

## **United Nations peacekeeping**

### *Initial proceedings*

#### **Decision of 12 July 2002 (4572<sup>nd</sup> meeting): resolution 1422 (2002)**

At its 4572<sup>nd</sup> meeting, on 12 July 2002,<sup>1</sup> the Council adopted as its agenda the item “United Nations peacekeeping”. The President (United Kingdom) drew attention to a draft resolution,<sup>2</sup> which was put to the vote and adopted unanimously as resolution 1422 (2002). In summary, by this resolution, the Council:

Requested, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a UN established or authorized operation, shall for a 12-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decided otherwise;

Expressed intention to renew the request under same conditions each 1 July for further 12 months for as long as necessary; decided that Member States shall take no action inconsistent with the above request and with their international obligations.

#### **Decision of 12 June 2003 (4772<sup>nd</sup> meeting): resolution 1487 (2003)**

By a letter dated 6 June 2003 addressed to the President of the Security Council, the representatives of Canada, Jordan, Liechtenstein, New Zealand and Switzerland requested the Council to convene a public meeting and to invite interested States to speak in the Council’s discussions on the proposed renewal of the provisions of Security Council resolution 1422 (2003). They noted that the proposed renewal of the provisions had implications of direct importance to Member States, including those that were parties to the Rome Statute of the International Criminal Court, relating to international peacekeeping, fundamental questions of international law and the role of the Council in promoting law and accountability.<sup>3</sup>

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<sup>1</sup> This meeting was also covered in a case study in chapter XII, part IV - Consideration of the miscellaneous provisions of the Charter, case 21.

<sup>2</sup> S/2002/747.

<sup>3</sup> S/2003/620.

At its 4772<sup>nd</sup> meeting,<sup>4</sup> held on 12 June 2003, the Council included the above letter in its agenda. The President (Russian Federation) also drew attention to a letter dated 10 June 2003 from the representative of Greece addressed to the President of the Security Council,<sup>5</sup> as well as to a draft resolution.<sup>6</sup> During the meeting, statements were made by most of members of the Council,<sup>7</sup> as well as by the representatives of Argentina, Brazil, Canada, the Democratic Republic of the Congo, Greece (on behalf of the European Union),<sup>8</sup> the Islamic Republic of Iran, Jordan, Liechtenstein, Malawi, Netherlands, New Zealand, Nigeria, Peru,<sup>9</sup> South Africa, Switzerland, Trinidad and Tobago, Uruguay and Pakistan.<sup>10</sup>

The Secretary-General noted that the Council was meeting to renew its request that the ICC not commence or proceed if a case arose involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a UN established or authorized operation. Noting that the Council was relying on article 16 of the Rome Statute,<sup>11</sup> he emphasized that the article was not intended to cover such a sweeping request, but only a more specific request relating to a particular situation. In addition, he did not believe the request was necessary for the following reasons. First, in the history of the United Nations, no peacekeeper or any other mission personnel had been anywhere near committing the kinds of crimes that fell under the jurisdiction of the International Criminal Court (ICC). Second, people serving United

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<sup>4</sup> Aspects of the discussion in this meeting have been covered in case studies in other chapter. For more details see, chapter XII, part II, section A - Article 24, case 17 and chapter XI, part I, section B - Discussion relating to Article 39, case 15.

<sup>5</sup> The letter stated that Greece, in its capacity as President of the European Union, strongly supported the request made to convene a meeting by the Governments of Canada, Jordan, Liechtenstein, New Zealand and Switzerland (S/2003/639).

<sup>6</sup> S/2003/630.

<sup>7</sup> The representatives of Chile and Mexico did not make statements.

<sup>8</sup> Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, Slovenia, Bulgaria, Romania, Iceland and Norway also aligned themselves with this statement.

<sup>9</sup> The representative of Peru spoke on behalf of the States member of the Rio Group, namely, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, Venezuela and Peru.

<sup>10</sup> The representative of Cuba was also invited to participate but did not make a statement.

<sup>11</sup> The text of Article 16 of the Rome Statute is as follows: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

Nations peacekeeping missions remained under the jurisdiction of their home states and under article 17 of the Rome Statute, no case was admissible in the ICC if it had already been or was being investigated or prosecuted by a State that had jurisdiction over it. The Secretary-General underlined his belief that in the case of a person serving in a United Nations-authorized mission being accused of the kind of crime under ICC jurisdiction, that the home state would be most anxious to investigate that accusation, which would make the case inadmissible to the ICC. While he could accept that the Council felt that it was necessary to renew the request for a further 12 months, as the Court was still in its infancy and no case had yet been brought before it, he expressed the hope that this would not become an annual routine. He expressed the fear that the world would interpret it as meaning that the Council wished to claim absolute and permanent immunity for people serving in its operations. If that were to happen, it would undermine not only the authority of the ICC but also the authority of the Council and the legitimacy of United Nations peacekeeping.<sup>12</sup>

Many speakers expressed the belief that resolutions 1422 (2002) and 1487 (2003) were unnecessary, that they diminished the importance of accountability and justice for victims and that they undermined fundamental principles of international law. Several speakers stressed that Council action was not needed to address the risk of frivolous prosecutions because safeguards to address that risk were already included within the ICC Statute. They also expressed doubt about the compatibility of the resolutions with the Council's mandate and were troubled that action would be taken in the absence of any apparent threat to international peace and security, which was the fundamental precondition for action under Chapter VII of the Charter. They also stressed that it was a misapplication of Article 16 of the Rome Statute, which was never intended as a tool to grant a priori immunity to a whole category of persons.<sup>13</sup>

The delegate of the Islamic Republic of Iran also expressed concern that, given the existing safeguards in the ICC Statute, as well as the very responsible statement that had been made by various officers of the Court, the insistence on extending the provision

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<sup>12</sup> S/PV.4272, pp. 2-3.

