TABLE OF CONTENTS

INTERNATIONAL CRIMINAL COURT:

Concerns at the ninth session of the Preparatory Commission (8 to 19 April 2002)

This paper discusses a number of the concerns which Amnesty International has about matters scheduled to be considered at the ninth session of the Preparatory Commission for the International Criminal Court: the establishment of the Trust Fund for Victims pursuant to article 79 of the Rome Statute of the International Criminal Court (Rome Statute), the draft Financial Rules for the Court, the recruitment of temporary qualified specialist personnel, the establishment of an Advisory Committee on the nomination of judges and pledging advances of first year assessments.[1] At the time of writing a revised draft of the First Year Budget has not been issued.

This paper updates Amnesty International paper, *International Criminal Court : Concerns at the eighth session of the Preparatory Commission (24 September to 5 October 2002)* (AI Index: IOR 40/006/2001). Amnesty International believes that the comments in this paper - which do not necessarily address the full range of the organization's concerns - will be useful to delegates in considering the matters before them at the ninth session. In addition to this paper, which is being made available to all Permanent Missions, the organization believes that, as in the past, the delegates will find the contributions of other non-governmental organizations useful in their work, including, in particular, the studies by the Project on International Courts and Tribunals (PICT) and the Coalition for an International Criminal Court.

Moreover, Amnesty International believes that the Preparatory Commission will continue to find the experience and insight of the staff of the International Criminal Tribunals for the former Yugoslavia and Rwanda (Yugoslavia and Rwanda Tribunals) invaluable and it urges delegates to consult them on all of the issues before them at the ninth session during discussions in the Working Groups and during informal meetings. As in the past, one or more delegations might wish to invite the staff to make presentations to delegates concerning the experience of the Tribunals relevant to various issues during lunch hours or at other convenient times. Such presentations have always

[1]Although Amnesty International has not addressed the question of the definition of the crime of aggression or the conditions under which the Court will exercise jurisdiction over this crime, it is essential that the conditions for exercising jurisdiction, as for any crime by any court, must fully respect the independence of the Court in determining whether the crime occurred and the guilt or innocence of an accused. It is a general principle of law, both at the national and international level, that the independence of the judiciary be fully respected. United Nations Basic Principles on the Independence of the Judiciary; Universal Declaration of Human Rights, Art. 10; International Covenant on Civil and Political Rights, Art. 14 (1).

proved extremely useful to delegations in providing greater insight into the practical issues facing the International Criminal Court.

I. ESTABLISHING AN EFFECTIVE TRUST FUND FOR VICTIMS

At the sixth session of the Preparatory Commission, the Working Group on Financial Regulations and Rules accepted the task of defining the article 79 Trust Fund and its work. At the end of the eighth session in October 2001, the Working Group having concluded its work on the Financial Regulations, decided that it did not have sufficient time or resources to complete its work on the Trust Fund and the issue was forwarded to the ninth session for consideration by the Working Group on Financial Issues. The status of the negotiations reached by the Working Group on Financial Regulations and Rules is contained in UN document PCNICC/2001/WGFIRR/RT.5.

In making its decision to defer the issue to the next session, a number of delegations taking part in the Working Group on Financial Regulations and Rules requested input from non governmental organizations, particularly those that work on victim's issues.

Following the eighth session, Amnesty International and other NGO members of the Coalition for an International Criminal Court have agreed NGO Principles on the Establishment of the Trust Fund for Victims which are annexed to this document.

II. ENSURING THE INDEPENDENCE OF THE PROSECUTOR IN THE DRAFT FINANCIAL RULES OF COURT

At the sixth session of the Preparatory Commission, the Working Group on Financial Regulations and Rules began work on the Financial Regulations of the International Criminal Court. The Regulations were completed at the eighth session; however, the Working Group was unable to work on the Financial Rules that provide more detailed guidelines on financial matters than the Regulations. The Assembly of States Parties is required to adopt Financial Rules in accordance with Article 113 of the Statute and the Preparatory Commission was instructed in Resolution F to draft them.

