

**Statement by  
His Excellency Ambassador Gelson Fonseca Jr.,  
Permanent Representative of Brazil  
in the Security Council Open Meeting on Bosnia Herzegovina**

**July 10, 2002**

Mr. President,

We appreciate the difficult predicament the Security Council is facing today. But in 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. On the contrary, peacekeeping operations and the institution of the International Criminal Court are two important pillars for the realization of United Nations goals, and we have to make sure that both instruments work in a coherent and mutually reinforcing manner. That is precisely the reason why the Rome Statute relies so deeply on a solid and very well crafted relationship between the Council and the Court.

Mr. President,

The decision to join an international treaty falls within the purview of each country's sovereignty. 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.

We understand that the ICC represents the culmination of a process in our collective endeavor to uphold human rights and defend them in every place of the world. We trust that the creation of ICC represents a new asset for mankind and that its very existence will contribute to making our world more stable and conflict situations less threatening to innocent people. We nevertheless have to face the fact that differences of view on this matter can arise, given the political implications of the Tribunal's jurisdiction and in the light of our different legal and constitutional systems. But there can be no doubt that we all share the same resolute determination to make sure that the horrors of genocide, crimes against humanity and war crimes defined in the Rome Statute will no longer go unpunished nor benefit from spurious immunities. That is the clear message that all bodies of the United Nations must convey.

Mr. President,

Brazil aligns itself with those who are firmly convinced that the Rome Statute provides all the necessary checks and balances against possible abuses and politically motivated misuse of the ICC jurisdiction. Articles 16 and 98(2) are only but two examples of it. And there is plenty more, starting with the very nature of the complementary jurisdiction of the Court.

It is inconceivable that peacekeepers mandated by the United Nations could ever be associated with the kind of crimes that fall within the jurisdiction of the ICC.

That has never happened and it is most unlikely that it ever will. Should this occur, it is essential that the perpetrators be brought to justice to preserve the mandate and authority of the mission.

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. We cannot accept (even in theory) the possibility that peacekeeping be regarded as a safe heaven for the commission of crimes against humanity. That is why it is so difficult for us to accept the terms under which the discussion on the renewal of UNMIBH is taking place.

Mr. President,

We came here to make a strong appeal to all members of the Council not to rush into hasty decisions that may cause irreparable damage to peacekeeping, to the rule of international law, and to the very credibility of the Security Council.

We understand that the Council faces a genuine problem, to which an appropriate solution must be found. This solution is not self-evident nor immediately available, but we are confident that it is not beyond reach within a reasonable span of time.

Mr. President,

We strongly discourage proposals or initiatives that ultimately seek to reinterpret or review the Rome Statute, especially with respect to Article 16, whose provisions are applicable only on a case-by-case basis and were never intended to give place to "ad aeternum" deferrals of the Court's jurisdiction.

The Security Council must not take action that might, in the words of the Secretary General in his letter to Secretary of State Colin Powell on the 3rd of July, "fly in the face of treaty law".

The Security Council cannot alter international agreements that have been duly negotiated and freely entered into by States-Parties. The Council is not invested with treaty-making and treaty-reviewing powers. It cannot create new obligations for the States Parties to the Rome Statute. This is an international treaty that can be amended only through the procedures contained in Articles 121 and 122 thereof.

Mr. President,

Let me resume my initial point. The Security Council and the International Criminal Court are not two competing jurisdictions. They must not represent a threat to each other's legitimate competence under the Charter and the Rome Statute.

The Security Council would be doing a tremendous disservice to its own authority and credibility if it encroaches unduly on the Court's proceedings and jurisdiction. Any decision by the Council that overreaches its mandate may risk not being accepted by the States Parties to the Rome Statute. The question before us today is no doubt complex and requires time to be dealt with appropriately.

We believe that a satisfactory solution is possible and we encourage the Council to continue taking forward proposals with a view to ensure a constructive outcome.

A compromise solution must be found to ensure continuity of peacekeeping operations while at the same time respecting the specific concerns of individual States. But let me stress that compromise must not come at any cost. It must not infringe upon the autonomy and the authority of the Court.

Brazil looks forward to contributing, in cooperation with the Security Council, to a solution that reaffirms our dedication to the fostering of international peace and security, and preserves the integrity of the International Criminal Court.

In the meantime, we 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. This could involve for any country the possibility to decline participation in peacekeeping operations whenever it feels that its troops would be subject to unacceptable risks; and the possibility to make full use of bilateral agreements under Article 98.2 of the Rome Statute.

As for the specific case of UNMIBH and given the present circumstances we would favor an accelerated schedule for the hand-over of the police-training program, the continuation of which seems to be crucial to ensuring the consolidation of the international community's efforts in Bosnia-Herzegovina.

Security Council members have a special responsibility to keep and promote a stable world order and it is the Council's duty to make all efforts to sustain international law and help making it universal. For this is the only real source of legitimacy in any world order based on justice for all. The creation of unnecessary and unjustifiable exceptions to the rule of law in international behavior would be a denial of this principle and a dangerous setback for the Organization.

Thank you.