

# AMICC

American Non-Governmental Organizations Coalition for the International Criminal Court

## BACKGROUND ON PEACEKEEPING AND THE ICC

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*ABA Section of Int'l Law & Practice*  
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*American Jewish Comm/ Jacob Blaustein Inst.*  
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*Int'l Human Rights Law Institute, DePaul Univ.*  
*Int'l Federation of Women Lawyers*  
*Int'l NGO Coalition for an ICC (CICC)*  
*Lawyers Comm. for Human Rights*  
*Lawyers Comm. on Nuclear Policy*  
*Maryknoll Fathers, Brothers, Sisters and Lay Missioner's National Ass'n of Criminal Defense Lawyers*  
*National Service Conf. of the Am. Ethical Union*  
*Network of Solidarity with the People of Guatemala*  
*Philadelphia Bar Ass'n*  
*Presbyterian Church, USA*  
*Unitarian-Universalist Ass'n*  
*United Methodist Church*  
*United Nations Ass'n USA*  
*Veterans for Peace, Inc.*  
*Women's Int'l League for Peace and Freedom*  
*World Federalist Ass'n*

### Observers

*US Fund for UNICEF*  
*Women's Caucus for Gender Justice*  
*Women's Bar Ass'n*

- On June 12, 2003, the Security Council will decide whether to renew resolution 1422, thereby exempting UN peacekeepers from non-states parties from the International Criminal Court (ICC) for another year.
- A majority of UN-member states are on the record as saying that they think this resolution is inappropriate and unnecessary.
- The morning of June 12<sup>th</sup>, an open Security Council meeting will be held during which UN-member states will reaffirm their general opposition to 1422 and support for the ICC.

### Timeline

**June 30, 2002:** On a vote of 13 in favor and one against, the US stood alone in vetoing the Security Council resolution extending the mandate of the UN Mission in Bosnia and Herzegovina (UNMIBH), a critical part of the international community's multi-billion dollar commitment to ensure long-term peace in the region. Bush Administration officials said that the US would not approve an extension of the Bosnian, or any other, mission unless international peacekeepers were given a permanent blanket immunity from arrest and prosecution by the ICC.

**July 10, 2002:** An open Security Council meeting was held during which well over a 100 states joined statements rejecting US efforts to force Security Council action against the ICC. Most stated their belief that:

- the ICC and peacekeeping are complementary enforcement tools;
- there are sufficient safeguards in the Rome Statute to address US concerns;
- the US proposals violate the principle of equality before the law; and
- it is inappropriate to endanger Bosnian people and others under peacekeeping protection when US exposure to the ICC is minimal.

**July 12, 2002:** Members of the Security Council achieved compromise language and adopted peacekeeping resolution 1422 by consensus, allowing the UNMIBH mission to continue uninterrupted.

**June 12, 2003:** 1422 renewal comes up for a vote. In its text, the Security Council "expresses the intention to renew the request...under the same conditions each 1 July for further 12-month periods for as long as may be necessary." Prior to the vote an open Security Council meeting will be held to reaffirm general opposition to the terms of 1422 and support for the Court as it begins operations this summer. Despite the open meeting, and in hopes of preventing renewed divisiveness, the Council members may agree to renew the resolution on the same terms for one more year.

### Resolution 1422

Resolution 1422 claims to conform to the text of the ICC Statute Article 16, which recognizes the authority of the Security Council to defer Court action on a specific situation or individual for a twelve-month period when it is in the interest of

international peace and security. However, 1422 does a great deal more. It tries to prevent the ICC from taking up any *potential* case against an entire class of persons – peacekeepers from non-state parties – before any crime has been committed. By doing so it:

- **violates the principle of equality underlying the work of the Court** and the irrelevance of official capacity in the determination of individual criminal responsibility;
- undermines the delicate balance of power between the Court and the Security Council carefully negotiated in Article 16 of the Rome Statute; and
- has led member states and legal experts to question the legal and political authority of the Council to adopt this resolution without, at a minimum, the existence of a specific threat to peace and security.

### **1422 and the Bilateral Immunity Agreement (BIA) Campaign**

US Administration concerns about the difficulty of renewing 1422 permanently have energized its pressure on states to sign bilateral immunity agreements (BIAs) requiring them to deliver a broad category of persons under investigation by the ICC to the United States. Persons exempted from the Court's jurisdiction under these agreements include not only US citizens, but US employees and US military personnel of any nationality. Moreover, these agreements do not require the US to investigate any charges against such persons after they are in US custody. The Administration claims that these agreements meet the requirements of Article 98(2) of the ICC Statute. However, the European Union and others disagree and have declared that entering into one of the US agreements would violate ICC States Parties' obligations under the Statute.

Faced with strong resistance by many states to BIAs, the Administration has been offering rewards to those that sign and threatening those that will not with an end to military and humanitarian assistance. In justifying such ultimatums, Administration officials are relying in part on the July 1 cut-off of US military funding, education, and training to ICC parties that haven't signed BIA agreements included in the American Servicemembers Protection Act (ASPA). Officials are pressuring countries by telling them that a broad range of funding prohibitions are therefore mandated by law. However, the president has full authority to waive the ASPA cut-off for any state when he determines that such assistance is important to US national interests. Since all ASPA-threatened funding was originally certified to Congress in Administration requests to "strengthen the security of the United States," affected states should automatically qualify for the national interest waiver.

### **Existing Safeguards for Peacekeepers**

The ICC's Rome Statute contains many safeguards that would prevent the Court from pursuing politically motivated prosecutions against peacekeepers and others. For example:

- The Court can only investigate the designated types of very serious crimes that fall within the Court's jurisdiction – crimes that are unlikely to be authorized or engaged in as part of any peacekeeping mission.
- The US can stop ICC action by investigating any charges against American peacekeepers – even if it does not lead to prosecution.

Moreover, United Nations status of forces agreements and troop contribution agreements applicable to peacekeeping missions already provide for US jurisdiction over many criminal offences committed by US military and civilian members in host countries.