

Malaysia
Permanent Mission to the United Nations
STATEMENT BY
HE. AMBASSADOR HASMY AGAM
PERMANENT REPRESENTATIVE OF MALAYSIA
TO THE UNITED NATIONS
AT THE SECURITY COUNCIL
ON
THE SITUATION IN BOSNIA AND HERZEGOVINA
WEDNESDAY, 10 JULY 2002

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Mr. President,

My delegation would like to thank you for convening this open meeting of the Council which will allow the larger membership of the United Nations to express their views on this important issue. For the past few weeks, the larger membership of this Organisation has been monitoring closely the issue from the sidelines. We watched with great interest and growing unease the developments in the Council which threatened to jeopardize the continuing mandate of UNMIBH. We were gratified that the Council on 3 July agreed to extend the mandate of UNMIBH until 15 July 2002. The 12-day technical rollover would allow for more time for consultations among Council members so that a compromise could be worked out.

Mr. President,

2. It cannot be denied that since its establishment, UNMIBH has made a tremendous contribution towards consolidating the rule of law and political stability in Bosnia and Herzegovina. It is also clear that UNMIBH is rapidly moving towards completing its core tasks by the end of the year. Nevertheless, as noted also by the Secretary-General, the State and its institutions are still fragile and under pressure from the so-called "nationalist" forces. The continuing failure to apprehend indicted war criminals also remains an obstacle to permanent peace and national reconciliation in Bosnia and Herzegovina. In the present circumstances it is, therefore, important for the Council to continue its support for Bosnia and Herzegovina by extending the mandate of the Mission as planned.

3. The continuing existence of UNMIBH would allow the UN to proceed, without interruption, its planned activities for Bosnia and Herzegovina, including the holding of national elections on 5 October 2002. The Secretary-General has proposed to maintain 1,600 police officers to assist in the holding of the elections. That would be an important day for the people of Bosnia and Herzegovina and it would be a shame if

the elections were marred by the Council's failure to extend UNMIBH's mandate. Such an outcome would be a great mistake and would be tantamount to the Council abandoning its responsibility towards the maintenance of international peace and security in the still unstable Balkans. As a country that has consistently supported UN and international involvement in Bosnia and Herzegovina, Malaysia hopes that nothing will be done by this Council that will jeopardize peace and security in that country and dash the hopes and aspirations of its people.

Mr. President,

We regret that the Security Council has been placed in a difficult and untenable situation with respect to the continuance of UNMIBH and the future of United Nations peacekeeping operations in general. We understand and respect the concerns of the United States pertaining to the ICC; we ourselves have concerns and reservations about the ICC. Nevertheless, Malaysia views the entry into force of the Rome Statute and the establishment of the ICC as significant to the development of international law to address impunity of war crimes, genocide, crimes *against* humanity and crimes of aggression which is a major concern for all member states, without exception. Therefore we consider it inappropriate that the future of UNMIBH, and possibly other UN peacekeeping operations, is being linked to the issue of the jurisdiction of the ICC. The objectives of the ICC and peacekeeping operations do not contradict each other and the existence of one should not forsake that of the other. Malaysia is extremely concerned over the view that is being postulated that the ICC is a threat to peacekeepers in that they are vulnerable to "politicized prosecutions". Should this view gain currency, it could seriously undermine or even lead to the demise of United Nations peacekeeping operations, as no state would be willing to put their troops at risk.

Mr. President,

5. Malaysia believes that giving immunity to the peacekeepers would send the message that they are above the law—which is wrong and unacceptable. No category of persons serving in UN peacekeeping missions should be above the law. We believe there are sufficient safeguards, which have been mentioned by previous speakers, to ensure that the ICC does not get in the way of the functioning of peacekeeping operations. We believe the fears and concerns of the United States are unfounded and would urge it to reconsider its position. We attach great importance to the role and participation of the United States in UNMIBH and other UN peacekeeping missions and express the hope that it will continue to be actively engaged in current and future UN peacekeeping missions.

6. Peacekeeping is and remains an essential and indispensable tool available to the United Nations in the maintenance of international peace and security. However, its viability and effectiveness would be seriously affected if we were to allow different sets of rules governing different groups of peacekeepers. Consistency and universality are

essential elements in ensuring the success of UN peacekeeping operations, in as much as they are essential in the operationalisation of international law.

7. What is at stake, Mr. President, is a fundamental principle of international law. It is vitally important for the Council not to take a decision that would have the effect of changing or amending the terms of an international treaty, which the United States draft resolution sets out to do in respect of the Rome Statute. Such changes or amendments could only be effected in accordance with procedures elaborated by the treaty with the full consent of the States parties, as provided for by the Vienna Convention on the Law of Treaties. We do not believe that the Security Council should be empowered to override the intention of the parties to any treaty. That would establish a bad precedent, with serious ramifications for the future.

Mr. President,

8. We fear that the adoption of the United States proposal would place the Security Council in a difficult position in that its credibility would be questioned as parties of the Rome Statute would be compelled to reexamine the legality of the Security Council decisions, as a number of them had indicated. Therefore, we hope that the Council would be able to find the collective wisdom and the political will to resolve the matter amicably as early as possible without jeopardizing UNMIBH's extension and the functioning of other UN peacekeeping missions. We trust, Mr. President, that your own leadership role and well-known creativity and resourcefulness would contribute positively to arriving at an acceptable compromise.

I thank you, Mr. President.

