

TABLE OF CONTENTS

1. Time allocated for Assembly sessions	1
2. Need for more meeting resources	2
3. Consideration of the slow-down in ratifications and the need for states to enact effective implementing legislation	2
4. Consideration of the status of ratifications and implementation of the Agreement on Privileges and Immunities.....	3
5. Consideration of the US campaign against the ICC	3
6. Consideration of the status of the Host State Agreement	4
7. Consideration of outreach activities of the ICC.....	4
8. Consideration of the need for geographical and gender balance in staff of the ICC	5
9. Establishment of an ICC United Nations Office at the United Nations Headquarters in New York.....	5
10. Consideration of the Permanent Premises of the ICC	6
11. Consideration of the 2006 Programme Budget and the Report of the Committee on Budget and Finance	7
12. Consideration of the status of arrears by states parties in paying assessed contributions	7
13. Adoption of the Regulations of the Trust Fund for Victims	7
14. Other Trust Fund for Victims related issues.....	8
15. Preparations for the Review Conference.....	8

International Criminal Court: Comments and recommendations following the fourth session of the Assembly of States Parties

The work of the Assembly of States Parties (Assembly) at its fourth session (28 November to 3 December 2005) represents major progress, in most areas, towards ensuring full and effective oversight of the work of the International Criminal Court (Court), while still respecting the independence of the Court.

In its paper: *International Criminal Court: Concerns at the fourth session of the Assembly of States Parties* (AI Index: IOR 40/027/2005), Amnesty International raised concerns about a number of issues on the agenda of the Assembly and other issues which were not on the agenda but which the organization believes should have been included. The organization made a series of recommendations on these issues for states to consider, a number of which were adopted by the Assembly.

This paper reviews the progress made during the fourth session, identifies problems that should be resolved by the Assembly through its Bureau in advance of its fifth session and makes recommendations for important follow-up that should be conducted inter-sessionally by Bureau working groups and other mechanisms. In particular, Amnesty International calls on the Bureau to establish new inter-sessional working groups on ratification and implementation of the Rome Statute of the International Criminal Court (Rome Statute) and the Agreement on Privileges and Immunities of the International Criminal Court (Agreement); outreach; the permanent premises for the Court; and the Review Conference. Amnesty International plans to contribute to the work of established working groups with detailed recommendations.

1. Time allocated for Assembly sessions

As Amnesty International and the Coalition for the International Criminal Court (CICC) have consistently argued, the time allotted to the first four sessions of the Assembly has been inadequate to address the many important and pressing issues of this unique new judicial institution. Amnesty International welcomes, therefore, as a first step to addressing this problem, the decision to extend the fifth, sixth and seventh sessions to eight days, with extra days for elections and meetings of the Special Working Group on the Crime of Aggression.¹

¹ Resolution ICC-ASP/4/Res.4, Strengthening the International Criminal Court and the Assembly of States Parties, para.53.

2. Need for more meeting resources

In addition to the increased investment in time, there is also a need for more investment in resources for the sessions, in particular interpretation resources. Amnesty International notes that a number of delegations were unable to participate fully in informal sessions and extended formal sessions due to the lack of interpretation services. This issue should be addressed at future sessions to ensure that all states parties can participate fully at all stages of the proceedings.

3. Consideration of the slow-down in ratifications and the need for states to enact effective implementing legislation

Having raised concern about the failure of the Assembly to consider these issues fully in previous sessions, Amnesty International welcomes the decision of the Assembly to:

“keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas and requests the Bureau to consider measures that could be taken by the Assembly, the Secretariat of the Assembly of States Parties or the States Parties to help increase the number of ratifications and to facilitate full implementation of the Rome Statute, and to report thereon to the Assembly in advance of its fifth session.”²

The organization also welcomes a number of statements by the President of the Assembly and states parties on the importance of making progress towards universal ratification and ensuring all states parties implement the Rome Statute.

Amnesty International urges the Bureau of the Assembly to establish working groups on both issues, to provide adequate time and facilities for the working groups to meet and consider the broad range of issues in detail, and to circulate the provisional agendas in advance of the meeting. Noting that several states parties, regional governmental organizations and civil society have played a very active role on these issues, Amnesty International recommends that the meetings of the working groups should be open to these participants to ensure full input and dialogue from the widest range of actors.

² *Ibid.*, para.4.

In addition to the work of the Bureau, Amnesty International hopes that the President of the Court, the Prosecutor and the Registrar will address these two matters in the Court's work, in consultation with civil society, and report to the fifth session of the Assembly on what steps the Court has taken to address these matters. For example, the Registry, working together with the Secretariat of the Assembly, could publish an on-line report on the progress of states parties and other states to implement the Rome Statute and the Agreement, including details about the procedure for drafting such implementing legislation and the role of civil society in that process.

4. Consideration of the status of ratifications and implementation of the Agreement on Privileges and Immunities

Amnesty International welcomes calls by the Assembly for states to ratify and implement the Agreement.³ Although the issue is not expressly referred to the Bureau for action, Amnesty International believes that it is one that is central to issues of universal ratification and effective implementation and therefore urges the Bureau to extend the mandate of the working groups it establishes on ratification and implementation of the Rome Statute to consider ratification and implementation of the Agreement as well.