In October 2001, the Chair of the Preparatory Commission appointed Christian Much of Germany as Focal Point to prepare the outstanding documents on financial and budgetary issues required by the Assembly of States Parties in its initial phase. The Focal Point identified the Financial Rules as an outstanding issue and prepared a discussion paper which was submitted to the Intersessional Meeting of the Preparatory Commission held at The Hague, The Netherlands, on 11 to 15 March 2002. The Focal Point indicated at the conclusion of this meeting that, based on the discussions, he would submit an amended discussion paper on the draft Financial Rules to the Preparatory Commission to be considered by the Working Group on Financial Issues at the ninth session.

Amnesty International attended the discussion at the Intersessional Meeting and has one major concern regarding the independence of the Prosecutor.
Draft Rule 103.2 provides that:

> "The Presidency shall decide on the programme content and resource allocation of the proposed programme budget to be submitted, by the Registrar, to the Committee on Budget and Finance."

This draft Rule relates to draft Regulation 3 of the draft Financial Regulations. A major issue which arose in the negotiations of draft Regulation 3 was ensuring the independence of the Prosecutor in preparing the budget for the Office of the Prosecutor. The eventual compromise wording that is included in draft Regulation 3 provides:

> "The proposed programme budget for each financial period shall be prepared by the Registrar in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute"

The independence of the Prosecutor is supported in this process by the inclusion of Regulation 1.4 which provides:

> "[t]he Prosecutor and the Registrar shall cooperate, taking into account the independent exercise by the Prosecutor of his or her functions under the Statute."

During the discussion of draft Rule 103.2 at the Intersessional Meeting, the Focal Point highlighted that the draft Rule was included to deal with the potential situation where the Prosecutor and the Registrar cannot agree on the programme budget for the Office of the Prosecutor. Although Amnesty International agrees that this issue should be resolved in the Financial Rules, the organization is opposed to appointing the Presidency as the final decision maker. Assigning this responsibility to the Presidency would pose a potential threat to its impartiality.

Amnesty International proposes that, in the event of a disagreement between the Prosecutor and the Registrar, the Rules should provide for a mediation process to seek agreement. The organization would not be opposed to the Presidency exercising a mediators role. However, in the event that agreement cannot be reached through mediation, the issue, including representations from the Prosecutor and the Registrar, should be referred directly to the Committee on Budget and Finance and the Assembly of States Parties for a final decision in accordance with the process set out in Regulations 3.4 and 3.5.

III. ESTABLISHING AN EFFECTIVE ADVISORY COMMITTEE ON NOMINATIONS

There are a number of important technical issues which will have to be addressed regarding how the Assembly of States Parties will consider nominations for the posts of Prosecutor, Deputy Prosecutors, Judges and in making recommendations for the post of Registrar and how it will conduct elections for the posts of Prosecutor, Deputy Prosecutors and Judges. These technical issues are outlined in detail in a working paper issued by the United Nations Secretariat.[2] However, this working paper does not address the crucial issue of the role of the Advisory Committee on nominations in any detail.

Article 36 (4) (c) of the Rome Statute. Article 36 (4) (c) of the Rome Statute authorizes the Assembly of States Parties to establish an Advisory Committee on nominations, but it does not spell out the role of the Advisory Committee.[3] Although Article 36 (4) (c) is part of the article dealing with the nomination and election of candidates to be Judges, nothing in the Rome Statute limits the role of the Advisory Committee to nominations of Judges, so the Assembly could authorize it to assist it in the nomination and election of the Prosecutor and Deputy Prosecutor and in making recommendations to the Judges for the post of Registrar.

Article 36 (4) (c) provides:

> "The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties."

[2] Election of judges, the Prosecutor and the Registrar of the International Criminal Court, U.N. Doc. PCNICC/2002/WGASP-PD/L.1, 26 February 2002.

[3] The Advisory Committee grew out of an initial proposal by the United Kingdom to ensure that the Assembly of States Parties had as much information as possible on which to assess the qualifications of the candidates and avoid politicization of the nomination and elections of judges by establishing a screening body of chief justices of states parties to assist the Assembly of States Parties in the nomination of candidates. This particular approach was not adopted, but, instead, after a suggestion by Egypt that a screening body be advisory, and a suggestion by France to establish an advisory committee, it was decided to authorize the Assembly to establish an Advisory Committee. For the history of this article, see Medard R. Rwelamira, *Composition and Administration of the Court, in* Roy S. Lee, ed., *The International Criminal Court: The Making of the Rome Statute - Issues - Negotiations - Results* (The Hague/London/Boston: Kluwer Law International 1999) 163-164.

