a solution will be found that will not imperil UN peacekeeping operations, and one taken within the confines of the law and that will not diminish the Statute of the Court."

**Representative of Samoa (H.E. Ambassador Tuiloma Neroni Slade)**

"[W]e cannot see how [the US proposals] can be viewed as being 'consistent with Article 16 of the Rome Statute', as the draft asserts, when the very purpose of the Statute is to put an end to impunity.

...There is clearly no ground for a determination in advance, and then in perpetuity. Our contention, therefore, is that the purported use of Article 16 would be plainly ultra vires.

So, too, in the absence of a situation threatening or breaching international peace and security, we would question the vires in the purported use of Chapter VII of the UN Charter. In our view, it seems very doubtful, that the requisite circumstances exist in this case to bring into play Article 39 of the Charter and Chapter VII."

**Representative of Sierra Leone (H.E. Ambassador Allieu I. Kanu)**

"Sierra Leone signed...and ratified [the Rome Statute], joining those who believe that the creation of a jurisdiction capable of complementing national systems when they are unwilling or unable to prosecute suspects, represents one of the most effective instrument that international community has created to prevent future conflicts and to give redress to millions of victims of outrageous violence."

**Representative of South Africa (H.E. Ambassador Dumisani S. Kumalo)**

"For several years, the UN has assisted the people of Bosnia-Herzegovina to rebuild their war-shattered government institutions and to work toward the establishment of effective and credible police and border control services....these achievements are now threatened by one permanent member of the Security Council in its misunderstanding and unfounded fears concerning the jurisdiction of the International Criminal Court, which came into force just ten days ago. This action by one member of this Council affects peace and stability in the entire Balkans and has implications for all United Nations peacekeeping operations throughout the world. As the Council is aware, most conflicts are presently in Africa and if this resolution was passed this would set back peace in our continent for a long time.

...The fact that any permanent member can unilaterally decide to exercise its veto privilege to defeat the efforts of all the other 14 Members of the Council to extend the mandate of an agreed United Nations peacekeeping mission holds disturbing implications for the rest of the 174 Members of the UN and the entire world in general.

...We urge the Security Council to stand firm and protect the peace mission in the Balkans while reinforcing and certainly not jeopardizing the International Criminal Court and the norm of International Law that is has established. The Security Council cannot fail the people of Bosnia-Herzegovina because if it did so, it shall have failed people everywhere."

**Representative of Switzerland (H.E. Ambassador Jenö C.A. Stahelin)**

"The adoption by the Security Council of a resolution that modifies a treaty conforming to the United Nations Charter is not an acceptable solution. It would be a detrimental development for the future of international law and that of the United Nations.

...We do not have any objections to the Security Council expressing its intention of using, in the future, if the circumstances require it in particular cases, powers instilled in it by Article 16, as long as it conforms to the intent of the rule. But a preventive and generalized usage of Article 16 would be contrary to the treaty."

[Please note: This is an unofficial record of the statements made at the Public Meeting of the Security Council on 10 July 2002, prepared by the NGO Coalition for the International Criminal Court.]



**Country Chart of Statements Made or Endorsed by Governments at the Security Council Public Meeting  
On United Nations Peacekeeping  
10 July 2002**

[prepared by the NGO Coalition for the International Criminal Court]

Country	Against US proposals	US proposals undermine the integrity of Rome Statute/ the compromise must not undermine integrity of Rome Statute	US proposals are an attempt to amend Article 16 and give the Security Council inappropriate power over the ICC	US proposals assume an illegitimate role – rewriting treaties – for SC under UN Charter undermining SC's credibility	The ICC is not a threat to int'l peace and security so not a Chapter VII issue / ICC and peace-keeping are complementary	There are sufficient safeguards in the Rome Statute to address US concerns	US proposals undermine int'l law/ int'l system, including principle of equality before the law	It is wrong to endanger Bosnian people and others under peace-keeping protection
Argentina*	X	X	X	X	X	X	X	X
Austria	X	X	X		X	X		X
Belgium	X	X	X		X	X		X
Bolivia	X	X	X	X	X	X	X	X
Bosnia/ Herzegovina					X	X		X
Brazil*	X	X	X	X	X	X	X	X
<b>Bulgaria</b>	X	X	X		X	X		X
<b>Cameroon</b>		X			X	X		X
Canada	X	X	X	X	X	X	X	X
Chile	X	X	X	X	X	X	X	X
<b>China</b>		X			X	X		X
<b>Colombia*</b>	X	X	X	X	X	X	X	X
Costa Rica	X	X	X	X	X	X	X	X
Cuba	X	X	X	X			X	X
Cyprus	X	X	X		X	X		X
Czech Republic	X	X	X		X	X		X
Denmark	X	X	X		X	X		X
Dominican Republic	X	X	X	X	X	X	X	X
Ecuador	X	X	X	X	X	X	X	X

\*Endorsed statement of regional grouping and presented individual statement  
Security Council Members in **bold**.









**Letter Signed by:**

**Ambassadors of Brazil, Canada, New Zealand and South Africa**

Sent to the President of the UN Security Council

In Relation to the Draft Resolution S/2002/747 Currently under Consideration by the  
Security Council under the Agenda Item of Bosnia-Herzegovina

July 12, 2002

New York, N.Y.

July 12, 2002

H.E. Sir Jeremy Greenstock

President of the United Nations Security Council

Room C-207

United Nations Secretariat

New York, N.Y. 10017

Excellency,

This letter is in relation to the draft resolution S/2002/747, currently under consideration by the Security Council under the agenda item of Bosnia-Herzegovina, but dealing in fact with the International Criminal Court. The consideration of this matter, under a Chapter VII resolution by the Security Council, is a matter of grave concern, as a large number of members.

States have already expressed in the open debate held on 10 July. Since in spite of the clear opposition of the international community to the Council's adopting the kind of resolutions it is discussing, the Council continues nevertheless to pursue this matter, we feel that it is our obligation to point out specifically that Council action is damaging international efforts to combat impunity, the system of international justice, and our collective ability to use these systems in the pursuit of international peace and security.

Leaving aside the legitimacy of the Security Council's arrogating to itself the right to interpret and to change the meaning of treaties, which we challenge, we wish to focus on one of the unacceptable consequences of passage of the draft resolution "put into blue" yesterday.

The International Criminal Court was always intended as a court of last resort filling a void where states fail to undertake their international responsibilities to prosecute perpetrators of grievous crimes. The net effect of Operative Paragraphs 1 and 2 of S/2002/747 will be to remove that possibility in the specific cases of peacekeepers who may have committed crimes under the Court's jurisdiction, if that peacekeeper comes from a state not Party to the Rome Statute. Further, the request to the Court in the draft resolution would be renewable on an annual basis which, for all intents and purposes, would amount to creating a perpetual obstacle to Court action.

Operative paragraph 3 has the effect of directing states not to cooperate with the ICC if that co-operation is in relation to such a peacekeeper. This means, that if such a person were to be found in one of our countries, and the ICC wished to investigate or prosecute having fully taken into account the principle of complementarity, the Council would have us refuse to surrender to the Court an alleged perpetrator of one of the three most grievous crimes.

While some States are able to prosecute under universal jurisdiction, many States do not have the ability or means to undertake such a prosecution. Should such an alleged perpetrator be found in a state that cannot exercise universal jurisdiction, that perpetrator would enjoy immunity from prosecution, the Council having putatively removed resort to the ICC.

We are confident that no highly trained, professional military personnel would engage in acts actionable under the ICC Statute. But no one can give the same confident assurance about all personnel involved in peacekeeping. This is why we have been urging that a solution be found on a bilateral basis, and that the coverage of the ICC not be removed from a whole class of international actors.

For this and the other reasons cited in our presentations in the open debate, we respectfully request members of the Council not to pass a resolution that would have such negative consequences.

We would ask that this document be made an official document of the Security Council.

**EXCERPTS FROM STATEMENTS BY REGIONAL ORGANIZATIONS  
ON THE ICC AND UN SECURITY COUNCIL RESOLUTION 1422**

**NON-ALIGNED MOVEMENT (NAM)**

**FINAL DOCUMENT ADOPTED AT THE 2003 MEETING OF HEADS OF STATES & GOVERNMENTS,  
KUALA LUMPUR, MALAYSIA, 25 FEBRUARY 2003.**

"[The Heads of State or Government] stressed the importance of safeguarding the integrity of the Statute and the need to ensure that the Court remains impartial and fully independent of political organs of the United Nations which should not direct or hinder the functions of the Court nor assume a parallel or superior role to the Court.

They observed with concern actions geared at establishing a process to grant immunity to the members of the United Nations established or authorised peacekeeping operations. These actions seriously affect treaty law, are not consistent with the provision of the Rome Statute and severely damage the Court's credibility and independence."

"The Heads of State or Government stressed the Movement's deep concern over the intention of a group of States to unilaterally re-interpret or re-draft the existing legal instruments in accordance with their own views and interests. The Movement again emphasised that the integrity of international legal instruments by Member States must be maintained. They further reiterated the Movement's deep concern at the decrease of the representation of Non-Aligned countries in several treaty bodies and called upon the members of the Movement that are parties to these bodies to work collectively with a view to increasing and enhancing its representation, particularly by supporting the candidatures of experts from the Non-Aligned Countries."

**AFRICAN, CARIBBEAN AND PACIFIC GROUP OF STATES AND THE EUROPEAN  
UNION JOINT PARLIAMENTARY ASSEMBLY (ACP-EU JPA)**

**Resolution**

**On the International Criminal Court (ICC)**

**31 March to 3 April 2003**

*"The ACP-EU Joint Parliamentary Assembly,*

... [H]aving regard to the Rome Statute of the ICC, and in particular Articles 16, 86 and 98 thereof,  
... A. [W]hereas the Rome Statute makes a decisive contribution to the implementation of international law and justice and is a valuable instrument to combat impunity for the most serious international crimes,

... 2. Stresses that no immunity agreement should ever afford the possibility of impunity for any individual accused of war crimes, crimes against humanity or genocide;

... 6. Firmly believes that the ICC States Parties and Signatory States are obliged under international law not to defeat the object and purpose of the Rome Statute, under which, according to its Preamble, 'the most serious crimes of concern to the international community as a whole must not go unpunished' and that States Parties are obliged to cooperate fully with the Court, in accordance with Article 86 of the Rome Statute, thus preventing them from entering into immunity agreements which remove certain citizens from the States' or the ICC's jurisdictions, undermining the full effectiveness of the ICC and jeopardizing its role as a complementary jurisdiction to State jurisdictions and a building block in collective global security;

... 13. Urges ACP countries and EU Member States, candidate countries and all other countries associated with the EU under various agreements to undertake an analysis of the legal implications

of UN Security Council Resolution 1422, and calls for strong action against the renewal of the resolution in July 2003...”

