

[International Reaction to US Position](#)

US EFFORTS TO OBTAIN BILATERAL IMMUNITY AGREEMENTS

Numerous discussions have been taking place at the international level as countries consider their response to US pressure to sign a [US proposed-agreement](#) promising not to surrender US nationals to the Court. [Click here to read background on the US campaign.](#)

EUROPEAN UNION POSITION

EU Guiding Principles

The European Union (EU) asked its candidate countries to not sign any such agreements with the US until the Union determined its common position on the matter. This was done on September 30, 2002, when the EU Foreign Ministers adopted [a framework of guiding principles](#). While binding politically, these principles do not establish any legal obligations for EU members.

The guiding principles are as follows:

- **"Existing agreements:** Existing international agreements, in particular between an ICC State Party and the United States, should be taken into account, such as Status of Forces Agreements and agreements on legal cooperation on criminal matters, including extradition;
- **The US proposed agreements:** Entering into US agreements — as presently drafted — would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties;
- **No impunity:** any solution should include appropriate operative provisions ensuring that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity. Such provisions should ensure appropriate investigation and — where there is sufficient evidence — prosecution by national jurisdictions concerning persons requested by the ICC;
- **Nationality of persons not to be surrendered:** any solution should only cover persons who are not nationals of an ICC State Party;
- **Scope of persons:**
 - Any solution should take into account that some persons enjoy State or diplomatic immunity under international law, cf. Article 98, paragraph 1 of the Rome Statute.
 - Any solution should cover only persons present on the territory of a requested State because they have been sent by a sending State, cf. Article 98, paragraph 2 of the Rome Statute.
 - Surrender as referred to in Article 98 of the Rome Statute cannot be deemed to include transit as referred to in Article 89, paragraph 3 of the Rome Statute.
- **Sunset clause:** The arrangement could contain a termination or revision clause limiting the period in which the arrangement is in force.
- **Ratification:** The approval of any new agreement or of an amendment of any existing agreement would have to be given in accordance with the constitutional procedures of each individual state."

Background on EU Position

Efforts directed by the principle EU organs — the Council, the Commission and the Parliament — leading up to the adoption of the common position include:

- On July 26, the Political and Security Committee (PCS) of the European Council agreed that a common EU position should be sought and that any resolution must not undermine the ICC.
- In mid-August, the European Commission produced a legal analysis that concluded that any State Party to the ICC treaty entering into such an agreement would, in so doing, "act against the object and purpose of the Statute and thereby violate its general obligation to perform the obligations of the Statute in good faith." The legal analysis furthermore highlighted that Article 98 of the Rome Statute only permits agreement between States Parties to the Rome Statute.
- On September 5, the legal chiefs of the fifteen European Union members' Ministries of Foreign Affairs that comprise the EU Council Working Group on Public International Law (COJUR) met in Brussels. That group likewise concluded that the US request for blanket immunity for all Americans was unacceptable. The meeting of the COJUR further put forward three recommendations for consideration in any non-surrender agreements:

