



Vote About the International Criminal Court

John D. Negroponte, U.S. Permanent Representative to the United Nations

Remarks at stakeout following UN Security Council vote on Resolution 1422,
including text of explanation of vote

New York, New York

July 12, 2002

Released by the U.S. Mission to the United Nations

"Mr. President,

"This resolution represents the culmination of weeks of work by my government and many of the other governments represented here. Some members of this Council are members of the International Criminal Court while others, including the United States, are not and never will be. The United States has therefore sought a resolution that would allow those in the Court to meet their obligations to it, while it protected those of us who reject the jurisdiction of that institution. At risk were the peacekeeping activities of the United Nations, in the first instance in Bosnia but ultimately throughout the globe. The United States is therefore very pleased that we have successfully reached agreement. It offers us a degree of protection for the coming year.

"For the United States, this resolution is a first step. The President of the United States is determined to protect our citizens - soldiers and civilians, peacekeepers and officials - from the International Criminal Court. We are especially concerned that Americans sent overseas as soldiers, risking their lives to keep the peace or to protect us all from terrorism and other threats, be themselves protected from unjust or politically motivated charges. Should the ICC eventually seek to detain any American, the United States would regard this as illegitimate - and it would have serious consequences. No nation should underestimate our commitment to protect our citizens.

"Our government was founded by Americans to protect their freedom. Our Declaration of Independence states that and I quote "governments are instituted among men, deriving their just powers from the consent of the government" end of quote, "from the consent of the governed," excuse me, in order to secure their rights. We have built up in our two centuries of constitutional history a dense web of restraints on government, and of guarantees and protections for our citizens. The power of the government is very great, but those restraints are equally powerful. The history of American law is very largely the history of that balance between the power of the government and the rights of the people.

"We will not permit that balance to be overturned by the imposition on our citizens of a novel legal system they have never accepted or approved, and which their government has explicitly rejected. We will never permit Americans to be jailed because judges of the ICC, chosen without the participation of those over whom they claim jurisdiction, so decide. We cannot allow that Americans who have been acquitted of accusations against them in the United States shall be subject to prosecution for the same acts if an ICC prosecutor or judge concludes that the American legal proceedings were somehow inadequate. We know that prosecutors who are responsible to no one constitute a danger, and we will not expose our citizens to such a danger. We cannot accept a structure that may transform the political criticism of America's world role into the basis for criminal trials of Americans who have put their lives on the line for freedom.

"The American system of justice can be trusted to punish crimes, including war crimes or crimes against humanity, committed by an American - and we pledge to do so. But we do not believe the International Criminal Court contains sufficient safeguards to protect our nationals, and therefore we can never in good conscience permit Americans to become subject to its authority.

"The power to deprive a citizen of his or her freedom is an awesome thing, which the American people have entrusted to their government under the rules of our democracy. Thus does an American judge have the legal and moral right, founded in our Constitution and in democratic procedures, to jail an American. But the International Criminal Court does not operate in the same democratic and constitutional context, and therefore does not have the right to deprive Americans of their freedom.

"The United States does not oppose special tribunals to prosecute international offenses, and indeed has been a key supporter of them. But we believe that these existing mechanisms, within the framework of the UN Charter and the Security Council and already accepted by the international community, are adequate.

"Once again I thank the members of the Security Council for their hard work in reaching a successful agreement today. I would also like to pay a special tribute to our President, Sir Jeremy Greenstock, who led us through this very difficult debate. This resolution respects those who have decided to submit to the International Criminal Court, and for one year it protects those of us who have not. We will use the coming year to find the additional protections we need, using bilateral agreements expressly contemplated in Article 98 of the Rome Statute. We will seek your cooperation, that is to say, the cooperation of the Council in achieving these agreements, so as to provide the protection that our understanding of the rights and freedoms of our citizens requires."

With that, I would be pleased to entertain any questions that you might have.

Reporter: Ambassador, once you have sort of established this network of bilateral agreements, Article 98 agreements and status of forces agreements, will you then end your efforts to renew this resolution every July 1st, or is this something that you see that the U.S. would like to be enforced for many years to come - forever?

Ambassador Negroponte: As you know, our initial drafts provided for virtually automatic extension of those provisions on an annual basis. That turned out not to be acceptable to other members of the Council, and we reached the compromise that is reflected in the resolution that you have before you. Yes, indeed, it is our intent, in accordance with the second paragraph, the operative paragraph, of the resolution, to seek renewal of this resolution on an annual basis; but the resolution is clear that this will be an annual decision and no doubt there will be debate within the Council prior to actually taking action, so I wouldn't want to try to prejudge or predict the outcome of any such discussion at this point.

Reporter: Ambassador, those of us who have covered this for many years know that the American bottom line has always been a cast iron guarantee that no American would ever come before this court. You haven't achieved that result in this resolution, why did you give up on that principle?

Ambassador Negroponte: Well, I think that we certainly achieved in operative paragraph one a request to the Court that no investigation or prosecution start before this one year period. So, in effect, I think for practical purposes it achieves the kind of protection for a one-year period that we were seeking. We would have preferred that this protection be for an indefinite period of time.

Reporter: But obviously, in the situation where somebody were to commit an atrocity, hypothetically in that one year, it would obviously be hard for you to get a renewal of the deferral and therefore the jurisdiction would attach to that atrocity.

Ambassador Negroponte: Well, I think that perhaps we ought to take this on a stepwise basis. We have achieved these protections for a one-year period, as Sir Jeremy pointed out in virtually in any hypothetical situation of this kind. I don't think either the United States or Great Britain or other countries doubt that we ourselves would administer the requisite justice to the accused individual. But yes, I think it adds an important measure of protection for the year ahead and then we are going to seek through a multifaceted approach to also build additional protections under Article 98 of the Rome Statute and other mechanisms that I referred to in my statement. Thank you very much.