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International Criminal Court: Concerns at the fourth session of the Assembly of States Parties

INTRODUCTION

The fourth session of the Assembly of States Parties (Assembly) will take place in The Hague from 28 November to 3 December 2005. Seven years after the adoption of the Rome Statute of the International Criminal Court (Rome Statute), over half of all states have ratified the Rome Statute and the fourth session of the Assembly takes place in the context of a functioning International Criminal Court (Court), which is conducting three investigations and which, in October 2005, issued its first arrest warrants.

Despite these important developments, Amnesty International is seriously concerned that the provisional agenda of the Assembly¹ and the time allotted to it are inadequate to ensure the fullest support for the Court and consideration of all issues essential to its oversight functions.

In Part A, the paper examines and makes recommendations on items on the provisional agenda of the Assembly, including: the status of overdue assessed contributions; the Trust Fund for Victims; the 2006 Budget; the New York Liaison Office; and the Permanent Premises.

The status of the Regulations of the Trust Fund for Victims is an issue of the utmost concern. Amnesty International was disappointed by the failure of the Assembly to adopt the Regulations at its third session. The organization is concerned that, as of 1 November 2005, agreement has yet to be reached on all issues. Unless this is addressed immediately the Assembly may once again fail to adopt the Regulations, which are vital for the effective functioning of the Trust Fund.

In Part B of this paper, Amnesty International examines the weaknesses in the current system and identifies the issues which the Assembly is failing to deal adequately. In particular, Amnesty International is concerned that the Assembly continues to fail to address: the slowdown in ratifications of the Rome Statute; failure of states parties to ratify the Agreement on Privileges and Immunities; the failure of states to enact effective implementing legislation; the campaign by the United States of America to undermine the Court; and the Headquarters Agreement. Amnesty International makes a number of recommendations on how these issues can be addressed at this session.

¹ ICC-ASP/4/18.

In Part C, the paper examines other important issues that are not on the provisional agenda of the fourth session, including, concerns about the interim premises, the nomination of candidates for judges and declarations made by some states upon ratification that amount to reservations to the Rome Statute, which are prohibited. These are all issues which should be considered by the Assembly.

Amnesty International will have a delegation present throughout the fourth session of the Assembly. Members of the delegation are available to discuss any of these issues with government delegations. Some of the issues considered by the Assembly and not discussed in this paper may be the subject of separate papers.

PART A – ISSUES ON THE PROVISIONAL AGENDA OF THE ASSEMBLY

I. The 2006 Budget

Amnesty International is an active member of the Budget and Finance Team of the Coalition of the International Criminal Court (CICC). Although the organization believes there are many positive aspects of the budgetary process this year (in particular, the increased investment in field operations), concerns remain in some areas of the draft 2006 Budget and in relation to some specific recommendations of the Committee. The organization fully supports the Budget and Finance Team's recommendations to the Assembly set out in the Team's report: *Commentary on the Report of the Committee on Budget and Finance on the work of its fifth Session (10 to 14 October 2005)*.²

II. Overdue assessed contributions

In section VI of this paper, Amnesty International raises concerns about the failure of the Assembly in past years to take more immediate steps to address this developing financial problem. Nevertheless, the organization welcomes the Report of the Bureau on the arrears of States Parties³ as a major step forward in the debate. Amnesty International urges states to fully adopt the recommendations contained in the report and to continue to monitor the status of contributions as a permanent agenda item for Assembly meetings. The organization urges all states parties that are overdue in the payment of their assessed contributions to promptly pay them in full.

III. Trust Fund for Victims

Adoption of the Trust Fund Regulations

The failure of the Assembly to adopt the Board of Directors' draft Regulations at its third session was a major disappointment and has seriously impeded progress of the Trust Fund in 2005. As the Board has noted in its Report to the Assembly:

“The lack of approved regulations of the Trust Fund for Victims, in particular of regulations pertaining to the activities and projects of the Trust Fund (Part III), makes it difficult for the Board of Directors to proceed with the planning of concrete activities and projects for 2006.”⁴

² Available at: www.iccnw.org.