The Preparatory Commission should recommend to the Assembly of States Parties that an Advisory Committee be established to assist the Assembly in considering nominations of Judges, the Prosecutor and Deputy Prosecutors and in other tasks related to elections, as well as in making recommendations to the Judges concerning the choice of the Registrar. This advisory body should be composed of independent experts to ensure its impartiality and increase its credibility. In establishing the Advisory Committee, the Assembly of States Parties could draw upon the experience of expert intergovernmental organization and non-governmental organization advisory bodies, such as the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe in providing advice on the election of judges to the European Court of Human Rights, the Committee on ICJ nominations of the American Society of International Law on the nomination of judges to the International Court of Justice and the Committee on the Federal Judiciary of the American Bar Association on the nomination of Federal judges. Such an advisory body, particularly if it was composed of independent experts, could help the Assembly by improving the speed, effectiveness, impartiality and credibility of considering nominations and in conducting elections in a number of ways.[4] Such assistance will be particularly valuable to the Assembly of States Parties given the complexities involved in the nominations and elections of candidates from two separate lists, as provided in Article 36 (3) (b) and (5), one involving established competence in criminal law (List A) and the other involving established competence in relevant areas of international law (List B).

Ways in which the Advisory Committee could assist the Assembly in the selection of the best candidates to be Judges. The ways in which the Advisory Committee could assist the Assembly in the difficult task of choosing the best candidates to be Judges include:

[4] As the leading commentary on the Statute has explained:

"It is essential to devise the method for selecting the judges so as to make sure that the best possible candidates are elected. The proposed judges must be elected on merit and will, hopefully, be perceived to be so. Paragraph 4 provides the States Parties an opportunity to carefully review the qualifications of candidates through an independent review committee. In other word[s], it is stipulated in this paragraph that nominations must be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of criminal trial experience or that of recognised competence in international law as demanded in paragraph 3. This was included to help ensure that selection would be primarily based on merit rather than on political considerations. It was also for that purpose, that the Assembly of States Parties may even decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate will be established by the Assembly of States Parties. Such an open and thorough examination and selection at the national and international level would surely help to ensure that the judges elected will act independently and impartially on the basis of professional ethics rather than on the basis of political considerations."

Zu Wen-qi, *Article 36: Qualifications, nominations and elections of judges, in* Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* (Baden-Baden: Nomos Verlagsgesellschaft 1999), 604.

facilitating the implementation of the complex requirements involved in nominating and electing Judges from two separate lists;

receiving nominations;

determining eligibility of candidates in the light of Article 36;

suggesting standard formats for statements to accompany nominations to facilitate comparison of candidates;

inviting and receiving submissions from legal experts and others on the qualifications of candidates;

developing impartial criteria to assist the Assembly in electing the best candidates from two separate lists;

interviewing candidates;

providing the Assembly and the general public with all relevant information as it is received;

providing the Assembly with evaluations of candidates in the light of impartial criteria; and

providing the Assembly and the general public with timely information as nominations are being submitted on the balance of legal systems and geographic regions, the degree to which the nominations are fairly representing men and women and the number of persons with relevant expertise on specific issues, including, but not limited to, violence against women and children.

The latter function would assist the Assembly and states parties as they make nominations of Judges to ensure that the balances and areas of expertise required by Article 36 8 (a) and (b) of the Statute are properly reflected in the total number of nominations. Article 36 (8) (a) provides:

> "The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:
> (i) The representation of the principal legal systems of the world;
> (ii) Equitable geographical representation; and
> (iii) A fair representation of female and male judges."

Article 36 (8) (b) provides:

> "States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children."

By requiring the Advisory Committee to make public information concerning the nominations from different legal systems of the world, the places where the candidates are from, whether they are men or women and their legal expertise, all states parties and the general public will know immediately if imbalances are developing and if sufficient numbers of candidates with appropriate areas of legal expertise are not being nominated. This will allow states parties that have not yet made nominations to take into account the developing imbalances and the deficiencies in legal expertise when making subsequent nominations. It could also enable the Advisory Committee to alert the Assembly if it appears that it is unlikely that sufficient nominations will be received for each list.

