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**Focus**

- [International Criminal Court](#)
- [Resolution 1422](#)

**Ambassador John D. Negroponte**

[United States Permanent Representative to the United Nations:](#)

“The United States has therefore sought a resolution that would allow those in the Court to meet their obligations to it, while it protected those of us who reject the jurisdiction of that institution. At risk were the peacekeeping activities of the United Nations, in the first instance in Bosnia but ultimately throughout the globe. The United States is therefore very pleased that we have successfully reached agreement. It offers us a degree of protection for the coming year.”

## **Security Council Resolution 1422: a reward for opponents of the ICC Statute?**

Following several weeks of wrangling in the United Nations concerning the scope of jurisdiction of the [International Criminal Court](#) (ICC), the Security Council unanimously adopted on July 13, 2002 [Resolution 1422](#) which prevents the investigation and/or prosecution of members of UN authorised missions if they are nationals of a country that has not ratified the Rome Treaty.

Although the impetus for this resolution stems from the desire of the nationals of the United States to be immune from ICC prosecution, the resolution is more wide-encompassing in so far as it declares that the ICC cannot start any proceedings “involving current or former officials or personnel from a *contributing State not a Party to the Rome Statute*”. This resolution removes an entire group of individuals, i.e. personnel from States that are not parties to the Rome Treaty, from the jurisdiction of the ICC. What is at stake is the immunity not only of soldiers but also of officials involved in the decision-making process. Such immunity can only be removed by decision of the Security Council, which is highly unlikely given the composition of the Security Council.

The resolution not only applies to peacekeeping operations as seemed to be the initial point of discussion of the United States. The wording of the resolution implies that personnel engaged in *any operation established or authorised by the United Nations* would be immune from investigation and/or prosecution provided his/her country of nationality has not ratified the Rome Statute. It means that an operation such as that launched in 1991 in Kuwait does also fall within the purview of this resolution. Similarly, operations approved by the United Nations such as the mission in Afghanistan are also covered by Resolution 1422. This issue is all the more important as, in its “war against terrorism” the United States has, on numerous occasions, expressed its will to engage in armed hostilities with Iraq.

On the other hand, *such individuals are not covered if the operation is not established or authorised by the Security Council*. If a State or a group of States wish to embark on a mission without express authorisation of the Security Council, then the participants would not be exempt from ICC jurisdiction. For example, the operation launched by NATO in 1999 against the Federal Republic of Yugoslavia was not authorised by the Security Council. Personnel and commanders would be thereby placed in legal jeopardy, for they are not deployed in the framework of an operation authorised by the Security Council.

Initially the United States sought immunity from prosecution of personnel involved in *peacekeeping operations* and thereby linked the renewal of the mandate of the peacekeeping operations in Bosnia-Herzegovina to the adoption of Resolution 1422. Yet, the way the resolution is phrased, and more particularly paragraph 7 of the introductory remarks, gives the impression that no State would be interested in taking part in peacekeeping operations due to existence of the ICC. With this regard, it is possible to foresee future missions preponderously composed of forces from a globally-dominant state that is able to ensure the adoption of resolutions granting immunity to its forces.

It hence appears that Resolution 1422 rewards opponents to the ICC Statute while it punishes those who have put so much efforts into drafting and implementing it.

### **Responsibility**

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