

*United States Mission to the United Nations*

USUN PRESS RELEASE # 85 (03)

June 12, 2003

FOR IMMEDIATE RELEASE

*Statement by Ambassador James Cunningham, Deputy United States Representative to the United Nations, on the Renewal of Resolution 1422, Security Council, June 12, 2003*

Mr. President, we welcome the Security Council's renewal for another year of the compromise on the International Criminal Court so painstakingly put together in Resolution 1422. Like any compromise, the resolution [1487] does not address all of our concerns about the Court. It does balance divergent positions and help ensure against any undermining of UN peace operations.

Like Resolution 1422, this resolution exempts states that are not parties to the Rome Statute but participate in UN operations from the ICC's jurisdiction in a manner consistent with the UN Charter and with the 1998 Rome Statute. The resolution is consistent with the fundamental principle of international law, the need for a state to consent if it is to be bound, is respected by exempting from ICC jurisdiction personnel and forces of states that are not parties to the Rome Statute. It is worth noting that the resolution does not in any way affect parties to the Court, nor the Rome Statute itself. Nor does it, as some today suggested, elevate an entire category of people above the law. The ICC is not "the law."

The provisions of this resolution are as relevant and necessary today as Resolution 1422 was a year ago. We all know that UN operations are important if the Council is to discharge its primary responsibility for maintaining or restoring international peace and security. We also all know that it is not always easy to recruit contributors and that it often takes courage on the part of political leaders to join military operations established or authorized by this Council. It is important that Member States not add concern about ICC jurisdiction to the difficulty of participating.

We have heard the arguments that this resolution is not necessary, and we do not agree. I would suggest that even one instance of the ICC attempting to exercise jurisdiction over those involved in a UN operation would have a seriously damaging impact on future UN operations. We are disappointed, of course, that not every Council Member shares our view. But we are not at all persuaded that our concerns are overstated or lack validity.

The United States yields to no country its historical leadership in the struggle for international justice and accountability for war crimes. After all, the United States was the first country to codify the laws of war – international humanitarian law – and an original participant in the creation of every successful international effort to date to adjudicate allegations of war crimes and crimes against humanity. It has been and will continue to be a strong supporter of the tribunals established under the aegis of this Council. But unlike the ICC, those tribunals are accountable to the Security Council.

The ICC is not a UN institution and, some would even say, challenges and weakens the UN Charter system and the Council's place in it. The ICC is vulnerable at each stage of any proceeding to politicization. The Rome Statute provides no adequate check. "Having every confidence" in the ICC's correct behavior, however that is defined, is not in our view a safeguard. We have already seen in other fora the potential for politically motivated criminal charges against national leaders and military officers, including over the recent Iraq hostilities.

Our primary concern, of course, is for American personnel that may find themselves subject to ICC jurisdiction even though the United States is not a party to the Rome Statute. As Ambassador Negroponte explained last year, "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...[T]he 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, therefore, has a fundamental objection to the ICC. In our view, it is a fatally flawed institution. Many others, including some of our closest friends, do not share that view. We are thoroughly familiar with our respective positions and understand that those positions are not going to change in the foreseeable future. We all need to acknowledge that fact and its implications. This resolution represents a compromise that respects the strongly held views of those who support the ICC and the equally strongly held views of those that do not. Such respect is important to maintain. This compromise, therefore, is important to maintain.

Thank you, Mr. President.