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Open letter to the Foreign Minister of Bulgaria urging rejection of the impunity agreement with the United States of America on the International Criminal Court

Dear Minister,

Amnesty International is concerned by reports that the United States of America (USA) is putting intense pressure on the government of Bulgaria to enter into a bilateral agreement committing not to surrender United States (US) nationals accused of genocide, crimes against humanity and war crimes to the new International Criminal Court. Amnesty International is writing to urge your government to refuse to sign this agreement, which violates Bulgaria's obligations as a state party to the Rome Statute of the International Criminal Court and under international law.

Amnesty International welcomes reports that you said that Bulgaria will not enter into any agreement that goes against the guiding principles of the European Union. These guiding principles state that "[e]ntering into US agreements - as presently drafted - would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties." The EU guiding principles also state that there should be no impunity, and any solution 'should ensure appropriate investigation and – where there is sufficient evidence – prosecution by national jurisdictions ...' The current draft US agreement contains no requirement that the USA investigate or prosecute any of its citizens who are accused of crimes under international law. Indeed, in some cases the USA would be unable to do so, as US law does not criminalise all the crimes under the ICC Statute. Amnesty International has analysed the EU guiding principles in *International Criminal Court: The need for the European Union to take more effective steps to prevent members from signing US impunity agreements* (AI Index: IOR 40/030/2002), published in October 2002 and available from www.amnesty.org/icc/.

Amnesty International has been working towards the establishment of the ICC for nearly 10 years, believing that it is an essential mechanism to end impunity for the worst crimes known to humanity. No one should have impunity for these crimes. Amnesty International, together with the majority of the international community, believes that the US government's concerns that the ICC will be used to bring politically motivated prosecutions against US nationals are wholly unfounded; the substantial safeguards and fair trial guarantees in the Rome Statute would ensure that such a situation would never arise. Amnesty International is confident that the ICC, with 18 of the highest qualified and respected judges in the international community and a highly qualified and experienced Prosecutor, will allay the US government's concerns and that the US government will in due course change its position.

Amnesty International hopes that you will consider the following legal arguments against impunity agreements which are set out in detail in *International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes* (AI Index: IOR 40/025/2002), published by Amnesty International in August 2002 and available from www.amnesty.org/icc/.

- Impunity agreements are unlawful because they commit states to violate their legal obligations under the Rome Statute and other international law to bring those responsible for genocide, crimes against humanity and war crimes to justice.
- Impunity agreements are not permitted by the Rome Statute. US assertions that the agreements are provided for in Article 98 of the Statute are incorrect, as numerous legal analyses, including by Amnesty International, conclude. This article was designed to cover existing Status of Forces Agreements, which determine which state has jurisdiction to investigate and prosecute crimes committed by forces stationed in another country, not agreements designed to give nationals of one state impunity from international justice.
- Impunity agreements contain no assurance that if US nationals are not surrendered to the ICC they will be brought to justice in the USA. In fact, in some cases the United States judicial system would not be able to do so as US criminal law does not include many of the international crimes included in the Rome Statute.

Amnesty International hopes that you will refuse to give consent to this or any other agreement which seeks to undermine the ICC and provide impunity to anyone accused of genocide, crimes against humanity and war crimes.

Yours sincerely,

Claudio Cordone
Senior Director
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