## **COUNCIL OF EUROPE**

### **Resolution 1336 (2003) [Assembly debate on 25 June, 20<sup>th</sup> Sitting] Threats to the International Criminal Court**

“...7. It considers that Resolution 1422 and its renewal constitutes a legally questionable and politically damaging interference with the functioning of the International Criminal Court. Its independence from the UN Security Council, with regard to the opening of procedures against persons suspected of international crimes, is one of the most important advances in the Rome Statute. Resolution 1422 is legally questionable for two reasons: firstly, it is ultra vires in that the legal basis for a Security Council Resolution under Chapter VII of the UN Charter – a present threat to international peace and security – was not present. Secondly, Resolution 1422 violates the Rome Statute (Articles 16 and 27). The Assembly considers that Article 16 does not cover blanket immunity in relation to unknown, future situations. It further recalls that Article 27 of the Rome Statute expressly prohibits making distinctions on the basis of official capacity in order to ensure that no person is above the law. The Assembly considers that this should also apply to UN peacekeepers, independently from their nationality.

... 12. The Assembly therefore,

... ii. as regards Security Council Resolution 1422 (2002) / 1487 (2003):

- a. regrets the renewal for another year of Resolution 1422, which requests the International Criminal Court to refrain from prosecuting crimes under international law committed in connection with peacekeeping and other operations authorised by the UN Security Council, decided by the UN Security Council on 12 June 2003 (Resolution 1487 (2003));
- b. regrets that all Security Council members that are members of the Council of Europe did not maintain a united, unequivocal stance in favour of the integrity of the ICC;
- c. thanks those member and observer States of the Council of Europe (in particular Canada and Switzerland) that insisted on an open debate in the Security Council on this issue, voiced their principled stance, and made clear that they do not consider that renewal of Resolution 1422 should be automatically renewed;
- d. opposes any further renewal of the exemption of peacekeeping missions from the jurisdiction of the ICC, and invites the member and observer States of the Council of Europe that are members of the UN Security Council, especially those having a permanent seat, to take all the necessary steps - in good time before the question of renewal re-arises in 2004 - to prevent any further renewal of this exemption;
- e. encourages the International Criminal Court, if a situation arises in which Resolution 1422 or its possible successor may become relevant, to assess independently the legal validity of and, as the case may be, the precise interpretation that shall be given to any request addressed to the Court under the said Resolution.”

**EXCERPTS FROM THE PUBLIC MEETING AT THE UNITED NATIONS SECURITY COUNCIL  
ON THE UNITED NATIONS PEACEKEEPING  
12 JUNE 2003**

Below are excerpts from statements made at a public meeting in the Security Council, convened in order to provide an open forum for debate on the proposed renewal of Resolution 1422. The resolution endeavored to provide perpetual impunity from ICC prosecution to “officials or personnel” who are from states not party to the Rome Statute and who are involved in UN peacekeeping or authorized missions.

Both non-members and members of the Security Council from all regions of the world voiced their views about the resolution, many opposing the renewal of Resolution 1422 as contrary to the letter and the spirit of both Article 16 of the Rome Statute and Chapter VII of the United Nations Charter. Many nations also stressed the importance of avoiding automatic renewal of the resolution, as this was seen as both unnecessary and contrary to the intent and purpose of the Rome Statute.

The Resolution was passed as Security Council Resolution 1487 by a vote of twelve in favor, none opposed, and three abstentions (France, Germany and Syrian Arab Republic).

**Representative of Angola (H.E. Minister Counsellor Julio Helder de Moura Lucas)**

“We understand the apprehension expressed by many countries that Resolution 1422 (2002) undermines the credibility of and weakens the International Criminal Court. In this regard, we are convinced that serious crimes that concern the international community should not be left unpunished and that effective prosecution of those crimes must be ensured by taking measures at the national level and by enhancing international cooperation when required.

...It is our view that the international community must ensure that the International Criminal Court is not undermined or weakened, that it fulfills the mandate for which it was established, that Member States keep their commitments to provide the needed personnel and support to peacekeeping operations established or authorized by the Security Council and that the review of the resolution that the Council adopted today does not lead to automaticity in its renewal.”

**Representative of Argentina (H.E. Ambassador Arnoldo M. Listre) [unofficial translation]**

“...We hope that the exemption approved by the Security Council in this resolution, submitted for your consideration, does not become a permanent exemption.

...The Statute provides the necessary safeguards to assure the Court will not exercise jurisdiction except in the cases it is competent. Still in those cases, the Court must previously apply the complementarity principle, allowing that national judicial systems examine and decide on the question. For that reason, we cannot explain the fears of a country that is confident of its own legal order and the effectiveness of its judicial system.

...We hope that this debate contributes to overcome the, in our opinion, unfounded fears or concerns regarding the Court. The Rome Statute is not in conflict with the system established in the UN Charter. Rather, the Court will serve to strengthen the maintenance of international peace and security because of its mere existence and will serve as a deterrent for the potential perpetrators of crimes under its jurisdiction. For this reason, we believe that there is no contradiction or need to choose between them.”

**Representative of Brazil (Minister Maria Luiza Ribeiro Viotti)**

“Brazil is nevertheless firmly convinced that those concerns have already been addressed by the Rome Statute. In view of that, it seems clear that the ICC provides all the necessary checks and balances to prevent possible abuses and politically motivated misuse of its jurisdiction. Thus, efforts to secure broad immunities from the potential jurisdiction of the Court are both unwarranted and unhelpful. Maintenance of international peace and security and the repression of serious crimes cannot be viewed as conflicting objectives. ...Initiatives aimed at extending the exemptions of certain categories of individuals from ICC jurisdiction must not be carried out at the expense of the effectiveness of the historical achievement represented by the entry into force of the Rome Statute, a major step to prevent continuing impunity for the worst sort of crimes. Efforts that may have the effect of dismantling such an achievement do not serve the cause of justice.”

**Representative of Bulgaria (Deputy Permanent Representative, Mr. Rayko Raytchev)**

“While we are convinced that the search for compromise should not be linked to the weakening of important international treaties such as the Rome Statute, we remain of the view that Council members must act in the spirit of compromise and understanding and actively work to find a solution that is acceptable to all.”

**Representative of Cameroon (Deputy Permanent Representative, Iya Tidjani)**

“For Cameroon, the International Criminal Court has undeniably strengthened the capacity of existing structures preserving international peace and security, including that of the Security Council. ...Cameroon shares the hope of Secretary General Kofi Annan that today’s renewal will not become routine, because of the consequences to international law and to the credibility of the International Criminal Court and the Security Council.”

**Representative of Canada (H. E. Ambassador Paul Heinbecker)**

“Last year, the Council heard clear opposition to this resolution expressed by many members of the Organization. This year, I will not reiterate all of the concerns we registered a year ago. Those concerns remain. I will, nonetheless, focus only on the most salient points, namely:

- our belief that the resolution is unnecessary;

- our concern that it diminishes the importance of accountability and justice for victims;
- our worry that it undermines fundamental principles of international law; and
- our doubt about the compatibility of this resolution with the Council's mandate.

...

The ICC's principal purpose is to try humanity's monsters, the perpetrators of heinous crimes. We are distressed, therefore, that the council, in purporting to act in our names, appears in this resolution to come down on the side of impunity, and for the most serious of international crimes.

...We believe that a system based on law -- the fair, predictable, equal application of principles agreed to by all -- is in everyone's interest. We believe we must defend these basic principles, even if it means we must sometimes respectfully disagree with friends."

**Representative of The People's Republic of China (H.E. Ambassador Wang Yingfan)**

"China supports the establishment of an independent, impartial, effective and universal International Criminal Court (ICC).

...We attach importance to the views expressed by the Secretary-General. We hope that in the year following the renewal of the resolution 1422 (2002) the parties concerned will carefully study the relevant questions with a view to finding proper solutions."

**Representative of Democratic Republic of Congo (First Counselor, Mr. Zenon Mukongo Ngay) [unofficial translation]**

"The concept of the fight against impunity is not at all opposed to your mission, on the contrary it is complementary to international peace keeping and security, principle held dear by your Council.

...Because paragraph 2 of resolution 1422 is only a facultative clause and not a binding provision, my delegation wonders about the appropriateness and real necessity of renewing resolution 1422, at a time where our generation wants to try to see the first international and permanent criminal jurisdiction that will try the most heinous crimes against the conscience of humanity."

**Representative of Guinea ( H.E. Ambassador Mamady Traore)**

"My country, which is a signatory to the Rome Statute, reaffirms the principle of universality and the primacy of the Court, whose establishment will help us build a world based on the rule of law.

...Therefore, my delegation, which perfectly understands the concerns expressed by some, maintains the hope that in the near future the consensus for which everyone wishes will emerge after our consideration of the issue, not only for the implementation but also for the strengthening and greater effectiveness of the peacekeeping operations. My country's support for the renewing resolution 1422 (2002) is part of that view and should in no way be considered automatic renewal year after year."

**Representative of Iran (H.E. Ambassador Javad Zarif)**

"This meeting gives us another opportunity to register our concern over the dangerous tendency to undermine international law and erode the credibility of this council.

...The international community is cognizant of the fact that Resolution 1422 could only be adopted after the threat of vetoing the extension of the UN Mission in Bosnia and Herzegovina and also the threat to do the same with regard to other peacekeeping mandates there were to come up for renewal, thus jeopardizing the whole UN peacekeeping system

...My delegation regrets that a unilateral approach, which is founded on a misplaced notion of placing one country above the law, has created an untenable and unsound situation in the Security Council and in international relations in general. Undoubtedly, such an approach runs counter to the spirit and letter of the UN Charter, especially article 24, which maintains that the Council acts on behalf of the general membership."

**Representative of Jordan (HRH Prince Zeid Ra'ad Zeid Al-Husseini)**

"We join others in believing the Council should not be rewriting treaties previously negotiated by all states comprising the entire international community. The implications of this practice are obvious to all here today.

...

We are still concerned over how this resolution has attempted to elevate an entire category of people to a point above the law; a feeling sharpened still further when thought is given to the revolting nature of the crimes covered by the court's jurisdiction."

**Representative of the Principality of Liechtenstein (H.E. Ambassador Christian Wenaweser)**

"The adoption of resolution 1422 has raised very serious questions concerning the role of the Security Council which the simple renewal of course does not address. The greatest risk, however, lies in the possibility of the relevance of such a renewed resolution in a concrete case which might arise under the Court's jurisdiction. In such an event – unlikely as it is - the Court would have to deal with the legality of the decision by the Security Council as an incidental question – a most unfortunate, but inevitable consequence of the questionable legal underpinning of the request made by the Council. Such a situation would necessarily upset the relationship between the Court and the Council, one of the most carefully balanced aspects of the Rome Statute.