³ ICC-ASP/4/14.

⁴ Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 16 July 2004 to 15 August 2005 (ICC-ASP/4/12), para.2.

In May and August this year, the Bureau of the Assembly organized meetings of a Working Group in New York to review the Regulations. Unfortunately, the Working Group failed to reach agreement on all issues during these meetings. Although negotiations are continuing, Amnesty International is concerned that unless there is a major effort by all states parties to reach agreement, the Regulations may not be adopted this year. Such an outcome would be a serious setback for the Trust Fund.

The major issue that remains to be resolved is whether the Board can decide the uses of the “other funds” of the Trust Fund referred to in Rule 98(5) of the Rules of Procedure and Evidence. These funds include voluntary contributions which the Trust Fund collects independent from the funds assigned to it by the Court through reparation awards or fines or forfeiture. In its draft Regulations the Board outlined that, in some cases, it may want to use such funds for the benefit of victims generally of a situation under investigation by the Court through programs of physical and psychological rehabilitation or material support.

Although many states are supporting this vision for the Trust Fund, some states have opposed it. In particular, a proposal issued by Australia, Canada, Croatia, Japan, The Netherlands, New Zealand, Norway and the United Kingdom in May 2005 seeks to limit the scope of the Board’s activities to only fulfilling orders of the Court for reparations. The proposal provides that if the Board wishes to organize projects or activities for the benefit of victims before a reparations order is made or for victims who are not the subject of reparations orders, it would have to obtain a special order from the Court. Amnesty International is extremely concerned by this proposal and, as an active member of the Victims Rights Working Group, the organization fully supports the position taken in its *Comments on the Proposals Submitted By Australia, Canada, Croatia, Japan, The Netherlands, New Zealand, Norway and the United Kingdom*.⁵

Although Amnesty International recognizes the important role that the Trust Fund must play in fulfilling reparations orders, the organization believes that the Trust Fund should not be limited to this task only. If such a situation were to exist, the Trust Fund would only be able to assist victims who were fortunate enough to have their crimes investigated and prosecuted by the Court. In the context of a focussed prosecution strategy announced by the Prosecutor, the number of beneficiaries could potentially be small in comparison to the overall number of victims of a situation, whose needs would be ignored. Furthermore, victims whose cases are prosecuted by the Court would have to wait years before they receive any assistance from the Trust Fund, as the accused person would need to be arrested and surrendered to the Court and the trial and appeals completed for reparations to be distributed. For these reasons, this vision of the Trust Fund would be unappealing to donors, who want their donations to be put to immediate use for the benefit of victims. As proposed by the

⁵ Available at: <http://www.vrwg.org/Publications/1.html>

Board, other activities of the Trust Fund, which are designed to address some of the suffering of victims of a situation under investigation - regardless of whether the Court prosecutes their case - using voluntary contributions, would address these problems and reinforce a positive perception of the Trust Fund and the Court throughout the affected population.

Amnesty International recognizes the concerns of some states not to create expectations of the Trust Fund that are too high to be met. However, the organization sees no benefit in limiting the Trust Fund to the extent that it could only benefit victims of crimes prosecuted by the Court and ignoring the needs of all others. Amnesty International has every confidence that the Board can manage expectations effectively through clear public messages about the Trust Fund's limitations (especially in its first years) and careful consideration of a range of activities and projects to benefit a broad group of victims within the limitations of the Trust Fund's resources, whilst also fulfilling its functions towards reparations orders of the Court.

The organization also recognizes that some states are concerned that activities of the Trust Fund other than fulfilling reparations orders may interfere with the work of the Court. Amnesty International believes these concerns are addressed through the existing structure of the independent Trust Fund and safeguards in the Board's draft Regulations, including the provision that any assistance provided independently of reparations orders will be for the benefit of victims generally. There will be no individual awards of such assistance that could compromise the independence of the Court or Court proceedings. In this system, the Board of Directors will be unlikely to interfere in the work of the Court. If such a situation arose, the Board would no doubt take immediate steps to address the situation. In the unlikely event that the Board failed to take effective measures, the Assembly could step in to address the issue as the Board is a subsidiary body to the Assembly.

