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Fédération Internationale des Ligues des Droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
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الفدرالية الدولية لحقوق الانسان

INTERNATIONAL CRIMINAL COURT (ICC) NO TO AMERICAN EXCEPTIONALISM

**Under Cover of the War Against Terrorism, a Destructive
US Offensive Against the ICC**

December 2002

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No comment !

(5) Multinational peacekeeping forces operating in a country that has joined the treaty can be exposed to the Court's jurisdiction even if the country of the individual peacekeeper has not joined the treaty. Thus, the treaty purports to establish an arrangement whereby United States armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty. Not only is this contrary to the most fundamental principles of treaty law, it could inhibit the ability of the United States to use its military to meet alliance obligations and participate in multinational operations, including humanitarian interventions to save civilian lives. Other contributors to peacekeeping operations will be similarly exposed.

(8) Members of the Armed Forces of the United States should be free from the risk of prosecution by the International Criminal Court, especially when they are stationed or deployed around the world to protect the vital national interests of the United States. The United States Government has an obligation to protect the members of its Armed Forces, to the maximum extent possible, against criminal prosecutions carried out by the International Criminal Court.

(9) In addition to exposing members of the Armed Forces of the United States to the risk of international criminal prosecution, the Rome Statute creates a risk that the President and other senior elected and appointed officials of the United States Government may be prosecuted by the International Criminal Court. Particularly if the Preparatory Commission agrees on a definition of the Crime of Aggression over United States objections, senior United States officials may be at risk of criminal prosecution for national security decisions involving such matters as responding to acts of terrorism, preventing the proliferation of weapons of mass destruction, and deterring aggression. No less than members of the Armed Forces of the United States, senior officials of the United States Government should be free from the risk of prosecution by the International Criminal Court, especially with respect to official actions taken by them to protect the national interests of the United States.

Extract of Section 2002 of the American Servicemembers' Protection Act H.R. 4775
August 2nd, 2002

Since July 17th 1998, the date on which the United States voted against the Rome Statute creating the first permanent International Criminal Court (ICC), the US managed to build up a complex legal and political arsenal aimed at guaranteeing that the ICC will never hand over, prosecute or judge their nationals, and also any person, whatever his nationality, who works under the American command.

I. The Bush Administration's allegation that the ICC will result in specious and politically motivated complaints directed against its nationals is unfounded

1. The ICC does not provide for retroactive jurisdiction; ICC jurisdiction only applies to crimes committed after its entry into force, on 1 July 2002?

The American ICC demarches is an orchestrated attempt to blanket American military and civilian leaders involved in counter terrorism and other military operations abroad in "carte blanche" immunity by guaranteeing, before any such undertaking, that any "overflowing" or "collateral damage" will be immune from prosecution by any authority except the US itself. But, as explained below, the ICC statute already provides the US with very similar protections that it now seeks.

2. The ICC will be governed by the complementary principle which provides each State with primacy of national jurisdiction to prosecute and judge crimes within the jurisdiction of the Court: genocide, crimes against humanity and war crimes US anxiety is, therefore, unfounded.

The principle of complementary with national jurisdictions recognizes the primary right of each state to prosecute its own citizens before its own courts. The ICC is only competent to assert jurisdiction when States refuse or are unable to try criminals, such as when the judiciary is failing. Moreover, under Article 17 of the ICC statute regarding admissibility, a case is considered inadmissible by the Court when "*the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution*", or if "*the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute*".

Because of these fundamental principles it is not necessary for a State that wants to exclude its nationals from the jurisdiction of the Court to enter into Article 98 Bilateral "Impunity" Agreements. Rather, any time that one of its nationals is the subject of such a complaint, he or she may be prosecuted before his or her national judicial system. Upon a finding by the ICC that an investigation or a prosecution is being carried out, that after an investigation, a decision not to prosecute has been taken or that a judgment has already been delivered, the international Court will declare, by applying the complementary principle, that the case is not admissible.

Moreover, the ICC Statute provides for effective and efficient guarantees against the filing of improper or politically motivated complaints. Notably it provides:

- the Pre-Trial Chamber with the power and the duty to control the acts of the

Prosecutor as early as the investigation stage of a proceeding. The Pre-Trial Chamber must give its preliminary authorization for any investigation the Prosecutor may initiate, it controls the collection of evidence by the Prosecutor, and it controls the respect of the guarantees provided for by the Statute to arrested persons;

- for the protection of information impacting on the national security of States;
- general measures to protect witnesses aiming notably at ensuring the confidentiality of some witness statements and which can apply to specific witnesses who are the personnel of peace keeping operations missions;
- judicial guarantees benefiting the suspected persons and the accused at all stages of the proceedings;
- the proceedings provided for the analysis of the admissibility of the complaints by the Court.

These safeguards, considered in the specific context of the US demarches and gesticulations regarding the ICC expose the disingenuous objections to the ICC that it continues to put forth. With these tactics in mind, how can we but doubt the American will of trying American nationals before their own tribunals?

3. The Rome Statute aims at applying to all in an equal manner, without any distinction based on official capacity?

Article 27 of the Statute provides that no immunity will be given, even for States or government leaders. Consequently, any exemption to the jurisdiction of the Court appears to be in complete contradiction with the text and spirit of the Statute.

4. Finally, the competence of a State to prosecute a person, whatever his nationality, for a crime committed on its territory, is a traditional competence which is recognized by all the legal systems of the world

The International Criminal Court has a jurisdiction limited to the crimes committed by a national or on the territory of a State Party to the ICC. Thus, as even the US government has conceded, an American citizen who commits a crime on the territory of a State Party is under the jurisdiction of the ICC, with or without the acceptance of the Rome Statute by the United States. According to the complementary principle, the State Party at stake has also jurisdiction to try American citizens in its domestic tribunals explained the Swiss delegation during its statement on October 14th, 2002, before the General Assembly of the United Nations, “*The Court does not undermine the rights of States non parties. Therefore it is wrong to reproach for an extraterritorial power. When it will judge the author, whatever his nationality, of a crime committed on the territory of a State Party, it will have an ordinary, classical territorial jurisdiction. All the contemporary national criminal codes establish this kind of competence. We are therefore underlining, once more, that a proliferation of immunities and exemption clauses will undermine the good functioning of the Court..*”

II – A complex juridical machinery constructed by the US to effect impunity for its nationals

If one analyses it globally, the arsenal that was set up cannot be separated from the means the US has implemented in order to fight terrorism.

These actions are undertaken simultaneously at the domestic political level, international diplomatic level and bilateral negotiations level:

- The ASPA, initiated under the Clinton administration by Conservatives in the American Senate, draws the frame of this objective in claiming the US refusal to cooperate with the ICC. The law criticizes the legal grounds of the Court, is critical of international law and accounts for American unilateralism on the international scene in trying to impose its ICC -objections to other states by using means of pressure deriving from US economic, political and military superiority (A).
- On the brim of their position at the domestic political level, the United States continues to undermine the jurisdiction of the Court in the context of international diplomacy. Having failed in its attempt to negotiate "acceptable " international criminal justice in Rome and then during the sessions of the Preparatory Commission for the ICC, the United States decided to use the UN Security Council in order to ensure a political control over the jurisdiction of the Court and over the practice of the jurisdiction. Despite the strong mobilization of States, NGOs and of the Secretary General of the United Nations against American propositions, Resolution 1422 was unanimously approved. Therefore, it grants total and unlimited immunity before the ICC to officials or personnel (or former officials or personnel) of a contributing State not party to the Rome Statute over acts or omissions relating to a United Nations *established or authorized operation* (B).
- American pressure is also placed on states through US' maneuvering through SOFAs, extradition conventions and judiciary cooperation conventions in order to prevent any surrender of an American national to the Court (C)

A - The American Service Members' Protection Act (ASPA): the US doctrine against the ICC

The American Service Members' Protection Act (ASPA), adopted in the context of the budget legislation in response to the terrorist attacks on the United States, represents the US public doctrine on the ICC.

It recalls in its preamble the reasons for their opposition to the Court and wrongly insists on the fact that "*an international treaty cannot create obligations towards a State Non Party*" and that, consequently, "*the United States refuses any jurisdiction of the Court over their nationals.*"

This law, presented the first time on May 8th and 9th 2001 respectively before the House of Representatives and the Senate by Republicans M. Delay and M. Helms, was signed by President Bush on August 2nd 2002:

1.Prohibits American cooperation with the ICC:

This general prohibition applies to American tribunals, local governments and federal government. The law prohibits transfers to the Court of any person -an American citizen or a foreigner permanently living in the United States present on US territory; it prohibits the ICC from conducting any inquiry on US territory; there is also a prohibition to use US's funds in order to help the inquiry, the arrest, the detention, the extradition, or the prosecution of an American citizen or of a foreigner permanently living in the United States by the Court; a prohibition to process on the territory of the United States to any investigative measure linked to a primary demand, an inquiry, a prosecution or any other procedure by the Court.

2. Restricts American participation in certain UN peace keeping operations (Section 2005):

It is established that the President will use the American voice and vote at the Security Council in order to guarantee that all resolutions taken within chapters VI and VII of the United Nations Charter respectively authorizing the implementation of peace-keeping operations and of peace-making operations provide for a permanent exemption for all American members of the armed forces from criminal prosecution before the ICC for acts committed in link with the operation. The participation of American armed forces will be authorized only if it takes place on the territory of a State Non Party to the Statute. The President of the United States may authorize the participation of American troops to such operations if one of the following three conditions is met: the Security Council guarantees the immunity of US armed forces; the ICC cannot exercise its jurisdiction on the territory of military operations or, if there is an "Article 98" type agreement between the United States and the country in which the military operations take place or if national interest justifies such an operation.