Concerned as we are about the integrity of the Rome Statute, we nevertheless believe that resolution 1422 is more damaging to the Council itself than it is to the International Criminal Court."

**Representative of Malawi (H.E. Ambassador Isaac Lamba)**

"This resolution weakens an earnest global collective crusade against the recurrence of the humanitarian catastrophes of, for example, Cambodia, the Balkans, Rwanda, Sierra Leone and other parts of Africa where crimes against humanity may be taking place. My

delegation appeals for careful consideration of the advantages of the International Criminal Court as a deterrent to crimes in the promotion of global peace.”

**Representative of the Kingdom of the Netherlands (H.E. Ambassador Dirk Van den Berg)**

“In our view, Article 16 does not sanction blanket immunity in relation to unknown future events. The Secretary-General has followed this line of reasoning before the adoption of Resolution 1422 as well.

The Netherlands firmly believes that a repeated renewal of Resolution 1422 undermines the letter and spirit of the Statute of the ICC and that adoption of this resolution today should not be interpreted as moving in the direction of automatic renewal.”

**Representative of New Zealand (Deputy Permanent Representative, Mr. Tim McIvor)**

“There should be no double standard for personnel engaged in U.N. missions. To attempt to place such personnel above the law places their moral authority and the indispensable institution of U.N. peacekeeping in serious jeopardy.

We also expressed serious concerns [at the adoption of Resolution 1422 on 12 July last year] that the use of the specific procedure laid down in Article 16 in a generic resolution, not in response to a particular fact situation and with the intention to renew it on an annual basis, was inconsistent with both the terms and purpose of that provision. As such, it touched directly on the obligations assumed by States Parties under the Rome Statute, without their consent. Such an approach, to say the very least, stretched the legitimate limits of the role and responsibility entrusted to the Council under the Charter.”

**Representative of Nigeria (H.E. Ambassador Arthur C.I. Mbanefo)**

“It is our view that article 16 was intended to be invoked by the Security Council only after a crime under article 5 is alleged to have been committed by a member or members of UN peacekeeping operations. Furthermore, the allegation must be under investigation by the prosecutor with a view to effecting prosecution in the Court. It follows that article 16 was not intended to be invoked pre-emptively nor in anticipation of future crime by members of UN peacekeeping personnel in a mission area.

...Indeed, the renewal of Resolution 1422 has the potential of undermining the integrity of the Court and impedes the implementation of the rule of law and international humanitarian law. Nigeria holds the view that the invocation of article 16 of the Rome Statute for the renewal of Resolution 1422, in the present circumstances, would be unnecessary. Consequently, we urge members of the Council to exercise restraint in the use of the article and stress that the article be invoked constructively and only to further the intended cooperation between the Security Council and the International Criminal Court.”

**Representative of Pakistan (H.E. Ambassador Munir Akram)**

“While supporting the draft resolution, Pakistan strongly adheres to the position that the Security Council, despite its wide authority and responsibilities, is not empowered to unilaterally amend or abrogate international treaties and agreements freely entered into by sovereign States. The powers of the Security Council are constrained under Paragraph 2 of Article 24 of the United Nations Charter, which obliges it to discharge its duties in accordance with the purposes and principles of the Charter... The Council’s decisions cannot and do not override these provisions of the Charter.”

**Representative of Peru on behalf of the Rio Group** (which includes Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela) **(H.E. Ambassador Alfonso de Rivero)**

“We know that this Council is about to approve an extension to the demand of exception taken last year. For this reason, the Rio Group thinks that if this draft resolution is approved, the exemption contained in itself must not be a permanent one.

...Keeping its obligation to maintain peace and international security, we are convinced that the Security Council, besides any eventual circumstances, should contribute towards the strengthening of the International Criminal Court.

...The Rio Group believes that the relation between the Security Council and the International Criminal Court must be of cooperation because their responsibilities and functions towards humanity are complementary. That is why Rio Group will continue working to promote the strengthening of this relation.”

**Representative of the Russian Federation (H.E. Ambassador Sergey Lavrov)**

“We hope that the practical work of the Court, which has only just begun, will be successful, and will not only strengthen the positions of its unconditional supporters, but will help dispel the doubts that still exist in some countries as to its effectiveness and impartiality.”

**Representative of South Africa (H.E. Ambassador Dumisani Kumalo)**

“Many delegations expressed the view that it was an inappropriate action on the part of the Security Council to use its authority under Chapter VII of the United Nations Charter to call into question the authority of the International Criminal Court conferred upon it by an international treaty. The Council decided nonetheless to adopt the resolution. This cast a shadow on the integrity of the ICC Statute, the Criminal Court, and the application of international law.”

**Representative of Spain (H.E. Ambassador Inocencio Arias)** [unofficial translation]

“Finally, Mister President, I would like to add that, from our point of view, it must not be assumed that [renewal of Resolution 1422] is going to consolidate the practice of

permanently invoking Article 16. On this regard, the Security Council must obviously study the prevailing circumstances that can vary in the future. For this reason, Spain believes that the Council maintains the right, without automaticity, to consider possible renewal in the case it is necessary, as provided in the resolution itself.”

**Representative of Switzerland (H.E. Ambassador Jenö C.A. Staehelin)**

“The International Criminal Court was established by a treaty not by a UN Security Council resolution. The Rome Statute is a major achievement in contemporary codification of international law. It is very worrying to see the Security Council adopt a resolution which limits the scope of a treaty which is in force while this treaty is in full conformity with the Charter of the United Nations. Switzerland disagrees both with the principle and the modalities of resolution 1422.

...Article 16 cannot be used as a basis for granting blanket immunity to all participants in peace-keeping operations. Such a step presupposes that the International Criminal Court is in itself an obstacle to peace. We do not agree with this reasoning.

...Whenever States actually fulfil their responsibilities, the International Criminal Court does not have jurisdiction.

...Resolution 1422 clearly undermines a historic development. The fight against impunity must become more universal, with the support of everyone. The more it is pursued in a co-operative spirit, the more effective it will be. This is why Switzerland deplores the adoption, and even more, the prospect of renewing resolution 1422. Incidentally, every automatism would be contrary to the Statute.”

**Representative of Trinidad and Tobago (Minister David Edghill)**

“This resolution is itself inconsistent with the provisions of the Rome Statute since, by granting blanket immunity from prosecution before the Court to a defined category of personnel of non-States Parties participating in UN authorized missions, it contradicts the true intent of article 16 of the Rome Statute.

...We consider its initial adoption as well as its proposed renewal at this time to be contrary to the UN Charter in that the Security Council did not make then, nor has it made now, a determination regarding the existence of a threat to the peace, a breach of the peace or an act of aggression...”

**Representative of United Kingdom (H.E. Ambassador Sir Jeremy Greenstock)**

“Under the circumstances, we regard the adoption of this resolution as an acceptable outcome in what is for the council a difficult situation ... Whilst we understand US concerns about the International Criminal Court, we do not share them.”

**Representative of Uruguay (H.E. Ambassador Felipe H. Paolillo)**

“The Statute provides more than adequate guarantees that the decisions taken by the Court will be neither arbitrary nor politically motivated.

...I would like to remind the members of the Security Council that more than 1,800 Uruguayan civilians and military personnel who are currently participating in operations established or authorized by the United Nations have accepted the possible consequences of the commission of criminal acts described in the Rome Statute... It is Uruguay's understanding that all peacekeepers must be subject to the same rules and must enjoy the same status."

[Please note: This is an unofficial record of the statements made at the Public Meeting of the Security Council on 12 June 2002, prepared by the NGO Coalition for the International Criminal Court.]

**Country Chart of Statements Made or Endorsed by Governments at the UN Security Council Public Meeting  
On United Nations Peacekeeping**

**12 June 2003**

[Prepared by the NGO Coalition for the International Criminal Court]

<b>Country</b>	<b>Against automatic renewal of Resolution 1422</b>	<b>Resolution 1422 undermines the integrity of Rome Statute</b>	<b>Resolution 1422 attempts to amend/misuse Article 16 and contravenes the Rome Statute</b>	<b>Res 1422 assumes an illegitimate role (rewriting treaties) for SC under UN Charter, undermining SC's credibility</b>	<b>Res 1422 undermines int'l law/ int'l system, including principle of equality before the law</b>	<b>Resolution 1422 is unnecessary</b>	<b>There are sufficient safeguards in the Rome Statute to address US concerns</b>	<b>ICC has highly-qualified officials/ functioning Court</b>
Argentina				X	X	X	X	X
Austria			X		X	X		X
Belgium	X	X	X		X	X		X
Bolivia	X	X	X	X	X	X	X	X
Bosnia/Herzegovina					X	X		X
Brazil*	X	X	X	X	X	X	X	X
<b>Bulgaria</b>	X	X	X		X	X		X
<b>Cameroon</b>					X	X		X
Canada	X	X	X	X	X	X	X	X
Chile	X	X	X	X	X	X	X	X
<b>China</b>		X			X	X		X
<b>Colombia*</b>	X	X	X	X	X	X	X	X

\*Endorsed statement of regional grouping and presented individual statement  
Security Council Members in **bold**





<b>United Kingdom*</b>	X	X	X	X	X	X	X	X	X	X	X	X
<b>United States</b>												
Uruguay	X	X	X	X	X	X	X	X	X	X	X	X
Venezuela	X	X	X	X	X	X	X	X	X	X	X	X
Yugoslavia	X	X	X	X	X	X	X	X	X	X	X	X

\*Endorsed statement of regional grouping and presented individual statement  
Security Council Members in **bold**



**Remarks by:**  
**H.E. Michael Duclos**  
Deputy Permanent Representative of France in the UN,  
In the Security Council  
On the Adoption of Security Council Resolution 1487  
June 12, 2003

Mr. President,

My delegation fully aligns itself with the speech made this morning by the Greek presidency of the European Union.

It also wishes, in a national capacity, to explain briefly the reasons why France decided to abstain on the draft resolution presented by the United States of America to renew for one year, starting 1 July 2003, the provisions of Security Council resolution 1422 adopted last 12 July.

Mr. President,

Paragraph 2 of the provisions of resolution 1422 did not include a provision for automatic renewal. To be sure, it expressed the Security Council's intention with regard to the renewal of this resolution but stipulated, and I quote, "for as long as may be necessary." That formulation definitely implied an obligation to consider the opportuneness of renewal, according to the circumstances.

Last year, after long and at times difficult negotiations, France like the other member States of the Council agreed to the exemptions provided for in resolution 1422 for one year. It did so in order to take into account in particular two factors then that were very significant: the risk at that time if the mandates of certain UN forces or missions were not renewed; and the wish, in response to a request by the US, to allow it a further period of time to find a lasting solution to its concerns regarding the Statute of the International Criminal Court. Both factors now belong to a context that has passed.

Since then there have been other developments which seem to us, moreover, to meet the concerns expressed by the United States.