1. **No reciprocity:** EU member states cannot agree to have their own nationals exempted from the jurisdiction of the Court;
 2. **No immunity:** There must be U.S. agreement that any individual accused of crimes within the jurisdiction of the Court will be investigated or tried "where appropriate"; and
 3. **Limited applicability:** The agreement can only apply to individuals who are "sent" between the agreeing states i.e., only current government employees or military personnel who are in the country on official business often under a SOFA or SOMA.
- On September 10, also in Brussels, a meeting of the ambassadors of the Political and Security Committee (PCS) further discussed "Article 98" agreements. The group unanimously endorsed the conclusions of the September 5 COJUR meeting, and all but one member of the intergovernmental body agreed that the EU Presidency could speak on behalf of its 15 member states. NGOs learned from those privy to the negotiations that the opposition to an EU consensus came from the United Kingdom. Were the UK to stand in the way of an EU Common Position on "Article 98" agreements, it would be the second time that country aligned itself with the United States on proposals considered to be contrary to the Rome Statute, following the US-UK cooperation that led to the adoption of Security Council Resolution 1422.
 - On September 25 in Strasbourg, the European Parliament heard statements by the President-in-Office of the EU Council (Denmark) and the European Commissioner for External Relations, Mr. Chris Patten (UK). It was revealed in those statements that EU member states are in agreement that US demands are inconsistent with states' obligations with regard to the ICC, yet, with regard to the importance of transatlantic relations, the EU would not flatly reject the US proposal. Negotiations, it was emphasized, are still ongoing and the EU is working hard to find a solution which will meet US concerns while doing nothing to undermine the Court.
 - On September 26 the European Parliament passed [a non-binding resolution](#) expressing the opinion of the highest democratically-elected body in Europe on these non-surrender agreements. The resolution:
 - calls on "governments and parliaments of the EU Member States" and associated countries "to refrain from adopting any agreement which undermines the effective implementation of the Rome Statute;
 - considers in consequence that signing such an agreement is incompatible with membership of the EU";
 - expresses the Parliament's belief that the currently proposed agreements are illegal under the Vienna Convention on the Law of Treaties, which states that Parties to the treaty must refrain from any action inconsistent with the object and purpose of that treaty; and
 - is the first official document of an international institution that "urges Member States, candidate countries and all other associated countries to undertake an analysis of the legal implications of Security Council Resolution 1422, and calls for strong action against the renewal of the UN Security Council Resolution in July 2003."

Resolutions, Declarations, Recommendations

-  [ACP-EU Joint Parliamentary Assembly Urgent Resolution on the Situation in West Africa](#), October 15, 2003 (affirming principle of compensation for developing countries suffering consequences of BIA campaign)
-  [UN Sub-Commission on the Promotion and Protection of Human Rights, Draft Resolution on the International Criminal Court, E/CN.4/Sub.2/2003/L.24](#), August 7, 2003
-  [Parliamentary Assembly of the Council of Europe, Resolution 1336, Threats to the International Criminal Court](#), June 25, 2003
-  [European Union Council Common Position on the International Criminal Court](#) (doc.10400/03)CFSP, June 2003, strengthening position in opposing BIA agreements
-  Joint Parliamentary Assembly of the (Partnership Agreement Between the African, Caribbean and Pacific Group of States and the European Community and its Member States) [ACP-EU Resolution on the International Criminal Court \(ICC\)](#), ACP-EU 3560/03/fin., March 2003
-  ["Proyecto de Declaracion" \(Declaration\) from the Argentine Senate regarding the request made by the American Government on the ICC](#), unanimously adopted March 6, 2003.
-  [European Parliament Resolution on the General Affairs Council's position concerning the International Criminal Court, P5 TA-PROV\(2002\)0521, adopted October 24, 2002](#)
-  [Resolution Submitted to the National Congress of Uruguay on Bilateral Immunity Agreements](#), October 17, 2002
-  [Council Conclusions on the International Criminal Court](#) including EU guiding Principles Concerning Arrangements Between a State Party to the Rome Statute of the International Criminal Court and the United

States Regarding the Conditions to Surrender of Persons to the Court, 12488/1/02 REV 1LIMITE COJUR 10USA 37PESC 374, September 30, 2002

-  [European Parliament resolution on the International Criminal Court \(ICC\), P5 TA-PROV\(2002\)0049, September 26, 2002](#)
-  [Parliamentary Assembly of the Council of Europe, Resolution 1300, Risks for the Integrity of the Statute of the International Criminal Court, September 25, 2002](#)
-  [Parliamentary Assembly of the Council of Europe, Recommendation 1581, Risks for the Integrity of the Statute of the International Criminal Court, September 25, 2002](#)
-  [Sub-Commission on the Promotion and Protection of Human Rights ICC Resolution, E/CN.4/Sub.2/2002/L.11, Establishment of the International Criminal Court, Adopted at the Fifty-fourth session held on August 13, 2002](#)
-  [Declaration by the Presidency of the European Union on the UN Security Council's unanimous decisions concerning Bosnia-Herzegovina/International Criminal Court, July 13, 2002](#)