Amnesty International encourages all states parties to support the Board's draft Regulations and to join states supporting the Board in working for an effective agreement with those governments that have expressed concerns and opposition in regard to the draft Regulations. In doing so, states parties are urged to oppose any efforts to curtail the ability of the Trust Fund to benefit victims and their families as presented in the Board's draft Regulations and to focus instead on establishing additional safeguards, where necessary, which fully respect the independence of the Court and the Trust Fund and will ensure that both operate effectively and successfully for the future.

Support for the establishment of an Executive Director

Amnesty International welcomes the decision of the Board of Directors to propose the establishment of an Executive Director of the Trust Fund in its report to the Assembly.⁶ The proposed budget, including the funds to establish the post, has been considered by the

⁶ Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 16 July 2004 to 15 August 2005 (ICC-ASP/4/12).

Committee on Budget and Finance at its fifth session, which recommended the Assembly approve the budget request of the Board.⁷

Amnesty International believes the post of the Executive Director is essential for the effective functioning of the Trust Fund for the next year. It is essential that the independent Secretariat of the Trust Fund has a full-time Executive Director to manage the day-to-day tasks of the Trust Fund in accordance with the instructions of the voluntary Board of Directors and to report to them regularly. Amnesty International urges states to support the adoption of this post.

Supporting voluntary contributions to the Trust Fund

As the Report of the Board of Directors shows, as of 15 August 2005, the Fund has already received €680,185.77 and \$403.02 in voluntary contributions. This is an important start to the Trust Fund, although we hope that this amount will increase significantly with the adoption of the draft Regulations clarifying how the Trust Fund will work and the rules on earmarking of voluntary contributions. Furthermore, the fundraising capacity of the Trust Fund will no doubt increase with the appointment of a fundraising officer to work with the Board of Directors and civil society to promote voluntary contributions from all possible sources; these being "Governments, international organizations, individuals, corporations and other entities."⁸

At a time when the Court is conducting investigations into three situations where there are a large numbers of victims, it is essential to ensure that the greatest number of possible voluntary contributions are deposited in the Trust Fund in its first years. Indeed, Amnesty International reminds states that the UN Security Council expressly encouraged states to contribute to the Trust Fund in its resolution referring the situation of Darfur to the Court.⁹

Amnesty International urges all states parties to consider making voluntary contributions to the Trust Fund in the next year and, if possible, to announce their contributions during the fourth session of the Assembly. The organization also recommends that the Assembly reiterates its call for governments, international organizations, individuals, corporations and other entities to make voluntary contributions to the Trust Fund.

⁷ Report of the Committee on Budget and Finance on the work of its fifth session (ICC-ASP/4/27), para.70.

⁸ Resolution ICC-ASP/1/Res.6, Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims," paragraph 2.

⁹ Preamble, UN Security Council Resolution 1593 (2005).

IV. The Permanent Premises of the Court

Amnesty International welcomes the progress that has been made in the last year on the issue of the permanent premises, including the presentation of a number of reports on aspects of the housing options. The Committee on Budget and Finance notes that no further progress can be made until the Court completes its strategic plan, including detailed information of its staffing estimates for the fully functional Court.¹⁰ Amnesty International encourages the Assembly to request the Court to prioritize finalizing this information so that significant progress can be made on the permanent premises, without further delay.

Amnesty International remains concerned at the lack of adequate consultation with civil society so far in the design of the permanent premises. The organization hopes the Assembly will ensure that such systems are established shortly. In particular, this concern arises from inadequate consultation with victims groups and other civil society groups on the design of the courtrooms in the interim premises.

Amnesty International recommends 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.

