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The Adoption of Security Council Resolution 1497: A Setback for International Justice

I. Introduction

Human Rights Watch welcomes the deployment of a Multinational Force in Liberia and the plans for a follow-on United Nations Stabilization Force, mandated by Security Council Resolution 1497. Such a force is critically needed to ensure that the Liberian conflict is stemmed, and that Liberian civilians are able to access desperately needed humanitarian assistance. Moreover, a strengthened United Nations presence in Liberia—one with a robust mandate to protect civilians, ensure humanitarian access, investigate human rights violations, and disarm and demobilize child soldiers and other combatants—would be a crucial step towards long-term stability in the country and the region.

By backing the immediate deployment of a Multinational Force in Liberia, and the longer-term introduction of a United Nations Stabilization Force, Resolution 1497 serves a vital humanitarian purpose.

However, the resolution seriously undermines long-established and well-recognized principles of national and international jurisdiction. Moreover, it seeks to rewrite the Rome Statute for the International Criminal Court (ICC).

At the insistence of the United States, the resolution includes a paragraph allowing certain personnel associated with the Multinational or United Nations Stabilization Force in Liberia impunity for crimes, including the same crimes they are called upon to prevent. The United States took advantage of the dire circumstances in Liberia and the urgent need for international intervention to win inclusion of this text (paragraph 7) in the resolution, despite the serious misgivings of other Security Council member states. Three states (France, Germany and Mexico) abstained from the vote in protest.

Given the damaging consequences of this resolution to international law and the ICC, Human Rights Watch calls on states committed to the rule of law and the idea of accountability to review paragraph 7 and consider its implications for international justice. As this text does not have any unique application to the situation in Liberia, it is possible that similar language will appear in future draft Security Council resolutions. States should remain aware of this possibility and commit themselves to ensuring that the inclusion of language such as that in paragraph 7 never be repeated.

II. The Language and Consequences of Resolution 1497

Paragraph 7 of the resolution states that the Security Council:



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 all alleged acts or omissions arising out of or related to the Multinational Force or United Nations Stabilization Force in Liberia, unless such jurisdiction has been expressly waived by the contributing State.

According to this paragraph, so long as a contributing state is not a party to the ICC, only that state may exercise jurisdiction for any crime committed by those persons that it sent as part of the Multinational or UN Force.

Paragraph 7 is a step backward in the fight against impunity. It adversely impacts the application of well-recognized principles of jurisdiction. The resolution improperly impedes the use of existing national legislation allowing for jurisdiction based upon the principles of passive personality, nationality and universal jurisdiction.

The jurisdictional limitations imposed by Paragraph 7 are also illogical. None of these principles of jurisdiction has any relation to the Rome Statute. However, their application with regard to the Multinational or UN Force depends upon whether the sending state of the accused is a party to the ICC. A state's ability to exercise its national jurisdictional laws will therefore depend on whether the state of the accused is a party to the Rome Statute. The resolution does not offer any justification for this additional limitation. There is no basis for this limitation in existing law or practice.

Paragraph 7 impacts the principles of national jurisdiction in the following ways:

1. A number of Security Council members, including states that abstained in the vote on Resolution 1497, have national laws allowing for passive personality jurisdiction (jurisdiction over perpetrators of crimes committed against their nationals). By the wording of Paragraph 7, these laws cannot be applied against Stabilization Force personnel from states that are not parties to the ICC treaty.
2. The vast majority of states are legally bound to exercise universal jurisdiction for grave breaches of the 1949 Geneva Conventions and the Convention against Torture by virtue of their ratification of these instruments. Resolution 1497 would prevent states from carrying out these legal obligations with respect to Stabilization Force personnel from states not party to the ICC.
3. Should a national of one state be employed and sent by another (which is a non-state party to the ICC) as part of the Stabilization Force to Liberia, the state of nationality would be barred from exercising jurisdiction on the basis of the nationality principle. This principle, which is included in many states' laws, grants a state jurisdiction over crimes committed by its nationals.

Resolution 1497 attempts to amend the ICC treaty:

1. A situation could arise where the ICC would be authorized by the terms of the Rome Statute to exercise jurisdiction over certain Stabilization Force personnel, but would be blocked from doing so by Resolution 1497.

Security Council Resolution 1487, adopted on June 12, 2003, references article 16 of the Rome Statute to provide that the ICC, in the event “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 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.”

Human Rights Watch considers Resolution 1487’s interpretation of article 16 to contravene the Rome Statute. However, it is important to note that Resolution 1487 does not grant immunity from the ICC. It grants a period of time where the ICC prosecutor is barred from acting. Should the Security Council not renew Resolution 1487, the ICC prosecutor could immediately initiate proceedings over those who committed crimes under ICC jurisdiction while Resolution 1487 was in force.

Resolution 1497 has a more questionable and expansive effect: the grant of absolute immunity, which by any reading of the Rome Statute is neither envisioned nor allowed.

By virtue of this resolution, the ICC could be barred in the future from exercising its lawful jurisdiction should Liberia, under article 12(3) of the Rome Statute, grant the court jurisdiction over a situation involving the Multinational or UN Force.

III. Conclusion

Resolution 1497 represents the most far-reaching and egregious example of the United States attempts to exempt itself from mechanisms of international justice, undermining both settled international law as well as the ICC. Operative Paragraph 7 is an unnecessary and ultimately harmful addition to a resolution of great consequence.

This resolution forms part of an unceasing campaign by the United States to circumvent the legitimate jurisdiction of the ICC through bilateral immunity agreements with the court’s states parties. Further evidence of this campaign is found in the U.S. refusal to vote in favor of Resolution 1502 on the protection of humanitarian personnel until text including a simple factual reference to the jurisdiction of the ICC was removed.

Human Rights Watch reminds all states that there can be no immunity for genocide, crimes against humanity, war crimes and other serious violations of human rights and humanitarian law. It is crucial that the Security Council not be used as a mechanism to advance an agenda so at odds with the goals of the United Nations. All states that value the ideals of accountability and justice must make every effort to avoid this from happening.