Statements and Reports


-  [Brazilian Press Release 033/2003 - US Military Aid and the International Criminal Court, July 2, 2003](#)
-  [Speech by the President of the Parliamentary Assembly of the Council of Europe Peter Schieder at the 4th Parliamentary Conference on the Stability Pact for South-Eastern Europe, May 21, 2003](#)
-  [EU/Albania: Commission Expresses Concerns over Criminal Court Deal with US, European Report, May 10, 2003, No. 2775](#)
-  [Letter written by Deputy Tarcisio Navarette, MP \(Mexico\) to Foreign Minister Luis Ernesto Derbez, urging Mexico to oppose both BIAs and the Renewal of UNSC 1422, April 24, 2003.](#)
-  [UK Parliament Debate, February 25, 2003](#)
-  [Article 98.2 Statute ICC – Overview of 'Existing Treaties' Relevant for US Citizens Staying in the Netherlands, J.G. de Hoop Scheffer, Minister of Foreign Affairs, The Netherlands, January 21, 2003](#)
-  [Statement by Per Stig Moller, Foreign Minister of Denmark, holding the EU Presidency, Ottawa Citizen, November 5, 2002](#)
-  [German Government, Supportive Interpretation of and Commentary on the EU General Affairs Council Conclusions on the International Criminal Court of 30 September 2002, October 24, 2002](#)
-  [Government References to bilateral immunity agreements, September-October 2002](#)
-  [Foreign Minister's statement, on behalf of the Council, at the European Parliament's plenary on the state of play regarding the International Criminal Court following the informal meeting of Foreign Ministers in Elsinore on 29 and 30 August 2002, September 25, 2002](#)
-  [Parliamentary Assembly of the Council of Europe, Report on the Risks for the Integrity of the Statute of the International Criminal Court, Doc. 9567, Committee on Legal Affairs and Human Rights, Rapporteur Mr. Dick Marty, Switzerland, Liberal, Democratic and Reformers' Group, September 25, 2002](#)
-  [Statement by Mr. Pattern, European Commissioner for DG External Relations, at the European Parliament, September 25, 2002](#)
-  [Statement by His Excellency Arthur N.R. Robinson, President of the Republic of Trinidad and Tobago, concerning the United States administration's campaign against the International Criminal Court, August 23, 2002](#)
-  [European Commission's legal opinion \(Legal Service\), regarding bilateral agreements with the US, August 13 2002, Human Rights Law Journal \(HRLJ\) 2002, vol. 23, p. 158](#)

US EFFORTS TO SECURE A UN SECURITY COUNCIL RESOLUTION PROVIDING IMMUNITY FOR UN PEACEKEEPERS

Decision Not to Renew (2004)

 [Secretary General's remarks](#) to the press, June 17, 2004.

Resolution 1487 (2003)

 [Letter written by Deputy Tarcisio Navarette, MP \(Mexico\) to Foreign Minister Luis Ernesto Derbez](#), urging Mexico to oppose both BIAs and the Renewal of UNSC 1422, April 24, 2003.

Statements on US draft resolutions made at a June 12, 2003 open Security Council meeting by:

 [Secretary General Kofi Annan](#)

 [Brazil](#)

 [Canada](#)

 [France](#)

 [Germany](#)

 [Greece, on behalf of the EU and affiliated states](#) (including the acceding countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia; the associated countries Bulgaria and Romania; the EFTA countries members of the European Economic Area, Iceland and Norway)

 [Iran](#)

 [Jordan](#)

 [Liechtenstein](#)

 [Netherlands](#)

 [Pakistan](#)

 [South Africa](#)

 [United States](#)

 [Uruquay](#)

Resolution 1422 (2002)

