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Statement and recommendations on the Open Debate of the Security Council on Peace and Justice, with a Special Focus on the Role of the International Criminal Court

Amnesty International welcomes the *Open Debate of the Security Council on Peace and Justice, with a Special Focus on the Role of the International Criminal Court* scheduled to take place on 17 October 2012. The debate is an important occasion for states to consider, not only the first decade of the International Criminal Court (ICC), but specifically the emerging relationship between the Security Council and the Court.

The tenth anniversary of the establishment of the ICC this year marks an important milestone in the new system of international justice. The very existence of the Court signifies the determination of the international community to end impunity for crimes under international law. Within the last decade, the Court has become part of the international legal system.

However, the ICC faces many challenges that must be addressed if it is to have a real impact in the fight against impunity, including ensuring cooperation from all states and adequate funding to respond to many situations around the world where crimes under its jurisdiction have been or are being committed.

The important role that the International Criminal Court can play in supporting the Security Council's mandate to maintain international peace and security has been demonstrated by the Council's decisions under Chapter VII to refer the situations in Darfur and Libya to the ICC Prosecutor in Resolutions 1593 (2005) and 1970 (2011) respectively.

The failure of the Security Council to refer other situations where crimes have been committed outside the ICC's immediate jurisdiction to the Prosecutor, however, leaves the Court vulnerable to charges of politicization and undermines the credibility of the Council. In particular, since April 2011, Amnesty International has repeatedly called for the Security Council to refer the situation in Syria to the ICC Prosecutor. 18 months later, with the bloodshed continuing, the Security Council must take the long-overdue step to refer the situation and demand international justice. Our organization calls on all UN Member States to support a recent initiative by Switzerland to develop a collective appeal of UN Member States to the Security Council calling for the referral.

The ever present threat of permanent members of the Security Council using their veto power to block referrals or other measures aimed at responding to crimes under international law is unacceptable and the lack of effective action in situation such as Syria calls into question the ability of the Security Council to perform the mandate entrusted to it. The recent draft Resolution on Follow-up to the Outcome of the Millennium Summit (the so-called 's-5 Resolution') recommended that the permanent members of the Security Council consider *"refraining from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity."*

Amnesty International urges all UN Member States to insist that the Security Council members make this commitment.

In both the Darfur and Libya situations, the work of the ICC has been undermined by flaws in Resolutions 1593 and 1970 and the failure of the Security Council to support the ICC's work and insist on cooperation. In particular, there is no reasonable basis for the Security Council's decision only to urge and not require all states to cooperate with the Court, as it did in establishing the International Criminal Tribunal for the former Yugoslavia in Resolution 827 and the International Criminal Tribunal for Rwanda in Resolution 955.

The failure of the Security Council to respond to non-cooperation, including referrals by the ICC of instances involving states parties to the Rome Statute, is particularly disappointing. The Security Council has failed to react to continued travel by President Omar al-Bashir to other countries without arrest and did not call for either Saif al-Islam Gaddafi (before a challenge to the admissibility of the case was filed by Libya) or Abdullah al-Senussi to be surrendered to the ICC. It is, therefore, not surprising that none of the suspects that are subject to arrest warrants in Darfur and Libya have yet been surrendered to the ICC for prosecution.

However, the Security Council has not been completely inactive. Amnesty International welcomes the prompt reaction of the Security Council to the detention of four ICC staff in Libya earlier this year. The situation highlights the need to ensure that referrals require all states to give effect to the Agreement on Privileges and Immunities of the ICC. The Security Council also assisted with the lifting of the travel ban to ensure Laurent Gbagbo's surrender to the ICC. An exemption for surrender to the ICC should be included in all travel bans.

Furthermore, since the Security Council refused to renew its decisions in Resolutions 1422 and 1487, which unlawfully sought to prevent the ICC from exercising jurisdiction over nationals of non-state parties for a one-year period, it has not sought to defer any investigation or prosecution under Article 16 of the Rome Statute. Deferrals under Article 16 are inconsistent in all cases with the spirit and purpose of the Rome Statute and, if implemented, would allow those accused of the crimes to blackmail the international community into granting indefinitely repeated renewals. The refusal of the Security Council to consider proposals to defer proceedings against President al-Bashir is particularly welcome.

The relationship that has emerged between the Security Council and the ICC in the last decade demonstrates that states parties to the Rome Statute who are members of the Council have an important responsibility to ensure against the politicization of the ICC by the Security Council. Regrettably, on many occasions, those states parties have failed to ensure that the Security Council acts consistently and supports the work of the Court. Disturbingly, some states parties have supported referrals at the Security Council and then opposed additional resources for the ICC to investigate and prosecute the crimes. Amnesty International, therefore, supports strengthening the role of states parties within the Council by establishing a "Rome Statute Caucus".

In accordance with these observations, Amnesty International urges states participating in the Open Debate to:

- Express their strong support for the International Criminal Court and call on the Security Council to support its work;
- Call on the Security Council to adopt a consistent approach to referrals, including calling on permanent members of the Council not to use their veto power to block referrals;
- Call on the Security Council to refer the situation in Syria to the ICC Prosecutor without further delay;
- Call on the Security Council to address flaws in Resolution 1593 and 1970, including calling for all states to cooperate with the ICC and to respect the Agreement of Privileges and Immunities of the ICC;
- Call for travel bans to include an exemption against surrendering persons to the ICC;

- Call on the Security Council to follow-up on referrals by supporting the work of the ICC and insisting on cooperation, including responding promptly to instances of non-cooperation referred to it by the ICC;
- Support adequate funding for the ICC to respond to all Security Council referrals;
- Call on the Security Council not to defer any investigation or prosecution under Article 16;
- Support the establishment of a “Rome Statute Caucus” of states parties within the Security Council.