3.Prevents the transfer of documents of national security concern to the Court (Section 2006)

4.Prohibits any US military assistance with most of the States having ratified the Rome Statute (Section 2007):

The general principle of this article provides that, one year after the entry into force of the Court, no US military assistance may be given to a State Party to the ICC. However, the law provides that certain states may be exempted, where an American national interest is at stake. Hence, the non-assistance clause cannot be applied to NATO-state members, to essential allies although not NATO members (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, New Zealand) as well as Taiwan. In the same way, the President may revise the prohibition if the state has passed an agreement with the United States in accordance with article 98 of the Statute, which would explicitly prohibit the surrender of an American to the ICC.

5.Submission of reports to the Congress (Section 2009)

The US President must report to the Congress detailing each military alliance which the United States is part of and specifying to what extent the members of American armed forces could, in the context of a military operation supervised by this alliance, be placed under the operational control of foreign officers submitted to ICC jurisdiction as nationals of a State Party to the Statute and evaluate the risk for American armed forces.

6.ASPA or “Hague Invasion Act” (Section 2008)

Authorizes the President to make use of "all means necessary and appropriate" to free an American citizen detained by the ICC- hence the dubbing the "Hague Invasion Act".

The ASPA also contains a series of mechanisms, which allow the American President to remove those prohibitions.

During the summer of 2001 and until the events of September 11, the Congressmen who drafted the law decided to link the Senate's authorization on the payment of back dues to the UN to the anti-ICC law.

On September 13th, two days after the terrorist attack on New York and Washington, Representative Tom DeLay eventually decided to stop opposing US payment of back dues and the Representatives accepted the payment without linking it to the endorsement of the Helms-DeLay act.

On September 10, 2001, the anti-ICC law was amended to include presidential prerogatives that allow the lifting of some of the prohibitions of ASPA.

On September 25, 2001, a letter by the Department of State informed Jesse Helms of government support to the amended law.

On November 28, 2001, Republican Senator Henry Hyde slipped in a last minute amendment to the Financial Year 2002 Department of Defense Appropriations Act that would prohibit any cooperation with the ICC.

After numerous amendments, the final version of the law gives the President much room to maneuver for the removal of the prohibitions provided in the ASPA, and insists on the fact that no part of the bill may interfere with the President's constitutional authority to make foreign policy.

Eventually, a final amendment (the "Dodd amendment", Section 2015) allows the US to cooperate with international efforts, including with the ICC, in order to bring to justice foreign nationals accused of genocide, war crimes or crimes against humanity such as Saddam Hussein, Slobodan Milosevic, Bin Laden and other members of Al Queda or of the Islamist Jihad. Between immunity for its nationals and fight against terrorism, "national interest" allows for all contradictions.

On August 2, 2002, George W. Bush signed the ASPA. The American doctrine on the ICC is therefore inscribed in its domestic law. But the United States must also make sure that none of their nationals, civilian, diplomat or military located outside American territory may be "annoyed" by the Court.

This is why both the negotiation of a resolution, within the Security Council in order to lift ICC jurisdiction over them and the conclusion of bilateral agreements to prevent any surrender to the Court of American nationals complement the ASPA at the international level.

B - The combat conducted by the United States against the ICC within the Security Council: Resolution 1422

1. Resolution 1422 (2002) adopted by the Security Council at its 4572nd meeting, on July 12th 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 Parties to the Rome Statute will continue to fulfill their responsibilities in their national jurisdiction 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;

4. Decides to remain seized of the matter. "

As stated above, the American ASPA provides that :

"Effective beginning on the date on which the Rome Statute enters into force pursuant to Article 126 of the Rome Statute, the President should use the voice and vote of the United States in the United Nations Security Council to ensure that each resolution of the Security Council authorizing any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations permanently exempts, at a minimum, members of the Armed Forces of the United States participating in such operation from criminal prosecution or other assertion of jurisdiction by the International Criminal Court for actions undertaken by such personnel in connection with the operation. "

The Statute was ratified by more than 60 States on April 11th and therefore entered into force on July 1st, 2002. Without surprise, since the middle of June 2002, Washington attempted to introduce language at the UN Security Council aiming at excluding from the jurisdiction of

the ICC any national of a State non-party to the Rome Statute involved in UN peace-keeping operations and, foremost among them, American nationals.

In order to face the opaqueness of Security Council procedures, Canada made three requests for an open session. After two refusals, this session eventually took place on July 10, 2002.

Although more than 130 States had spoken out, during a plenary session, against the American proposition and against the possibility for the Security Council to reopen negotiations on the Rome Statute, the States members of the Security Council voted, on July 12, a resolution which was supposed to be a compromise.

Although Resolution 1422 was qualified as a "historical compromise" or a "victory" by some States, this resolution actually leads to common acceptance of justice "à la carte".

The resolution also grants absolute immunity for nationals of States non Party to the Statute for a one year period, starting on July 1st, 2002 in the context of peace-keeping operations. Moreover, this decision may be renewed every year on July 1st, the anniversary date of the entry into force of the ICC.

Hence, Resolution 1422 alters the jurisdiction of the Court and violates Article 16 of the Rome Statute, which enables the Security Council to suspend an inquiry or prosecution, but only on a case by case basis and in a limited way.

Indeed, Article 16 of the Rome Statute provides that:

“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.”

According to that article, the Court can only be temporary “untriggered” if none of the five permanent members of the Security Council vetoes the demand.

Therefore, Resolution 1422 violated Article 16 as it systematized a nullification of ICC jurisdiction in any case relating to current officials or personnel, or to former officials or personnel of a contributing State non Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation.

This formalized impunity concerns both the citizens of States non Parties and as well as of States Parties to the Rome Statute. It suffices therefore that the contributing State to a UN operation is a State non Party whether or not the entirety of its former and current personnel is immune from the jurisdiction of the ICC.

Therefore, for example, if a British citizen (State Party to the ICC) is sent by the United States (State non Party) in the context of a UN peacekeeping operation in Democratic Republic of Congo (State Party) and commits a crime, which falls in the scope of the jurisdiction of the ICC, this person will automatically benefit from the immunity.

Finally, no mechanism in the Resolution provides that these persons will be judged in the national tribunals of the contributing State, ie: the United States.

Also, this resolution dangerously opens the way to other modifications of international conventions through a political decision of the Security Council.

Zero US Exposure to ICC

A chart has been produced, based on current UN data, showing that US peacekeepers have no exposure to the jurisdiction of the International Criminal Court under existing arrangements. US peacekeepers would only be exposed to possible investigation by the ICC if:

1. The US has contributed personnel to the peacekeeping mission;
2. US personnel in a UN mission were in a country which has ratified the ICC; and
3. No other court, such as the International Tribunal for the former Yugoslavia has primacy.

In every UN peacekeeping mission, the US either has no personnel in the mission, the host state is not a party to the ICC, or the ICTY has primacy. Thus, total US exposure to the ICC is zero in every case. Furthermore, there are many safeguards built-in to the Rome Statute, including the principle of complementarity, which ensures that the US will always have primary jurisdiction over its nationals. Given this analysis, it appears that the intention of the United States is not to protect its own peacekeepers, but to undermine the Court.

See Annex A2: Chart illustrating zero exposure of US peacekeepers to ICC's jurisdiction currently (data source : UN)

[Original data is available at <http://www.un.org/Depts/dpko/dpko/contributors/30062002.pdf>]

2. Reactions from the institutions about Resolution 1422

Resolution 1422 of the Security Council has been commented and condemned by several institutions at both the regional and international levels.

In reaction to Resolution 1422, the Sub-Commission on the Promotion and Protection of Human Rights of the Economic and Social Council of the UN adopted Resolution 2002/4 on 13 August 2002, in which it declared that it deeply deplored:

the immunity automatically allowed to nationals of States parties or not parties to the Rome Statute who participate in operations decided and authorized by the United Nations Security Council for the maintenance or restoration of international peace and security, under the terms of resolution 1422 (2002) of the United Nations Security Council of 12 July 2002.”

The European Parliament also condemned Resolution 1422 in a resolution dated 26 September 2002 (Resolution (2002)0449) which provides that:

“The European Parliament, [...]

C. Regretting UN Security Council Resolution 1422 adopted on 12 July 2002 on operations established or authorised by the United Nations, whereby the ICC shall not commence or proceed with investigation or prosecution of any case of acts or omissions by current or former officials or personnel from a contributing State not a party to the Rome Statute for a twelve-month period starting on 1 July 2002, with the possibility of renewal each 1 July for a further twelve-month period [...]

1. Underlines that no immunity agreement should ever afford the possibility of impunity for any individual accused of war crimes, crimes against humanity or genocide...”

Despite these and similar reactions from the International Community the United States went further still in its destructive enterprise in scheming around Article 98 of the Rome Statute in order to prevent any handing over of an American national to the ICC.

C -The United States scheme around Article 98 of the Rome Statute

1. The legal mechanism of Article 98

Article 98 of the Rome Statute provides as follows:

"1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender."

Article 98 of the Rome Statute governs conflicts of obligations with regard to the cooperation regime of the Statute. Clashes may arise, for example, where a State party to the Statute is bound by a request of the Court to arrest a person, but cannot comply with its obligation to cooperate without violating another obligation under international law, for example, to respect the immunity of this person. Once it has been established that a norm exists under international law making it illegal for a state to comply with a request from the Court, the Court, in general, may not issue the request.

However, if a State waives its immunities, a request from the Court for cooperation would no longer imply that the requested state would be acting illegally to comply with the request. Indeed, Article 98 (1) provides that the Court has the authority to enter into negotiations with third states to obtain a waiver of their rights. Whether the compliance of a state with a request for cooperation amounts to a violation of another norm of international law is not to be decided by the requested state but by the Court. However, in accordance with Rule 195 (1) of the Draft Rules of Procedure and Evidence, a state may inform the Court that it sees a difficulty with respect to Article 98 and submit necessary information. Any third states involved may also submit information. Thus, the Court will have an appropriate factual basis on which to rule.