-  [European Parliament resolution on the International Criminal Court \(ICC\), P5 TA-PROV\(2002\)0049 September 26, 2002](#)
-  [Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, July 22, 2002, on SC Res. 1422](#)
-  [Declaration by the Presidency of the European Union on the UN Security Council's unanimous decisions concerning Bosnia-Herzegovina/International Criminal Court, July 13, 2002](#)
-  [Letter sent to the President of the UN Security Council in relation to the draft resolution S/2002/747. The letter was signed by the Ambassadors of New Zealand, South Africa, Brazil and Canada on Friday, July 12, 2002.](#)
-  [Letter from Secretary General Kofi Annan to Secretary of State Colin Powell, July 3, 2002](#)
-  [Letter to the President of the Security Council from the 10th PrepCom, July 3, 2002](#)
-  [Excerpts from government statements at the Special Plenary of the 10th PrepCom on 3 July 2002](#)

Statements on US draft resolutions made at a July 10, 2002 open Security Council meeting by:

-  [EU](#)
-  [Brazil](#)
-  [Canada](#)
-  [Germany](#)
-  [India](#)
-  [Iran](#)
-  [Ireland](#)
-  [Jordan](#)
-  [Liechtenstein](#)
-  [Malaysia](#)
-  [Mongolia](#)
-  [New Zealand](#)
-  [Norway](#)
-  [Samoa](#)
-  [Sierra Leone](#)

 [South Africa](#)

 [Ukraine](#)

 [United States](#)


 [Yugoslavia](#)

AMERICAN SERVICEMEMBERS PROTECTION ACT (ASPA)


 [European Parliament resolution on the draft American Servicemembers' Protection Act \(ASPA\), P5_TA-PROV\(2002\)0367, Consequences for transatlantic relations of law on the protection of US Personnel, July 4, 2002](#)

 [Statements in European Parliament](#) by Europe Minister Bertel representing the EU Danish Presidency and Mr. David Byrne, on behalf of Chris Patten, European Commissioner for External Relations, Consequences for Transatlantic Relations of the Law on the Protection of US Personnel, July 3, 2002

 [European Union Statement by Europe Minister Bertel Haarder, July 3, 2002](#)

 [Letter from EU to ASPA House and Senate conferees, June 18, 2002](#)

 [General Affairs Council of EU, "Council Conclusions on the International Criminal Court \(ICC\) and the Draft US American Servicemembers' Protection Act \(ASPA\)," conclusions of 17th of June 2002](#)

 [The Netherlands House of Representatives of the States General Interpellation regarding the US American Service Members' Protection Act \(ASPA\), June 13, 2002](#)

 [Text of letter to US Secretary of State Colin Powell on behalf of the European Union transmitted on October 30, 2001](#)

 [Text of letter to US Senator Daschle, majority leader of the US Senate, on behalf of the European Union transmitted on October 30, 2001](#)

 [Text of letter from German Foreign Minister to Secretary of State Colin Powell dated October 24, 2001, delivered on October 31, 2001](#)

US POSITION, GENERALLY

 [Debate on the ICC in the UK House of the Commons, Westminster Hall, January 14, 2003](#)


 [Statement of the EU on the position of the United States of America towards the International Criminal Court, UN/DOC/PCNICC/2002/INF/7, May 20, 2002](#)

 [Declaration by the EU on the position of the US towards the International Criminal Court, May 13, 2002](#)

 [European Parliament resolution on entry into force of the Statute of the International Criminal Court, P5_TA\(2002\)0082, February 28, 2002](#)

 [Aide-Mémoire, European Union's View of the Bush Administration Policy Toward International Criminal Court, June 2001](#)

OTHER

 [Organization of American States ICC Resolution, AG/RES. 1929 \(XXXIII-O/03\), Promotion of the International Criminal Court, adopted by the General Assembly, June 10, 2003 \(see annex for US statement\)](#)



[Organization of American States ICC Resolution, AG/RES. 1900 \(XXXII-O/02\), Promotion of the International Criminal Court](#), adopted at the fourth plenary session held on June 4, 2002

US RESPONSE



[Statement by the US Embassy \(NL\), "The International Criminal Court and Reaction to the American Servicemembers' Protection Act" June 12, 2002](#)



[United States Mission to the OSCE Statement on the International Criminal Court, Delivered by Chargé d'Affaires Douglas A. Davidson to the Permanent Council, Vienna, May 16, 2002](#)