V. Establishment of a NY Liaison Office

Amnesty International recognizes the need for the Court to have a presence in New York to liaise with the UN, states parties and non-states parties to the Rome Statute, international and regional governmental organizations and NGOs.

Last year, the Assembly decided not to establish the office but to defer consideration of it to the fourth session. Amnesty International welcomes the Options paper by the Bureau on the establishment of a New York Liaison Office as an important study to advance the discussions; this paper sets out the purpose, functions, structure, financial implications and proposed budget of such an office.¹¹

The organization notes that the Committee on Budget and Finance considered the document at its fifth session and noted in its report:

¹⁰ Report of the Committee on Budget and Finance on the work of its fifth session (ICC-ASP/4/27), para.82-3.

¹¹ ICC-AS/4/6.

“The Committee was of the view that the proposal was modest and generally acceptable. The Committee noted that the establishment of such an office would assist in responding to genuine needs of the Court and the cost associated with its establishment appeared reasonable.”¹²

Amnesty International supports the establishment of the New York Office in 2006 to perform essential functions at the United Nations Headquarters and urges all states parties to support its establishment. The organization, however, is not convinced that all the tasks listed in the options paper can be conducted by two staff and, if established, hopes the Assembly will review the workload of the Office at its next session.

PART B – THE ROLE OF THE ASSEMBLY AND ITS FAILURE TO ADDRESS KEY ISSUES IN RECENT YEARS

VI. The Role of the Assembly

The need for an effective Assembly to support and provide oversight of the Court is essential, especially at this time in the establishment of the Court, when it is advanced in its first three investigations and is expected to commence trials in 2006. The history of other international courts, in particular, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda demonstrate the long-lasting effects that problems experienced in the first years of an international court can have on its future functioning and credibility. The Assembly has an important role to ensure that the Court does not experience similar problems, and in particular to ensure that it enjoys the fullest political support and cooperation from states parties. Amnesty International is concerned that the current activities of the Assembly fall far short of the role that it should be taking to support the Court.

Inadequate time for sessions of the Assembly

The provisional agenda of the Assembly includes 24 items, including a number of issues which will likely require detailed discussion. As experienced at the third session, it is unlikely that the Assembly will be able to have a full discussion of all these issues in the timeframe of the session. The decision last year to extend the Assembly from five to six days at its fourth session will have only a limited impact in addressing this problem.

Greater flexibility required in the agenda for states to raise other issues

As noted below, there are a range of issues which the Assembly is failing to address. States wishing to address such issues may be prevented from doing so due to the non-inclusion of these issues on the agenda. Amnesty International believes there should be a forum for states

¹² Committee’s Report, para.104.

to raise a range of issues that are not included on the agenda. Accordingly, the organization recommends that the Assembly include in its agenda a reasonable amount of time for general statements by states and observers, including NGOs.

Failure to address important issues

The range of issues discussed at previous sessions of the Assembly has been disappointing and in many cases, too brief. The Assembly has failed to even attempt to deal with a number of important issues that are fundamental to the success of the Court, including:

- Serious concerns about the slowdown in ratifications of the Rome Statute since its entry into force;
- Slow progress in states parties ratifying the Agreement on Privileges and Immunities;
- The failure of most states parties to enact effective implementing legislation which threatens to obstruct cooperation in the first cases;
- US efforts to undermine the Court through bilateral pressure on states not to ratify and to enter into illegal impunity agreements and through initiatives in international fora, including the UN Security Council and General Assembly, to undermine international support for the Court;
- Other key issues related to the effective functioning and perception of the Court, in particular: finalizing the Headquarters Agreement and; ensuring full cooperation by states and inter-governmental organizations in a range of issues, including arresting and surrendering suspects to the Court; protection of victims and witness and outreach (an issue where the Court is subject to increasing criticism).

In most cases these issues are not addressed for political reasons and/or because there is insufficient time in Assembly meetings.

Non-transparency of Bureau's Working Groups

At the last session, steps were taken to strengthen the role of the Bureau and as a result a number of Working Groups were established in 2005. However, Amnesty International has serious concerns about the transparency of some of the Working Groups and the Assembly's overall strategy in establishing them.