Where foreign forces are present with the consent of the receiving state, SOFAs usually regulate their status, the most famous example being that of NATO SOFAs. NATO-type SOFAs do not contain immunities in the strict sense, but establish a concurrent jurisdiction, which gives the sending or the receiving state a primary right to exercise its jurisdiction over certain crimes. In other words, when a State Party could have the obligation to surrender an American national to the Court, the latter will be transferred, on the grounds of these agreements, to American jurisdictions. These agreements therefore alter the jurisdiction of the Court.

Article 98 of the Rome Statute does not prohibit the ICC from requiring the cooperation or the transfer in rare and limited circumstances.

2. The US scheme around Article 98

Since the end of July 2002, the United States has approached nearly all the countries of the world in its effort to enter into bilateral agreements with these states to secure guarantees that American nationals will not be transferred to the ICC, in consideration of the possibility that they may be the target of politically motivated trials claimed by "hostile" countries. There is said to be about 180 on going processes.

In this context, American Secretary of State Colin Powell personally wrote to European governments on 16 August 2002 to ask them to sign such agreements at "the earliest possible" time without waiting for the European Union to finalize its official position.

Washington also complained that the European Commission requested that countries which are candidates to the membership of the EU not sign any impunity agreements before States Members finalized their position.

On November 25th, 2002, at least fifteen States have signed agreements with the United States under Article 98. These include:

- Uzbekistan,
- the Dominican Republic,
- Mauritania,
- East Timor,
- Israel,
- the Marshall Islands,
- Micronesia,
- Palau,
- Romania,
- Tadjikistan,
- Honduras,
- Gambia,
- Afghanistan,
- El Salvador
- Sri Lanka.

It is extremely difficult to control these agreements because they are generally concluded silently.

i. Excerpts from the bilateral agreements

"2. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party,

a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the United States extradites, surrenders or otherwise transfers a person of the other Party to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the expressed consent of the Government of X.

4. When the Government of X extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of X will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the expressed consent of the Government of the United States."

An additional paragraph intended for countries that are not parties or signatories to the Rome Statute, is included in agreements and provides that:

"Each Party agrees, subject to its international legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to the International Criminal Court".

All the governments, academics and NGO legal experts consulted by the International Coalition of NGOs for the ICC (CICC) to date believe that the bilateral agreements being sought, specifically exempting US nationals from the jurisdiction of the Court on the basis of Article 98 (2) of the Rome Statute, are not permitted by that article.

Ratifying such agreements puts countries in violation of international law and States Parties in contravention of their obligations under the Rome Statute.

According to Article 32 of the Vienna Convention on the Law of Treaties, the negotiating history of a treaty is relevant where a particular interpretation of a treaty would "[lead] to a result which is manifestly absurd or unreasonable". Clearly, agreements concluded in line with the US interpretation of article 98 (2) would lead to such an absurd or unreasonable result, by allowing non-State parties to subvert the fundamental principle of the Rome Statute that anyone - regardless of nationality - committing genocide, crimes against humanity, or war crimes on the territory of a State Party is subject to the jurisdiction of the International Criminal Court.

The overall object and purpose of the Rome Statute is to ensure that the ICC brings those responsible for the worse possible crimes to justice in all cases, primarily by States, but as a last resort. Thus, any agreement that precludes the ICC from exercising its complementary function of acting when a State is unable or unwilling to do so, defeats the object and purpose of the Statute.

The Vienna Convention on the Law of Treaties reinforces the conclusion that the US approach to Article 98 is unreasonable, noting that "*a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of their object and purpose*" (Vienna Convention on the Law of Treaties, Article 31 (1), our emphasis).

In addition, the language of Article 98 (2) clearly does not allow the kind of agreements the US is lobbying for around the world. The US-proposed "Article 98" agreements seek to prevent surrender to the ICC rather than seeking the return of persons to the US. In fact, the US-proposed agreements seek to amend the terms of the treaty by effectively deleting the critical concept of the "sending State" from Article 98 (2). Moreover, the US draft agreement purports to deny the original extraditing country its power of consent.

States that may be considering concluding so-called "Article 98" agreements that would effectively exempt only US nationals and not their own nationals, as Romania has done, would still be in breach of their international obligations.

"Article 98" agreements have a detrimental effect both on the global ratification process of the Rome Statute and on international law as a whole. They are in total contradiction with it.

ii. *Reactions from European institutions to the US scheme around Article 98*

Several institutions at the European level have denounced the US scheme around Article 98.

On September 25, 2002, the Parliamentary Assembly of the Council of Europe expressed its concern regarding the US immunity agreements:

9. Moreover, the Assembly is greatly concerned by the efforts of some States to undermine the integrity of the ICC Treaty and especially to conclude bilateral agreements aiming at exempting their officials, military personnel and nationals from the jurisdiction of the Court (“exemption agreements”).

10. The Assembly considers that these “exemption agreements” are not admissible under the international law governing treaties, in particular the Vienna Convention on the Law of Treaties, according to which States must refrain from any action which would not be consistent with the object and the purpose of a treaty.

11. The Assembly recalls that States Parties to the ICC Treaty have the general obligation to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction (Article 86) and that the Treaty applies equally to all persons without any distinction based on official capacity (Article 27). It considers that the “exemption agreements” are not consistent with these provisions.”

By condemning the immunity agreements concluded with the United States, the Assembly called members and observer States of the Council of Europe not to ratify bilateral agreements:

“14. Accordingly, the Assembly calls: [...]

iii. on all member and observer States of the Council of Europe:

c. not to enter into any bilateral “exemption agreements” which would compromise or limit in any manner their cooperation with the Court in the investigation and prosecution of crimes within the jurisdiction of the Court...”

On September 26, 2002, the European Parliament also condemned the agreements concluded with the United States:

“The European Parliament, [...]

3. Firmly believes that the ICC States Parties and Signatory States are obliged under international law not to defeat the object and purpose of the Rome Statute, under which, according to its Preamble, ‘the most serious crimes of concern to the international community as a whole must not go unpunished’ and that States Parties are obliged to cooperate fully with the Court, in accordance with Article 86 of the Rome Statute, thus preventing them from entering into immunity agreements which remove certain citizens from the States’ or the International Criminal Court’s jurisdictions, undermining the full effectiveness of the ICC and jeopardising its role as a complementary jurisdiction to the State jurisdictions and a building block in collective global security...”

However, on September 30, 2002, the Council of the European Union adopted a common position on Article 98 Agreements that did not firmly reject such agreements but defined some guiding principles “concerning arrangements between a State Party to the Rome Statute of the ICC and the United States regarding the conditions to surrender of persons to the Court”.

Intended to preserve the integrity of the Statute and to guarantee the respect of the obligations of the States Parties, the principles drafted by the EU condemn the agreements in their current form but accept the possibility of negotiating future agreement with the Americans subject to some modifications.

The European Parliament reacted to the directives of the Council of the European Union in a resolution adopted on 24 October 2002, stating that it regretted the “vague indications” of the Council of the ministers of the Union and deplored that it “*has not adopted a clear common position in response to the US Administration’s efforts to conclude bilateral agreements with individual Member States*”.

III - Conclusion and Recommendations

The demarches undertaken by the American government in order to guarantee the impunity of their nationals or persons acting on their behalf for the most serious crimes, i.e. war crimes, crimes against humanity and genocide, are multifaceted.

The diplomatic offensive in progress does not only aim at the ratification of so-called "impunity" agreement based on Article 98 of the Rome Statute, but it also, and inter alia, aims at the renegotiation of some bilateral extradition conventions and legal cooperation conventions and also at the reopening of conventions dealing with the privileges and immunities of some categories of persons.

The American offensive is not limited to diplomatic maneuvering; it is most often accompanied by wide-ranging economic, financial, and/ or industrial promises and, if a State refuse to compromise, by serious and absolutely unacceptable threats at the military and economical levels.

Consequently, in today's hegemonic world, only a handful of great world powers can face American pressures on the ICC. But the balance is fragile and only firm and unambiguous public statements, notably from the fifteen States of the European Union, may guarantee the independence and the impartiality of the ICC.

For these reasons, FIDH urges that States:

- 1. Refuse to conclude any bilateral agreement with the United States, in whatever form it may take, which aims at excluding American citizens or persons working on their behalf from the jurisdiction of the ICC;**
- 2. Consolidate the independence and efficiency of the ICC by ratifying the Rome Statute and by adopting national implementation laws of the Rome Statute;**
- 3. Publicly oppose the "American exception" concerning the ICC jurisdiction and the fight against impunity of authors of the most serious crimes and thus to refuse an "à la carte" International Criminal Court.**
- 4. Refuse to engage in the scheme to transform the fight against terrorism into a pretext for the conclusion of such agreements;**

IV - ANNEXES

A - ANNEXES RELATING TO RESOLUTION 1422 OF THE SECURITY COUNCIL

A1. Letter from the Secretary General of the UN to the President of the Security Council on July 3rd, 2002

THE SECRETARY GENERAL

His Excellency
Mr. Colin L. Powell
Secretary of State
United States of America
Washington, D.C.

3 July 2002

Excellency,

I am writing to you because I am seriously concerned at the development in the Security Council with respect to the extension of the United Nations Mission in Bosnia Herzegovina (UNMIBH) and the issue that the United States has raised in that connection following the entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court (ICC).

The United States has put forward a proposal invoking the procedure laid down in Article 16 of the Rome Statute of the ICC. This provision means that the Security Council can intervene to prevent the Prosecutor of the ICC to proceed with a particular case. The article, which is meant for a completely different situation, is now proposed to be used by the Security Council for a blanket resolution, preventing the Prosecutor from pursuing cases against personnel in peacekeeping missions. Contrary to the wording of Article 16, which prescribes that such resolutions by the Council can be adopted for a period of 12 months, which period is renewable, it is proposed that the resolution is automatically prolonged, unless the prohibition is lifted. Any decision to this effect is subject to the necessary majority in the Council.

