



**REMARKS GIVEN BY H.E. MR. PAUL HEINBECKER,  
AMBASSADOR AND PERMANENT REPRESENTATIVE OF CANADA TO THE UNITED NATIONS  
AT THE TENTH SESSION OF THE PREPARATORY COMMISSION FOR  
THE INTERNATIONAL CRIMINAL COURT**

**WEDNESDAY, JULY 3, 2002**

Canada is deeply disturbed by the discussions currently underway in the Security Council concerning a sweeping exemption from national and international jurisdiction for peacekeepers.

We understand that the United States has strong concerns about the International Criminal Court, although we do not agree with them, given the extensive concessions and safeguards to preclude frivolous prosecutions.

No one could, or would want, to force the United States or any other UN member to become a party to the ICC statute.

In any event, all countries, including the United States, have several options to protect their interests without vetoing peacekeeping missions.

The US could decline to participate in those missions where it believed its troops could be at risk.

It could negotiate appropriate bilateral arrangements with receiving states.

There is therefore no reason for other States to be prevented from carrying out UN peacekeeping operations, particularly as it is other States that contribute the vast majority of personnel to these operations.

This morning's New York Times indicates that the US is providing 704 personnel out of a total of some 45,000 UN peacekeepers.

This exercise of the veto gives the unfortunate impression that peacekeeping is being held hostage.

What is now at stake is not the ICC versus peacekeeping.

In fact, fundamental issues of international law and international relations are in jeopardy.

First, the proposed resolution would set a negative precedent under which the Security Council could change the negotiated terms of any treaty it wished, e.g. the NPT, through a Security Council resolution.

This would undermine the treaty-making process.

The proposal now under discussion would dramatically alter and undermine the Rome Statute.

Article 16 was intended to be available to the Security Council on a case-by-case basis, where a particular situation required a twelve-month deferral in the interests of peace and security.

Article 16 was the product of protracted and delicate negotiations.

Most states were opposed to any Security Council interference in ICC action, regarding it as inappropriate political interference in a judicial process.

The requirement for specific action and reconsideration after twelve months was the sole basis on which this provision was acceptable.

The Security Council should not purport to remove that fundamental cornerstone.

Those states that have pledged to uphold the integrity of the Statute have a special responsibility in this regard.

The proposal now under discussion is a radical extension of Article 16, seriously altering the Statute and the role of the Security Council.

Second, the proposed resolution perversely implies that in upholding the most basic norms of humanity, the ICC is somehow a threat to international peace and security.

In fact, the precise opposite is true.

We have just emerged from a century that saw the works of Hitler, Stalin, Pol Pot, Idi Amin and Slobodan Milosevic, and the Holocaust and the Rwandan genocide.

Surely, we have all learned the lessons of this bloodiest of centuries, which is that impunity from prosecution for grievous crimes must end.

Third, this proposed resolution would send an unacceptable message that peacekeepers are above the law.

It would entrench an unconscionable double standard in international law.

Fourth, we must recall that under the principle of complementarity, the ICC may only step in where impunity would otherwise result.

Where the sending state is willing and able to investigate an alleged crime, the Court is precluded from exercising jurisdiction.

Thus, to block the ICC is to permit impunity and to do so unnecessarily.

Let me repeat: where sending states decline to prosecute alleged perpetrators, this proposed Security Council resolution would deliver them impunity for genocide, crimes against humanity and war crimes.

No one in this room believes that the US government and the American legal system would turn a blind eye to allegations of such grievous crimes.

And when the US acquitted itself of its obligations to investigate, and if necessary prosecute perpetrators, as it would, the Court would be blocked.

Fifth, the proposed sweeping exemption excludes not only ICC jurisdiction but also national jurisdiction.

Thus, it would sweep aside other well-established jurisdictional principles, including the "grave breaches" provisions of the Geneva Conventions.

It displaces customary principles relating to accountability for crimes against humanity and genocide.

The attempt by the Security Council to do so may even contradict *jus cogens* norms of accountability for these crimes.

Adoption of this proposal could place Canada in the unprecedented position of having to examine the legality of a Security Council resolution.

Sixth, such a step would undermine the standing and credibility of the Security Council itself because its mandate to maintain peace and security should not be used for other purposes.

Canada has pressed this matter vigorously and tirelessly on all possible fronts over the past few weeks.

We have engaged in demarches, interventions and statements at NATO, at the OSCE, in Sarajevo, in Washington, indeed in capitals of all Security Council members, in New York at permanent missions and with Security Council members at meetings.

Last week I sent a letter to all members of the Security Council urging them not to endorse a blanket immunity for the most serious crimes.

I repeat that plea again today.

The proposed resolution avoids the word "immunity" but in fact has precisely the same effect as the proposal decisively rejected by the Security Council members.

We appeal to members of the UN Security Council to ensure that essential principles of international law not be compromised.

And that a solution to this problem be found that preserves the indispensable instrument of UN peacekeeping.

We remain convinced that the concerns expressed by the US can be addressed in ways that do not compromise the Court or international law, or place the UN Security Council in the untenable position of risking a return to impunity for genocide, crimes against humanity and war crimes.

Thank you.

**Canada** 