Firstly, some of the Working Groups have been non-transparent and closed to observers. In one case, the Working Group tasked to review the Trust Fund Regulations prepared by the Board of Directors failed to take effective measures to ensure that the Board attended either of its two meetings held in 2005. Although some Working Groups have been more open, Amnesty International is concerned that the practice of establishing Working Groups must not become an inaccessible system where states deal with issues in a non-transparent manner.

Secondly, Amnesty International is concerned about the apparent lack of a strategy on the part of the Assembly in establishing Working Groups. In particular, Working Groups must not become a forum for dealing with issues once they become serious problems. For example, the status of arrears of contributions has been a major concern since the first financial period: indeed, Amnesty International has been calling for the Assembly to address this issue since the second resumed meeting of the first session of the Assembly in April 2003. While we welcome the Report of the Bureau on the arrears of States Parties¹³, the fact that the Assembly failed to act until states parties were subject to losing their voting rights has undoubtedly contributed to the growing problem. Amnesty International is concerned that the Assembly does not appear to have an effective forum for identifying upcoming issues and developing strategic responses to them before they become serious problems.

Amnesty International urges the Assembly at its fourth session to review the serious shortcomings in its current working practices, in order to ensure that it asserts its role as the most effective supporter of the Court and provides the full oversight required of it in the Rome Statute.

VII. The Assembly should address the concerning decline in the rate of ratifications of the Rome Statute

Amnesty International welcomed Mexico's ratification of the Rome Statute on 28 October 2005 – the 100th ratification – as a landmark for international justice. However, it is impossible to ignore the dramatic slowdown in the rate of ratifications in recent years, despite renewed initiatives by civil society, including the ongoing campaign for universal ratification conducted by the CICC (supported by Amnesty International) and continuing initiatives by states and inter-governmental organizations, including Brazil, Canada, Germany, the Community of Portuguese Language Speaking Countries, the European Union, the Organization of American States, the African Union and others. The current worldwide campaign by the USA against the Court continues to have a major impact on ratifications, although other factors, including the international community's shift of focus away from the Court following the entry into force of the Rome Statute, should also be taken into account.

Amnesty International is disappointed that, despite having called on the Assembly to address this slowdown in ratifications since its first session, the provisional agenda once again fails to include it. At previous sessions, Amnesty International has called on the Assembly to consider effective measures it can take to promote ratifications, including recommending that:

- The Assembly include an item on the agenda of its sessions to discuss proposals to re-establish momentum towards universal ratification. Such meetings should be open to states parties, non-states parties, the Court and NGOs.

¹³ ICC-ASP/3/14.

- The Assembly establishes mechanisms to ensure stronger coordination of all ratification initiatives undertaken by states, IGOs, NGOs, the Court, the Assembly and its Secretariat.
- The Assembly establishes mechanisms to engage all existing states parties in lobbying non-states parties to ratify the Rome Statute.
- The Assembly publicly denounces any initiatives by any non-state party that seeks to prevent states from ratifying the Rome Statute.
- The Assembly responds to any specific reports that a non-state party is pressuring a state not to ratify the Rome Statute, including intensifying efforts to support the state being pressured to ratify.
- The Assembly establishes technical assistance projects for states that encounter constitutional obstacles or perceived constitutional obstacles to ratification, including requesting the Assembly Secretariat, with the assistance of states parties and independent experts, to prepare papers describing how existing states parties have overcome the most common barriers to ratification. Such barriers may include head of state immunity, prohibition of life imprisonment and prohibition of extradition. Technical assistance should be transparent and carried out at all stages with broad consultation with civil society.
- The Assembly provides technical assistance to non-states parties in the preparation of effective national implementing legislation so that it can be enacted by the time the Rome Statute enters into force for that state party.