For instance, the past year has confirmed, as Mr. Hans Corell, Legal Counsel of the United Nations, had predicted at the time, that it is highly unlikely that a case would occur to trigger the implementation of resolution 1422.

Also, the International Criminal Court, to which 90 States are parties to date, has become a reality given this year's election of its 18 judges, the Prosecutor and the appointment very soon of its Registrar. Its professionalism can already be judged on evidence. The acknowledged caliber and competence of the members of the Court assure beyond doubt

the credibility of this international tribunal, and that credibility is the best guarantee against the suspicions that might still exist about a "politically motivated" court.

Lastly, at the very time the International Criminal Court is being established, we did not consider it appropriate to renew for one year the exemptions accorded to certain personnel of States not Parties to the Rome Statute participating in forces or missions under UN auspices. Agreeing to the renewal risks in effect giving credence to the perception of permanent exceptions which can only weaken the Court and impair its authority.

Mr. President,

The Council has just adopted resolution 1487. An additional period of one year has therefore started. My delegation hopes that this period will allow all to note that the way the Court functions does not in the least justify the concerns expressed by certain States. Thank you for your attention.



**Statement by:**  
**H.E. Ambassador Dr. Günter Pleuger,**  
Permanent Representative of Germany to the UN,  
At the Security Council Meeting on  
Peacekeeping / ICC  
June 12, 2003

Mr. President,

Germany supports the position of the European Union as expressed in the statement of the Greek Presidency earlier today.

Germany was and remains a major driving force in the creation of the International Criminal Court. As a State Party Germany is deeply committed to the mission of the ICC: to fight impunity by prosecuting those responsible for the most serious crimes which are of concern to the international community in situations where national jurisdictions do not prosecute these crimes.

The ICC project has been consistently and actively supported by the present and earlier governments of the Federal Republic of Germany. The German Parliament has repeatedly expressed its support for the ICC across party lines.

Justice is, and must remain, indivisible. At the beginning of the new millennium, the ICC will serve as an efficient and indispensable instrument to further international security, peace and justice.

The ICC is not an impediment to peacekeeping, but a safeguard. The ICC, as an institution designed to prevent impunity, can play an important role in protecting peacekeepers in the execution of their missions.

The judges and the prosecutor of the ICC have meanwhile been elected. Germany is confident that experience will show that the ICC is going to work impartially, justly and without politically motivated misuse.





**Statement by:**  
**H.E. Ambassador Adamantios Th. Vassilakis**  
Permanent Representative of Greece to the United Nations  
On Behalf of the European Union,  
On the Proposed Renewal of the Provisions of Security Council Resolution 1422  
(2002)  
June 12, 2003

Mr. President,

I have the honour to speak on behalf of the European Union. The Central and Eastern European Countries associated with the European Union align themselves with this statement.

At the outset I would like to thank you and all the members of the Security Council for giving us the possibility to express ourselves on this important matter.

Mr. President,

The entry into force of the Rome Statute of the International Criminal Court (ICC) on 1 July 2002, which was made fully functional this year upon the election of the 18 judges and the Prosecutor, is a major step in the progressive development of international law that will allow a long standing dream of humanity to finally take shape.

All Members States of the European Union have ratified the Statute.

The ICC is not just a judicial institution designed to prevent and put an end to the impunity of the perpetrators of serious crimes which are of concern for all Member States, but is also an essential means of promoting respect for international humanitarian law and human rights law, thus contributing to freedom, security, justice and the rule of law as well as contributing to the preservation of peace and the strengthening of international security.

From the very outset the EU has been supportive of the early establishment of the ICC and is, and will remain, firmly committed to its effective functioning. In our Common Position, adopted by the EU Council of Ministers of the Council on 30 September 2002, we have pledged to advance the promotion of the widest possible participation in the Statute, to share our experiences on its implementation and to provide technical assistance to the best of our ability. This Common Position is now in the process of being revised with a view to being consolidated, updated and take into account new developments, such as the adoption of the above Conclusions and the set of principles attached therein.

The promotion of the widest possible participation in and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organizations, whenever appropriate, are declared EU objectives. In addition the EU is determined to adopt initiatives to promote the dissemination of the values, principles and provisions of the Statute and related instruments.

Mr President,

The EU restates its belief that the concerns expressed by the United States about politically motivated accusations have been met and sufficient safeguards against such accusations have been built into the Statute. Indeed, the latter contains substantive safeguards and fair trial guarantees to ensure that such a situation would never arise. In addition, the Statute incorporates the principle of complementarity, which places the primary responsibility for investigation and prosecution with domestic jurisdictions. The Court may assume responsibility as a last resort and only when a state is unable or unwilling to do so.

Among the various solutions offered to the above concerns is Article 16 of the Rome Statute. This article states that "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." In our view this article should only be invoked in conformity with the Statute and its purposes and it is ultimately up to the ICC itself to determine whether this has been the case.

Mr President,

The EU wishes to reiterate its appreciation to the United States for their important contribution to peacekeeping missions around the world. We also would like to commend individual peacekeepers for their hard work and dedication in trying to maintain and restore peace and stability in risky, dangerous and volatile environments.

It is the strong belief of the EU that the ICC is no threat to peacekeeping, but a welcome safeguard to protect peacekeepers against serious crimes. SCR 1422 states that the Council intends to renew as long as may be necessary, and the necessity to do so should also be evaluated in the light of the positive effects that the ICC will have on peacekeeping. Thus, our adherence to the Rome Statute should be seen as an indication of complete trust to the important role played by peacekeeping missions and their personnel.

Mr President,

The EU is of the view that the inclusion in Resolution 1422 of the phrase "renew the request ...under the same conditions each 1 July for further 12-month periods for as long as may be necessary" should not be interpreted as permitting the automatic renewal of that resolution without taking into account the specific conditions under which such a request is being made. The EU firmly believes that an automatic renewal of that resolution would be undermining the letter and the spirit of the Statute of the ICC and of its fundamental purpose that is to put an end to impunity for the most serious crimes of concern to international community, by bringing to justice in all cases all those within the Court's jurisdiction.

We urge all members of the Security Council to do their utmost to reach a solution that will preserve the integrity of the Rome Statute and will ensure the unimpeded continuation of peacekeeping operations.



**Statement by:**  
**H.E. Ambassador Mikhail Wehbe**  
Permanent Representative of the Syrian Arab Republic to the UN,  
At the UN Security Council Public Meeting  
On United Nations Peacekeeping  
June 12, 2003

My delegation abstained in the vote on the draft resolution for the following reasons.

The Syrian Arab Republic does not see any necessary justification for renewing resolution 1422 (2002) this year. Last year we voted for the resolution, and the Council adopted it unanimously. Our vote this year is based on the conviction that articles 16 and 17 of the Rome Statute respond to the preoccupations and problems involved in the renewal of resolution 1422 (2002). The Secretary-General referred to this matter in his statement this morning.

Eleven months have passed since the adoption of resolution 1422 (2002), without any need arising that requires the reaffirmation of the importance of continuing to give permanent immunity to peacekeeping forces of those States that are not parties to the International Criminal Court from coming before the Court and having its Statute implemented against them.

Secondly, we are fully confident that peacekeeping forces and those working in international forces established by the Security Council for the maintenance of international peace and security in many parts of the world are assumed to be above all form of suspicion vis-à-vis crimes that come under the jurisdiction of the ICC as war crimes or crimes against humanity or genocide. Peacekeeping forces are sent by the Security Council, whether or not they belong to States parties to the Court — it is the same — and they do not go to areas of conflict in order to commit war crimes and crimes against humanity and genocide. Their function is to bring peace to those areas and to maintain international peace and security to those regions, in accordance with the jurisdiction authorized by the Council.

In the event that they perpetrate crimes breaching the Rome Statute, then they can be surrendered to their Governments, who will try them before their national courts in accordance with article 17 and with the principle of judicial complementarity, as mentioned in article 1 of part 1, on the establishment of the Court.

Thirdly, when resolution 1422 (2002) was adopted last year, the ICC was in its first days of establishment. Today, the Court has been in existence for 11 months. It has become a concrete reality, and Judges were elected from among qualified judicial

persons. The Court has become almost universal, since the number of States ratifying the Rome Statute has reached 90 and there are 140 signatory States. Hence, we believe that the adoption of this resolution would result in gradual weakening of the Court's role in persecuting those who have perpetrated the most heinous crimes that come under its jurisdiction.

As my country supported the establishment of the Court and participated in drafting its Statute, it has signed the Statute and is about to take the legislative procedures necessary to ratify it.

Fourthly, we have full confidence in international criminal justice. We would like to affirm the importance of upholding the principles, objectives and purposes of the United Nations Charter and respecting international law and international humanitarian law, particularly the Geneva Conventions, which govern crimes perpetrated during wartime and armed conflict by all parties.



**Statement by:**

H.E. Ambassador James Cunningham,  
Deputy United States Representative to the United Nations,  
In the Security Council on the Renewal of Resolution 1422  
June 12, 2003

Mr. President, we welcome the Security Council's renewal for another year of the compromise on the International Criminal Court so painstakingly put together in Resolution 1422. Like any compromise, the resolution [1487] does not address all of our concerns about the Court. It does balance divergent positions and help ensure against any undermining of UN peace operations.

Like Resolution 1422, this resolution exempts states that are not parties to the Rome Statute but participate in UN operations from the ICC's jurisdiction in a manner consistent with the UN Charter and with the 1998 Rome Statute. The resolution is consistent with the fundamental principle of international law, the need for a state to consent if it is to be bound, is respected by exempting from ICC jurisdiction personnel and forces of states that are not parties to the Rome Statute. It is worth noting that the resolution does not in any way affect parties to the Court, nor the Rome Statute itself. Nor does it, as some today suggested, elevate an entire category of people above the law. The ICC is not "the law."

The provisions of this resolution are as relevant and necessary today as Resolution 1422 was a year ago. We all know that UN operations are important if the Council is to discharge its primary responsibility for maintaining or restoring international peace and security. We also all know that it is not always easy to recruit contributors and that it often takes courage on the part of political leaders to join military operations established or authorized by this Council. It is important that Member States not add concern about ICC jurisdiction to the difficulty of participating.

We have heard the arguments that this resolution is not necessary, and we do not agree. I would suggest that even one instance of the ICC attempting to exercise jurisdiction over those involved in a UN operation would have a seriously damaging impact on future UN operations. We are disappointed, of course, that not every Council Member shares our view. But we are not at all persuaded that our concerns are overstated or lack validity.

The United States yields to no country its historical leadership in the struggle for international justice and accountability for war crimes. After all, the United States was the first country to codify the laws of war – international humanitarian law – and an original participant in the creation of every successful international effort to date to adjudicate allegations of war crimes and crimes against humanity. It has been and will continue to be a strong supporter of the tribunals established under the aegis of this Council. But unlike the ICC, those tribunals are accountable to the Security Council.