I think that I can state confidently that in the history of the United Nations, and certainly during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC. The issue that the United States is raising in the Council is therefore highly improbable with respect to United Nations peacekeeping operations. At the same time, the whole system of United Nations peacekeeping operations is being put at risk.

It is of course for the United States to decide what is in its interest. But let me offer the following thoughts.

First, the establishment of the ICC is considered by many, including your closest allies, as a major achievement in our efforts to address the impunity that is also a major concern for the United States. The development of this matter is followed by many and, in particular, the States that have ratified the Rome Statute and by non-governmental organizations. I fear that the reactions against any attempts at, as they perceive it, undermining the Rome Statute will be very strong.

Secondly, the method suggested in the proposal arid in particular its operative paragraph 2, flies in the face of treaty law since it would force States that have ratified the Rome Statute to accept a resolution that literally amends the treaty.

My concern is that the only real result that an adoption by the Council of the proposal would produce — since the substantive issue is moot — is that the Council risks being discredited. The purpose of this letter is to ask you to consider this aspect. I am confident that you share my view that it is not in our collective interest to see the Council's authority undermined.

The members of the Council do realize — as indeed I do — that the United States has a problem to which a satisfactory solution must be found. I am also aware that this may take some time. As a matter of fact, on 30 June, I pleaded with the members of the Council to give themselves sufficient time find such a solution.

In order to create additional time to solve the overarching issue, may I suggest that the United States at the present juncture relies on the fact that the jurisdiction of the ICC, as a matter of law, is overtaken by the jurisdiction of the International Tribunal for the former Yugoslavia. In reality, the situation with respect to international criminal jurisdiction in the territory of the former Socialist Federal Republic of Yugoslavia is the same after 1 July 2002, as before that date.

One solution may be for the Security Council to reconsider the extension of UNMIBH as proposed or 30 June, adding this time a preambular paragraph, in which the Council notes that the International Tribunal for the Pannier Yugoslavia, which is established under Chapter VI of the Charter of the United Nations as a subsidiary organ of the Security Council, has primacy to exercise, on behalf of the international community, international jurisdiction over genocide, war crimes and crimes against humanity committed in the territory of the former Socialist Federal Republic of Yugoslavia.

However, there might also be other solutions to avoid that the Council is precipitated into adopting a resolution, the effects of which may soon be deeply regretted by all.

Please accept, Excellency, the assurances of my highest consideration.

-Kofi A. Annan

A2. Chart illustrating zero exposure of US peacekeepers to ICC's jurisdiction currently (data source: UN)

| | MINUGUA | MINURSO | MONUC | UNAMSIL | UNDOF | UNFICYP | UNIFIL | UNIKOM | UNMEE | UNMIBH | UNMIK | UNMOGIP | UNMOP | UNOMIG | UNMISSET | UNTSO |
|--------------------|--|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------------------|-----------------------------|------------------|------------------|--|------------------|-----------------------------|-----------------------------|-----------------------------|
| Ukraine Observer | | | 10 | 5 | | | | | 6 | | 1 | | 2 | 3 | | |
| Ukraine Troop | | | 1 | 623 | | | 649 | | | | | | | | | |
| Ukraine Police | | | | | | | | | | 30 | 193 | | | | | 7 |
| Uruguay Observer | 1 | 13 | 25 | 11 | | | | 6 | 6 | | | 1 | | 3 | 5 | |
| Uruguay Troop | | | 1494 | | | | | | | | | | | | | |
| Uruguay Police | | | | | | | | | | | | | | | | |
| USA Observer | | 7 | | | | | | 12 | 6 | | 2 | | | 2 | 2 | 2 |
| USA Troop | | | | | | | | | 1 | | | | | | | |
| USA Police | | | | | | | | | | 46 | 535 | | | | 65 | |
| Vanuatu Observer | | | | | | | | | | | | | | | | |
| Vanuatu Troop | | | | | | | | | | | | | | | | |
| Vanuatu Police | | | | | | | | | | | | | | | 6 | |
| Venezuela Observer | | | | | | | | 3 | | | | | | | | |
| Venezuela Troop | | | | | | | | | | | | | | | | |
| | No US personnel Host State not party to ICC | Host State not party to ICC | No US personnel | Host State not party to ICC | Host State not party to ICC | ICTY has primacy | ICTY has primacy | No US personnel Host State not party to ICC | ICTY has primacy | Host State not party to ICC | Host State not party to ICC | Host State not party to ICC |
| TOTAL US EXPOSURE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | |

Index of peacekeeping operations

- MINUGUA United Nations verification mission in Guatemala
- MINURSO United Nations mission for the referendum in Western Sahara
- MONUC United Nations organization mission in the Democratic Republic of the Congo
- UNAMSIL United Nations mission in Sierra Leone
- UNDOF United Nations disengagement observer force (Golan)
- UNFICYP United Nations peacekeeping force in Cyprus
- UNIFIL United Nations interim force in Lebanon
- UNIKOM United Nations Iraq-Kuwait observation mission
- UNMEE United Nations mission in Ethiopia and Eritrea
- UNMIBH United Nations mission In Bosnia and Herzegovina
- UNMIK United Nations Interim Administration Mission in Kosovo
- UNMOGIP United Nations military observer group in India and Pakistan
- UNMOP United Nations mission of observers in Prevlaka
- UNOMIG United Nations observer mission in Georgia
- UNMISSET United Nations mission of support in East Timor
- UNTSO United Nations truce supervision organization (Middle East)

Summary of News on So-Called "Article 98" Agreements *(last updated: 13 November 2002)*

| Country Approached | RS Status | Date of US approach | Status of agreement | US official | Official approached | Reaction as reported in the news | Official response |
|--------------------|-----------|------------------------------|---|---|---|--|-------------------|
| Afghanistan | neither | not stated | yes | not stated | not stated | | |
| Argentina | SP | End of August | under consideration Amb. Fernando Petrella, deputy secretary for foreign policy and former ambassador to the UN to prepare response to US. | Ambassador James Walsh (head of political section), Col. Michael Borders (head of Military Group) | Defense Minister Horacio Jaunarena, Foreign Minister Carlos Ruckauf, FFAA leaders | Foreign Minister Carlos Ruckauf said President Eduardo Duhalde would reject any U.S. request to secure immunity for its visiting troops. Ruckauf is quoted in EFE News Service, September 4, 2002, "ARGENTINA OPPOSES 'IMMUNITY' FOR U.S. SOLDIERS", that Argentina had "promoted the International Criminal Court and believes that all crimes against humanity should be tried by that court." However, Defence Minister Horacio Jaunarena and Foreign Minister Carlos Ruckauf are considering signing a bilateral agreement with the United States. | none given |
| Australia | Signatory | not stated | under consideration | not stated | not stated | "We need to work through this a little bit, but our inclination is to support America's request for an Article 98 agreement," Foreign Minister Alexander Downer said in AAP NEWSFEED, August 29, 2002, "Fed. Govt close to agreeing to exempt US citizens from ICC". Foreign Minister Alexander Downer said the government of Prime Minister John Howard was "sympathetic to the idea of entering into an Article 98 agreement with the US" in Agence France Presse, August 28, 2002 - "Aussie government 'sympathetic' to ICC amnesty deal with US". Mr. Richard Rowe, Advisor, Australian Mission to the UN, addressing the 6th Committee of the UNGA on 15 October 2002: "Australia, while fully supporting the ICC, acknowledges that some States have chosen not to become Parties to the Statute. Australia believes States Parties should take what steps they can to ensure such States are able to accommodate the Court's existence." | none given |
| Austria | SP | 17-jul-02 | NO. EU rejected on 30 Sept. | Ambassador Lyons Brown | Austrian Foreign Ministry | Austrian Foreign Minister Benita Ferrero-Waldner spoke out openly about the need for a common position in Agence France Presse, August 31, 2002 "Britain, Italy break EU ranks over court row with US". "There is a fundamental need for everyone to be open to prosecution," she told reporters. "It is important that there is no immunity," she added. | none given |
| Bosnia-Herzegovina | SP | Officially approached 19 Aug | under consideration. Will wait for official EU position. | Ambassador Clifford Bond | Foreign Ministry | "Bosnia-Herzegovinan institutions have plenty of time to study the US request, review the country's position and obligations towards the ICC, the international community, the EU and the USA, and make a suitable stand," said the spokesman for the Foreign Ministry Amer Kapetanovic in BBC Monitoring Europe - August 24, 2002 "USA officially asks Bosnia to sign ICC non-extradition deal". Bosnia-Herzegovina Foreign Minister Zlatko Lagumdžija is cited as saying in BBC Monitoring Europe - August 23, 2002, "Bosnian foreign minister comments on US non-extradition request", that there was no reason for any country to obtain such privileges. President Beriz Belkic said in 13-19 August, Transitions Online, "Bosnia: Between A Rock and a Hard Place", that suspending its signature was out of the question, adding that Bosnia—with its long list of suspected war criminals—is the last country that should retreat from the ICC. If such a court had existed as early as 1991, said Belkic, many people would have thought twice about committing war crimes that they could see would not go unpunished. | none given |