Such a mechanism could help avoid the embarrassment to the Assembly that could occur if the nominations were only made public at the close of the period for nominations and there were such serious imbalances and deficiencies in the nominations that it would not be possible for the Assembly to satisfy the legal requirements of Article 36 (8) (a) and (b). Such a mechanism could have avoided the problem that occurred in the most recent elections of judges and judges *ad litem* to the International Criminal Tribunal for the former Yugoslavia, when almost no women were nominated.[5]

Assisting in the nomination and election of the Prosecutor and Deputy Prosecutors. In addition to the above role for the Advisory Committee with respect to the nomination and election of judges, the Assembly of States Parties could ask the Advisory Committee to assist it in the nomination and election of the Prosecutor and the Deputy Prosecutors. The Statute fails to provide a mechanism and detailed procedures in this regard and, as the Secretariat's working paper suggests, the Advisory Committee could play a similar role in assisting the Assembly select the best possible candidate to the one suggested with respect to Judges.[6]

[5] For example, in March 2001 the General Assembly considered a list of 25 nominees for judges of the International Criminal Tribunal for the former Yugoslavia, only one of which was a woman. Fourteen people were elected, one of whom was a woman.

[6] Election of judges, the Prosecutor and the Registrar of the International Criminal Court, U.N. Doc. PCNICC/2002/WGASP-PD/L.1, 26 February 2002, para. 57 (stating that the Advisory Committee could be assigned to establish a list of nominees for Prosecutor).

Assisting in making recommendations for appointment of the Registrar. Similarly, the Assembly of States Parties could request the Advisory Committee to assist it in preparing recommendations to the Judges concerning the appointment of the Registrar. Both the Statute and Rule 12 of the draft Rules of Procedure and Evidence do not provide for a procedure for making recommendations to the Presidency. To address this gap, the Secretariat's working paper suggests that this possibility could be considered.[7] For the same reasons that the Advisory Committee could provide effective support with respect to the selection of Judges, the Prosecutor and Deputy Prosecutors, it could do so with respect to making recommendations concerning the appointment of the Registrar.

IV. ENSURING THAT THE COURT WILL BE ABLE TO RECRUIT TEMPORARY QUALIFIED SPECIALIST PERSONNEL, INCLUDING GRATIS PERSONNEL, RAPIDLY

The Court will need to be able recruit temporary qualified specialist personnel, including gratis personnel, rapidly in exceptional circumstances when persons are not available, or not available in sufficient numbers, on the staff of the Court and they cannot be recruited quickly through normal procedures for permanent staff. Gratis personnel are "personnel donated and paid by outside governments or organizations to serve as personnel for the Court".[8]

Article 44 (4) of the Rome Statute provides that the Court may employ such gratis personnel in exceptional circumstances in accordance with guidelines to be adopted by the Assembly of States Parties. It is anticipated that the Preparatory Commission will be drafting proposed guidelines for adoption by the Assembly. Article 44 (4) states:

> "The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties."

[7] *Ibid.*, para. 71 (suggesting consideration of a role for the Advisory Committee in this process).

[8] David Tolbert, *Article 44: Staff*, in Triffterer supra, 650.

Such gratis personnel proved invaluable to the International Criminal Tribunals for the former Yugoslavia and for Rwanda, particularly in their early years, when it proved difficult to recruit temporary personnel rapidly when there were no or insufficient numbers of staff in the Tribunals or the United Nations with the necessary skills.[9] The cumbersome and lengthy United Nations recruitment procedures for permanent and temporary staff often meant that it was difficult to hire temporary staff, such as investigators, forensic experts and lawyers, at the time they were most needed. Gratis personnel from non-governmental organizations, intergovernmental organizations and governments were able effectively to fill the gap. For example, the International Commission of Jurists provided interns to the International Criminal Tribunal for the former Yugoslavia that facilitated the successful investigation and prosecution of the first cases. Indeed, gratis personnel were a key part of the success of both tribunals.

