



Coalition for the  
International  
Criminal Court

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## FACT SHEET

### **Chronology of US Anti-ICC Draft Proposals Leading to the Adoption of Security Council Resolution 1422**

In May the United States government commenced a number of attacks on the Rome Statute of the International Criminal Court, including announcing that they would oppose the renewal of UN Security Council mandates for all peacekeeping operations until the Security Council granted immunity from prosecution by the ICC of all US peacekeeping personnel. Firing a salvo across the UN bow at the time of the renewal of the East Timor peacekeeping operation, the threats escalated in June into one of the most intense confrontations ever at the Security Council. The US vetoed renewal of the Bosnia peacekeeping mission on June 30 and literally threatened to shut down all UN peacekeeping operations unless their demands for immunity from the ICC were met. With the Rome Statute entering into force on July 1 and more than 120 nations attending the final ICC Preparatory Commission meetings at UN headquarters, the US encountered the fierce opposition of many of its closest allies and scores of other nations. These nations were outraged the US would pit international peacekeeping against international justice. They strenuously objected to the US effort to misuse the Security Council and Chapter VII authority to amend a treaty the US opposes. The Secretary-General sent an extraordinary and angry letter to the US stating that their proposal was a dangerous and irresponsible threat to peacekeeping, and would violate the Charter and international treaty law. Special plenaries and special open meetings in the Security Council were convened within hours. In the end, on July 12, the Council adopted resolution 1422. None were satisfied, most were disgusted and ashamed. Following is a chronology of this extraordinary confrontation.

#### **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 US peacekeepers immunity from domestic and international courts. 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>1</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) 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 and stinging letter to US Secretary of State Colin Powell, expressing his strong disapproval of US proposals in the Security Council. Secretary 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”<sup>vi</sup> if it were to extend its mandate by involving itself in treaty-making.

The UN Preparatory Commission (PrepCom) for the ICC, meeting in its 10th session, convened an emergency plenary to discuss the anti-ICC US resolutions before the Security Council. Most delegations opposed the proposals by the United States on the grounds that the US proposals:

- 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.<sup>vii</sup>

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>viii</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>ix</sup> The second and third paragraphs, which attempt to automatically renew the immunity clause, were authored by the US. These provisions blatantly try 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>x</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>xi</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 a 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>xii</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 right-wing members of Congress for abandoning the demand for blanket immunity, said they had no room for flexibility.<sup>xiii</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>xiv</sup>

**July 12, 2002:**

Mauritius presented amendments, reportedly drafted by 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 further twelve months period for as long as may be necessary.”<sup>xv</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>xvi</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. Though many countries hid behind an alleged opinion from the UN Office of Legal Affairs on the legality of the Security Council resolution, there is no official document supporting this view.

**Consequence and Analysis of Resolution 1422:**

For the Bush administration, the “compromise” resolution was a retreat from its initial demands for blanket immunity for peacekeepers with almost automatic annual renewal. For the majority of UN member states, simply allowing the Security Council to interpret an existing international treaty was a concession. In the end, all sides claimed to have satisfied their core demands. US peacekeepers had relative immunity for a year, the integrity of the Court had been maintained, and for all concerned, the peacekeeping mission in Bosnia would continue.<sup>xvii</sup>

UK Ambassador Greenstock believed the compromise represented a “significant achievement” that preserved the credibility of both the Security Council and the Court. France, after having been a leading force in criticizing the US efforts, was satisfied, stating that the resolution was in line with the Rome Statute. Other governments, however, continued to disapprove of the resolution, including Canadian Ambassador to the UN Paul Heinbecker who remarked that the vote represented a “sad day for the UN. [...] We are extremely disappointed with the outcome. We do not think it is in the mandate of the Security Council to interpret treaties negotiated elsewhere.”<sup>xviii</sup>

NGOs expressed relief that the adopted resolution was much weaker than initial resolutions. William Pace, from the CICC, explained that the United States and the Security Council were the big losers by having cast a shadow of doubt on their own legitimacy.<sup>xix</sup> Richard Dicker, from Human Rights Watch, noted that “For all its arm-twisting, Washington got only a temporary reprieve of dubious legality and a strong taste for global outrage. The Court will begin its work in a matter of months with greater international support than ever before.”<sup>xx</sup> According to UN experts, the issue will arise again next July when the Security Council will have to make an additional positive decision on renewing or amending Resolution 1422. By that time, the ICC will have elected its Judges, Registrar, and Prosecutor, and will be operational, rendering it better able to defend itself against such attacks.

### **About the Coalition for the International Criminal Court**

The Coalition for the International Criminal Court (CICC) is a network of close to 2,000 civil society organizations, legal associations and academics working together to support a permanent, fair and independent International Criminal Court (ICC). Established in 1995, the CICC is the leading source of information regarding the ICC and the worldwide movement supporting its formation. For more information, please visit <http://www.iccnw.org>.

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<sup>i</sup> USA Anti-ICC Peacekeeping Resolution, June 19, 2002

<sup>ii</sup> USA Anti-ICC Peacekeeping Resolution, June 27, 2002

<sup>iii</sup> French alternative proposal, June 27, 2002

<sup>iv</sup> Remarks by Ambassador John D. Negroponte on the situation in Bosnia and Herzegovina at the Security Council Stake-Out, June 27, 2002

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

<sup>vi</sup> Letter from UN Secretary General Kofi Annan to US Secretary of State Colin Powell, July 3, 2002

<sup>vii</sup> Government Responses to US resolutions during Special PrepCom Plenary, as outlined by the CICC through a chart, July 3, 2002

<sup>viii</sup> Letter from the PrepCom to the President of the Security Council, July 3, 2002

<sup>ix</sup> Reported UK-US anti-ICC peacekeeping resolution, July 3, 2002

<sup>x</sup> Government Responses to US resolutions in the open meeting of the Security Council, as outline by the CICC in a chart, July 10, 2002

<sup>xi</sup> US anti-ICC peacekeeping resolution, July 10, 2002

<sup>xii</sup> French alternative proposal, July 11, 2002

<sup>xiii</sup> New York Times, “Diplomats say court immunity solution may be in sight,” July 12, 2002

<sup>xiv</sup> CICC, “Zero US Exposure to the ICC” with chart, July 11, 2002

<sup>xv</sup> Mauritius proposed amendments, July 12, 2002

<sup>xvi</sup> Text of Resolution 1422. July 12, 2002

<sup>xvii</sup> New York Times, “US Peacekeepers given year’s immunity from new court,” July 13, 2002

<sup>xviii</sup> *Ibid*

<sup>xix</sup> CICC, “UN Security Council Passes ICC Resolution in Contravention of UN Charter,” July 12, 2002

<sup>xx</sup> Human Rights Watch, “US Campaign for permanent immunity fails,” July 12, 2002