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|-----------------|-----------|--------------|--|---|------------------------|---|------------|
| Bulgaria | SP | not stated | under consideration. Foreign Ministry Spokesman Lyubomir Todorov indicated there was an intention to sign once EU procedures were established. | not stated | not stated | It was reported in 14 August 2002 - PARI Daily, "BULGARIA, DENMARK STARTED TALKS ON ICC" that Bulgaria's deputy foreign minister Petko Draganov went to Copenhagen for talks on the on the standard bilateral draft treaties proposed by the US regarding the surrender of persons to the International Criminal Court (ICC), according to the press office of the foreign ministry. The purpose of the visit was to coordinate the positions on the ICC of Bulgaria and Denmark which currently chairs the European Union. On October 2, Bulgaria hailed the EU position to continue its cooperation and dialogue on the problems related to the ICC and to give its members the possibility to sign bilateral agreements with the US in accordance with Article 98(2), said Foreign Ministry Spokesman Lyubomir Todorov. He said that should the EU establish the respective procedures as it is expected to do, Bulgaria would sign a bilateral agreement with the US regarding the ICC. "We appreciate the pronounced desire to find a solution which will uphold the integrity of the Roma Statute on the one hand, and contribute to the continuation of the dialogue between the US and the EU on the other," the Foreign Ministry spokesman said [Reported "Bulgaria "hails" EU's decision to continue discussions on ICC issue", BBC Monitoring Europe, October 2, 2002]. | none given |
| Canada | SP | early August | no response yet/likely no | not stated | not stated | Carl Schwenger, a spokesman for the Foreign Affairs Department said in 8 August 2002 - Montreal Gazette, "Canada Asked to Help Insulate U.S. Soldiers from World Court", "We don't share the U.S. concerns. Democratic, law-abiding states have nothing to fear from the ICC, which has rigorous safeguards to protect against any frivolous investigations." Canadian Foreign Minister Bill Graham said, after meeting with his Danish counterpart, "Canada and Europe are determined to maintain the integrity of the International Criminal Court. We'll work together to strengthen it and not weaken it. I think it is our job as European and Canadian allies of the United States to take the message to them that they have nothing to fear from this court." [reported October 7, 2002, "Canada, EU should make the ICC work to prove that Americans have nothing to fear, foreign minister says", Associated Press Worldstream], Ms. Deborah Chatsis, Representative of Canada, addressing the 6th Committee of the 57th session of the UN General Assembly on 15 October 2002: "The birth of the Court, unfortunately, has been marked by a series of challenges. The efforts to secure broad immunities from the potential jurisdiction of the Court are both unnecessary and unfortunate. The Rome Statute is a carefully balanced instrument which fully respects the sovereignty of law-abiding states willing and able to fulfil their existing legal obligations to investigate and, when necessary, prosecute those who commit the most heinous crimes." Foreign Minister Bill Graham said Canada will not sign a bilateral deal with the United States. Graham said Canada and the United States already had an agreement covering the conduct of US military personnel on Canadian soil. Under that agreement, any US soldiers accused of crimes are sent back to the United States for court-martial there. "There is no need to have another specific bilateral agreement," said Graham. "We don't have any intention of signing such an agreement." [reported November 4, 2002, "Canada refuses to sign pact to exempt US soldiers from international court", Agence France Presse] | none given |
| Chile | signatory | not stated | under consideration | not stated | not stated | see Costa Rica for the Rio Group statement Otto Reich stated that Chile was a "special" country to the United States and that the eventual ratification of the ICC will not effect the bilateral relationship between them [reported October 18, 2002, "Chile es "un pais especial" para EEUU segun Otto Reich"]. | none given |
| Colombia | SP | 15-août-02 | No. President Uribe announced his decision to US Pres. George Bush on 20 Sept. | Undersecretary of State for Political Affairs Marc Grossman | President Alvaro Uribe | President Uribe announced to Bush that no agreement would be signed, however immunity would be granted to those who are already covered under an agreement from 1962. Reportedly, President Alvaro Uribe is "currently analyzing the possibility of nullifying the declaration on Article 124 made upon ratification, by which the ICC cannot investigate or prosecute war crimes committed [in Colombian soil] until 2009." [reported, October 12, 2002, "El Universal", Cartagena de Indias (Colombia)] | none given |

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|-----------------------|-----------|------------|--|------------|------------|--|------------|
| Costa Rica | SP | not stated | | not stated | not stated | "We, the member states of the Rio Group, believe that the integrity and effectiveness of the Rome Statute is not negotiable. We are convinced that its full application and interpretation, in keeping with the principles of public international law and the law of treaties, are absolutely necessary to ensure the noble objectives which motivated the creation of the Court. We therefore, urgently plead to all States to respect both the letter and the spirit of the Rome Statute, and actively guarantee its effectiveness and legitimacy. The Rio Group will make the strongest efforts to this effect." Costa Rica, on behalf of the Rio Group -- H.E. Mr. Bruno Stagno, Ambassador and Permanent Representative of Costa Rica to the United Nations, at the first meeting of the Assembly of States Parties (9-10 September 2002) | |
| Croatia | SP | mid July | unofficial no. President Stipe Mesic, Premier Ivica Racan, Foreign Minister Tonino Picula have all openly denounced the US request. Foreign Minister Tonino Picula to respond to the US request. | not stated | not stated | It was reported in 21 August 2002 -BBC Monitoring Europe, Vjesnik, "Panorama Supplement" that Croatian Foreign Minister Tonino Picula has said Croatia will "absolutely" reject the USA's request for the non-extradition of US citizens to the International Criminal Court (ICC). Croatia must meet its obligations under a growing system of international law to punish war criminals, and this included the Hague tribunal and the ICC, Picula said. "One can hardly expect us to extradite our people and at the same time refuse to extradite citizens of the US or any other country," government spokesman Zarko Plevnik told 14 August 2002, Agence France Presse, "Croatia Says Unlikely to Sign US Non-Extradition Pact". Foreign Minister Tonino Picula said in 14 August 2002 - BBC Monitoring Europe-Political, "Croatia Likely not to sign Non-Extradition Accord with USA", "We must bear in mind that Croatia is a country that has one duty more than the EU candidate countries, and that is the duty to cooperate with the Hague tribunal. | none given |
| Cyprus | SP | not stated | under consideration | not stated | not stated | | none given |
| Czech Republic | signatory | not stated | under consideration | not stated | not stated | Czech Foreign Minister Cyril Svoboda told EU foreign policy chief Javier Solana that the EU Guiding Principles will enable a possible Czech-U.S. agreement. The compromise on which the EU has agreed gives chance of going both ways, that is both to ratify the ICC Status in parliament and to negotiate with the United States," Svoboda said. If the Czech Republic considered signing a bilateral agreement with the USA, it would do so only under the conditions agreed on by the EU, Svoboda said. "It simplify our and all candidate countries' life," he added. [reported, October 1, 2002, "EU compromise on ICC will enable Czech-US agreement - Svoboda", CTK National News Wire]. Reportedly, Czech Foreign Minister Cyril Svoboda told Danish Foreign Minister Moeller that the Czech position on the International Criminal Court (ICC) was in line with the European Union's position ["Czechs must defend their interests in talks with EU - foreign minister", CTK news agency, Prague, October 4, 2002]. | none given |
| Denmark | SP | not stated | under consideration | not stated | not stated | "We want to make sure the court is not weakened, and at the same time we will find a solution for American concerns," said Danish Foreign Minister Per Stig Moeller."We will find a solution that maintains U.S.A.'s role in international peacekeeping operations and makes sure the court gets a good start," Moeller said in Associated Press Worldstream, August 29, 2002 "Denmark's foreign minister optimistic on compromise between EU and US over ICC-issue", declining to comment on what the content of such a compromise might be. Denmark currently holds the rotating presidency of the EU. Ms. Mette Nørgaard Dissing, First Secretary, Permanent Mission of Denmark, addressing the UNGA 6th Committee on 14 October 2002: "At present, some States are still hesitant towards the International Criminal Court. They fear prosecution of their nationals for politically motivated purposes. The European Union is firmly convinced that the Rome Statute provides all the necessary safeguards against the misuse of the Court for such purposes. Nevertheless, the EU is ready to address these concerns through frank and constructive dialogue while preserving the integrity of the Rome Statute. The objective of individual accountability for the most serious crimes of concern to the international community must not be compromised." | none given |

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|---------------------------|---------------------------|------------|--|------------|------------|---|------------|
| Dominican Republic | Signatory | not stated | yes. Signed 16 September. | not stated | not stated | | none given |
| East Timor | SP | 23-ao0t-02 | Signed 26 August. The East Timorese Foreign Ministry has initiated the process for a bilateral agreement with the United States. This process has not reached a conclusion. Under the Constitution of East Timor, this agreement requires both Parliamentary approval and Presidential promulgation before it can come into force. It is therefore still under active consideration. | not stated | not stated | | none given |
| European Union | n/a (all members are SPs) | n/a | n/a | n/a | n/a | <p>The Council of the EU adopted the following guiding principles on 30 Sept.: -existing international agreements should be taken into account, - entering into US agreements as presently drafted would be inconsistent with ICC States Parties' obligations under the Rome Statute and possibly under other international agreements, -any solution should include appropriate operative provisions ensuring that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity, -any solution should only cover persons who are not nationals of an ICC state party, -the scope of persons should be narrowed down. Per Stig Møller, Foreign Minister of Denmark which holds the EU Presidency: "Individual member states can now, if necessary, conclude bilateral agreements with the United States on the non-surrender of U.S. nationals to the court, so long as they observe the strict benchmarks that ensure respect for our obligations as parties to the Rome Statute of the ICC. "With respect to the U.S. proposal for bilateral agreements, it is our view that many of the U.S. concerns can be solved on the basis of existing agreements. Each EU country will have to assess whether its existing bilateral and multilateral treaty relations with the United States can meet U.S. concerns. If a member state deems it necessary to amend existing agreements or to enter into a new agreement with the U.S., the EU guiding principles will apply.</p> <p>"If individual states stay within these red lines in their bilateral contacts with the United States, the ICC will not be undermined.</p> <p>Under the guidelines, any solution should ensure that people who have committed crimes falling within the jurisdiction of the court do not enjoy impunity from prosecution, that there is an appropriate investigation and, where there is sufficient evidence, prosecution by national jurisdictions of people requested by the ICC. This will ensure accountability.</p> <p>"The EU approach is the best way to defend the court, as any other solution would have led to a weakening of the strong EU support for the ICC. A flat no to the United States proposal for bilateral agreements would have had a very damaging effect on trans-Atlantic relations. Furthermore, it would have endangered the vital U.S. engagement in peacekeeping operations around the world.</p> <p>"Having no common EU position would have caused irreparable damage to the court. The United States has already entered into bilateral agreements with 12 countries, which have not had the opportunity to avail themselves of the EU position. Leaving EU member states and others to conduct bilateral negotiations with the U.S. without strong EU unity and clear criteria for those bilateral agreements would result in a variety of agreements that surely would have undermined the court."</p> <p>[reported, November 5, 2002 "Europe courts the U.S." Ottawa Citizen].</p> | |