Amnesty International is concerned that the Assembly has continually refused to examine this issue, which is a serious challenge for the long-term support and success for the Court. The organization urges states parties to call for this issue to be added to the agenda of the fourth session.

VIII. The Assembly should address the need for more states to enact effective implementing legislation

A state that ratifies the Rome Statute will, in most cases, have to enact implementing legislation in order to fulfil its obligations under the Statute. In accordance with the principle of complementarity incorporated in the Rome Statute, such implementing legislation offers states an excellent opportunity to enable their prosecutors and courts to fulfil their primary role in ensuring accountability for the worst crimes in the world and to demonstrate their support for international law. Amnesty International also urges states parties to take advantage of the opportunity presented when drafting legislation implementing the Rome Statute to incorporate provisions requiring their authorities to cooperate with the International Criminal Tribunals for the former Yugoslavia and Rwanda.

As of 1 November 2005, fewer than 40 of the 99 states parties to the Rome Statute have enacted legislation implementing some of their obligations under the Statute and other

relevant international law into national law. Neither Uganda, nor the Democratic Republic of Congo, nor Sudan (states where situations are being investigated by the Prosecutor) have enacted implementing legislation. Fewer than 20 other states parties have published draft implementing legislation. Much enacted and draft implementing legislation for the Rome Statute is seriously flawed either because it addresses only some of the state's obligations or because it addresses them ineffectively.

Amnesty International has identified the most common problems that are emerging in draft legislation now being prepared or considered:

- weak definitions of crimes;
- unsatisfactory principles of criminal responsibility and defences;
- failure to provide for universal jurisdiction to the full extent permitted by international law;
- political control over the initiation of prosecutions;
- failure to provide for the speediest and most efficient procedures for reparations to victims;
- inclusion of provisions that prevent or could potentially prevent cooperation with the Court;
- failure to provide for persons sentenced by the Court to serve sentences in national prisons; and
- failure to establish training programmes for national authorities on effective implementation of the Rome Statute.

To assist states in addressing these problems and in drafting effective implementing legislation, Amnesty International has issued: ***International Criminal Court: Checklist for Effective Implementation*** (AI Index: IOR 40/11/00); and a 2004 study of draft and enacted implementing legislation: ***International Criminal Court: the Failure of States to Enact Effective Implementing Legislation*** (AI Index: IOR 40/019/2004)¹⁴. Amnesty International will be approaching government delegations throughout the Assembly to request information about state parties' progress towards enacting implementing legislation.

Since the first session of the Assembly, Amnesty International has been calling on the Assembly to address the concerning lack of implementing legislation and the serious flaws that are starting to emerge in enacted legislation. The fact that the Court has issued its first arrest warrants and more than half the states parties, including Uganda and the Democratic Republic of Congo, have failed to enact legislation is a matter of serious concern that could obstruct cooperation with the Court in its first cases. Sudan, as a non-state party, has also failed to take any steps to enact legislation to cooperate with the Court.

¹⁴ Both documents are available on Amnesty International's implementation webpages: <http://web.amnesty.org/pages/icc-implementation-eng>

At previous sessions, Amnesty International has recommended that:

- The Assembly convenes a special meeting to discuss the current status of implementing legislation for both the Rome Statute and the Agreement on Privileges and Immunities and mechanisms to monitor and assist states in enacting effective implementation. This meeting should be open to states parties, non-states parties, the Court and NGOs.
- The Assembly provides adequate resources to the Assembly Secretariat to monitor the status of implementation in states parties and states in the process of ratification, and to publish regular reports indicating which states parties or states that have made Article 12 (3) declarations have enacted legislation, published draft legislation or begun drafting legislation and attach legislation or electronic links to that legislation.
- The Assembly provides adequate resources to the Assembly Secretariat to establish technical assistance projects for states implementing the Rome Statute.
- The Assembly goes further than its resolutions encouraging states parties that have not yet done so to adopt implementing legislation as a priority by directly calling on states parties and states that are in the process of ratifying to adopt effective implementing legislation as soon as possible.