The ICC is not a UN institution and, some would even say, challenges and weakens the UN Charter system and the Council's place in it. The ICC is vulnerable at each stage of any proceeding to politicization. The Rome Statute provides no adequate check. "Having every confidence" in the ICC's correct behavior, however that is defined, is not in our view a safeguard. We have already seen in other fora the potential for politically motivated criminal charges against national leaders and military officers, including over the recent Iraq hostilities.

Our primary concern, of course, is for American personnel that may find themselves subject to ICC jurisdiction even though the United States is not a party to the Rome Statute. As Ambassador Negroponte explained last year, "the power to deprive a citizen of his or her freedom is an awesome thing, which the American people have entrusted to their government under the rules of our democracy...[T]he International Criminal Court does not operate in the same democratic and constitutional context, and therefore does not have the right to deprive Americans of their freedom."

The United States, therefore, has a fundamental objection to the ICC. In our view, it is a fatally flawed institution. Many others, including some of our closest friends, do not share that view. We are thoroughly familiar with our respective positions and understand that those positions are not going to change in the foreseeable future. We all need to acknowledge that fact and its implications. This resolution represents a compromise that respects the strongly held views of those who support the ICC and the equally strongly held views of those that do not. Such respect is important to maintain. This compromise, therefore, is important to maintain.

Thank you, Mr. President.

# Statements and Analyses by NGOs



*Photo Credit: CICC*

CICC members shared their concerns on renewal of Security Council Resolution 1487 during an informal meeting with governments.  
(l-r) Richard Dicker, Human Rights Watch; Yvonne Terlingen, Amnesty International; William Pace, CICC (3 May 2004)



**ANALYSIS**  
**Of US Proposals' Damaging Effects**  
**On the ICC, the Security Council, and International law**  
July 10, 2002

The **Coalition for the International Criminal Court**, comprised of over 1000 nongovernmental organizations from around the world, which has been involved in the ICC process from its inception, is deeply concerned by the United States government's efforts to use the Security Council to amend the Rome Statute. The proposal circulated by the United States on Wednesday, July 10, is yet another effort to undermine the integrity of the Statute and is as unacceptable as previous attempts.

We wish to highlight the following outstanding concerns:

1. By invoking Chapter VII of the UN Charter, the Security Council is required to consider the International Criminal Court as a threat to the peace, breach of the peace, or an act of aggression, none of which apply.
2. Paragraph 1 is inconsistent with Article 16 of the Rome Statute which provides for Security Council deferrals only on a temporary, case by case basis. Instead, Paragraph 1 constitutes a generalized preventive exemption clearly not envisaged by Article 16.
3. Paragraph 2 at the very least is ambiguous but seems to provide a basis for an automatic renewal. This is contrary to Article 16 and would in effect be an amendment of the Rome Statute.
4. Paragraph 3, and indeed the entire proposal, attempts to bind Signatory States to act in contravention to their obligations to respect the object and purpose of the Rome Statute and precludes State Parties from respecting their obligations under the Statute.

For these reasons, we strongly urge you, as a member of the Security Council or as a member of the United Nations with a vested interest in this issue, to remain steadfast and join the vast majority of Member States in rejecting the current United States proposal and any subsequent attempts to undermine the integrity of the Statute, the mandate of the Security Council, and international law.



## HUMAN RIGHTS WATCH

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## Close the Door to Impunity:

### **Human Rights Watch Recommendations to U.N. Member States on the Renewal of Resolution 1487**

Updated May 13, 2004

## **I. Introduction**

One of the key components of the Bush administration's campaign to undermine the International Criminal Court ("ICC") is Security Council Resolution 1487. The resolution, adopted on June 12, 2003, grants immunity from the ICC to personnel from ICC non-states parties involved in United Nations (U.N.) established or authorized missions, for a twelve-month period. Resolution 1487 represents the renewal of Security Council Resolution 1422, and the effect of Resolution 1487 is identical to Resolution 1422.

The Security Council adopted Resolution 1422 on July 12, 2002, following an intense debate on the U.N. Peacekeeping Mission in Bosnia-Herzegovina (UNMIBH). In an extraordinary step two weeks earlier, United States Ambassador to the U.N. John Negroponte vetoed the mission's renewal, and Bush administration officials threatened to veto the renewal of all peacekeeping operations, if Council members did not agree to the text of the resolution. Wanting to preserve peacekeeping operations, Security Council members adopted the text despite its serious flaws. Resolution 1422 included text stating the intention of the Security Council to renew it each year.

Human Rights Watch opposes Resolution 1422/1487 primarily for two reasons: (i) it grossly distorts the meaning of Articles 16 and 27 of the Rome Statute in ways that weaken the independence of the court; and (ii) by amending a multilateral treaty in this way the Security Council has overstepped its authority under the United Nations Charter. An analysis of Resolution 1422/1487 is provided below in Section III.

Human Rights Watch believes that states should take a principled course and work together to bring about an end to renewal of Resolution 1422/1487. Recent events underscore the importance of ensuring that the rule of law applies equally to all without any exceptions.

Human Rights Watch believes that three objectives are vitally important and achievable as part of the process to hasten the ultimate elimination of Resolution 1422/1487: 1) a greater number of abstentions by Security Council members in the vote to renew Resolution 1487 than in the vote last year; 2) statements by Security Council members at the Security Council debate on renewal expressing support for the ICC; and 3) an open meeting at the Security Council prior to the vote on the resolution in which both regional groups and individual delegations make considered statements expressing support for the ICC. As the vote on renewal of the resolution could come up quickly without substantial notice, advance preparation as soon as possible will be essential to achieving these objectives.

## II. Human Rights Watch's Recommendations

With the vote on renewal fast approaching (it is expected anytime in the next two months), Human Rights Watch urges U.N. member states who are ICC states parties and signatory parties to take the initiative now. While ultimately the decision of whether to renew Resolution 1487 will be in the hands of Security Council members, all ICC states parties and signatory parties have an important role to play in pressing the Council to respect the Rome Statute.

Human Rights Watch believes that ICC states parties and signatory parties' efforts around the vote on renewal will be an important measure of credibility with respect to commitment to combating impunity by supporting the ICC. Human Rights Watch further believes that civil society around the globe will follow closely the vote on the renewal of Resolution 1487.

Human Rights Watch urges U.N. member states who are ICC states parties and signatory parties to:

- In your discussions with Security Council members, urge them to abstain from the vote to renew Resolution 1487, and make statements at the Security Council debate supporting the ICC, affirming the need for equal application of the rule of law, and emphasizing that renewal will not be tolerated indefinitely;
- Request an open meeting at the Security Council on renewal of Resolution 1487;
- Work with your capitals in the coming weeks to develop statements intended for an open meeting at the Security Council in light of the possibility that there will be little advance notice prior to proposal of the resolution; and
- Make substantial and considered statements, as regional groups and individual delegations, at an open meeting at the Security Council opposing renewal of Resolution 1487, supporting the ICC, affirming the need for equal application of the rule of law, and emphasizing that renewal will not be tolerated indefinitely.

It is important to stress that we are not advocating in any way that ICC states parties and signatory parties make provocative or confrontational statements against the interests of the United States, but rather to express the need for the equal application of the rule of law and support for the ICC.

U.N. members states who are ICC states parties and signatory parties face a vastly improved political climate in which to implement the above recommendations than existed leading up to the vote on renewal of Resolution 1422 one year ago. Resolution 1422 was adopted by a unanimous vote in favor of the resolution. However, when the Security Council renewed Resolution 1422 by adopting Resolution 1487, three Security Council members – France, Germany, and Syria – abstained. Moreover, in the Security Council open meeting on Resolution 1487, the European Union and other states made strong statements underscoring that renewal would not be tolerated indefinitely. In particular, the Greek presidency made the following statement on behalf of the European Union and associate countries:

“The EU is of the view that the inclusion in Resolution 1422 of the phrase ‘renew the request...under the same conditions each 1 July for further 12-month periods for as long as may be necessary’ cannot be interpreted as permitting the automatic renewal of that resolution.... The EU firmly believes that an automatic renewal of that resolution would be undermining the letter and the spirit of the Statute of the ICC and of its fundamental purpose that is to put an end to impunity....”

The three abstentions in the vote on renewal last year represented a dramatic shift that, along with statements in the open meeting, U.N. member states who are ICC states parties and signatory parties can

and should build upon this year. Human Rights Watch believes that this effort will make an immensely important contribution to bringing about the end of renewal of Resolution 1422/1487.

### **III. Human Rights Watch Analysis of Resolution 1422/1487**

#### Article 16

The terms of Article 16 are clear. It states: “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.”

The article establishes a mechanism for deferring investigations or prosecutions on a case-by-case basis, subject to time limitations and a formal renewal process. This interpretation is derived from reading the article “in good faith in accordance with the ordinary meaning” of the words, as required by the Vienna Convention on the Law of Treaties. It is also consistent with the drafting history of Article 16.

The phrase, “no investigation or prosecution may be commenced or proceeded with,” presupposes the existence of a particular “investigation” or “prosecution” that relates to a specific incident or the potential culpability of an individual regarding specific conduct. Article 15 of the Rome Statute spells this out. The Pre-Trial Chamber must authorize the commencement of a specific “investigation.” All prosecutor inquiries up to this point are not “investigations,” but only “preliminary examinations” – *see* Article 15(6). Only after Pre-Trial Chamber authorization of an “investigation” is the Security Council entitled to request a deferral under Article 16.

The structure of the Rome Statute further underscores the requirement that any Security Council deferral request must respond to a specific case. Article 16 appears after Articles 12 – 15 (dealing with the mechanisms triggering ICC jurisdiction), demonstrating that, as a matter of logic, an Article 16 deferral request is not meant to be a tool for Security Council preventive, indiscriminate action, but a response to specific ICC proceedings.

Any such deferral must be temporary, subject to the 12-month limit stipulated in Article 16, so that the perpetrators of any atrocities would ultimately be brought to account for their crimes – either via national judicial systems or the ICC. It is clear, then, that Article 16 does not sanction blanket immunity in relation to unknown, future events.

The above interpretation of Article 16 is consistent with one of the Rome Statute's key features: to limit the role of the Security Council vis-à-vis the ICC, and specifically to prevent the court's investigations and prosecutions from being subject to prior Security Council approval. However, by ignoring the “case-by-case” requirements of Article 16, the text of 1487 does exactly the opposite, subjugating the ICC to the politics of the Security Council.

#### Article 27

Article 27 of the Rome Statute expressly prohibits making distinctions on the basis of official capacity. It is a crucial provision that encompasses the fundamental object and purpose of the treaty to ensure that no person is above the law. This includes peacekeepers, as well as politicians and heads of state. In contrast, Resolution 1487 allows an entire class of individuals to escape the judgment of the ICC, opening the door to impunity if national courts of non-states parties fail to carry out good faith investigations and prosecutions. It is a clear violation of Article 27 of the Statute.