5. Consideration of the US campaign against the ICC

Amnesty International is disappointed that although the Assembly has adopted strong language on protecting the integrity of the Rome Statute, it has again failed to take any practical measures for the Assembly as a whole to address the campaign being conducted by the United States of America (USA) against the Court.⁴

US pressure is now widely accepted as a major contributing cause to the slow-down in ratifications in recent years and Amnesty International urges the Bureau to ensure that this issue is dealt with thoroughly by the working groups established on ratification and implementation.

It is equally disturbing that the USA continues to pressure states to sign and ratify unlawful impunity agreements seeking to prevent the surrender of persons accused of genocide, crimes against humanity and war crimes to the Court. Disturbingly, at least 47 states parties have signed such agreements and at least 10 have ratified them.

The organization welcomes that some states (including Brazil, Kenya and Sierra Leone) did raise this issue in their general statements and highlighted the need for the

³ *Ibid.*, para.6-7.

⁴ *Ibid.*, para.5.

Assembly to address it. Amnesty International urges states to continue to raise this issue with a view to including it on the agenda of the fifth session.

6. Consideration of the status of the Host State Agreement

Amnesty International welcomes the decision of the Assembly to urge the host country and the Court to finalize negotiations of the Host State Agreement.⁵ The Agreement is of increasing importance as the Court expects that trials will begin in 2006. The organization encourages the Bureau to monitor the status of negotiations, with a view to ensuring that the final Agreement is submitted to the Assembly at its fifth session. In particular, the final Agreement should provide for effective access to the Court and the Assembly for non-governmental organizations, legal teams for the accused and support teams for victims.

7. Consideration of outreach activities of the Court

Amnesty International welcomes the Assembly's detailed consideration of problems currently being encountered by the Court in performing its outreach functions, in particular informing local populations where crimes are being investigated about the Court and its work. The Court should build upon the successful work of the outreach programs of the Special Court for Sierra Leone and not repeat the mistakes of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which failed to establish effective outreach programs in their first years of operation – an omission that undermined their credibility and effectiveness within the affected regions.

The Assembly has sent an important message to the Court to “intensify such outreach activities” and has requested that the Court “present a detailed strategic plan in relation to its outreach activities to the Assembly, in advance of its fifth session.”⁶ Unfortunately, the Assembly has undermined this message by approving cuts in the already inadequate outreach budget requested by the Court for 2006.

It is essential that the strategic plan on outreach activities requested by the Assembly is completed – after consultation with civil society and independent experts – as soon as possible and that states parties review it in detail. Accordingly, Amnesty International urges the Bureau to appoint a focal point to monitor and report to the Bureau, states parties and observers on the status of the preparation of the strategic plan on outreach and, once the plan is issued, to establish a working group to review it in detail.

⁵ *Ibid.*, para.36.

⁶ *Ibid.*, para.22.

This working group should invite Court staff to present the strategic plan and it should be open to non-governmental organizations to allow them to present their views based on their extensive experience and knowledge of the national situations and experience in conducting outreach.

8. Consideration of the need for geographical and gender balance in staff of the Court

Amnesty International welcomes the decision of the Assembly to request the Bureau to submit proposals to the fifth session regarding improving equitable geographical representation and gender balance in the recruitment of Court staff members.⁷

Amnesty International hopes that the Bureau's consideration of this important issue will also extend to examining concerns raised about the geographical and gender balance of the list of defence and victims' counsel⁸ with a view to working with the Court to address the problem in a manner fully consistent with the rights of suspects and accused to choice of counsel, including appointed counsel.

As part of the Bureau's consideration of these issues, it is essential that any mechanism established by the Bureau should also review the Court's existing practices on ensuring the appointment of staff with expertise on specific issues, including but not limited to violence against women or children, and should consider proposals on how to ensure that the requirements set out in the Rome Statute are fully implemented.

9. Establishment of an International Criminal Court United Nations Office at the United Nations Headquarters in New York

Amnesty International welcomes the decision of the Assembly to establish a United Nations Office in 2006.⁹ The organization believes that it is essential to ensure the Court is represented at the United Nations and to promote full support and cooperation from the United Nations and states.

⁷ *Ibid.*, para.23.

⁸ In its Gender Report Card issued to the Assembly of States Parties, the Women's Initiative for Gender Justice notes: "alarming trends in the appointments to the ICC List of Legal Counsel (to represent victims and defendants) where only 17 of 109 appointees are women and almost 70% of those on the List are from one region – Western European and Others Group (WEOG)".

⁹ *Ibid.*, para.25.

10. Consideration of the Permanent and Interim Premises of the Court

Amnesty International welcomes the consideration given by states to the issue of the permanent premises. In order to make further progress on the matter, the Assembly has invited the Court:

“to complete its staffing estimation and strategy planning well before the next session of the Assembly and to continue further preparatory and planning work on the detailed requirements of the permanent premises”

The Assembly requested the Bureau to remain seized of the matter. Given the importance of the permanent premises, Amnesty International encourages the Bureau to monitor the prompt preparation of the information required from the Court. Independently of this information, however, the Bureau is encouraged to establish a working group to further discuss outstanding issues of financial modalities, the location of the permanent premises and the process for establishing the permanent premises as soon as possible.