Nevertheless, there were a number of problems associated with the use of gratis personnel in the United Nations Secretariat. Since only a few states, predominantly in Western Europe and North America and mainly common law countries, provided such gratis personnel, the geographic and legal system balance needed in an international institution to ensure its effectiveness, credibility and legitimacy was not always present.[10] It was also feared that too great a reliance on gratis personnel from governments could affect the independence of the Tribunals. Instead of devising a more effective system to avoid such imbalances, the General Assembly phased out the use of most gratis personnel in the United Nations system, including in the two Tribunals.[11]

However, at the Rome Diplomatic Conference it was recognized that gratis personnel would be essential to the success of the Court in exceptional circumstances and Article 44 (4) was included to provide for them. It is said that this provision emphasizes that such personnel "are not to simply do the jobs for which regular staff can be recruited and that there must be some real exigency that requires such services".[12]

[9] As a leading expert noted, "The *ad hoc* Tribunals, particularly its Prosecutor, had difficulty in recruiting the types of investigators and lawyers needed for its work, as the expertise in such matters as forensics and investigation were not readily available in the United Nations system generally, and those individuals with the requisite expertise are generally in the employ of governments." *Ibid.*

[10] Gratis personnel "primarily came from western governments" and the Tribunals "eventually had a substantial number of such personnel in important positions." *Ibid.*

[11] G.A. Res. 243, 10 October 1997. In that resolution, the General Assembly expressed "serious concern at the impact on the geographical balance in some parts of the Secretariat of the presence of gratis personnel". As Tolbert noted, "The General Assembly eventually expressed concern about the use of such gratis personnel, citing issues relating to the independence of gratis personnel and the effects on geographic balance, and the use of gratis personnel was eventually phased out." *Ibid.*

[12] Tolbert, *supra*, 650.

In preparing the draft guidelines for the employment of gratis personnel, the Preparatory Commission should ensure that:

1. Such personnel can be recruited quickly on a temporary basis. Sometimes the Court will need to recruit temporary personnel in a matter of days or weeks and normal recruitment techniques would not be able in all cases to locate qualified personnel in urgent situations, such as the need to recruit translators or interpreters in a non-United Nations language or forensic teams to preserve, identify and examine bodies in a massacre. Often persons with the needed skills and experience work with governments, intergovernmental organizations or non-governmental organizations and would not be willing to leave their current permanent employment for temporary posts, but could be easily seconded by their employers on a short-term basis. It might be necessary when the Security Council refers a situation to the Court threatening international peace and security to hire large numbers of police investigators and forensic experts working with non-governmental organizations on short notice to deal with large scale crimes, as proved necessary in Kosovo at the end of hostilities.

2. Such personnel meet appropriate professional qualifications and the requirements of the Statute. Of course, it goes without saying that any personnel, whether permanent or gratis, should be of the highest professional caliber. Although criteria cannot always be developed in advance, it will be essential to develop appropriate professional criterial for any gratis personnel to ensure that they are properly qualified.

3. Such personnel should be recruited in a manner designed to ensure to the greatest extent possible that they come from all regions and legal systems of the world and that there is a fair representation of men and women. For example, the process of recruitment should be transparent and regular reports published on the numbers of gratis personnel recruited and how they fulfil the relevant criteria.[13] Of course, similar safeguards need to be put in place for the recruitment of permanent personnel. Indeed, the possibilities of imbalances inconsistent with the requirements of Articles 36 (8) and 44 (2) of the Statute exist with regard to regular staff, as well, and may well be more serious for the work of the Court, since such staff would be permanent, rather than temporary. Many of the applicants for posts in the Court will have had experience working in the two Tribunals and, to the extent there were any imbalances in staff of

[13] In this connection, the Court could consider the possibility of adopting the approach of the General Assembly in Resolution 243 (1997), in which it stated that "[t]he selection process for gratis personnel should be transparent and conducted on as wide a geographical basis as possible, and, if there is a need for gratis personnel as provided for in the present resolution, all Member States should be informed[.]" It also requested that the Secretary-General "report annually on the use of gratis personnel, indicating, inter alia, their nationality, the duration of their service and the functions performed[.]"

these two institutions, these imbalances may be reflected to some extent in the applications for permanent posts in the Court.