It is disappointing that the Assembly has failed to include this important item on its agenda of the fourth session. The organization urges states parties to call for this to be added to the agenda of the fourth session.

IX. The Assembly should address the lack of ratifications and implementation of the Agreement on Privileges and Immunities of the International Criminal Court

Amnesty International last year welcomed the entry into force of the Agreement on Privileges and Immunities of the International Criminal Court (the Agreement). However, the organization is concerned at the small number of states that have ratified the Agreement (as of 1 November 2005, 31 states had ratified the Agreement). It is particularly disappointing that many states parties to the Rome Statute, which have a responsibility to ensure that the Court can operate effectively, have failed to take this step, which would demonstrate their commitment to the Court and encourage other states to ratify both the Rome Statute and the Agreement.

It is also a matter of concern that no state parties to the Agreement on Privileges and Immunities have enacted legislation implementing the Agreement and only three states parties are known to have published draft legislation implementing the Agreement.¹⁵

¹⁵ Amnesty International recognizes that some states that have ratified the Agreement have stated that it is self-executing in their countries.

With investigations in three situations and the first cases expected to start in 2006, it is disturbing that most states parties are unable to provide the Court with the privileges and immunities contained in the Agreement. At previous sessions, Amnesty International has recommended that:

- The Assembly provides adequate resources to the Assembly Secretariat to monitor the status of ratification and implementation of the Agreement and to issue up-to-date information on its website, including regular reports indicating which states have ratified the Agreement and the text of all implementing legislation.
- The Assembly considers the status of ratification and implementation of the Agreement together with ratification and implementation of the Rome Statute, in the meetings recommended in sections VII and VIII of this paper
- The Assembly once again calls upon those states that have not yet signed and ratified the Agreement to do so as a matter of priority and to implement it into their national legislation.
- The Assembly allocates sufficient resources to the Assembly Secretariat to provide technical assistance to non-states parties in the preparation of effective national implementing legislation so that it can be enacted by the time the Agreement enters into force for that state party.

X. The Assembly should address the campaign by the United States of America against the International Criminal Court

The campaign by the USA against the Court has continued over the past year and in some cases it has intensified.

Non-inclusion of the Court reference in the UN Reform Summit document

Amnesty International was disappointed that as a result of US pressure, reference to the International Criminal Court was not included in the UN Reform Summit document. The organization welcomes a number of statements by states to the UN General Assembly expressing concern regarding this omission. Amnesty International welcomes the decision by states to omit any reference to the Court rather than include a very weak reference. However, this is an unfortunate example of successful pressure by the USA to undermine the Court, which will undoubtedly give rise to further initiatives to undermine the Court at the United Nations.

Increasing number of states that have signed impunity agreements

It is also a matter of great concern that, in the last year, the number of states that have signed unlawful impunity agreements (according to claims by the US administration) has risen to over 100. It is worrying that at least 47 of these states are states parties to the Rome Statute and at least 26 signatories. At least 20 states (including at least ten states parties and one signatory) have reportedly ratified these agreements and a further 22 states consider these to be executive agreements that do not require ratification.

Amnesty International, however, welcomes the more than 50 states that have committed to upholding international justice by refusing to enter into impunity agreements with the USA, including the members of the EU, Argentina, Brazil, Canada, Japan, Mali, Mexico, New Zealand, Paraguay, Peru, Samoa, Slovenia, South Africa, St. Lucia, Switzerland, Tanzania, Trinidad and Tobago, Uruguay and Venezuela.

Increased campaigning against ratifications

Amnesty International has continued to receive reports of many states that are under pressure by the USA not to ratify the Rome Statute. This pressure has no doubt had a significant impact on the slowdown in ratifications highlighted in section VII.

