

**Please find below the text of a letter sent to the President of the UN Security Council in relation to the draft resolution S/2002/747 currently under consideration by the Security Council under the agenda item of Bosnia-Herzegovina. The letter was signed by the Ambassadors of New Zealand, South Africa, Brazil and Canada on Friday, July 12, 2002.**

New York, N.Y.  
July 12, 2002

H.E. Sir Jeremy Greenstock  
President of the United Nations Security Council  
Room C-207  
United Nations Secretariat  
New York, N.Y. 10017

Excellency,

This letter is in relation to the draft resolution S/2002/747, currently under consideration by the Security Council under the agenda item of Bosnia-Herzegovina, but dealing in fact with the International Criminal Court. The consideration of this matter, under a Chapter VII resolution by the Security Council, is a matter of grave concern, as a large number of member States have already expressed in the open debate held on 10 July. Since in spite of the clear opposition of the international community to the Council's adopting the kind of resolutions it is discussing, the Council continues nevertheless to pursue this matter, we feel that it is our obligation to point out specifically that Council action is damaging international efforts to combat impunity, the system of international justice, and our collective ability to use these systems in the pursuit of international peace and security.

Leaving aside the legitimacy of the Security Council's arrogating to itself the right to interpret and to change the meaning of treaties, which we challenge, we wish to focus on one of the unacceptable consequences of passage of the draft resolution "put into blue" yesterday.

The International Criminal Court was always intended as a court of last resort filling a void where states fail to undertake their international responsibilities to prosecute perpetrators of grievous crimes. The net effect of Operative Paragraphs 1 and 2 of S/2002/747 will be to remove that possibility in the specific cases of peacekeepers who may have committed crimes under the Court's jurisdiction, if that peacekeeper comes from a state not Party to the Rome Statute. Further, the request to the Court in the draft resolution would be renewable on an annual basis which, for all intents and purposes, would amount to creating a perpetual obstacle to Court action.

Operative paragraph 3 has the effect of directing states not to cooperate with the ICC if that co-operation is in relation to such a peacekeeper. This means, that if such a person were to be found in one of our countries, and the ICC wished to investigate or prosecute having fully taken

into account the principle of complementarity, the Council would have us refuse to surrender to the Court an alleged perpetrator of one of the three most grievous crimes.

While some States are able to prosecute under universal jurisdiction, many States do not have the ability or means to undertake such a prosecution. Should such an alleged perpetrator be found in a state that cannot exercise universal jurisdiction, that perpetrator would enjoy immunity from prosecution, the Council having putatively removed resort to the ICC.

We are confident that no highly trained, professional military personnel would engage in acts actionable under the ICC Statute. But no one can give the same confident assurance about all personnel involved in peacekeeping. This is why we have been urging that a solution be found on a bilateral basis, and that the coverage of the ICC not be removed from a whole class of international actors.

For this and the other reasons cited in our presentations in the open debate, we respectfully request members of the Council not to pass a resolution that would have such negative consequences.

We would ask that this document be made an official document of the Security Council.

(end)