Defenders of the resolution argued that, as a matter of practice, 1487 would not damage the “core” of the court's jurisdiction by exempting a class of individuals from ICC jurisdiction because the risk of U.N.

peacekeepers committing Rome Statute crimes was said to be very low. Even if this is true most of the time, it is still no justification for violating Article 27.

Moreover, Human Rights Watch has documented crimes of sexual violence, including rape, allegedly perpetrated by U.N. peacekeepers in Sierra Leone (*see* “We’ll Kill You if You Cry” at <http://www.hrw.org/reports/2003/sierraleone>). On May 7, 2004, the U.N. peacekeeping mission in the Democratic Republic of the Congo also commenced an investigation into reported sexual exploitation and sexual abuse of civilians by its personnel. These disturbing allegations highlight the necessity to preserve Article 27 intact.

Resolution 1487, by bestowing blanket immunity from the court's jurisdiction to an entire class of persons in advance of unknown future events, is in manifest violation of the Rome Statute.

#### Security Council Overreach

The powers of the Security Council are subject to important limitations, governed by the U.N. Charter and customary international law. Before invoking its powers under Chapter VII of the U.N. Charter, the Security Council is required to make a finding of a threat to peace (*see* Article 39 of the U.N. Charter). The Security Council never made this determination in Resolution 1487. It is beyond the legal authority of the council to have invoked Chapter VII of the U.N. Charter without clearly identifying the threat to international peace and security.

#### A Broken Promise

When Resolution 1422 was first proposed, its supporters argued its acceptance on the grounds that it would result in the United States ceasing to make immunity for personnel from ICC non-states parties an issue each time the Security Council voted on a U.N. mission. However, as shown by Resolution 1497 establishing a U.N. peacekeeping mission in Liberia, this has not been the case. At the insistence of the United States, Resolution 1497 includes a paragraph allowing certain personnel associated with the Multinational or U.N. Stabilization Force in Liberia complete immunity and possibly impunity for crimes. Paragraph 7 of the resolution states:

“*Decides* that current or former officials or personnel from a contributing State, which is not a party to the Rome Statute for the International Criminal Court, shall be subject to the *exclusive jurisdiction* [emphasis added] of that contributing State for [any acts arising from participation in the mission] unless such jurisdiction has been expressly waived by the contributing State.”

The United States took advantage of the tragic circumstances in Liberia and the urgent need for international intervention to secure inclusion of this provision in a country-specific resolution despite the previous adoption of Resolution 1487.

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## **International Criminal Court: Security Council must refuse to renew unlawful Resolution 1422**



May 2003  
AI Index: IOR 40/008/2003

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM



## **International Criminal Court: Security Council must refuse to renew unlawful Resolution 1422**

Amnesty International is deeply concerned that on 12 July 2002, the United Nations (UN) Security Council adopted Resolution 1422 (2002). The resolution, which expires on 30 June 2003, seeks to prevent the International Criminal Court (Court), from exercising its jurisdiction over persons involved in operations established or authorized by the UN, if they are nationals of states which have not ratified the Rome Statute of the International Criminal Court (Rome Statute). The International Criminal Court acts as a court of last resort when states are unable or unwilling to investigate or prosecute people accused of genocide, crimes against humanity and war crimes. Amnesty International believes that no one should have impunity for the worst crimes known to humanity.

On 1 May 2003, Amnesty International issued *International Criminal Court: The unlawful attempt by the Security Council to give US citizens permanent impunity from international justice* (AI Index: IOR 40/006/2003), an 82-page legal memorandum analysing Resolution 1422, which concludes that the resolution violates the Rome Statute, the United Nations Charter and other international law. The memorandum calls on the Security Council not to renew the resolution. This short paper summarizes the organization's concerns.

### **What does Resolution 1422 provide?**

Resolution 1422 seeks to give perpetual impunity from investigation or prosecution by the recently established International Criminal Court, to nationals of states that have not ratified the Rome Statute accused of genocide, crimes against humanity and war crimes when these persons were involved in operations established or authorized by the UN.

The resolution:

- Requests the International Criminal Court, purportedly in accordance with Article 16 of the Rome Statute, not to commence or proceed with investigation or prosecution for a 12-month period - starting 1 July 2002 - any case involving current or former officials or personnel from a country that has not ratified the Rome Statute over acts or omissions relating to a UN established or authorized operation;
- Expresses the intention to renew the resolution under the same conditions each 1 July for further 12-month periods for as long as may be necessary;
- Decides that UN member states shall take no action inconsistent with the resolution and with their international obligations.

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### **Why does Amnesty International oppose Resolution 1422?**

Amnesty International, together with the vast majority of states, opposes the resolution as a direct attack against the new International Criminal Court, which has been established as a cornerstone of a new system of international justice to end impunity for the most serious crimes under international law. In upholding the rule of law by investigating and prosecuting people accused of genocide, crimes against humanity and war crimes when national courts are unable or unwilling to do so, the International Criminal Court promises to be an essential deterrent to people planning these crimes, as well as an important mechanism for ensuring justice for the worst crimes and reparations to victims. It is clearly the object and purpose of the Rome Statute to ensure an end to impunity where no one - regardless of their status or nationality - has impunity for these crimes.

The Security Council, by misusing the provisions of the Rome Statute and acting contrary to the UN Charter, as well as other international law (as described below), has sought to weaken the Court and international justice by establishing a system of impunity for nationals of non-states parties to the Rome Statute participating in UN authorized or established missions by (1) requesting the International Criminal Court to defer all such cases and (2) obliging all UN member states not to cooperate with the International Criminal Court should it decide to proceed with such investigations and prosecutions.

Resolution 1422 is contrary to the Rome Statute, the UN Charter and other international law and, therefore, it is not binding on the International Criminal Court or UN member states.

### **Why was Resolution 1422 adopted?**

Resolution 1422 was adopted at the insistence of one state - the United States of America (USA). On 30 June 2002, after the 14 other members of the Security Council initially rejected its proposal for impunity for US nationals involved in peacekeeping missions, the USA vetoed the renewal of the UN Mission in Bosnia and Herzegovina UNMIBH mandate and threatened to use its veto to stop all other UN peace-keeping operations.

The initiative forms part of a worldwide campaign by the USA to undermine the International Criminal Court and to ensure that members of its armed forces stationed abroad, as well as its military and civilian leaders, could never be subject to the jurisdiction of the International Criminal Court for these crimes. In the last year, the USA has also been exerting huge pressure on states to sign illegal impunity agreements committing them not to surrender US nationals accused of genocide, crimes against humanity and war crimes to the

International Criminal Court, if requested.<sup>1</sup> As of 1 May 2003, 27 states are reported to have signed such agreements, although not a single state has ratified such an agreement. In many cases, the USA threatened to withdraw military and other assistance, if states refused to sign. As a result of the limited success of this effort, the USA may well seek, at the Security Council or via other initiatives, broader protection for its citizens and others it seeks to protect abroad.

Amnesty International, together with the vast majority of the international community, believes the US concerns of politically motivated prosecutions against US nationals are unfounded as the Rome Statute contains substantive safeguards and fair trial guarantees to ensure that such a situation would never arise. The organization has repeatedly called on the USA to reconsider its position and to join the international effort to end impunity.

For two weeks following the US veto of the extension of the UNMIBH mandate, the Security Council debated the matter in detail. On 10 July 2002, the Security Council held an open session during which approximately 70 UN member states individually or in joint statements called on the Security Council not to adopt any resolution that would undermine the Rome Statute. Nevertheless, on 12 July 2002, the Security Council adopted Resolution 1422 by consensus.

### **Why is Security Council Resolution 1422 contrary to the Rome Statute?**

When drafting the Rome Statute, it was decided to include a provision – Article 16 - that allows the Security Council in the interests of international peace and security, to request the International Criminal Court, pursuant to Chapter VII of the UN Charter, to defer for 12 months an investigation or prosecution. There was in fact widespread opposition by most states to the inclusion of Article 16 in the Rome Statute, on the grounds that it could be used to protect nationals of permanent members of the Security Council. However, states were assured by supporters of the provision that it was intended solely to enable the Security Council to undertake delicate peace negotiations for a period of time in certain exceptional circumstances. For example, the deputy head of the United Kingdom delegation stated that ‘This [a request by the Security Council] will be a very rare case, and I cannot envisage that the Council will often ask for a deferral under Article 16.’<sup>2</sup> Several states, including Canada,

<sup>1</sup> For more information about Amnesty International’s position on US impunity agreements see: *International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes* (AI Index: IOR 40/025/2002) and *International Criminal Court: The need for the European Union to take more effective steps to prevent members from signing US impunity agreements* (AI Index: IOR 40/030/2002).

<sup>2</sup> Elizabeth Wilmschurst, *The International Criminal Court: The Role of the Security Council*, in G. Nesi & Mauro Politi, eds, *The Rome Statute of the International Criminal Court: A Challenge to Impunity* 40 (Aldershot: Ashgate Publishing Ltd 2001) (emphasis in original). The author wrote this essay when she was the Deputy Legal Adviser of the Foreign and Commonwealth Office.

Switzerland and New Zealand raised concern that the Security Council was considering using Article 16 contrary to the intention of its drafters, when they addressed the Security Council on 10 July 2002.

The drafters of the Rome Statute deliberately limited the circumstances in which the Security Council could request deferral to when it was acting under Chapter VII of the UN Charter to address a threat to international peace and security. Furthermore, Article 16 requires that all five permanent members of the Security Council must support or abstain from making such a request – if one of those states used their veto power, an Article 16 request could not be made. In fact, the limited powers given to the Security Council in the Rome Statute is one of the main reasons for US opposition to the Rome Statute. The USA had demanded and was refused Security Council control – with the USA able to veto any investigation or prosecution by the Court.

Resolution 1422 seeks to invoke Article 16 in a manner that the drafters of the Rome Statute did not intend:

- ***The Security Council cannot use Article 16 to make general exceptions to the jurisdiction of the International Criminal Court***

As stated above, Article 16 was only intended to permit the Security Council to request the Court to grant a temporary deferral of the investigation or prosecution of a case in exceptional circumstances. It is clear from the drafting history that Article 16 requires the Security Council to consider making a request for deferral on a case-by-case basis determining in each case that a deferral would be necessary to help it to restore or maintain international peace and security. Resolution 1422, however, was not adopted after such a case-by-case determination. Instead, it provides for a general exception for a whole class of people before any case has arisen, without determining that exceptional circumstances exist making a deferral necessary to restore or maintain international peace and security.