4. Effective mechanisms are developed to create a pool of potential gratis personnel in all regions of the world, with a fair representation of men and women. A variety of techniques could be used to create such a pool of candidates in various fields that would facilitate the rapid recruitment of experts on a temporary basis. In developing such a pool of candidates, the Court should take into account the experience of the UN Commission on Human Rights, which has developed a pool of forensic experts.[14] In addition, the organs of the Court could encourage training programs throughout the world for persons in the skills that the Court is likely to need to recruit on a temporary basis in exceptional circumstances so that there will be a sufficient pool of candidates from a wide variety of regions and legal systems, including both men and women, so that inevitable temporary imbalances resulting from such exceptional circumstances will be minimized. The priority for such training programs should be in countries and regions which are unrepresented or not well represented in the staff of the Court and they should ensure that men and women are fairly represented.

[14] Report of the Office of the United Nations High Commissioner for Human Rights submitted in accordance with Commission on Human Rights resolution 2000/32, U.N. Doc. E/CN.4/2002/67, 21 January 2002. In that report (paras 4-6), the Office of the High Commissioner for Human Rights noted how it prepared a list of nearly 500 forensic experts:

> "4. On 8 August 2000, a note verbale was sent to all Governments and a letter to relevant intergovernmental and non-governmental organizations (NGOs). As of 14 December 2001, replies had been received from 15 Governments, 2 NGOs, Physicians for Human Rights and the Argentinean Forensic Anthropology Team, and from the International Criminal Tribunal for the Former Yugoslavia. All the replies contained lists of forensic experts and some of them also contained other elements, as requested by the Commission on Human Rights.
>
> 5. In order to facilitate the identification and selection processes for recruitment purposes, OHCHR sought the technical advice of an international expert in forensic science to establish a practical electronic database. For the purposes of inclusion in the database, experts were classified according to the following categories of activity and expertise: (a) forensic physician/pathologist/expert in the field of forensic medicine; (b) forensic pathology related to deaths caused by explosions, projectiles or firearms; (c) anatomical dissection and morphology of decomposed bodies; mass graves; (d) identification of corpses in individual cases; coordination in identification centres with large numbers of corpses; (e) clinical forensic information relating to sexual crimes, personal injury, state of health, domestic violence, etc; (f) assessment of physical injuries and related evidence; (g) investigation of the presence of toxins in bodily and other fluids; (h) analysis of cause of death from projectiles from firearms and other weapons; imprints and marks on the skin and at the crime scene; (i) investigation of traces of biological evidence found at the crime scene or on the body of the victim or suspects in crimes such as homicide or sexual assault; (j) forensic information systems for cross-linking cases; (k) conducting forensic exhumation and autopsy examinations; exhumation and identification of bodies; investigation of mass graves; (l) forensic medical training.
>
> 6. A consolidated database containing a total number of 487 experts, classified according to these categories, is currently available at OHCHR."

5. The guidelines do not impede the Court in rapidly recruiting temporary gratis personnel to meet exceptional needs. It goes without saying that the guidelines should not prevent the Court from selecting temporary personnel to meet the exceptional needs envisaged by the Statute.

V. PLEDGING ADVANCES OF FIRST YEAR ASSESSMENTS

It will be necessary to ensure that the Court has sufficient funds during the first year of its existence. Even if the first year budget (a draft of which was not available at the time this paper was written) is approved at the first session of the Assembly of States Parties, expected to be held from 3 to 13 September 2002, and assessments of each state party agreed, there will be no guarantee that the assessments will be paid by each state immediately or promptly. Each state's parliament will have to authorize payment of the assessment and this action will depend on the parliamentary schedule. Although the host state has agreed to pay a significant amount of the first year expenses related to buildings, equipment, security and staff, it obviously cannot be expected to advance the money to cover the first year budget while waiting for the other states parties to pay their assessments.

Therefore, Amnesty International is calling upon all current states parties, as well as other states committed to prompt ratification of the Rome Statute to pledge publicly that they will advance the Court funds, to be deducted from their first year assessments, so that when it starts work it will be able to do so effectively without being hampered by the otherwise inevitable gap between the determination of the first year assessments and the payment by states parties after parliamentary approval of these first year assessments. These pledges should be the equivalent of the likely amount of their first year assessments (regardless what method of making assessments is determined, states parties will have a rough idea of what their assessments are likely to be) or a substantial proportion of the expected assessments so that the Assembly of States Parties, the Court and the host state will have a clear idea what amounts will be available when the Court is established. Such pledges would also encourage other states parties and states likely to become states parties to follow suit and ensure that the Court starts on a sound financial footing.