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| Estonia | SP | not stated | under consideration | not stated | Prime Minister Siim Kallas | According to BBC Monitoring Former Soviet Union - August 26, 2002, "Baltic, Nordic meeting discusses EU enlargement timetable, US immunity", Kristina Ojuland, the Estonian foreign minister said, "We are considering very thoroughly our possibilities as to whether it is possible to find a certain resolution to what the US side has offered. The legal analysis under way at present will definitely not be quick, since we are talking about a highly complicated matter within the international law." On October 16, Prime Minister Siim Kallas said that Estonia has a moral obligation to support the US wish to conclude an immunity agreement that would rule out that US soldiers and officials find themselves in the International Criminal Court. "What meets Estonian national interests is if we can be good allies for the USA while also cooperating well with the EU. This would be ideal", said Kallas. He added "In principle, the USA has exerted no direct pressure so far, but it is the US wish to conclude an agreement of this kind. Work is under way on various versions of the text." [reported October 17, 2002, "PM sees moral obligation to support USA over international court", BBC Monitoring Former Soviet Union - Political] Signing an immunity treaty now would provide Estonia with an invaluable opportunity to secure for itself bigger than usual attention and support from the United States. Mart Helme former Estonian Ambassador to Russia, said that "In order to guarantee this, Estonia should act pragmatically and sign the immunity accord as soon as possible. Signing of the treaty would be a credit of trust on our part to the United States of America. ... the U.S. government, which without doubt is much more resolute in protecting the interests and security of its citizens abroad than the Estonian government, for instance, cannot trust justice by strangers." He said there was no reason to doubt in the rigor of the American court martial and that what the Americans really wanted was not to save their criminals from punishment but to ensure a fair trial, which they consider possible only in the United States. [Reported, October 15, 2002, "Ex-Envoy: Estonia Should Sign Immunity Accord for U.S. Soldiers", Baltic News Service] | none given |
| France | SP | not stated | NO. EU rejected on 30 Sept. | not stated | not stated | According to the Wall Street Journal, September 3, 2002 "Germany, France Criticize U.S. On International Criminal Court", France said that signing such bilateral deals with the U.S. is contrary to the ICC's founding statute. "By pressing this issue, the Americans are creating a lot of useless tension," said one European official familiar with the French position. | none given |
| Gambia | SP | not stated | Yes - signed on October 5, 2002 | not stated | not stated | Richard Boucher of the State Department said at a press conference that Gambia was the thirteenth state to sign an "article 98" agreement [Reported, October 8, 2002, "Gambia becomes 13th country to sign ICC immunity deal with US", Agence France Presse]. | |
| Germany | SP | not stated | NO. EU rejected on 30 Sept. | not stated | not stated | German Foreign Minister Joschka Fischer told his EU counterparts over the weekend that Germany wouldn't sign a bilateral agreement with the U.S. because it would hurt the court's work, and if legally possible it is still morally dubious. "It will certainly not be compatible with the spirit" of the tribunal, which was created to bring war crimes suspects to justice when national governments refuse to do so, Deputy German Foreign Minister Gunter Pleuger said in Associated Press Worldstream, August 30, 2002 "Germany: keeping Americans out of ICC trials would undermine tribunal charter". German Foreign Minister Joschka Fischer called the EU position "very important". German officials, who said they didn't intend to slight the U.S., pointed out that the U.S. shouldn't worry because the legal standing of American troops in Germany is covered by special agreements that already provide limited immunity from national prosecutions. [Reported October 4, "Despite EU accord, Germany won't exempt US from ICC", Wall Street Journal]. The German Foreign Minister stressed for the Federal Government: "We are against the conclusion of special agreements and we will not conclude such an agreement." According to Fischer the existing agreements and arrangements could be used to alleviate concerns of the United States. It was essential that the EU kept a united front in this issue. It was up to the EU to bring about clarity with regard to this matter. Otherwise the ICC would be undermined. Foreign Minister Fischer emphasized: "We would have wished a clear rejection of the agreements. Because of the Principles we are very close to such a position (rejection of agreements)." The statements made by the German Foreign Minister were taken up in articles (1 October) on the ICC and the issue of bilateral agreements inter alia by: "The Guardian"; ("Joschka Fischer, the German foreign minister, insisted that Berlin would not make an agreement with the US, and sought to accentuate the importance of the court. "This is very important because the Milosevics and Pinochets of tomorrow will be brought to justice," he said.") "International Herald Tribune", "Washington Post", "New York Times" (relevant reference: "People are looking to Europe," Foreign Minister Joschka Fischer of Germany said in Brussels. "What matters is that the Europeans stand together on the basis of a strengthening of the court's statute. What matters to us is not to assuage anyone.") Also in the "New York Times": "This is not about appeasing anybody," said German Foreign Minister Joschka Fischer, whose country had insisted that | none given |

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| | | | | | | the guidelines should not automatically open the way for new exemption accords." ...) | |
| Ghana | SP | not stated | | not stated | not stated | "We are aware certain states entertain some fears of impartiality of the Court and have sought various ways to address these fears. We are distressed that some of these methods may tend to detract from the very integrity and universality that the like-minded states have worked hard to achieve. We believe that if the highest standards of integrity and judicial wisdom are balanced with geographical spread and gender sensitivity, these fears will be addressed sufficiently to render those special bilateral agreements redundant. We should avoid taking measures that would kill the ICC at birth or make it ineffectual." - Mr. Kwesi Quartey, Deputy Permanent Representative to the Permanent Mission of Ghana to the 6th Committee of the 57th session of the UN General Assembly (15 October 2002) | none given |
| Honduras | SP | not stated | yes. Signed 19 September 2002 | not stated | not stated | | |
| Hungary | SP | not stated | under consideration (now likely given 30 Sep EU position) | not stated | not stated | Foreign Ministry spokesperson Tamas Toth said consultations between the U.S. and Hungary on the extradition of U.S. citizens to the international criminal court could soon be concluded. He said a compromise on the issue acceptable to EU members, candidate countries and to the U.S. could soon be reached [Reported October 2, 2002, "Foreign Ministry Spokesperson Holds Media Briefing" Global News Wire, Hungarian News Agency (MTI)]. | none given |
| India | neither | not stated | under consideration. India is apparently ready to sign. | not stated | not stated | | |
| Italy | SP | not stated | reportedly under consideration despite EU position. | not stated | not stated | The U.K. and Italy have indicated they are prepared to grant the U.S. immunity from the court, while the European Commission, the EU's executive branch, said that such agreements could be harmful to the court's functioning. "Each EU nation has signed (the court charter) on its own and can decide on its own to conclude" additional accords with other states, Prime Minister Silvio Berlusconi said outside an EU foreign ministers meeting. [from 31 August 2002, Guardian Unlimited, "Italy May Exempt US From Tribunal"] | none given |

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|---------------|--|---|---|--|--------------------------------------|---|------------|
| Israel | signatory | Signed agreement with US on 4 August 2002 | yes. reciprocal agreement | Undersecretary of State John Bolton | Foreign Minister Shimon Peres | It was reported in 15 August 2002 - Diplomatic Panorama, "Israel Will Not Join International Criminal Court Before Crisis Abades" that As long as the Middle East crisis is raging, Israel will not sign the Statute of the International Criminal Court, said Alan Baker, director of the Israeli Foreign Ministry's Legal Department. The most important reason for this decision is the possible political bias of the court, Baker said. Baker claims that there is evidence that numerous Arab countries may use it for propaganda. The court may accuse Israel, which is fighting terrorism, of war crimes, while Palestinian leader Yassir Arafat and his entourage send murderers to commit terrorist attacks and are not held responsible, he said. Once the normalization of the Middle East is reached, Israel may consider joining the Statute, Baker added. A 7 August 2002 - The New York Times, "U.S. Seeking Pacts in a Bid to Shield Its Peacekeepers" article quotes: "Almost everybody in my country is a soldier. Someone can complain against a soldier and say they perpetrated a crime," said the Deputy Chief of Mission at the Israeli Embassy in Washington, DC, Rafael Barak. | none given |
| Japan | neither | 26 August (officially) | "no" likely. Japan Economic Newswire, August 22, 2002. "Japan 'not considering' U.S. demand on criminal court waiver" reports that Chief Cabinet Secretary Shinzo Abe said that Tokyo and Washington agreed that close consultations should be continued on the matter but he indicated that it is premature for Japan to sign such an accord when it is preparing to ratify a treaty for the establishment of the ICC. | U.S. Undersecretary of State John Bolton | Vice Foreign Minister Yukio Takeuchi | Takeuchi failed to show a clear attitude on the issue. 'At this point in time, we are not at all considering' the request, Deputy Chief Cabinet Secretary Shinzo Abe said at a news conference; reported in Japan Economic Newswire, August 22, 2002. "Japan 'not considering' U.S. demand on criminal court waiver". | none given |
| Kuwait | signatory | not stated | signed (but note conflicting reports) | not stated | not stated | Kuwait has agreed to exempt Americans from prosecution by the new International Criminal Court for actions inside the country's borders, a State Department official said. Kuwait and the United States are to sign the agreement, known as an Article 98 agreement after the relevant section of the treaty that set up the court, at a ceremony in Washington next week, the official said [reported, New York Times, November 2, 2002, "Kuwait to Exempt U.S. on War Crimes", New York Times]. An official Kuwaiti source has denied that Kuwait is preparing to sign an agreement with the USA. In a statement to the Kuwaiti daily al-Watan, the Kuwaiti governmental source said that negotiations are underway between the two sides to study this agreement. The source also noted that the beginning of this agreement goes back to a meeting in Rome attended by delegations including 17 countries including Kuwait in order to discuss excluding the Americans from being brought before International Criminal Court. The Kuwaiti source indicated that his country signed this agreement but did not ratify it so far and that this matter is under discussion. [reported November 4, 2002, "Kuwait denies protection of Americans before International Criminal Court", Arabic News] | |
| Latvia | signatory (scheduled to ratify 1 Sep.) | not stated | under consideration | not stated | not stated | "Latvia has made no decision about whether it would sign this agreement," said Foreign Ministry State Secretary Maris Riekstins in Baltic News Service, August 23, 2002, "LATVIAN FORMIN RESERVED OVER COMMENTS SUGGESTING US MAY BLOCK NATO ENLARGEMENT". | none given |

