

Remarks given by H.E. Mr. Paul Heinbecker
Ambassador and Permanent Representative of
Canada to the United Nations
before the UN Security Council open debate
on the Situation in Bosnia-Herzegovina
Wednesday, July 10, 2002

“As delivered”

Mr. President,

I am grateful to Council members for agreeing to an open debate on an issue of profound interest not only to most United Nations members but also to the organization itself.

My government is deeply worried by the discussions that have been taking place in the Security Council concerning sweeping exemptions for peacekeepers from prosecution for the most serious crimes known to humanity.

Issues of such potentially far-reaching consequences need to be debated openly, not in closed door consultations, if their conclusions are to carry the conviction of the membership as a whole.

I would like to make three basic points today, on which I will elaborate.

1. The issue is larger than the International Criminal Court; fundamental principles of international law are in question.
2. The Council is not empowered to re-write treaties; the resolutions that are circulating contain elements that exceed the Council's mandate and passage of them would undermine the credibility of the Security Council.
3. The issue is not a choice between peacekeeping and the ICC; options exist to resolve this issue that provide for the continuation of UN peacekeeping and that preserve the integrity of the international legal system and of the Rome Statute.

We respectfully submit that those options should be used.

The United States has clearly voiced its concerns about the International Criminal Court.

We respectfully disagree with the US on those concerns, because of the numerous safeguards written into the Rome statute, including through extensive US input into devising checks and balances, precisely in order to preclude politically-motivated prosecutions.

None of the States parties wants a political court.

The crimes were meticulously defined in a manner acceptable to US negotiators and all states, with thresholds that exclude the random and isolated acts that a peacekeeper might conceivably commit.

For example, Article 8 requires the Court to focus on war crimes “committed as part of a plan or policy or as part of a large-scale commission of such crimes”.

In addition, the Court is obliged to defer to genuine national legal proceedings.

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

And when the US discharged its obligations to investigate alleged perpetrators, and if necessary to prosecute them, as it would, intervention by the International Criminal Court would be precluded.

Nonetheless, we respect the US decision not to ratify the Rome Statute.

No one could, or would want to try, to force the United States or any other UN member to become a party to the International Criminal Court.

Acceding to a treaty is a sovereign decision.

The US government clearly has no obligations to the Court.

That is not the issue.

At stake today are entirely different issues that raise questions whether all people are equal and accountable before the law.

Whether everyone on the territory of a sovereign state is subject to that state’s laws, including international laws binding on that state.

And whether states may collectively exercise their sovereignty to prosecute perpetrators of grievous crimes.

These principles were affirmed at Nuremberg.

As a country with extensive experience in peacekeeping - - having participated in almost all of the UN peacekeeping missions and having lost 106 servicemen and women in peacekeeping missions, more than any other country - - Canada has no doubt that peacekeeping and peacebuilding are critical to the maintenance of international peace and security.

The current debate has been mischaracterized as a choice between peacekeeping and the ICC.

In fact, the stakes are actually different and even higher.

Fundamental principles of international law and the place of those principles in the conduct of global affairs are in question.

First, in the absence of a threat to international peace and security, the Council's passing a Chapter VII resolution of the kind currently circulating would be ultra vires.

Second, acting beyond its mandate would undermine the standing and credibility of the Council in the eyes of the membership.

Third, the proposed resolutions currently circulating would set a negative precedent under which the Security Council could change the negotiated terms of any treaty it wished, e.g. the nuclear Non-Proliferation Treaty, through a Security Council resolution.

The proposed resolution would thereby undermine the treaty-making process.

The UN Security Council has no such mandate.

Fourth, the proposals now circulating would have the Council, Lewis Carroll-like, stand Article 16 of the Rome Statute on its head.

The negotiating history makes clear that recourse to Article 16 is on a case-by-case basis only, where a particular situation -- for example the dynamic of a peace negotiation -- would warrant a twelve-month deferral.

The Council should not purport to alter that fundamental provision.

Those states that have pledged to uphold the integrity of the Statute, especially the six States Party in the Council, have a special responsibility in this regard.

Fifth, passage of the proposed resolutions currently circulating would send an unacceptable message that some people - - peacekeepers - - are above the law.

It would, thus, entrench an unacceptable double standard in international law.

Sixth, it is worth recalling that the ICC may only exercise jurisdiction where impunity would otherwise result.

Let me emphasize what the effect of this resolution would be.

Where sending states declined to prosecute peacekeepers alleged to have perpetrated crimes, the proposals now circulating would guarantee the alleged perpetrators impunity from prosecution for genocide, crimes against humanity and war crimes.

For these reasons, adoption of the resolutions currently circulating could place Canada and, we expect, others in the unprecedented position of having to examine the legality of a Security Council resolution.

The Council does not have to pursue this fraught course of action.

Solutions exist outside the ambit of Council responsibility.

The United States, as do all countries, has several options to protect its interests without vetoing United Nations peacekeeping missions, which are so vital to millions of people around the world.

In considering these options, it is perhaps helpful to recall the point made by the Secretary-General that for the missions in the Balkans, the ICTY already has primacy over the ICC.

Also, no mandate renewal beyond the Balkans is foreseen for UN mission operating on the territory of a State party in which the USA has stationed personnel.

The first option, therefore, is to do nothing now because the ICC does not have jurisdiction over any US personnel on UN peacekeeping missions.

Second, and the absence of ICC jurisdiction notwithstanding, the USA could simply withdraw its forces from current missions.

Their doing so would be regrettable and would not be without consequence, even significant consequence to those missions but, as the US contributes, 704 of 45,159 UN peacekeeping personnel, all told, adjustments could be made.

Third, the USA could decline to participate in future UN missions.

Fourth, for all UN or coalition missions, the United States could negotiate appropriate bilateral agreements with receiving states.

Doing so would be consistent with article 98 of the Rome Statute.

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

I respectfully repeat that plea again today.

The proposed resolutions circulating avoid the word “immunity” but in fact have precisely the same effect as the proposal that the Security Council members would not entertain June 30.

We appeal to members of the UN Security Council to ensure that essential principles of international law, and the spirit and letter of the Rome Statute, not be compromised.

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

And, that the unique authority of the Council not be undermined by over-reaching.

We have just emerged from a century that witnessed the evils of Hitler, Stalin, Pol Pot, and Idi Amin, and the Holocaust, the Rwandan genocide, and ethnic cleansing in the former Yugoslavia.

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

We remain convinced that the concerns expressed by the United States 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 permitting the possibility of impunity for genocide, crimes against humanity and war crimes.