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NEW ZEALAND MISSION to the UNITED NATIONS

Te Māngai o Aotearoa

UNITED NATIONS SECURITY COUNCIL

THE SITUATION IN BOSNIA AND HERZEGOVINA

STATEMENT BY THE PERMANENT REPRESENTATIVE
OF NEW ZEALAND

MR DON MACKAY

WEDNESDAY 10 JULY 2002

CHECK AGAINST DELIVERY

Mr. President,

New Zealand thanks the Council for acceding to the requests of Member States, including ourselves, for an open meeting on this issue. The issue does however have implications of importance to all members of the United Nations, not merely those party to the Rome Statute of the International Criminal Court. These are implications for United Nations peacekeeping, fundamental issues of international law and the international treaty making process, and the role of the Security Council itself

No decision should be taken by the Council without full consideration and reflection of the views of Member States.

Mr. President,

We note at the outset the comments of the Secretary-General in his letter to the Council, and his advice that the issue before the Council could only arise out of a most unlikely series of events, namely a situation where Service personnel on peacekeeping duties were alleged to have committed crimes of genocide, war crimes or crimes against humanity, but where the authorities of their own state were unwilling or unable to properly investigate those allegations.

The possibility of the existence of such a fact situation could not, in any event, be said to constitute a threat to international peace and security contained in the issue such as would require a Council decision upon it.

Mr. President,

Nor do we see this question as a conflict between the International Criminal Court and peacekeeping. To our mind, both institutions are aimed at a common goal at securing and maintaining international peace, and upholding the principles on which this organisation stands. Neither should be held hostage to the other, and no State should be required to choose between them as members of the Council are being asked to do in the current situation.

New Zealand, as a State which is both party to the Rome Statute and a troop contributing country, sees no need or justification for exemption of peacekeepers from the jurisdiction of the Court. We see only downsides to such a proposal.. To provide such an immunity in any fashion would seem to enshrine an unconscionable double standard. It appears to place peacekeepers above the law placing the moral authority of peacekeepers and the indispensable institution of UN peacekeeping in serious jeopardy.

But to attempt to provide an immunity by the mechanisms currently under consideration by the Council raises even greater difficulties. Attempts to invoke the procedure laid down in Article 16 of the Rome Statute in a generic resolution, not in response to a particular fact situation, and on a permanent basis, is inconsistent with both the terms and purpose of that provision. While Article 16 allows the Security Council to stop investigations and prosecutions for a 12 month period, its wording as well as its negotiating history makes clear that it was intended to be used on a case by case basis by reference to particular situations, to enable the Security Council to advance the interest of peace where there may be a temporary conflict between the resolution of armed conflict and the prosecution of offences. Here, no such conflict between the two arises. It might also be used as a

protection of last resort against frivolous or political prosecutions. But it provides no basis for a blanket immunity to be imposed in advance.

To purport to provide a blanket immunity in advance in this way amounts to an attempt to amend the Rome Statute, without the approval of its States Parties. It would represent an attempt by the Council to change the negotiated terms of a treaty in a way unrecognized in international law or international treaty making practice. Member States would have to question the legitimacy and legality of this exercise of the role and responsibility entrusted to the Council.

Mt President,

New Zealand recognises That the United States has strong concerns about the International Criminal Court. We do not share those concerns, but we respect that they exist

Similarly though, we would ask that the Council affords the same respect to those States that have chosen to bind themselves by the obligations of the Statute. We ask that no action be taken by this body which would purport to undermine the terms or integrity of the Rome Statute or its implementation by its States Parties.

We believe that there are adequate protections within the Rome Statute that address the concerns raised by the United States. In particular, we note that the Rome Statute is built on the principle that national courts have primary responsibility for the prosecution, of crimes by their nationals. The ICC is a court of last resort. It may conduct a prosecution only if impunity would otherwise result. There are also safeguards built in to prevent decisions on prosecutions being taken based on political rather than legal grounds.

If such protections are not considered to be enough, however, it remains open for individual States to take additional measures to protect their interests they could, for example, decline to participate in UN missions, or negotiate appropriate bilateral agreements with host States. These options should be considered first.

There are also various options in front of the Council itself short of the enactment of a blanket immunity for peacekeepers. Consistent with the mandate of Chapter VII, the Council should act to reach solutions in specific cases, taking account of the full range of facts in each situation. Such facts will vary from case to case and from mission to mission. We note the Secretary-General's suggestion, for example, that a pragmatic solution exists in respect of the missions in Bosnia and Herzegovina and Prevlaka,

We encourage each member of the Council not to take hasty decisions and to consider accepting such pragmatic solutions, without sacrificing the principles for which the International Criminal Court stands to put an end to impunity, and ensure that the most serious crimes of concern to the international community must not go unpunished.

Thank you Mr. President.