

“AS DELIVERED” STATEMENT BY H.E. PAUL HEINBECKER, AMBASSADOR AND PERMANENT REPRESENTATIVE OF CANADA TO THE UNITED NATIONS TO THE UNITED NATIONS SECURITY COUNCIL OPEN DEBATE ON THE INTERNATIONAL CRIMINAL COURT,

NEW YORK, JUNE 12, 2003

Mr. President,

I would like to thank the Council members for agreeing to an open debate on this issue of widespread interest among Member States.

We are grateful for this opportunity to respectfully express our continued strong concerns of principle about resolution 1422.

We appeal to the Council to ensure that the extraordinary situation created by this draft resolution not become permanent.

Last year, the Council heard clear opposition to this resolution expressed by many members of the Organization. This year, I will not reiterate all of the concerns we registered a year ago. Those concerns remain. I will, nonetheless, focus only on the most salient points, namely:

- * our belief that the resolution is unnecessary;
- * our concern that it diminishes the importance of accountability and justice for victims;
- * our worry that it undermines fundamental principles of international law; and
- * our doubt about the compatibility of this resolution with the Council's mandate.

Unnecessary undermining of the ICC

We respect the right of states not to become parties to the ICC. We believe nonetheless that this resolution is unnecessary and counterproductive.

We fully appreciate the need to prevent frivolous investigations and prosecutions. We understand the concerns triggered by ill-founded complaints that have been initiated in national and international jurisdictions. Canada has no desire to see the citizens of Canada or any other peace-keeping country subjected to political harassment in judicial fora.

It is important to emphasize that the ICC is not a court of frivolous prosecution. In fact, its existence is a deterrent to frivolous prosecution. The ICC Statute's extraordinary array of safeguards and checks and balances screens out any frivolous claims that may be submitted. Many of these safeguards were proposed by the United States and were willingly incorporated by other states. These safeguards include:

- * careful definitions of crimes, accepted by all states, with rigorous thresholds, focussing on major and deliberate atrocities.
- * the election of the judges and prosecutors by the Assembly of States Parties, in accordance with established criteria of professionalism and competence.
- * the requirement that the Prosecutor assess complaints and screen out all but the most serious ones.
- * the requirement that accusations pass an independent review by a Pre-Trial Chamber and then by an Appeals Chamber.
- * the capacity of the States Parties to remove prosecutorial officials in the highly unlikely event that they abuse their power.
- * and, not least, the principle of complementarity. This principle means that the ICC cannot act where states fulfil their duty to investigate and prosecute credible allegations of crimes. Citizens of countries that diligently investigate and prosecute crimes by their own nationals will not be investigated or prosecuted by the ICC.

The exemplary qualifications of the individuals already elected demonstrate the credibility of this institution.

The first statement of the newly elected Prosecutor, Luis Ocampo, on April 22, reveals his responsible, sober approach to the Court's mandate.

Mr. Ocampo emphasized that he will act "with caution and within the strict limits provided in the Statute" and highlighted the significance of complementarity and respect for national jurisdictions.

From the President of the Assembly of State Parties to the President and judges of the Court to the Chief Prosecutor, the Court is in good hands and on the right path.

We have every confidence that the court will prove to be apolitical and fair.

We respectfully submit that Council action is not needed to address the risk of frivolous prosecutions. That risk is already fully addressed within the ICC Statute.

If legitimate concerns remain, we would be more than prepared to see them addressed in an open dialogue, based on the actual safeguards and the actual risks and rewards of international justice.

Failure to support accountability and justice

Given the safeguards, and given the principle of complementarity, the only way this resolution can come into operation is both where a peacekeeper engages in the most serious international crimes and where his or her national legal systems refuses to investigate or prosecute the crime.

The only possible impact of this resolution is to grant impunity in such a case for crimes against international law.

The ICC's principal purpose is to try humanity's monsters, the perpetrators of heinous crimes. We regard the ICC as a centerpiece in the effort to end impunity for genocide and for other mass crimes. We see its deterrent character as crucial to sparing future potential victims.

We believe that it is the logical and necessary extension of previous international tribunals, such as those at Nuremberg, the Hague and Arusha -- albeit with more safeguards and even higher standards of due process.

We therefore call on Council members to support the effort to end impunity and to help provide greater security for the innocent. As a minimum, we ask the Council at least to refrain from hindering the collective efforts of States Parties to promote law and accountability.

Basic foundations of international law

This resolution is one of several initiatives over the last year, aimed at securing exemptions for some nationalities from the ICC.

We have watched these developments with concern.

Our concern arises not because we wish to see persons of any particular nationality brought before the Court.

Rather, our concern arises because claims to exemption, by any state, entail a rejection of some very important and well-established principles of international law.

Whether one chooses to be a party to the ICC Statute or not, there should be no doubt that the jurisdictional reach of the ICC is limitless and that its approach is entirely founded in established law.

States have jurisdiction over crimes committed on their own territory.

It is also clear that states may exercise their jurisdiction over international crimes individually, through national trials, or jointly, through international trials.

This principle was established at Nuremberg and affirmed many times since.

The issue at stake is therefore far more important than support for any single institution. Long-agreed principles of jurisdiction and accountability are in question.

We believe that a system based on law -- the fair, predictable, equal application of principles agreed to by all - is in everyone's interest. We believe we must defend these basic principles, even if it means we must sometimes respectfully disagree with friends.

We hope that through discussion over time these differences of view can be narrowed and, ultimately resolved.

Implications for role of Security Council

We are also concerned about the legitimacy of the action recommended to the Security Council. Under the UN Charter, member states have entrusted certain powers under certain conditions to the Council in order to maintain international peace and security.

The exercise of these powers is a solemn responsibility.

The Council has repeatedly affirmed that impunity is a threat to peace and security and that accountability for international crimes contributes to stability. We are distressed, therefore, that the Council, in purporting to act in our name, appears in this resolution to come down on the side of impunity, and for the most serious of international crimes.

We are troubled that the Council would act in the absence of any apparent threat to international peace and security, which is the fundamental precondition for action under Chapter VII.

Conclusion

In conclusion, Mr. President, this resolution raises grave concerns of principle and we urge the Council not to renew it indefinitely.

We are confident that the Court will prove itself and that it will become clear to all that such measures are unnecessary and counterproductive.

We hope that the Council will cooperate with the Court, for example, in referring grave atrocities to the Court.

We call upon Council members and all states to continue the dialogue so that the basic principles of international law and justice can be reinforced and strengthened.

Thank you.