

Statement by Amb. Koonjul on The situation in Bosnia and Herzegovina – 10 July 2002

As an African member of the Council, let me first of all express our sincere thanks for the words of congratulations on the launching of the African Union. It is indeed a new beginning for Africa.

My delegation is particularly pleased that a meeting such as this is being conducted before the adoption of a draft resolution on Bosnia and Herzegovina, as it adds to the transparency and openness of the Council that we are all striving persistently to achieve. This is most appropriate and timely, as any future decision regarding peacekeeping operations will be able to mirror the views and comments not only of the 15 States members of the Council, but also of the wider membership of the United Nations, which is actively participating in the debate today.

The United Nations Mission in Bosnia and Herzegovina (UNMIBH) has been playing a significant role in the maintenance of peace and stability in the Balkans. Its presence on the ground has been instrumental in the establishment of law and order in Bosnia and Herzegovina. Any hesitancy in the renewal of its mandate will create serious doubt in the minds of the people of Bosnia and Herzegovina. Continued uncertainty in UNMIBH's operations will be counterproductive and may undermine the progress achieved so far.

We have recently had one renewal of UNMIBH's mandate for three days, followed by another one for 15 days, which will lapse on 15 July. The Mission's continued operation now depends upon the concerns raised by one delegation as regards the applicability of the provisions of the Rome Statute. That delegation, as a non-party to the Rome Statute, insists that the Council adopt a resolution to ensure that its peacekeepers and those of other contributing countries not party to the International Criminal Court (ICC) enjoy complete immunity from the jurisdiction of the Court. We do not share that view, as we do not believe that peacekeepers, by the very nature of their duties, would be involved in any crime falling under the purview of the ICC.

In fact, past history does not include any instance where any peacekeeper has been the author of a crime that could fall within the Court's jurisdiction.

In any case, it must be emphasized that the ICC is complementary to national justice systems and that, since status of forces agreements entered into between host countries and contributing countries provide for the repatriation and prosecution in the contributing country of any peacekeeper allegedly accused of misbehaviour. We therefore do not understand how the ICC can pose a threat to any peacekeeper. Indeed, we have complete trust in the justice systems of all law-abiding States.

My delegation has strong reservations about the proposal for blanket immunity to be granted to any particular individual or group of individuals from the jurisdiction of the ICC. Mauritius believes in the constitutional principle of equality before the law. The Rome Statute, establishing the International Criminal Court, has been elevated to almost universal acceptance by the signatures of more than 139 countries and the ratification by 76 of them within four years of its adoption. It would indeed be inappropriate to undermine such a universally accepted international treaty.

The United States has proposed that article 16 of the ICC Statute be used by the Council to provide blanket immunity to peacekeepers. Mauritius maintains that article 16 of the Rome Statute should be invoked only on a case-by-case basis when the Court is seized of a specific case. We fully subscribe to the view expressed by the Secretary-General that the provisions of article 16 mean that the Security Council can intervene to request the ICC prosecutor to defer the process of investigation and prosecution on a case-by-case basis. Doing otherwise would be tantamount to rewriting article 16, which itself could then in fact be challenged by the Court. Mauritius also believes that the concerns raised by the United States would be best addressed in forums other than this Council, more specifically in the tenth session of the Preparatory Commission for the Court. The Rome Statute contains built-in checks and balances, and the treaty has a strong mechanism to ensure that the Court is used only as a last resort.

As a party to the Rome Statute, Mauritius firmly believes that any provision undermining the jurisdiction of the ICC as provided in the Statute would be inconsistent and incompatible with the precepts of international law based on the will of the comity of nations.