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|------------------|-----------|--------------------|---|---|---|---|------------|
| Lesotho | SP | not stated | | not stated | not stated | "The controversy that has emerged in the wake of the entry into force of the Statute, which threatens to hinder the progress made and to obstruct the institution even before it begins its work is indeed regrettable. For our part, we favor an approach that would take into consideration even the concerns of those who are still doubtful of the ICC, with a view to accomplishing the universality of the Court. In a similar vein, we believe that the rights of States to sovereignty cannot be allowed to justify impunity and to compromise humanity's best hope for justice." -- His Excellency Professor Lebohng K. Moleko, the current Permanent Representative of Lesotho to the UN, at the first meeting of the Assembly of States Parties (9-10 September 2002) | none given |
| Liechtenstein | SP | not stated | not stated | not stated | not stated | Mr. Jonathon Huston, Advisor, Permanent Mission of the Principality of Liechtenstein addressing the 6th Committee of the UNGA on 14 October 2002: "Similarly, there have been attempts over the past year to apply Article 98 of the Statute in a manner not provided for by the Statute. Article 98 was negotiated with a very limited application to Status of Mission and Status of Forces Agreements in mind, an understanding shared in Rome by all concerned parties. The purpose of Article 98 was not to create a loophole of impunity for nationals of non-States Parties. The proposed non-surrender agreements would not only undermine the integrity of the Court, but also the very principle of territorial jurisdiction of States." | none given |
| Lithuania | signatory | not stated | under consideration | not stated | not stated | "Our position hasn't changed -- we'll decide whether to sign the agreement suggested by the U.S. after consulting with partners in the European Union and NATO," said the Foreign Ministry's Information and Culture Department Director, Petras Zapolskas; according to Baltic News Service, August 23, 2002, "LITHUANIA TO WAIT FOR EU'S POSITION ON IMMUNITY FOR US FROM INTERNATIONAL CRIMINAL COURT" | none given |
| Macedonia | SP | not yet approached | Foreign Minister Slobodan Casule said that neither the US ambassador to Macedonia nor any other official has issued a request for such a bilateral agreement. | n/a | n/a | According to BBC Monitoring Europe - Political Supplied by BBC Worldwide Monitoring, August 28, 2002, "Roundup of former Yugoslav states' reactions to US non-extradition deal on ICC", Casule said Macedonia could not sign a deal with the US because it is itself subject to international prosecution. | none given |
| Marshall Islands | SP | not stated | signed 18 Sept. | not stated | not stated | | |
| Mauritania | neither | not stated | signed 17 Sept. Reciprocal | Undersecretary of State for Political Affairs Marc Grossman | Minister of Foreign Affairs Dah Ould Abdi | | |
| Mexico | signatory | not stated | not stated | not stated | not stated | "We regret the position adopted by the United States and all the actions discouraging the Ratification of the (Rome) Statute", stated Ambassador Adolfo Aguilar Zinser [reported October 16, 2002, Novedades (USA) "Mexico censura a EU en la ONU por rechazar la Corte Penal"]; Mexico's representative, Ambassador Aguilar Zinser, told the UNGA's 6th committee that the Court could not and would never be a political instrument, and regretted that the United States adopted actions to undermine the court. The representative said that Mexico would not sign an agreement weakening the court or violating its principles [reported October 25, 2002, "UN Members say World Court no threat to US", Inter Press Service]. | |
| Micronesia | neither | not stated | yes. Signed 24 Sept. | not stated | not stated | | |

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| Netherlands | SP | 30-jul-02 | no | not stated | not stated | According to XINHUA GENERAL NEWS SERVICE, September 3, 2002, "Netherlands refuses US demand for immunity from ICC", The Dutch government has said it would never sign a treaty with the United States. Dutch Foreign Minister De Hoop Scheffer was quoted as saying the treaty, which creates an exception for US soldiers, would "spell an end" to the court. It was reported in 30 July 2002 - Associated Press Worldstream, "Dutch remain opposed to U.S. exemption from new international court" that the Dutch Foreign Ministry said it was not considering such a deal. "Our position and the position of the European Union is clear," said Dutch Foreign Ministry spokesman Hans Jansen. "An exception as such, as they have indicated, would undermine the court's statute." | none given |
| Norway | SP | early August | no response yet/likely no | not stated | not stated | It was reported in 9 August 2002 - Agence France Presse, "Norway to Snub US Plea to Give Immunity from War Crimes Court" that Foreign Minister Jan Peterson asserts that Norway will reject the US plea. "I think the Americans are definitely exaggerating the problems with the court," said Peterson. "They have absolutely a point that the court might be abused, but in its statutes there are built in so many clauses and security mechanisms that this problem is in many ways solved," he added. "We consider the court to be a milestone in international justice, and we will be very reluctant to do anything that would undermine it in any way," said Oeystein Boe, the spokesman for the Norwegian Foreign Ministry in 8 August 2002 - Agence France Presse, "USA Asks Norway to Sign Non-Extradition Pact on Hague Court". | none given |
| Palau | neither | not stated | signed | not stated | not stated | | |
| Peru | SP | not stated | | not stated | not stated | In response to a letter from a Peruvian MP, dated October 17, 2002, the Minister of Foreign Affairs said the Peruvian State has assumed a formal commitment with the signature and the ratification of the Rome Statute of the International Criminal Court. For that reason, this Office will not take any action of other commitment that undermines or diminishes the scope of the Rome Statute. | |
| Philippines | signatory | 01-août-02 | under consideration. President Gloria Arroyo has formed a cabinet oversight committee to study the US government's bid. | Ambassador Francis Ricciardone | Department of Foreign Affairs | It was reported in 21 August 2002 - Agence France Presse, "Pressed for military aid, Philippines thinking of ICC immunity deal with US", that the Philippines is considering a deal with Washington in exchange for more US military aid, according to foreign department sources. | none given |
| Poland | SP | not stated | under consideration | not stated | not stated | "Many countries eager to please the United States are closely watching the positions of the EU dissenters. Polish officials, for one, have been in close contact with their British counterparts over the issue." [Reported October 2, 2002, "EU forges deal on world court; Some U.S. immunity in view", International Herald Tribune]. | none given |
| Portugal | SP | not stated | | not stated | not stated | MFA Antonio Martins da Cruz said that the Portuguese government requested a legal opinion from their Prosecutor's Office on a bilateral immunity agreement with the United States [reported October 17, 2002, "PORTUGAL-EEUU Gobierno consulta con Fiscalia sobre acuerdo inmunidad EEUU TPI"]. | |

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| Romania | SP | First approached 27 July. Signed agreement with US on 1 August 2002. Apparently not reciprocal. Parliament will not ratify until EU forms a position. The agreement may be amended to conform with the EU's Guiding Principles prior to parliamentary ratification. | yes. However, Foreign Minister Mincea Geona said Romania will not ratify accord unless a common stand is accepted by the US and the EU [reported in BBC Monitoring Europe, 20 Sep. 2002, "EU Commissioner Reassures Romania Country Will "not be left outside""]. | John McCain, Fred Thompson | Prime Minister Adrian Nastase | It was reported in BBC Monitoring Europe - Political, September 25, 2002, "ICC accord between Romania and US will not be ratified", that Romanian Senate Speaker Nicolae Vacarolu said that the accord between Romania and the US will not be ratified by parliament before the United States and the European Union reach an agreement on this matter. President Ilescu met in Johannesburg with Danish Premier Anders Fogh Rasmussen, who currently chairs the rotating EU Presidency, and told him that the parliament will not ratify the treaty Romania recently signed with the United States on the proposed International Criminal Court (ICC) until the EU officially formulates its own position on the treaty, Romanian Radio from "RFE/RL Newswire," 5 September 2002, "ROMANIAN PRESIDENT SAYS ICC TREATY WILL AWAIT PARLIAMENTARY RATIFICATION" reported. In August 19 2002 - BBC Monitoring Europe-Political, "Romania News Agency Review of Romanian Press for 19 Aug 2002" McCain was quoted as saying Romania will be a significant and influential member of NATO, which could offer support in Afghanistan. October 1, 2002, President Ion Ilescu is reported as saying Romania will adapt the agreement they signed with the US on August 1, 2002 to the EU's new recommendations. Speaker of the Senate, Nicolae Vacaroiu, considered that this compromise achieved by the USA and the EU countries is beneficial for Romania: "As for Romania, I think the finalization of this negotiation on the mutual point of view is a positive thing. Of course, Romania will make the necessary corrections to the signed agreement, after which it will be ratified by the Senate and the Chamber of Deputies." [Reported October 1, 2002, Pro TV, Bucharest, in Romanian]. | none given |
| Sierra Leone | SP | not stated | not stated | not stated | not stated | H.E. Mr. Allieu I. Kanu, Ambassador and Deputy Permanent Representative of Sierra Leone, addressing the 6th Committee of the UNGA: "Sierra Leone will seek together with our regional partners an advisory legal opinion from the ICJ on the so called Article 98 Agreements." | none given |
| Slovakia | SP | not stated | under consideration. Slovak Foreign Minister Eduard Kukan to answer the US request. | not stated | Foreign Minister Eduard Kukan | The EU's compromise on the ICC was welcomed by Slovak Foreign Minister Eduard Kukan. "We are interested in keeping good relations with both the United States and the EU," he said. "We are watching this positive development with delight," he added. According to Kukan, Slovakia will consider making a bilateral agreement with the USA. [reported, October 1, 2002, "EU compromise on ICC will enable Czech-US agreement - Svoboda", CTK National News Wire]. | none given |
| Slovenia | SP | 14-août | under consideration. Prime Minister and Foreign Ministry to Consider US proposal. | Congressional Delegation. Rep. Henry Hyde | Prime Minister Janez Drnovsek, Foreign Minister Dimitrij Rupel, President Milan Kucan | In an interview, Presidential candidate Janez Drnovsek, with regard to his position on a so-called Article 98 agreement between Slovenia and the US, said the following: "We are doing what the other European countries are doing. On the one hand, we obviously signed the agreement on the ICC, and on the other hand, the USA has offered a bilateral agreement which we are considering together with the EU. Similarly to the EU, we have already said that it should be amended. We are seeking some possibility that this agreement - if we signed it - would not go against the ICC, so that we would not be contravening it. This possibility is being sought. The EU has already found some legal possibilities and now consultations between the USA and Europe are under way on whether these possibilities could be acceptable to both sides. And we agree with this. I believe that it would be unnecessary for Slovenia to take any kind of stance when the entire international community is now seeking an optimal solution to this issue..." [reported, October 25, 2002, "Premier and presidential candidate answers questions on Slovene radio", BBC Monitoring Europe]. | none given |