- ***The Security Council cannot make a determination to renew the resolution indefinitely, possibly forever***

The inclusion in Resolution 1422 of the Security Council's intention to "renew the request...under the same conditions each 1 July for further 12-month periods for as long as may be necessary" is also contrary to Article 16. Article 16 specifically includes a 12-month deferral after which time the Security Council may renew that request under the same conditions. Consideration of any proposal for renewal should again be made on a case-by-case basis and at the time the resolution is to be renewed. The Security Council's expression of intention to renew Resolution 1422 automatically illustrates the Council's disregard for true purpose of Article 16 and its intention to provide perpetual impunity from the International Criminal Court to nationals of non-states parties involved in UN established or authorized operations. Due to the exceptional nature of Article 16, as well as the object and

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purpose of the Rome Statute to end impunity, this article should be given its narrowest possible interpretation. Any attempt to use Article 16 to bar the Court from exercising jurisdiction for more than a short period would be incompatible with the purpose of the Rome Statute – to ensure that *all* those within the Court’s jurisdiction are brought to justice in *all* cases.

- ***Resolution 1422 creates a class of persons who have impunity from international justice***

The effect of Resolution 1422 is that persons involved in UN operations from non-states parties to the Rome Statute have impunity from the International Criminal Court, which only acts when states are unable or unwilling to do so. Some states, such as the USA, have not defined all the crimes in the Rome Statute as crimes under national law. It is therefore possible that the US would be unable to investigate or prosecute one of its citizens if they were accused of international crimes within the jurisdiction of the International Criminal Court. The exemption is therefore contrary to the object and purpose of the Rome Statute - to end impunity for genocide, crimes against humanity and war crimes. Furthermore, it violates other international treaties, including the Conventions against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions of 1949, both of which oblige states to bring people accused of these crimes to justice.

### **Why is Resolution 1422 contrary to the UN Charter?**

The Security Council, like every political organ of the UN, an international organization established pursuant to international law, may only exercise powers it has under its constitutive instrument, the UN Charter. Like any other body established under law, it cannot act in excess of its powers (*ultra vires*) by attempting to exercise powers it does not possess under the UN Charter, or act in a way that is in violation of the Charter. As explained below, in adopting Resolution 1422, the Security Council exceeded its powers set out in the UN Charter.

- ***The Security Council failed to make a determination of a threat to the peace, breach of the peace, or act of aggression***

In Resolution 1422, the Security Council purported to act under Chapter VII of the UN Charter. However, it failed to make the essential determination of the existence of a threat to international peace and security required before it can take measures pursuant to Chapter VII. That Chapter gives the Security Council specific powers to take action with respect to threats to the peace, breaches of peace and acts of aggression. In order to use these Chapter VII powers, the Charter provides:

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“The Security Council shall determine the existence of any threat to the peace, breach of peace or act of aggression ...” (Article 39)

The International Criminal Tribunal for the former Yugoslavia and leading international law scholars have recognized that, although Article 39 is open to a wide degree of discretion, the Security Council may not invoke Chapter VII unless there is a bona fide determination of a threat to international peace and security. The drafting history of Resolution 1422 shows that – for the first time in 57 years - the Security Council made no such determination before seeking to act under Chapter VII. This is understandable, although unlawful, since no breach or threat to international peace and security existed. As many states which opposed the adoption of the Resolution noted, the work of the International Criminal Court and peace-keeping are complementary. Indeed, the only such threat reportedly cited during the closed sessions of the Security Council was the threat by the USA to veto the extension of the Bosnia and Herzegovina and other peace-keeping operation. It is inconceivable that the UN Charter would allow a permanent member of the Security Council to create a “threat” to international peace and security simply by threatening to veto the extensions of UN peace-keeping mandates in order for the Council to act under Chapter VII.

- ***Resolution 1422 could facilitate and encourage violations of jus cogens prohibitions of international law and human rights and international humanitarian law***

There are certain prohibitions under international law that are so important that they cannot be derogated under any circumstances – these are called *ius cogens* prohibitions or peremptory norms. Crimes under international law, such as genocide, crimes against humanity and war crimes - all crimes within the jurisdiction of the International Criminal Court – and torture, violate *ius cogens* prohibitions.

Resolution 1422, which seeks to prohibit the international community from taking steps to prevent genocide, crimes against humanity and war crimes could facilitate and encourage violations of *ius cogens* prohibitions by providing impunity to an entire class of persons. Therefore, it is invalid and does not bind the International Criminal Court or UN member states.

The Security Council must also act consistently with human rights and international humanitarian law, regardless whether they are characterized as *ius cogens* norms. The promotion and protection of human rights is a primary purpose of the United Nations and, as an organ of the UN, the Security Council has a duty to act consistently with human rights. Statements by the UN Secretary-General and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia confirm that the Security Council and all those participating in UN operations must respect international humanitarian law. Efforts by the UN Security Council to provide impunity for those participating in UN operations will facilitate and encourage violations of human rights and international humanitarian law and, therefore, are clearly outside of its mandate.

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### **Why is the International Criminal Court not bound by this resolution?**

When the International Criminal Court receives a request to defer an investigation or prosecution, it must decide what legal effect under the Rome Statute to give to the request. Article 16 states that the Security Council can ‘request’ a deferral from the International Criminal Court, not ‘decide’ or ‘determine’ that a deferral must be given. The use of ‘request’ in Article 16 was deliberate. The Security Council has no power to order the International Criminal Court, an independent international judicial body, to take or cease action.

In making a decision in a relevant case, the International Criminal Court must be convinced that a decision has been taken that would impose a requirement under Article 16 of the Rome Statute – that is, an exceptional request in a particular case for a temporary delay. The request must have also been made in a resolution adopted under Chapter VII of the UN Charter, which can only be invoked if the Security Council has made a determination under Article 39 that there is a threat to international peace and security. No such determination was made before adopting Resolution 1422. The International Criminal Court must also determine whether the request is consistent with the Rome Statute as a whole. As noted above, it seems clear from the drafting history of Article 16 that a request to defer all investigations and prosecutions of any persons not nationals of a state party to the Rome Statute for conduct relating to UN established or authorized operations, without having made individualized determinations that such deferrals are necessary for the Security Council to restore or maintain international peace and security, is inconsistent with that article, as well as the object and purpose of the Rome Statute as a whole.

If a case were ever to arise that fit within Resolution 1422, the International Criminal Court could determine the legal effect of the resolution based solely on whether the nature of the request is one that was intended under Article 16 of the Rome Statute. That article requires that the request be in a resolution adopted under Chapter VII. However, the International Criminal Court also has the power to determine whether the Security Council exceeded its powers under the UN Charter, as an incidental part of its jurisdiction. The International Criminal Court must first be convinced that the Security Council has determined that there is a threat to or breach of international peace and security, and second, that such a threat or breach does actually exist.

Amnesty International intends to urge the International Criminal Court, if a relevant case arises, to determine that Resolution 1422 does not contain a request within the meaning of the Rome Statute, and that it therefore has no relevance in determining whether to open an investigation or a prosecution of a national of a non-state party.

### **Why are UN member states not bound by this resolution?**

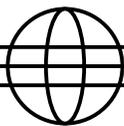
While Resolution 1422 makes a request to the International Criminal Court, the resolution “decides” that Member states shall take no action inconsistent with the resolution and “with their international obligations.”

The result of the Security Council's failure to make a determination as to whether there was a threat to international peace and security means that the decisions in Resolution 1422 are not binding decisions under Chapter VII and member states of the United Nations are not obliged to comply with them. Furthermore, it is fully consistent with states' "international obligations" to ensure that people accused of genocide, crimes against humanity and war crimes are investigated and prosecuted. Therefore UN member states should not take any measures to stop the International Criminal Court from investigating and prosecuting these crimes. In the event that the International Criminal Court decides to proceed with an investigation or prosecution of a national of a non-state party to the Rome Statute over acts relating to a UN authorised or established operation, states parties to the Rome Statute would be legally obliged to cooperate with the Court and non-states parties would be acting consistently with their obligations under international law if they also decided to cooperate.

**What action does Amnesty International expect Security Council members and other states to take?**

Amnesty International urges all 14 other Security Council members (Angola, Bulgaria, Cameroon, China, Chile, France, Germany, Guinea, Mexico, Pakistan, Russian Federation, Spain, Syrian Arab Republic and the United Kingdom) to oppose any attempt by the United States to renew Resolution 1422.

Amnesty International is urging all states to appeal to the Security Council not to renew the request.



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### PARLIAMENTARIANS OPPOSE RENEWAL OF RESOLUTION 1422: URGE CRITICAL DEBATE AT OPEN MEETING OF THE SECURITY COUNCIL

*NEW YORK; June 11, 2003* – The open meeting of the Security Council on Resolution 1422 (2002) must carefully consider the need, merit and legality of a renewal of the resolution, said Parliamentarians for Global Action (PGA) today. The organization strongly opposes this possible renewal. Also, PGA welcomes the open meeting as an opportunity to assess the implications of a twelve-month extension of Resolution 1422 on the International Criminal Court (ICC), the UN Charter, and principles of international law, such as the duty of states to prosecute international crimes.

“PGA members have invested much time and effort towards the establishment of the ICC,” said Senator A. Raynell Andreychuk (Canada), convenor of the organization’s International Law and Human Rights Program. “As parliamentarians committed to the fight against impunity, we expect our governments to reaffirm their support for the ICC and take into account the compelling arguments against Resolution 1422 before the Security Council takes action on its renewal.”

Resolution 1422, adopted last July, provides UN peacekeeping personnel from countries that have not ratified the Rome Statute with a 12-month suspension from investigation or prosecution for genocide, war crimes and crimes against humanity by the Court. It is due to expire on June 30, 2003. An open meeting of the Security Council on this matter has been scheduled for Thursday, June 12<sup>th</sup>, and it is expected that the Council will vote on the renewal shortly thereafter.

At various parliamentary conferences around the world, PGA members have vowed to uphold the principle of equality of all before the law. The organization fears that a renewal of Resolution 1422 would not only put a certain class of persons above the law, but may also endorse the view that the Security Council can amend multilateral treaties by unlawfully acting under Chapter VII of the UN Charter in the absence of a threat to the peace. Additionally, unopposed rollovers of the resolution each year could eventually lead to the development of customary rules against the universality of international justice. A critical public debate will serve as a record of opposition to counter such negative consequences should Resolution 1422 be renewed.

Reflecting the concerns of the organization, several PGA members have questioned their respective governments on Resolution 1422 and urged them to protect the integrity of the newly established ICC.

The Court was conceived as a preventive tool against mass atrocities, which too often have gone unpunished. “One day we will be in the position to witness how the ICC deterred a dictator or a leader from ordering the killing of a human being – this is the true significance of the Court,” said Andreychuk. With the swearing in of the first ICC Prosecutor, Mr. Luis Moreno Ocampo of Argentina, on June 16<sup>th</sup> in The Hague, the

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Court will soon serve its purpose and play a complementary role in investigating gross crimes committed under its jurisdiction, including the recent tragic events in the Democratic Republic of the Congo.

