

PEACEKEEPING AND THE ICC

Background

On June 30, 2002, on a vote of 13 in favor and one against, the US stood alone in vetoing the Security Council resolution extending the mandate of the UN Mission in Bosnia and Herzegovina (UNMIBH), a critical part of the international community's multi-billion dollar commitment to ensure long-term peace in the region. Bush Administration officials said that the US would not approve an extension of the Bosnian, or any other, mission unless international peacekeepers on the ground were given a permanent blanket immunity from arrest and prosecution by the ICC.

Subsequently, UNMIBH was given several brief extensions due to the temporary inability of the Security Council to find a compromise solution. On July 3, the PrepCom held a special plenary during which many states made statements in opposition to the US position. On July 10, there was an open Security Council meeting during which many additional states made statements against US attempts leverage peacekeeping operations as a weapon for Security Council action against the ICC. Finally, on July 12, 2002, members of the Security Council achieved compromise language and adopted an [omnibus peacekeeping resolution](#) by consensus, which allowed the UNMIBH mission to continue uninterrupted.

The text of UNSC Resolution 1422 attempts to track the requirements of [Article 16](#) of the ICC Statute, which authorizes the Security Council to act under its Chapter VII authority to suspend any ICC proceeding on a case-by-case basis for renewable 12-month periods. However, while that article merely authorizes the SC to stop an active investigation or prosecution against a specific individual, 1422 attempts to prospectively prevent the ICC from taking up any case against an entire class of persons.

Some commentators have even questioned whether such Security Council action is an *ultra vires* attempt to *de facto* amend the Rome Statute by creating prospective immunity for an entire class of persons — all peacekeepers from non-state parties serving anywhere — solely based on their status. This argument emphasizes that in addition to risking undermining the delicate balance of power between the Court and the Council carefully negotiated in Article 16, the resolution arguably contravenes Article 27 of the ICC Statute, which makes official capacity irrelevant in the determination of criminal responsibility under the Statute.

Moreover, at the time 1422 was adopted, member states such as Canada, Brazil, New Zealand and South Africa stated that they believe that a resolution of this character violates the U.N. Charter itself, as action under Chapter VII requires, at a minimum, the existence of a specific threat to international peace and security. For example, at an open session of the Council to debate the issue, Prince Zeid Al-Hussein, Jordan's Permanent Representative to the UN, asked, "How could the Security Council adopt a Chapter VII resolution on the Court, when the latter cannot by any stretch of the imagination, be considered a threat to international peace and security?"

On the other hand, some supporters of the US position argue that the fact that the negotiators of the ICC Statute did not envisage the application of Article 16 in precisely the manner that unfolded in UNSC Resolution 1422 does not necessarily invalidate the procedure that was adopted. They assert that far from being a *de facto* amendment of the ICC Statute, UNSC Resolution 1422 implements the Statute in a manner that achieved the consensus of the U.N. Security Council.

Read more detail on US efforts in an [CICC Fact sheet: Chronology of US Anti-ICC Draft Proposals Leading to the Adoption of Security Council Resolution 1422](#).

US administration concerns about the difficulty of renewing UNSC Resolution 1422 in 2003 propelled US efforts to conclude bilateral immunity agreements to prevent the extradition of US nationals to the Court. [Read more](#).

In related developments, on December 4th 2002 the UN Security Council unanimously approved a resolution to send more peacekeepers to the Congo after a delayed vote caused by US demands for language keeping US peacekeepers from the ICC. There are currently no US peacekeeping soldiers serving in the Congo, and Washington dropped the effort after other Council members refused to go along. [Read more](#).

2003 Renewal

On June 12th, 2003, the Security Council renewed resolution 1422 for one more year. The text of adopted [resolution 1487](#) is identical to 1422. Before the vote, the Secretary General and representatives of close to 60 countries spoke out against the resolution and against renewal. Many states argued that the resolution is unnecessary, inappropriate and illegal under the Rome Statute, the UN Charter, and general international law. Most explicitly rejected any attempt to automatically renew this resolution in the future. After the vote, eight Security Council members, plus the three that abstained in the vote (Germany, France, and Syria) expressed

their support for the ICC and confidence in its work. Pakistan joined the US in expressing reservations about the Court.

Read [country statements](#), the [Secretary General's remarks](#), and the [United States' comments](#).

2004 Failure to Renew

On June 23, 2004, the United States announced its decision not to bring Resolution 1487 up for a vote. Hostility toward the text increased this year in light of the revelations of prisoner abuse in Iraq. Numerous countries, including China, said that they would abstain. Shortly after announcing its decision, the US said that it would pull out its peacekeepers from several UN missions, including Kosovo and Ethiopia-Eritrea. [Read more.](#)

Read comments by the [Secretary General](#) and [US Officials](#).

Other Situations

In August 2003, the US threatened to veto a proposed peacekeeping operation in Liberia unless it secured an exemption from the ICC for personnel from non-state parties. The resolution authorizing the mission, adopted by a vote of 12-0, includes language that allows non-ICC member states to retain full jurisdiction over all their "current or former officials or personnel" involved with the mission. Not only does this constrict ICC jurisdiction, but it infringes on the rights of states to prosecute those who commit atrocities against their citizens. France, Germany, and Mexico abstained in the vote. "Quite frankly," said UN Secretary General Kofi Annan, "my sentiments are with those who abstained from the resolution." (See [Security Council Resolution 1497](#).)

