

NEWS

Committee on International Relations  
U.S. House of Representatives  
Henry J. Hyde, Chairman  
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For IMMEDIATE Release

**HYDE, OTHERS SEEK IMMUNITY FROM ICC JURISDICTION FOR U.S.  
SERVICEMEMBERS IN UN PEACEKEEPING OPERATIONS**

(WASHINGTON) - The United States should seek immunity from the jurisdiction of the International Criminal Court (ICC) for 3,000 U.S. servicemembers deployed in Bosnia when the United Nations (U.N.) mandate for that peacekeeping operation is renewed in June, U.S. Rep. Henry J. Hyde (R-IL) suggested Thursday.

Hyde, chairman of the House International Relations Committee, and a bipartisan group of House and Senate members made the request to Secretary of State Colin Powell following Thursday's announcement in New York that the Rome Statute has been ratified by more than the 60 nations needed for the establishment of the ICC.

"Supporters of the ICC have persuaded themselves that the threat of U.N. prosecution will deter the Saddam Husseins and Slobodan Milosevics of the world. But we know you agree with us that dictators with the blood of thousands on their hands will scoff at the threat," the legislators said in their letter to Powell. "The real deterrent effect of the ICC will be on nations like our own that respect the rule of law and will in the future hesitate to act in situations like we faced in Kosovo in 1999."

Among those signing the letter are Hyde and U.S. Sens. Zell Miller (D-GA) and Jesse Helms (R-NC); and U.S. Reps. Tom Delay (R-TX) and Bob Stump (R-AZ), chairman of the House Armed Services Committee.

"Supporters of the ICC have conceded that some countries may hesitate to participate in future U.N. peacekeeping operations if their military personnel are at risk of criminal prosecution by the ICC for activities undertaken by them on behalf of the United Nations," the legislators wrote. "The solution to this problem is for the United Nations Security Council to routinely include in Security Council resolutions establishing U.N. peacekeeping operations a grant of permanent immunity from ICC jurisdiction for personnel participating in the operation. Indeed, we would oppose any future U.S. military participation in U.N. peacekeeping operations where the Security Council refuses to grant such immunity to our personnel."

The United States participates in the Bosnian peacekeeping operation under the authority of U.N. Security Council 1357 which expires on June 21, 2002. Hyde noted that under the Dayton Accords of 1995, which established the peacekeeping operation in Bosnia, U.S. forces were granted full immunity from the criminal jurisdiction of the courts of Bosnia and Herzegovina. He added that U.S. service personnel accused of

crimes in Bosnia are subject to prosecution under the Uniform Code of Military Justice.

"Now that the government of Bosnia is poised to ratify the Rome Statute, thereby imposing ICC criminal jurisdiction on those same forces, it is perfectly reasonable to ask the Security Council to grant immunity from ICC and ICTY (International Criminal Tribunal for Yugoslavia) jurisdiction corresponding to the grant of immunity from Bosnian criminal jurisdiction provided in the Dayton Accords."

Text of letter to Secretary of State Colin Powell follows:

The Honorable Colin Powell  
Secretary of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Mr. Secretary:

Today's announcement that 60 countries have ratified the Rome Statute of the International Criminal Court is a regrettable setback for the promotion of international peace and security. Supporters of the ICC have persuaded themselves that the threat of U.N. prosecution will deter the Saddam Husseins and Slobodan Milosevics of the world. But we know you agree with us that dictators with the blood of thousands on their hands will scoff at the threat that, if ever removed from power, apprehended, and successfully prosecuted by the ICC, they may be forced to spend the rest of their life in a Scandinavian prison. Rather, the real deterrent effect of the ICC will be on nations like our own that respect the rule of law and will in the future hesitate to act in situations like we faced in Kosovo in 1999.

We are confident that history ultimately will judge the Rome Statute as another sad example of good intentions run amok. Like the Kellogg-Briand Pact of 1928 - which began as a well-meaning effort to outlaw war but wound up encouraging the Axis Powers and contributing to the outbreak of World War II - the ICC is more likely to hinder than help efforts to prevent genocide, war crimes, and crimes against humanity. Clearly, however, at least 60 countries have failed to recognize the court's obvious flaws, and the ICC will be an international fact of life for the foreseeable future. Accordingly, the United States must begin now to implement policies to protect against the unintended consequences that will flow from establishment of the ICC.

On May 24th of last year, two of us wrote to you to suggest a number of concrete steps that should be taken in this regard. We stand by the recommendations in that letter, but wish to draw your attention to one recommendation made in that letter which is time-sensitive.

Even supporters of the ICC have conceded that some countries may hesitate to participate in future U.N. peacekeeping operations if their military personnel are at risk of criminal prosecution by the ICC for activities undertaken by them on behalf of the United Nations. The solution to this problem is for the United Nations Security Council to routinely include in Security Council resolutions establishing U.N. peacekeeping operations a grant of permanent immunity from ICC jurisdiction for personnel participating in the operation. Indeed, we

would oppose any future U.S. military participation in U.N. peacekeeping operations where the Security Council refuses to grant such immunity to our personnel.

In this connection, we note that, under Security Council Resolution 1357 (2001), the U.N. mandate of the peacekeeping operation in Bosnia will expire on June 21st of this year. We understand that there is a general expectation that the mandate of the Bosnia peacekeeping operation will be extended by the Security Council once again, as it has been every year since 1996. In connection with the renewal of that mandate, we strongly encourage the Bush Administration to insist that this year's Security Council Resolution include a permanent grant of immunity from ICC jurisdiction for, at a minimum, the approximately 3,000 U.S. servicemembers serving in Bosnia as part of that operation. Once this issue is raised, it would also make sense to seek a permanent grant of immunity from the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY), particularly in view of the ICTY's decision three years ago to investigate the United States and other NATO allies for possible war crimes in the Kosovo operation in 1999.

No one can regard this as an unreasonable demand by the United States. The Dayton Accords, which provided for the establishment of the Bosnia peacekeeping operation, included a provision exempting personnel participating in that operation from the criminal jurisdiction of the courts of Bosnia and Herzegovina. Clearly this provision was included in the Dayton Accords because potential troop-contributing countries (including most importantly the United States) considered such an exemption important to their ability to deploy forces to Bosnia. Now that the government of Bosnia is poised to ratify the Rome Statute, thereby imposing ICC criminal jurisdiction on those same forces, it is perfectly reasonable to ask the Security Council to grant immunity from ICC and ICTY jurisdiction corresponding to the grant of immunity from Bosnian criminal jurisdiction provided in the Dayton Accords.

Moreover, such action by the Security Council would further the objective of Security Council Resolution 1353 (2001), which directed the United Nations to take a number of steps to make it more attractive for countries to contribute forces to U.N. peacekeeping operations. The United States should make clear that, like the other measures described in Resolution 1353, obtaining immunity from the criminal jurisdiction of the ICC and other U.N. criminal tribunals is important to continued U.S. participation in U.N. peacekeeping operations.

Mr. Secretary, there is no reason to delay establishing the principle that the U.S. will not participate in U.N. peacekeeping operations in cases where the U.N. Security Council refuses to grant U.S. forces participating in such operations immunity from the criminal jurisdiction of U.N. tribunals. Because renewal of the Bosnia peacekeeping operation will be the first such case to present itself after entry into force of the Rome Statute, we urge the Bush Administration to assert and insist upon this principle in the case of Bosnia.

Sincerely,

U.S. Rep. Henry J. Hyde

U.S. Sen. Zell Miller  
U.S. Rep. Tom Delay  
U.S. Sen. Jesse Helms  
U.S. Rep. Bob Stump

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