The Preparatory Commission could recommend to states that they make such public pledges. It could also encourage governments, international organizations, individuals, corporations and other entities to pledge to provide voluntary contributions pursuant to Article 116 of the Rome Statute as soon as the Assembly of States Parties adopts the relevant criteria for acceptance of such contributions.

The first opportunity for such public pledges could be at the event sponsored by the United Nations on Thursday, 11 April 2002, at 9.30a.m. to mark the 60th ratification of the Rome Statute. Other events at which such pledges could be made include the date the Rome Statute enters into force, which is likely to be 1 July 2002, the ceremony in Rome on Wednesday,17 July 2002 marking the fourth anniversary of the adoption of the Rome Statute and the opening of the first session of the Assembly of States Parties, probably on 3 September 2002.

ANNEX: NGO PRINCIPLES ON THE ESTABLISHMENT OF THE TRUST FUND FOR VICTIMS

Article 79 of the Rome Statute of the International Criminal Court provides for the establishment of a Trust Fund Afor the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims (the Trust Fund).

At the sixth session of the Preparatory Commission of the International Criminal Court, the Working Group on Financial Regulations and Rules accepted the task of defining the Trust Fund and its work. At the end of the eighth Session in October 2001, the Working Group having concluded its work on the Financial Regulations, decided that it did not have sufficient time or resources to complete its work on the Trust Fund and the issue has been forwarded to the ninth session, which will take place from 8-19 April 2002, for consideration by the Working Group on Financial Issues. The status of the negotiations reached by the Working Group on Financial Regulations and Rules is contained in UN document PCNICC/2001/WGFIRR/RT.5 (ART.5). In making its decision, a number of delegations taking part in the Working Group on Financial Regulations and Rules requested the input of non-governmental organizations, particularly those that work on victim's issues.

This paper contains principles to ensure an effective Trust Fund, agreed by the NGO members of the Coalition for an International Criminal Court's Victims Working Group. Preparation of these principles has included consultations with the members of the United Nations Voluntary Fund for Victims of Torture and examination of other trust funds, including, the United Nations Trust Fund on Contemporary Forms of Slavery and the UNDP Trust Fund for Crisis, Post-Conflict and Recovery Situations.

Representatives of the Victims Working Group will be present throughout the negotiations of the Working Group on Financial Issues and can also be contacted in advance of the Preparatory Commission through the Coalition's Secretariat.

Management and administration of the Trust Fund

The Victims Working Group is opposed to the current proposal for managing the Trust Fund set out in paragraph 5 of the annex to RT.5. Neither the financial experts of the Committee of Budget and Finance nor the administrative experts of the Registry have the experience or expertise to determine the activities of the Trust Fund or to consult directly with victims and their families.

To ensure that the Trust Fund provides meaningful and effective assistance and reparations to victims and their families, the Assembly of States Parties should appoint a Board of Trustees, made up of individuals with expertise and experience of providing assistance to victims of serious human rights violations. The tasks of the Board of Trustees should include determining the activities of the Trust Fund and promoting and soliciting contributions and pledges.

The Board of Trustees should meet regularly, at least three times each year and have facilities to communicate and issue advice and instructions in between meetings.

An Executive Director of the Trust Fund should be appointed to manage the day-to-day tasks of the Trust Fund. The Executive Director should have sufficient facilities and staff to effectively manage the Trust Fund, including staff members with experience of working with victims, administration and fundraising.

Oversight and accountability mechanisms should be established by the Assembly of States Parties to ensure the effective management of the Trust Fund.

Resources of the Trust Fund

The Victims Working Group recommends a broader and more flexible list of resources than those listed in paragraph 2 of RT.5. In its current form, paragraph 2 could prevent the Trust Fund from accepting contributions consistent with the spirit and aims of the Trust Fund.

The text of paragraph 2 should allow the Executive Director to accept funds from a broad range of sources, if necessary, on the advice of the Board of Trustees.

