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AMNESTY INTERNATIONAL URGES UNITED NATIONS TO MOVE ON
INTERNATIONAL COURT

The UN General Assembly has opened its 50th session. Government representatives from around the world have gathered in New York to hammer out decisions in the name of the international community. This historic session is coming immediately after the call made by the fourth world conference on women in Beijing to strengthen the protection of the human rights of women worldwide. At a time when the UN faces increasing criticism, governments have a rare opportunity to confound the sceptics and take a tangible and significant step forward in the international protection of human rights.

Today, when states have the chance to move from rhetoric on human rights to practical action -- Amnesty International is calling on governments to set up a permanent international criminal court.

There is a clear link between continuing human rights violations and impunity. Impunity is the determining element which allows sporadic human rights violations to develop into a systematic pattern of abuses. Violators of human rights must be brought to justice if further abuses are to be prevented.

In international law, individual governments are charged with protecting their citizens' rights and ensuring that justice is done. They bear the primary responsibility for investigating violations of human rights and for bringing to justice those responsible.

However, many governments fail to fulfill this fundamental obligation. Widespread abuses of human rights, including extrajudicial executions, rape and other forms of torture and "disappearances", continue around the world and those responsible walk free.

In some countries, internal strife or the collapse of judicial systems make it impossible to hold trials. In others, the government itself is deeply involved in the crimes, so will not mount investigations and trials. Sometimes trials are held, but they stray so far from internationally recognized standards of fairness that they are mere shams.

States have already agreed that some heinous crimes, such as war crimes and crimes against humanity including genocide, systematic "disappearances" and torture demand an international response. It does not matter where the perpetrators of such crimes have fled. States who find such people in their territory should prosecute them or extradite them to a country which will. In practice, however, states rarely do so.

Direct enforcement of international criminal law by states acting collectively has been even more exceptional: the tribunals at Nuremberg and Tokyo were established 50 years ago to prosecute crimes committed during the Second World War, and the UN has set up two *ad hoc* tribunals in response to the atrocities in the former Yugoslavia and Rwanda.

These tribunals express a collective international will to assert the rule of law and minimum standards of humane conduct. But *ad hoc* tribunals are only a stop-gap: they are neither

global in scope nor permanent. The world needs a permanent international criminal court that can try individuals from anywhere in the world suspected of gross violations of international human rights and humanitarian law, whether they are leaders or subordinates, civilians or soldiers.

An international criminal court will not mean that states are abdicating their responsibilities to a new UN institution. National judicial authorities will still have the primary responsibility for bringing perpetrators of human rights violations to justice. The international criminal court will step in when national courts are unwilling or unable to act.

Most states have long agreed that there is a need for a court. At the special anniversary meeting of the General Assembly, between 22-24 October, Heads of state will have a chance to show their support for this major initiative. It is almost half a century since the UN General Assembly asked experts in the International Law Commission to draft a statute for the court. The Cold War stifled progress for decades, but public anger at the suffering in the former Yugoslavia stimulated renewed action which led the creation of the first ad hoc tribunal.

The statute of the permanent international criminal court has been drafted and redrafted, and a final draft text was submitted to the UN General Assembly last year. The draft statute goes a long way towards creating a court which will be just, fair and effective. However Amnesty International has made some recommendations to ensure that the court is truly independent, has real powers to tackle impunity and stands as a model of justice and fairness. These include:

The court should automatically be able to try crimes such as war crimes, genocide and other crimes against humanity without states being able to pick and choose what the court can pursue.

The court's Prosecutor should have the power to investigate and prosecute cases on his or her own initiative, not just at the request of states. The UN Security Council should not be allowed to interfere to prevent the Prosecutor deciding which cases to pursue.

The court itself- and not states- should decide whether to step in and prosecute someone who a state has failed to prosecute or has prosecuted unfairly. A state, which could be implicated in the crimes, could too easily veto action by the court because of political self-interest.

All internationally recognized safeguards of the right to fair trial must be guaranteed at all stages.

Last year's UN General Assembly again postponed a decision on creating the court. Instead, it set up an Ad Hoc Committee of government experts to examine the draft statute. The committee's meetings have been positive, with an emerging consensus on some crucial issues.

Many states have argued that the court could be set up without further delay. However, a small group of influential states -- including some permanent members of the UN Security Council -- have raised serious political and legal objections. They argue that more discussions are needed.

There are substantive issues still to be worked out, relating to the authority and independence of the court. But Amnesty International believes that if the political will is there, the legal obstacles can be overcome quickly.

The fate of the court is uncertain. If the 1995 General Assembly decides to hold a special inter-governmental conference next year, the court could be set up by October 1996. This would be a fitting climax to the end of the UN's 50th anniversary year. .

An international criminal court will not mean the end of gross violations of human rights. But, in the UN's 50th anniversary year, it would turn lofty principles of international justice into a powerful and practical measure to protect the human rights of men, women and children around the globe.

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