

**EFFECTS OF THE LINK BETWEEN THE INTERNATIONAL CRIMINAL COURT
AND THE SECURITY COUNCIL OF THE UNITED NATIONS,
ACCORDING TO ARTICLE 16 OF THE STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

(presented by Dr. Sergio González Gálvez)

The adoption of resolution 1422 (2002) by the United Nations Security Council on 12 July concerning the non-application of the *Statute of the International Criminal Court* for the next 12 months renewable to military personnel taking part in a United Nations peace-maintaining operation, when these troops are sent by countries that have not ratified the above-mentioned international instrument, has led to the following observations which I now submit to the appreciation of the Inter-American Juridical Committee, which has a theme on its agenda linked to this very matter.

It is regrettable that this resolution of the Security Council has come to confirm in full the author's fears, as President of the Mexican Delegation to the Rome Conference that drew up the *Statute of the International Criminal Court*, with regard to the political restrictions that it places on the activity of the Court.

At the Rome Conference we argued that the inclusion of Article 16 in the *Statute of the International Criminal Court* created an undesirable situation of the Court being dependent on the Security Council. It will be recalled that Article 16 of the *Statute* establishes precisely the following: "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."

During the debate at the Rome Conference, we pointed out with regard to Article 16 that we shared the point of view of the American Association of Jurists, which upholds that a treaty by which it is intended to set up an international tribunal that includes clauses that in some way or another subordinate the Court's jurisdictional activity to decisions of another international body or organization, either for the purpose of promoting or suspending such activity, delaying or paralyzing it, could be absolutely null, in accordance with Article 53 of the Vienna Convention on the Law of Treaties, which stipulates this sanction for any Convention that stands in opposition to an imperative norm of general international *jus cogens* law.

As the American Association of Jurists claims, clauses that establish this subordination are contrary to the principle of independence of the Judiciary and the right of all persons to appeal to an independent court to settle the question, a concept that in itself constitutes an imperative norm, based on the provisions of articles 10 of the *Universal Declaration of Human Rights*, 14 of the *International Pact of Civil and Political Rights* and 1 and 2 of the *Basic Principles Relating to the Independence of the Judiciary*, approved by the General Assembly of the United Nations in its resolutions 40/32 and 40/46 of 1985.

The above-mentioned resolution of the Security Council could also mean, as we have already stated, that no citizen of the Permanent Members of the Security Council will ever be prosecuted by that Court, which leads me to wonder: is this the kind of international court we want to belong to?

We have seen in the mass media some articles on the advisability of all countries ratifying the *Statute* of this court at once, yet, with very few exceptions, the commentators have concerned themselves with analyzing the flaws of the *Statute* and the effects caused by becoming Parties of

the above-mentioned Statute; the dilemma here is: should we go ahead and ratify, explaining at the very start the changes that we shall demand be made to the first revising meeting of the *Statute* to take place 7 years after it came into effect, in order to try to repair the serious lacunas of the *Statute*⁵, or should we wait to analyze how the Tribunal works in practice and then decide what to do?

I leave these comments for consideration when the theme of the International Criminal Court is examined at the next dialogue with the Legal Advisors of the Member States of the Organization of American States.

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Resolution 1422 (2002)
(Adopted by the Security Council at its 4572nd meeting,
on 12 July 2002)

The Security Council,

Taking note of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute);

Emphasizing the importance to international peace and security of United Nations operations;

Noting that not all States are parties to the Rome Statute;

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity;

Noting that States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes;

Determining that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security;

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council;

Acting under Chapter VII of the Charter of the United Nations,

1. *Requests*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, 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 United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise.

2. *Expresses* the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary.

3. *Decides* that Member States shall take no action inconsistent with paragraph 1 and with their international obligations.

⁵ Our objections include: the need to typify weapons of massive destruction as war crimes; the dangers raised by inadequate definition of non-international armed conflicts; recognition of the General Assembly of the United Nations as the forum for maintaining international peace and security; limiting the exercise of the powers of a country that ratifies in order not to observe for 7 years the obligations set by the chapter on "war crimes" (art. 124); and provisions considered to be incompatible with Mexican legislation and that should be analyzed and adjusted.

4. *Decides* to remain seized of the matter.

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