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**Hot Button issues in  
Canadian Foreign Policy  
since September 11, 2001**

**Group of 78 Annual Policy Conference 2002  
21st Annual Policy Conference**

**letter to the Honourable Bill Graham, Minister for Foreign Affairs  
and International Development**

**September 27 - 29, 2002  
Econiche House: 32 River Road, Cantley, Quebec J8Y 3A1**

**Conference Chair: Peggy Mason  
Rapporteurs: Tim Creery, Arch MacKenzie**

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The following is the text of a letter to the Honourable Bill Graham, Minister for Foreign Affairs and International Development.

Similar letters were sent to Prime Minister Jean Chrétien, Deputy Prime Minister and Minister of Finance John Manley, The Right Honourable Joe Clark, Mr. Stephen Harper, Leader of the Canadian Alliance, Mr. Gilles Duceppe, leader of the Bloc Québécois and Ms. Alexa McDonough, Leader of the NDP.

Minister Graham's response follows.

Honourable Bill Graham,  
Minister for Foreign Affairs  
CANADA

ORIGINAL BY EMAIL

October 2, 2002

Dear Sir:

It was with grave concern that I read yesterday of the EU decision to allow member states to enter into Article 98 agreements with the USA to exempt American nationals from the International Criminal Court. As you are well aware, if agreements under Article 98 are to remain true to the purpose of the Rome treaty, they must respect the ICC's right to intervene in national prosecutions should they prove to be a charade. No ICC suspect should ever be sent under Article 98 to a government that does not recognize this right. Without U.S. acceptance of that principle, the agreements Washington seeks under the guise of Article 98 amount to impunity deals that are inconsistent with the purpose of the Rome treaty.

The U.S. has not accepted the right of ICC oversight and the EU “guiding principles” for Article 98 agreements are therefore a sham and cannot disguise the illegality of such grants of blanket immunity. Foreign Minister Joschka Fischer of Germany, to his credit, has made clear that Germany would not be offering any such exemption to U.S. troops.

The International Criminal Court represents perhaps the most significant achievement of humankind since the creation of the United Nations. **In keeping with the singular leadership role that Canada has demonstrated to this point in negotiating the Rome treaty and in bringing the ICC to life, I call upon Canada to state unequivocally that it will not enter into an Article 98 agreement with the United States.**

At its 2002 Policy Conference, I had the privilege of being elected the new Chair of The Group of 78. Among the issues we discussed in some depth were the history and significance of the ICC and the singular role that Canada has played in making the permanent international criminal court a reality. Participants were inspired in equal measures by this immensely important development of international law and by Canada's leadership role in making it happen. As a consequence, a number of recommendations were approved committing The Group of 78 to a range of outreach activities designed to better publicize the Court and Canada's role in supporting it, despite the war being waged against it by the United States. Once we have finalized our Report of the

Conference, we will be forwarding these and other recommendations to you and other Parliamentarians.

I close with part of the letter that I sent to a number of British newspapers yesterday, regretting the pivotal role that Prime Minister Tony Blair played in breaking the previous EU consensus to stand firm against the American call for immunity:

"Milosevic must be laughing all the way to his next courtroom appearance. How is Tony Blair to stand up and say to the Serbs (or anyone else) that prosecution for war crimes is not fatally poisoned by politics? If Tony Blair cannot distinguish between what is fundamental and what is not – is there any hope that his party can do it for him?"

It is my fervent hope that you – with your eminent background in, and evident commitment to, international law – can distinguish between what is fundamental and what is not. It is my equal hope that the Prime Minister can do the same. As I have written in a separate letter to him, if he wants a legacy, standing by the ICC in its hour of greatest need, is surely one that will outlast any domestic initiative he might devise.

Yours very sincerely,  
Peggy Mason

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## **Minister Graham's response**

Dear Ms. Mason:

Thank you for your e-mail of October 2, 2002, concerning the position of the United States with regard to the International Criminal Court (ICC).

The Prime Minister has also forwarded to me your correspondence on this issue. I regret the delay in replying to you.

The International Criminal Court is a central component of Canada's foreign

policy, and we are proud to have played a leadership role in the creation of an effective and credible Court. The ICC will help eliminate impunity and provide accountability for the most serious criminal acts of genocide, crimes against humanity and war crimes.

As you know, the United States has approached countries, including Canada, seeking bilateral agreements to exempt U.S. citizens from the jurisdiction of the ICC. Many countries have expressed concern that such agreements are inconsistent with the letter and spirit of the ICC Rome Statute. Indeed, Canada has conveyed to the U.S. that the proposed exemption appears to be far wider than what is permitted by the Statute, and is therefore problematic. We have further indicated that Canada will not enter into a bilateral agreement to exempt all U.S. nationals from surrender to the ICC.

Canada and the U.S. are already party to the NATO Status of Forces Agreement , which provides appropriate protection to military and related civilian personnel. We have indicated a willingness to make changes to that Agreement to accommodate legitimate U.S. concerns.

Additional information on Canada and the ICC, including my address of September 9, 2002, to the ICC Assembly of States Parties, is available on the Department's Web site at: [www.dfait-maeci.gc.ca/foreign\\_policy/icc](http://www.dfait-maeci.gc.ca/foreign_policy/icc).

Thank you again for taking the time to write in support of the ICC.

Sincerely,  
Bill Graham