

Président Jacques Chirac
Monsieur le Président de la République
Palais de l'Elysée
55, rue du faubourg Saint-Honoré
75008 Paris
FRANCE

17 June 2004

Your Excellency,

Open letter to members of the Security Council regarding renewal of Resolution 1487

I am writing to you to express Amnesty International's deep concern at the efforts of the United States of America (USA) to renew Security Council Resolution 1487 (2003). Contrary to the Charter of the United Nations and international law, this resolution seeks to prevent the International Criminal Court (ICC) from exercising jurisdiction over nationals of states that have not ratified the Rome Statute of the International Criminal Court (Rome Statute) when these nationals are accused of committing genocide, crimes against humanity or war crimes in connection with a United Nations (UN) established or authorized operation.

Resolution 1422, which was adopted in 2002 in response to threats by the USA that it would veto peace-keeping operations, prevented the ICC from exercising jurisdiction over nationals of non-state parties for a one-year period. The resolution also expressed the Security Council's intention to renew this resolution every year for one-year periods "for as long as may be necessary". In 2003, Resolution 1487 renewed Resolution 1422 for a further year. Amnesty International is concerned that such renewals seek to grant permanent impunity for the most serious crimes under international law committed by those nationals of non-states parties to the Rome Statute relating to UN established or authorized operations.

However, in 2003, France and two other members (Germany and Syria) did express their opposition to the renewal by abstaining from voting on Resolution 1487. On that occasion, Mr. Duclos declared that "...renewal risks lending credence to the perception that such exemptions are permanent. That appearance of permanency can only weaken the court and harm its authority." On 17 June 2004, the Secretary-General reiterated the concerns he had expressed in previous years, and demonstrated his strong opposition to the renewal of Resolution 1487 in the light of the abuse of prisoners in Iraq:

"... for the past two years, I have spoken quite strongly against the exemption, and I think it would be unfortunate for one to press for such an exemption, given the prisoner abuse in Iraq. I think in this circumstance it would be unwise to press for an exemption, and it would be even more unwise on the part of the Security Council to grant it. It would discredit the Council and the United Nations that stands for rule of law and the primacy of rule of law."

The Secretary-General's concerns have been echoed by many Council members, an increasing number of which have expressed opposition to the annual renewal of the resolution.

The unlawfulness of Resolution of 1422 is documented in Amnesty International's legal memorandum *International Criminal Court: The unlawful attempt by the Security Council to give US citizens permanent impunity from international justice* (AI Index IOR 40/006/2003) May 2003 (available at: <http://www.amnesty.org/icc>), a copy of which is enclosed with this letter. Legal experts throughout the world, including Hans Corell, former Legal Counsel to the UN, have overwhelmingly concluded that Resolution 1422 and its subsequent renewals are contrary to the UN Charter and other international law. In particular:

- In adopting Resolutions 1422 and 1487, the Security Council purported to act under Chapter VII of the UN Charter. However, it failed to make the essential determination of the existence of a threat to international peace and security required before it can take measures pursuant to Chapter VII. Without such a bona fide determination, the Security Council was acting *ultra vires* in a way that violated the UN Charter.
- Resolutions 1422 and 1487 are inconsistent with the Rome Statute, which provides that the UN Security Council may defer specific cases for 12 months if it deems there is a threat to peace and security. The resolutions seek to grant impunity without any such case-by-case determination.
- The resolutions are contrary to other international law, including *jus cogens* prohibitions and international human rights and international humanitarian law, as they seek to give impunity to an entire class of individuals accused of genocide, crimes against humanity and war crimes.

Amnesty International and the majority of UN member states believe the Rome Statute contains ample safeguards against frivolous or politically motivated prosecutions. Under the principle of complementarity, the ICC will only exercise jurisdiction if states are unable or unwilling genuinely to investigate or prosecute the worst possible crimes under international law.

France played a crucial role in the establishment of the ICC since it made the first proposal in the UN in 1947 for an international criminal court and remains one of its strongest supporters. We appeal to you as a member of the UN Security Council not to allow the renewal of Resolution 1487. In doing so, the Security Council will send a powerful message, reinforcing the international community's commitment to ending impunity for the worst crimes known to humanity at a time when universal respect for the international standards that prohibit these crimes is at stake. We therefore urge your government to abstain or use its veto when the renewal is considered. We also ask that France informs other Security Council members of its decision to abstain and urges them to do likewise, in particular those members that have strong links with France, including Algeria, Benin and Romania.

Yours sincerely,

Irene Khan
Secretary General