<sup>13</sup> Ibid., pp. 3-5 (Canada); pp. 5-6 (New Zealand); pp. 6-7 (Jordan); p.7 (Switzerland); pp. 7-8 (Lichtenstein); pp. 8-9 (Greece); p. 10 (Islamic Republic of Iran); pp. 10-11 (Peru); pp. 11- 12 (Malawi); p. 13 (Brazil); pp. 14-15 (Trinidad and Tobago); pp. 15-16 (Argentina); pp. 16-17 (South Africa); pp. 17-18 (Nigeria); p. 20 (Netherlands); pp. 24-25 (Germany); and pp. 25-26 (Syrian Arab Republic).

of the resolution indefinitely would amount to seeking impunity for more serious crimes, including genocide, crimes against humanity and war crimes. He also recalled that resolution 1422 (2002) was only adopted after the extension of the United Nations mission in Bosnia and Herzegovina along with other missions had been threatened with a veto.<sup>14</sup>

The representative of Uruguay stated that resolution 1422 (2002) introduced a curious kind of discrimination among perpetrators of the most hateful crimes: on one hand there were criminals who may be judged or sentenced for their crimes, and on the other hand those who may act under the protection of immunity.<sup>15</sup>

Several speakers noted that the maintenance of international peace and security and the repression of serious crimes could not be viewed as conflicting objectives and that the rules of the ICC also reflected the determination to establish a framework that made the Court's role compatible with the needs of the collective security.<sup>16</sup>

The representative of France expressed hope that the new one-year extension would allow States that still had a bias against the ICC to overcome that bias.<sup>17</sup>

The representatives of Bulgaria, Guinea, China and the Russian Federation expressed strong support for the ICC, but also acknowledged the legitimate concerns of the various countries involved in peacekeeping operations. They stressed that Council members must act in the spirit of compromise and understanding and actively work to find a solution that was acceptable to all.<sup>18</sup>

The representatives of the United Kingdom, Bulgaria, Spain and Angola were of the view that resolutions 1422 (2002) and 1487 (2003) were consistent with article 16 of the ICC Statute; that the renewal of the provision in paragraph 1 of resolution 1422 (2002) did not affect the integrity of the Statute; did not undermine the Court and that the resolution did not create a precedent for interference by the Security Council in the

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<sup>14</sup> Ibid., p. 10.

<sup>15</sup> Ibid., p. 11.

<sup>16</sup> Ibid., p. 7 (Switzerland), p. 13 (Brazil); p. 14 (Peru); p. 16 (Argentina); and p. 19 (Democratic Republic of the Congo); and p. 22 (Cameroon).

<sup>17</sup> S/PV.4772, p. 24.

<sup>18</sup> Ibid., p. 26 (Bulgaria), p. 27 (Guinea), p. 27 (China) and p. 28 (Russian Federation).

sovereign right and capacity of Member States to prosecute repugnant crimes against humanity that were included in the Rome Statute.<sup>19</sup>

The representative of the United States underlined that the primary concern was for American personnel that might find themselves subject to ICC jurisdiction. He emphasized that the resolution was consistent with a fundamental principle of international law: the need for a State to consent if it is to be bound. He continued that that principle was respected by exempting from ICC jurisdiction personnel and forces of States that were not parties to the Rome Statute. He stressed that the resolution did not in any way affect parties to the Court, or the Rome Statute itself, nor did it elevate an entire category of people above the law, as the ICC was not the law. He also suggested that even one instance of the ICC attempting to exercise jurisdiction over those involved in a United Nations operation would have a seriously damaging impact upon future United Nations operations. He argued that the ICC was vulnerable at every stage of any proceeding to politicization; that the Rome Statute provided no adequate check; and that having every confidence in the ICC's correct behavior was not a safeguard.<sup>20</sup>

The representative of Pakistan regretted that the Rome Statute did not provide for reservations by countries, which might have ensured wider adherence to the Statute. He noted that there were several provisions of the ICC Statute which his Government had concerns on, including the mechanism for initiation of proceedings; provisional arrest; provisions dealing with armed conflicts not of an international character; and the question of immunity of heads of State or Government. As the largest contributor to United Nations peacekeeping, he underlined that peacekeepers should not be exposed to any arbitrary or unilateral action by any national or international body. As that was the primary concern that had inspired the present draft resolution, no matter how unlikely the circumstances, he expressed his support for the draft resolution. He believed that annual renewal might be avoided in the future through separate arrangements.<sup>21</sup>

At the meeting, the draft resolution was put to the vote; it received 12 votes to none, with 3 abstentions (France, Germany, and Syrian Arab Republic), and was adopted as resolution 1487 (2003). In summary, by this resolution, the Council:

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<sup>19</sup> Ibid., p. 23 (United Kingdom), p. 25 (Spain), p. 26 (Bulgaria), and p. 27 (Angola).

<sup>20</sup> Ibid., p. 23.

<sup>21</sup> Ibid., p. 21.

Requested that the ICC shall for a 12-month period starting 1 July 2003 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decided otherwise;

Decided that Member States shall take no action inconsistent with paragraph 1 and with their international obligations; decided to remain seized of the matter.