In its considerations of all issues relating to the permanent premises, it is important that the working group bears in mind a wide range of factors concerning the permanent premises in the coming decades, including the possible structure of the Court itself, which might have the bulk of its pre-trial and trial proceedings in other countries, and the need to design facilities that guarantee the independence of each organ of the Court and respect the role of victims in the proceedings.

In relation to the design of the permanent premises, Amnesty International urges the Bureau to consider recommending that the Assembly establish a consultative committee on the permanent premises made up of representatives of the Court; the Secretariat of the Assembly; subsidiary bodies of the Assembly including the Trust Fund for Victims; governments; intergovernmental organizations (IGOs) (in particular, international criminal courts); non-governmental organizations (NGOs) (including victims' organizations and organizations with expertise on the rights of the accused); and the press.

In addition to the long-term problem of building permanent premises, the Court faces an immediately pressing problem of finding adequate space in or near its interim premises. Amnesty International fully supports the CICC's call upon the Assembly to adopt an effective solution at its resumed fourth session so that the work of the Court will not be impeded.

11. Consideration of the 2006 Programme Budget and the Report of the Committee on Budget and Finance

Amnesty International is concerned by the new approach adopted by the Assembly in considering the Court's Programme Budget. The Assembly adopted the recommendations of the Committee on Budget and Finance to make cuts on the basis that the Assembly was simultaneously providing budgetary flexibility to allow the Court to move resources within major programmes if those resources that were cut are subsequently needed. Although Amnesty International recognizes that the budget process leading up to the Assembly was greatly improved compared to previous years, the organization is concerned by the Assembly's decisions to approve cuts for outreach functions, legal aid and training for defence and victims' counsel, and victims' protection and support. Amnesty International urges the Court to ensure that resources are made available in these areas if, as the organization believes is likely, resources which have been cut are in fact required in 2006.

12. Consideration of the status of arrears by states parties in paying assessed contributions

Amnesty International welcomes the Assembly's decision to adopt a range of measures as set out in the Report of the Bureau on the arrears of States Parties to address the current failure by many states to pay their assessed contributions to the Court. Amnesty International urges all states parties to pay any outstanding assessed contributions to the Court as soon as possible. A review of the effectiveness of these measures should be undertaken by the Bureau, which should report on this matter with any necessary recommendations to the fifth session.

13. Adoption of the Regulations of the Trust Fund for Victims

Amnesty International welcomes the Assembly's adoption of the Regulations of the Trust Fund for Victims (Trust Fund) without restricting the Trust Fund's work. In particular, Amnesty International welcomes that the Regulations:

- enable the Trust Fund to act as soon as an investigation is announced;
- enable the Trust Fund to provide assistance to victims of crimes under the jurisdiction of the Court which are being investigated by the Court, rather than limiting assistance only to victims of specific crimes being prosecuted by the Court;
- guarantee the independence of both the Trust Fund and the Court by establishing a procedure whereby a Chamber can notify the expert Board of Directors of the Trust Fund of any concerns it may have that the Trust Fund's activities will interfere with the presumption of innocence or the right to a fair trial. Amnesty

International believes that the types of activities – which are routine in many national legal systems – envisaged by the Trust Fund in providing assistance to victims, independently of any reparations order by the Court, are unlikely to affect these rights.

- allow for discussion between the Chambers and the Board of Directors of the Trust Fund to adapt projects to address concerns raised by the Court. The alternative – that the Court immediately make an order that the Trust Fund cannot help victims – would have been damaging for both the Court and the Trust Fund.

14. Other Trust Fund for Victims related issues

Amnesty International welcomes the decision of the Assembly to appoint an Executive Director for the Trust Fund, who will be essential to manage the day-to-day work of the Trust Fund in accordance with the instructions of the Board of Directors.

Amnesty International welcomes that a number of states made voluntary contributions to the Trust Fund during the fourth session. The organization encourages all states parties and non-states parties to make voluntary contributions to support the Trust Fund at this important stage of its establishment and to ensure that it has sufficient resources to fund its first activities.

15. Preparations for the Review Conference

It is a matter of concern that at its fourth session the Assembly did not address the question of preparations for the Review Conference. In order to ensure that preparations for the Review Conference are conducted effectively and expeditiously, it is recommended that the Bureau establish a working group as soon as possible to consider options for conducting such a conference and report back to the members of the Assembly during the coming year.

Amnesty International believes that it will be important for the Review Conference to limit itself to the questions it must consider: the definition and procedure regarding the crime of aggression and the definitions of drug trafficking and “terrorism”. Any attempt to open up the Rome Statute to amendments, apart from translation corrections, would risk unravelling the grand political bargain reached at Rome. Indeed, there is a serious risk that one or more non-states parties will seek to do that in return for a promise to cease opposing the Court. Only after the Court is well-established and it becomes clear that flaws cannot be corrected by jurisprudence or practice should more substantial amendments be considered.