Amnesty International has repeatedly urged the Assembly to take steps to address this issue, recommending that:

- The Assembly convenes a special meeting on ensuring the integrity of the Rome Statute, in which states can discuss threats to the integrity of the Court, including initiatives by the USA to undermine the Court. This meeting should be open to states parties, non-states parties, the Court and NGOs.
- The Assembly adopts a resolution reiterating its request that states uphold the integrity of the Rome Statute.
- The Assembly examines ways in which it can provide greater political and other support to states that are under immense pressure from the USA not to ratify the Rome Statute (see recommendation in section VII) and to sign illegal impunity agreements.

XI. The Headquarters Agreement

Amnesty International is concerned that despite the adoption of ‘Basic principles governing a headquarters agreement to be negotiated between the Court and the host country’ at its first session in September 2002, such an agreement has still not been finalized and will reportedly not be submitted to the Assembly for approval at its fourth session. Although an interim agreement remains in force, as the Court is progressing towards its first trials it is important that the Court and the Host State complete drafting an effective Headquarters Agreement, specifically tailored to meet the needs and requirements of the Court as well as the legitimate concerns of the Host State, as soon as possible.

It is disappointing that despite concerns raised by Amnesty International on this specific issue last year, the Headquarters Agreement has not been finalized. It is furthermore concerning that the Assembly has not asked the Host State and the Court to report to it on the status of discussions and outstanding issues. Amnesty International urges the Assembly to address this issue by calling for a report from both the Host State and the Court to be considered in an open session of the fourth session. It is also important that the Assembly calls on the Court and the Host State to finalize a draft Headquarters Agreement for its consideration and adoption at its fifth session and to call upon the Host State and the Court to focus in the forthcoming negotiations on concluding all issues essential for the independent functioning of the Court.

PART C – OTHER ISSUES NOT ON THE AGENDA OF THE ASSEMBLY

XII. Interim premises of the Court

Amnesty International is concerned by the report of the Committee that the planned growth of Court staff in 2006 may be frustrated by lack of space in the interim premises of the Court.¹⁶ The Committee notes that the problem has arisen from the Host State being unable to provide office space in other parts of the interim premises, as previously planned. It is important for the Assembly to address this issue at its fourth session. In particular, the Assembly should request the Host State to report to it on the situation and possible solutions. In discussing solutions with the Host State, states parties should consider the potential extra costs (including security and other logistical support) for which budgeting may be necessary and the inconvenience and practical problems that will arise if some staff are located in a separate location.

¹⁶ Report of the Committee on Budget and Finance on the work of its fifth session (ICC-ASP/4/27), para.88.

XIII. Nomination of judges

In August 2005, the Assembly opened the nomination process for candidates for the election of judges scheduled to take place on 26 to 27 January 2006. In September 2005, Amnesty International issued a call for all states parties to consider nominating their most highly qualified candidates and issued a revised *International Criminal Court: Checklist to ensure the nomination of the highest qualified candidates for judges* (AI Index: IOR 40/026/2005).¹⁷

Unfortunately, many states parties have failed to undertake national nomination processes, in many cases instead supporting regional strategies to nominate a small number of candidates. As a result, the deadline for submissions has been extended twice (most recently to 6 November 2005) to allow for further nominations to meet the minimum nomination requirements.

The failure of all states parties to nominate their most highly qualified candidates so that the Assembly has the widest possible choice of highly qualified candidates is disappointing. Amnesty International urges states parties that have not nominated to reconsider their position on this issue and to make nominations before the nomination period closes.

XIV. Declarations upon ratification that amount to reservations

Amnesty International is seriously concerned that some declarations made upon ratification by some states amount to disguised reservations. Although Article 120 of the Rome Statute provides that no reservations may be made to this Statute, unilateral declarations which specify or clarify the meaning of certain provisions are not prohibited. In a report to be issued in advance of the Assembly, Amnesty examines declarations made by states parties to date and concludes that a number of them amount to reservations. The legal analysis sets out in detail the organization's concern and calls on all states parties not to make any declaration that may amount to a reservation. Furthermore, Amnesty International calls on the International Criminal Court not to take into account such declarations.

¹⁷ Available at: <http://web.amnesty.org/library/index/ENGIOR400262005>