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|----------------------------|-----------|------------|---|---------------------------------|-------------------------------|---|------------|
| Spain | SP | 14-aout | NO. EU rejected on 30 Sept. | Secretary of State Colin Powell | Foreign Secretary Ana Palacio | "Spain's position is the same as that of major European governments, which is that we support the ICC operating by the rules under which it was designed," a Spanish foreign ministry spokesman was quoted as saying in Agence France Presse, August 27, 2002 "No let-outs from rules of international court, says Spain". Spanish Minister of Foreign Affairs, Ana Palacion, denied today that the EU had granted the US with any kind of immunity before the International Criminal Court (ICC) and reaffirmed that the common position adopted by the fifteen member states is a "good example of what can be achieved in the means of foreign policy". [reported October 9, 2002, "TPI-EEUU Palacio: acuerdo UE sobre TPI es "buen ejemplo" para futura PESC"] Reportedly, Spain has received the formal request from the United States to sign a bilateral agreement on immunity before the ICC. American Ambassador Marisa Nilo stated that Spain has not given an answer yet [reported October 19, 2002, "Una enviada de Washington realiza una gira por varias capitales europeas"]. Spanish Foreign Minister Ana Palacio defended the EU position on bilateral agreements with the US. Palacio argues that the deal "clearly respects the integrity of the court" and allows "open dialogue" with the United States with a view to its possible later inclusion in the system [reported, October 29, 2002, "Spanish Minister Defends EU Deal to satisfy USA over Criminal Court", BBC Monitoring International Reports]. | none given |
| Sweden | SP | not stated | NO. EU rejected on 30 Sept. | not stated | not stated | Sweden's deputy prime minister Lena Hjelm-Wallen said "My government is highly critical of all efforts to undermine this treaty through agreements not in conformity with its object and purpose" [from Associated Press Worldstream, September 10, 2002 "Annan hails new tribunal as 'missing link'"]. | none given |
| Switzerland | SP | August | no (formal rejection on 14 August) | not stated | not stated | "I do not believe Switzerland should sign this kind of agreement," Foreign Minister Joseph Deiss said in 13 August 2002 - The New York Times Online, "Swiss Nix U.S. Deal on Immunity". "We hope the United States will not impede the work of the court," he added. On October 1, Daniela Stoffel of the Swiss Foreign Ministry said: "We certainly don't wish to see a weakening of the court. We will see how the court will proceed. It's not that it is weakened by this decision of the EU, but it will have to prove that it can do the work it was created to do. We don't regret not granting these exemptions. In fact they would be superfluous anyway, because Switzerland does not have American troops on its soil. We see the EU's decision not as a compromise but as a solution to give member states some fairly narrow room for manoeuvre should they want to make special agreements with the US. We can't of course interfere in any decision the EU has taken, but we wish for a strong ICC, as strong as possible. We don't see all 15 members of the EU making these arrangements with the US. We'll just have to wait and see which countries deem it necessary" [Reported October 2, "Swiss fear EU guidelines on US may undermine International Criminal Court", Swissinfo]. | none given |
| Tajikistan | SP | not stated | signed 27 Aug. Not clear if reciprocal. | not stated | not stated | | none given |
| Thailand | signatory | not stated | under consideration | not stated | not stated | | |
| Trinidad and Tobago | SP | not stated | "no" likely | not stated | not stated | "It is astonishing that the United States of America with such a history of promoting human rights, international peace and international order should now be in a determined campaign against an International Criminal Court, which has been adopted by most of the nations of the world, which adhere to principles of democracy and human rights", said His Excellency Arthur N.R. Robinson President of the Republic of Trinidad and Tobago on Tue Aug 27, 2002 4:25 pm, in an official Statement by President Robinson on Art. 98 agreement. | none given |
| Ukraine | signatory | not stated | under consideration | not stated | not stated | It was reported in 20 August 2002 - BBC Monitoring Kiev Unit, "US action against Iraq only permissible with UN backing - Ukrainian official", that Ukraine is considering the US proposal. However, The deputy state secretary at the Ministry of Foreign Affairs, Volodymyr Yelchenko ruled out the possibility of a trade-off with the USA where it could sign such an agreement in exchange for getting fast-track entry into NATO. | none given |

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| United Kingdom | SP | not stated | Under consideration despite EU Guiding Principles of 30 Sept. | not stated | not stated | According to the Financial Times; Sep 03, 2002 "Britain reveals plans for compromise on ICC". Britain, backed by Spain and Italy, is proposing the US should not use article 98(2) of the ICC's Rome treaty to "preclude the surrender of all US citizens" to the court. It said that article only covered personnel "sent" by the US government, such as military personnel and officials. It also suggested that if the US signed a bilateral accord with any other ICC signatory, it should not be reciprocal. "As a party [to the ICC], we [Britain] would not want this reciprocal exemption," according to the proposals seen by the Financial Times. British Minister for European Affairs Peter Hain hailed the EU compromise, saying at a press conference: "This has been a long-running stand-off between the US and the ICC which has now been successfully resolved with bilateral agreements between each country" [reported October 2, "EU caves in to US pressure on ICC" Xinhua News Agency]. In question time in the House of Lords, Baroness Amos (of the Foreign Office) said "... we do understand US objections although we do not share them. We value the US role in international peacekeeping and we want to enable the US to continue to play that role and it is in that spirit that we are looking at the possibility of a bilateral agreement," she said. Tory former Chancellor Lord Lamont suggested it was "common-sense" in the short term to comply with the US government. He said: "...even if we in this country disagree with the grounds of the American administration, given their importance in international peace keeping is it not common-sense in the short-term at least to comply with what they want?" Baroness Amos said the Government was concentrating on a bilateral agreement for precisely this reason. "We will ensure that any agreement which emerges will be consistent with our obligations under the statute of the International Criminal Court and within the guiding principles agreed between EU Foreign Ministers on 30th September. My Lords, I again repeat that we are strong supporters of the International Criminal Court and that we will do nothing which conflicts with the statute. Therefore, in entering into a bilateral agreement our support for the ICC will remain," [reported, October 14, 2002, "Bush under fire over War Crimes Court", Parliamentary News, Press Association]. | none given |
| Uzbekistan | signatory | not stated | signed 18 Sept. | not stated | not stated | | |
| Yugoslavia | SP | 08/08/02 | under consideration/probable no. Foreign Minister Goran Svilanovic will most likely respond to the US. | US Embassy in Belgrade | Foreign Ministry (Presumably Foreign Minister Goran Svilanovic) | According to Foreign Minister Goran Svilanovic says government must wait and not be the ones to "cut this knot." President Vojislav Kostunica is vehemently against the US request. Prime Minister Zoran Djindjic, who will ultimately decide, is more cautious and wishes to wait to see how the EU and other states will respond. | none given |

C. List of FIDH documents on the International Criminal Court and the American demarches

- October 2nd, 2002: Council of the European Union / ICC: Consecration of an ICC "à la carte"

<http://www.fidh.org/communiq/2002/ij0210a.htm>

- September 9th, 2002: Statement by Mr. Sidiki Kaba, First Assembly of States Parties to the International Criminal Court

<http://www.fidh.org/communiq/2002/ij00909a.htm>

- August 30th, 2002: First Assembly of States Parties to the ICC – A high risk meeting (French only)

<http://www.fidh.org/communiq/2002/ij3008f.htm>

- July 17th, 2002: The ICC exists, the fight for its establishment begins! (French only)

<http://www.fidh.org/communiq/2002/ij1707f.htm>

- July 9th, 2002: Open letter to members of the Security Council

<http://www.fidh.org/communiq/2002/ij1007a.htm>

- July 3rd, 2002: Open letter to Mr Jacques Chirac – International Criminal Court: All our hopes are turned towards France (French only)

<http://www.fidh.org/communiq/2002/fr0307f.htm>

- July 1st, 2002: A three day postponement before an "à la carte" International Criminal Court?

<http://www.fidh.org/communiq/2002/ij0107a.htm>

- May 6th, 2002: ICC/US: Threat of un-signature of the ICC Statute: Which game is George W. Bush playing? (French only)

<http://www.fidh.org/communiq/2002/ij0605f.htm>

- December 10th, 2001: The United States wage war on the ICC

<http://www.fidh.org/communiq/2001/ij1212a.htm>

- October 3rd, 2001: The American government supports a law prohibiting military assistance to States that have ratified the International Criminal Court Statute (ICC)!

<http://www.fidh.org/communiq/2001/ij0310a.htm>