Text of Final Resolution and Drafts



[Security Council Resolution 1497 on peacekeeping in Liberia, adopted August 1, 2003](#)



[Security Council Resolution 1487 on peacekeeping, adopted June 12, 2003](#)



[Security Council Resolution 1422 on peacekeeping, adopted July 12, 2002](#)



[US draft Security Council Resolution July 10, 2002 \(not adopted\)](#)



[US draft Security Council Resolution June 19, 2002 \(not adopted\)](#)

International Reaction

[Click here to read about the international reaction to US efforts to exempt peacekeepers from non-state parties from the ICC.](#)

Official US Statements

Decision not to renew 1487



[US Defense Department briefing](#) with Lawrence Di Rita, Special Assistant to The Secretary of Defense; Brigadier General David Rodriguez, Deputy Director for Operations, J-3, Joint Staff, July 1, 2004



[LA Times interview with Secretary of State Colin Powell](#), June 24, 2004



[Remarks by Richard Boucher](#), State Department Spokesperson, on the US decision not to renew SC Res. 1487, June 23, 2004



[Remarks by Ambassador Cunningham](#), US Representative to the United Nations, on the US decision not to renew SC Res. 1487, June 22, 2004

Liberia



[Statement by Richard Boucher, State Department Spokesperson](#), on the Liberian peacekeeping resolution, July 31, 2003

SC Res. 1487



[Statement by Nicholas Rostow, General Counsel](#), on Agenda Item 154: the International Criminal Court, in the Sixth Committee, October 23, 2003



[Statement by Kim R. Holmes, Assistant Secretary for International Organization Affairs](#), on the Future of US-UN Relations, at the XXI German American Conference, Berlin, Germany, June 13, 2003



[Statement by Ambassador James Cunningham, Deputy United States Representative to the United Nations](#), on the Renewal of Resolution 1422, June 12, 2003

SC Res. 1422



[Statement by H.E. John D. Negroponte, U.S. Permanent Representative to the United Nations, Remarks following UN Security Council vote on Resolution 1422](#), including discussion of US pursuance of bilateral immunity agreements, July 12, 2002



[Statement by H.E. Ambassador John D. Negroponte, Permanent Representative of the USA to the UN, at the UN Security Council open debate](#) on the situation in Bosnia and Herzegovina, July 10, 2002



[Ambassador-at-Large for War Crimes Issues Pierre Prosper Remarks to the Simon Bond International Wannsee Seminar](#), Berlin, July 9, 2002



[Ambassador John D. Negroponte, US Permanent Representative to the UN, Remarks at UN Headquarters](#) following the Security's Council's Vote on a Technical Extension of the UN Mission in Bosnia and Herzegovina, July 3, 2002



[Department of Defense Briefing, Background Briefing](#) on the Possible Effects of the International Criminal Court on U.S. Military Personnel, July 2, 2002



[Explanation of vote by H.E. Ambassador John D. Negroponte, US Permanent Representative to the UN](#), on the renewal of the mandate for the UN Mission in Bosnia and Herzegovina, in the Security Council, June 30, 2002



[Ambassador John D. Negroponte, US Permanent Representative to the UN, Remarks at UN Headquarters](#) following the Vote on Renewal of the Mandate of the UN Mission in Bosnia and Herzegovina, June 30, 2002



[Ambassador James B. Cunningham, Deputy US Permanent Representative to the UN, Remarks at UN Headquarters](#) on the Situation in Bosnia and Herzegovina, June 28, 2002



[Ambassador John D. Negroponte, US Permanent Representative to the UN, Remarks at UN Headquarters](#) on the Situation in Bosnia and Herzegovina, June 27, 2002



[Secretary of Defense Rumsfeld, Briefing on the Global War on Terrorism](#) (discussion of ICC and peacekeeping), June 21, 2002



[Remarks by Ambassador Richard S. Williamson, United States Alternate Representative to the United Nations](#), on the situation in Bosnia and Herzegovina, at the Security Council Stake-Out, June 19, 2002

Legal and Policy Analysis



[Human Rights Watch, The Adoption of Security Council Resolution 1497: A Setback for International Justice](#), August, 2003

[Amnesty International, The Unlawful Attempt by the Security Council to Give US Citizens Permanent Impunity from International Justice](#), May 1, 2003

 [Human Rights Watch, Closing the Door to Impunity: HRW Recommendations for Renewing Resolution 1422, April 22, 2003](#)


 [Collection of Legal Scholars Opinions on the Legal and Policy Implications of Resolution 1422](#), compiled by Parliamentarians for Global Action, April 2003

 [Kai Ambos, International Criminal Law Has Lost Its Innocence GLJ Vol. 3 No. 10 - 01 October 2002 - European & International Law](#)

[ASIL Insight: Authority of the Security Council to Exempt Peacekeepers from International Criminal Court Proceedings, by Bryan MacPherson \(July 2002\)](#)

[Read media reports on reaction to US efforts in the Security Council.](#)

Texts of UN Agreements

 [Model Agreement Between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-Keeping Operations](#), UN Doc. A/46/185, May 23, 1991

 [Model Status-of-Forces Agreement for Peace-Keeping Operations](#), UN Doc. A/45/594, Oct. 9, 1990

[Convention on the Privileges and Immunities of the United Nations](#), adopted by the UN General Assembly on 13 February 1946, entered into force on 17 September 1946.