*PGA is an association of 1350 legislators from 105 countries united to promote the resolution of global issues such as peace and democracy, sustainable development, international law and human rights. PGA members have promoted the establishment of the ICC since 1989 when A.N.R. Robinson, then Prime Minister of Trinidad & Tobago and convenor of PGA's International Law program, introduced the ICC in the U.N. General Assembly agenda. Since its adoption, PGA members have promoted the ratification and effective implementation of the Rome Statute, which entered into force on July 1, 2002.*

## **P r e s s   R e l e a s e**

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### **States send clear message to U.S.: Don't expect permanent exemption from ICC**

NEW YORK - As the U.S. continued to press for a two-tier system of justice for serious human rights crimes, U.N. member states showed that they have other plans. Today the Security Council voted 12-0 to renew the controversial resolution 1422, shielding UN peacekeepers from the ICC for a further year. But three states abstained, robbing the U.S. of a consensus. And in a meeting open to non-Security Council members preceding the vote, states expressed overwhelming support for the new Court and serious concerns about the resolution.

The Lawyers Committee is disappointed that the resolution, which reflects U.S. continuing efforts to undermine the ICC, was adopted. However we are encouraged by the fact that even states that voted for the resolution made clear this was not an automatic renewal: "States showed today that they were not ready to simply bow to the will of the United States and rubberstamp the resolution", said Fiona McKay, director of the Lawyers Committee's International Justice Program. "The U.S. has been put on notice that it must expect a reassessment of the circumstances every year and that it cannot expect the exemptions to become permanent."

States abstaining from voting for the resolution included one permanent member, France, as well as Germany and Syria. In explaining its reasons for abstaining, France said it was not appropriate to renew the resolution at the very time when the ICC was starting to operate, and that such a move would only weaken the Court and harm its authority.

Before the vote, delegates speaking on behalf of more than 50 non-Security Council members representing all regions of the world expressed their strong support for the ICC and their concerns at the renewal of the resolution. Many stressed that the Rome Statute contained more than adequate safeguards against politically motivated prosecutions – which the U.S. says it fears from the Court - and stated their own fears at the serious harm being done to the ICC, to international law, and to the Security Council itself by the resolution.

Particularly welcome were strong expressions of support for the Court from states that are not yet parties to the ICC treaty, including China and Russia.

Secretary-General Kofi Annan warned Council members that the Rome Statute was not intended to cover such a sweeping request, and expressed his hope that renewal of the resolution would not become an annual routine. "If it did so", he said, "I fear the world would interpret it as meaning that this Council wished to claim absolute and permanent immunity for people serving in the operations it establishes or authorizes. And if that were to happen, it would undermine not only

the authority of the ICC but also the authority of this Council, and the legitimacy of United Nations peacekeeping.”

The U.S. asserts that its opposition to the ICC is based on fear: fear that the Court will instigate politically motivated prosecutions against U.S. nationals. Such fears are not only misplaced, but an insult to the 18 distinguished judges and the highly qualified Chief Prosecutor, as well as the states that recently elected them. Many states today expressed their confidence in the composition of the new Court.

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*Since 1978, the Lawyers Committee for Human Rights has worked in the U.S. and abroad to create a secure and humane world by advancing justice and human dignity. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; promote fair economic practices by creating safeguards for workers' rights; and help build a strong international system of justice and accountability for the worst human rights crimes.*



# Coalition for the International Criminal Court

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## OPEN LETTER ON THE OCCASION OF THE SECURITY COUNCIL PUBLIC MEETING ON RENEWAL OF RESOLUTION 1422

12 JUNE 2003

The Coalition for the International Criminal Court (Coalition), a network of more than 2,000 non-governmental organizations worldwide, welcomes the public meeting of the Security Council and the opportunity for countries to express their principled objections to the renewal of Resolution 1422. The Coalition opposes renewal of the resolution, and believes that it is a significant achievement that supporters of the International Criminal Court (ICC) have successfully resisted intense pressure for a quiet, automatic renewal by securing this open debate.

The Coalition believes that Resolution 1422 contravenes not only the Rome Statute, but also the United Nations Charter and other international law. The Coalition objects to the renewal of Resolution 1422 on several grounds:

- Resolution 1422, purportedly based on Article 16 of the Rome Statute, reaches beyond the scope of this Article by altering the Court's jurisdictional regime. The drafters of the Statute intended that Article 16 of the Statute be used only in exceptional circumstances on a *case-by-case* basis, and that the Court's investigations and prosecutions not be subject to prior Security Council authorization. The resolution effectively amends the Rome Statute, a multilateral treaty now ratified by 90 states.

- Resolution 1422 aims at exempting an entire class of individuals from the jurisdiction of the ICC, opening the door to impunity if national courts of non-States Parties fail to carry out good faith investigations and prosecutions. It is a clear violation of Article 27 of the Rome Statute, which expressly prohibits making distinctions on the basis of official capacity. It also violates the fundamental principle of complementarity at the heart of the ICC system.
- Resolution 1422 purports to have been adopted under Chapter VII of the UN Charter, but the Security Council failed to make the necessary determination that there existed a breach of or threat to international peace and security.
- This resolution also threatens the constructive relationship between the ICC and the Security Council, which was carefully crafted in the Rome Statute.
- Indeed, the Coalition emphasizes that under the Rome Statute, the Court as a new, independent, international organization will interpret its own Statute and will ultimately have to determine the legal and practical effect of the Resolution.

The Coalition notes that this public debate is taking place just 4 days before the swearing-in of the ICC Prosecutor, as well as the expected election of a Registrar in The Hague. Now that all the highly-qualified senior officials of the ICC are in place, the Court is poised to become a truly independent and impartial arbiter of international justice and the rule of law. Many countries recognize the significance of this landmark institution, as demonstrated by the increasing number of States Parties to the Court. The ICC is considered by many as the most important advance in international law since the creation of the United Nations, by serving as a tool in the fight against impunity for the kind of heinous crimes we have witnessed over the past century.

We appeal to members of the Security Council that the ICC and the Security Council should not be undermined by an unnecessary and unlawful resolution.

**FOR IMMEDIATE DISTRIBUTION**

## **Public Meeting of UN Security Council Hears Groundswell of Support for the International Criminal Court**

*Three Security Council Members Abstain From Vote on ICC Exemption Resolution*

**(New York, June 12, 2003)** – In a public meeting of the Security Council today, statements were made on behalf of 70 members and non-members of the Council supporting the International Criminal Court (ICC) and opposing the automatic renewal of Security Council Resolution 1422. Adopted last year, the resolution requested that, for a twelve month renewable period, the ICC not proceed with investigations or prosecutions of personnel in any UN peacekeeping or authorized missions who are nationals of non-States Parties to the ICC.

UN Secretary-General Kofi Annan also expressed his opposition to the resolution at the meeting, stating, “I believe that the article was not intended to cover such a sweeping request...I do not believe this request is necessary.” Immediately following the public meeting, the Security Council renewed the resolution, now Resolution 1487, by vote of 12 – 0, with France, Germany and Syria abstaining. This is a significant shift since the resolution was adopted unanimously last year.

“It is a significant achievement for states to have circumvented the intense pressure for a quiet and automatic renewal of this resolution,” said William Pace, convenor of the more than 2,000-member NGO Coalition for the ICC. “Today’s open meeting reflects the international community’s unwillingness to accept in perpetuity a misguided resolution that creates a two-tiered system of justice,” he said.

The NGO Coalition for the ICC unequivocally opposes Resolution 1422, which it finds to be in clear violation of the Rome Statute and a misuse of the UN Charter. Numerous international law experts contend that Article 16 of the Rome Statute, on which the Resolution 1422 is purportedly based, should be used only in exceptional circumstances on a case-by-case basis, and is not intended to subject ICC investigations and prosecutions to prior Security Council authorization. Experts also find the resolution breaches the Security Council’s Chapter VII authority, which mandates that the Council act only when there is a

threat to or breach of the peace, or an act of aggression, which the resolution ostensibly infers the ICC would pose.

By exempting a wide range of persons from the ICC jurisdiction, the resolution effectively opens the door for impunity. “The Security Council does not have the authority to rewrite an international treaty, and that’s what this resolution does,” said Richard Dicker, director of the International Justice Program at Human Rights Watch.

According to Coalition member organizations, it will be up to the ICC to ultimately decide on the legal and practical effect of Resolution 1422.

The ICC will see its first chief prosecutor, Mr. Luis Moreno Ocampo, sworn in during a special ceremony in The Hague on Monday, June 16, and is also expected to elect its registrar next week. With all of its top officials in place, the Court is poised to become an independent and impartial tool in the fight against impunity for the most heinous violations of international humanitarian and human rights law. There are currently 90 States Parties to the ICC.

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**NB:** Further information on Security Council Resolution 1422 can be found online at: <http://www.iccnw.org/documents/otherissues1422.html>





*Credit: ICC-CPI/Wim Van Capellen*

## ABOUT THE INTERNATIONAL CRIMINAL COURT (ICC)

The ICC is the world's only permanent judicial institution capable of trying individuals who commit genocide, war crimes and crimes against humanity, when national courts are unable or unwilling to do so.

As of May 2004, the Rome Statute of the ICC has 139 signatories and 94 ratifications. The Statute entered into force on July 1, 2002, and the ICC has since set up its offices in The Hague, The Netherlands. All senior officials of the Court have been elected or appointed, including the Prosecutor, Judges and Registrar, and the Court has received two referrals from States Parties on situations that may fall within its jurisdiction. **For more information, visit the Court's website: [www.icc-cpi.int](http://www.icc-cpi.int) or the Coalition for the ICC's website: [www.iccnw.org](http://www.iccnw.org)**



## ABOUT THE COALITION FOR THE ICC

The NGO Coalition for the ICC (Coalition) is a diverse, dynamic global network of over 2,000 civil society organizations working to support the establishment of a fair, effective and independent ICC.

Established in 1995 by a Steering Committee that included *Amnesty International*, *Asociación Pro Derechos Humanos*, *European Law Students Association*, *Fédération Internationale des Ligues des Droits de l'Homme*, *Human Rights Watch*, *International Commission of Jurists*, *Lawyers Committee for Human Rights*, *No Peace Without Justice*, *Parliamentarians for Global Action*, *Rights & Democracy* and the *World Federalist Movement*, the Coalition has since coordinated NGO work in support of the ICC. In addition to facilitating efforts leading up to and during the 1998 Rome Diplomatic Conference, in which the Rome Statute was adopted, the Coalition coordinated NGO involvement in the ten meetings of the Preparatory Commission of the ICC, and continues this role through the meetings of the Assembly of States Parties and through direct contact with the Court.