Voluntary Contributions

The Executive Director, not the Registrar as set out in RT.5, should oversee the receipt of voluntary contributions on a case-by-case basis.

Earmarked contributions shall be permissible to the extent that the consequences for excluded victims and the effect of accepting the donation are not inconsistent with the spirit and purpose of the Trust Fund.

The Board of Trustees should develop detailed criteria to guide the Executive Director in determining whether to accept voluntary contributions. If necessary, the Executive Director should consult with the Board of Trustees on implementing the guidelines.

A report should be submitted to the Assembly of States Parties each year on the acceptance and refusal of voluntary contributions.

Uses of the Trust Fund

The Trust Fund shall be used for:

- Fulfilling orders of the International Criminal Court to pay reparations through the Trust Fund, in accordance with Rule 98 (1) to (4) of the Rules of Procedure and Evidence.
- The benefit of victims of crimes under the jurisdiction of the Court, and the families of such victims in accordance with Article 79(1) and Rule 98(5).

Beneficiaries of the Trust Fund

When an order is made by the International Criminal Court for reparations to be paid to victims through the Trust Fund, in accordance with Rule 98(1) to (4) of the Rules of Procedure and Evidence, the Court will name individual beneficiaries and/or describe the beneficiaries (particularly relating to collective awards). When the victim(s) are not named by the order of the Court, the Executive Director, in consultation with the Board of Trustees, should take reasonable steps to identify the beneficiaries as described in the order.

"Victims of crimes under the jurisdiction of the Court" in Article 79(1) and Rule 98(5), should not be limited to victims participating in a case before the Court or victims of a particular individual being prosecuted by the Court. It should apply to all victims of crimes under the jurisdiction of the Court and their families, resulting from a situation where the Prosecutor of the International Criminal Court has conducted an investigation and either:

(i) the Pre-Trial Chamber has issued a warrant of arrest in accordance with Article 58, or,

(ii) the Prosecutor has concluded that there is not a sufficient basis for a prosecution under Article 53(2), for reasons other than the Prosecutor is satisfied that crimes under the jurisdiction of the Court did not take place, and this decision has been communicated to the victims or their families.

In accordance with the principle of complementarity, victims of crimes under the jurisdiction of the International Criminal Court that have been investigated by national authorities or prosecuted by the national court of a state which has jurisdiction over the case, should also constitute "victims of crimes under the jurisdiction of the Court" for the purposes of Article 79(1) and Rule 98(5).

Victims appearing before the International Criminal Court

The Trust Fund should not provide assistance to victims appearing before the International Criminal Court until the Court has decided whether or not to convict the accused. During the investigation and trial, the Victims and Witnesses Unit will be responsible under Article 43(6) to provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance to victims appearing before the Court.

Forms of Reparation

Awards made through or by the Trust Fund may consist of any form of reparations, including, restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

Activities of the Trust Fund

Funds paid to the Trust Fund under Rules 98(1) to (4) shall be used in accordance with the Court's instructions set out in the order. In the event that the order does not detail the use of the award, the Executive Director shall refer the case to the Board of Trustees.

All other funds received by the Trust Fund (general funds) may be used for activities to benefit victims of crimes under the jurisdiction of the International Criminal Court and their families. In determining the uses of the general funds the Board of Trustees must consider the needs of the victims and their families, the resources available in the Trust Fund and whether the activity or project would discriminate against other victims and families of victims eligible for a Trust Fund award.

Uses of the general funds include:

- awards to fulfil an order of the Court for reparations against a convicted person, in accordance with Article 75(2), when the full amount of the order has not been obtained from the convicted person. In the event that funds are subsequently obtained from the convicted person, the amount shall be re-paid to the Trust Fund;

- awards made through established channels of assistance, including intergovernmental, international and national organizations for activities and projects to benefit victims and their families.

Awards to intergovernmental, international and national organizations

An award made to an intergovernmental, international and national organizations, in accordance with Rule 98(4) or from the general funds of the Trust Fund, should be subject to checks and balances, such as oversight and monitoring mechanisms, to ensure that the award is used for the benefit of the victims and their families, included in the order of the Court and/or the conditions specific to the award.