

**SAMOA**  
**SECURITY COUNCIL**  
**OPEN MEETING**  
**On THE SITUATION IN BOSNIA AND HERZEGOVINA**  
**(UNMIBH)**  
**STATEMENT BY H.E. TUILOMA NERONI SLADE**  
**Ambassador/Permanent Representative of Samoa to the United Nations**  
**10 July 2002**  
**PERMANENT MISSION OF SAMOA TO THE UNITED NATIONS**

Mr. President,

We thank you, and the Council, for the opportunity to take part in this open meeting. We have sought to be heard in the debate because of our unalterable faith in The Rome Statute of the International Criminal Court. Samoa has been committed in its support for the establishment of the Court, and remains actively engaged.

Our concern is that the draft proposal before the Security Council, in connection with the United Nations Mission in Bosnia and Herzegovina, will, in our view, undermine the purpose and meaning of the Rome Statute. The proposal will also raise rather fundamental issues that touch on the obligations and responsibilities of States under international law and, to our mind, will have reflections on the role of the Security Council.

We believe that every State, whether a signatory or ratifier of the Rome Statute, is under obligation not to act in contradiction of the Statute. Indeed, by the terms of the Vienna Convention, we would regard States as duty-bound by treaty law to ensure the integrity of the Statute and not to undermine it in any material way.

The draft we have seen proposes to exempt peacekeepers from the jurisdiction of the Court by way of blanket immunity. Respectfully, we say that such exemption would be unnecessary, and would set the wrong standards. Furthermore, we cannot see how that can be viewed as being 'consistent with Article 16 of the Rome Statute, as the draft asserts, when the very purpose of the Statute is to put an end to impunity.

More seriously, the draft purports, pursuant to Article 16, to grant immunity on a permanent basis. Yet, it is apparent on the face of the Article that the true meaning and intent is to enable the Security Council to judge each case based on its particular circumstances. There is clearly no ground for a determination in advance, and then in perpetuity. Our contention, therefore, is that the purported use of Article 16 would be plainly *ultra vires*. I believe there is an abundance of material from the negotiation process that would support such a contention.

So, too, in the absence of a situation threatening or breaching international peace and security, we would question the vires in the purported use of

Chapter VII of the UN Charter. In our view, it seems very doubtful, that the requisite circumstances exist in this case to bring into play Article 39 of the Charter and Chapter VII.

We do recognise, and respect, the concerns of the United States. At least initially, others shared the essential point of their concern. At all times throughout the negotiations, the most serious and conscientious effort was made by all concerned to find the right accommodation. The United States played an important part in that effort. The consensus reached, by way of the provisions on complementarity, is enshrined in the Statute of Rome. Fundamentally, they reaffirm, and leave to national courts the primary responsibility for the prosecution of their nationals. We believe these provisions offer protection and substantially address the concerns expressed.

As I close, may I note the Secretary General's letter of 3 July 2002 as circulated to the Council, and his advice of pragmatic solutions that could be considered. We would, respectfully, commend to the Council the type of options suggested by the Secretary General. Putting the Rome Statute at risk cannot be an option.

Thank you.