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

INTRODUCTION

The fifth session of the Assembly of States Parties (Assembly) will take place in The Hague from 23 November to 1 December 2006. Eight years after the adoption of the Rome Statute of the International Criminal Court (Rome Statute), over half of all states have ratified it and the fifth session of the Assembly takes place in the context of a functioning International Criminal Court (Court), which is about to start its first trial.

At this stage in the Court's history, the support of the Assembly is vital. Amnesty International, therefore, welcomes the Assembly's decision at its fourth session to extend its session to eight days to ensure that it has more time to perform its oversight functions. It is important that the extra time is used effectively to give proper attention to the many issues on the Assembly's provisional agenda. Furthermore, it is important that the lack of interpretation at previous sessions to cover all meetings must not be repeated at the fifth session to ensure that there is effective discussion including all delegations.

Amnesty International also welcomes the Assembly's decisions at its fourth session to request the Bureau of the Assembly to undertake work on a number of key issues which it will report on to the Assembly at this session. Bureau members in consultation with other states parties, observers and non-governmental organizations in The Hague and New York have examined a number of issues, including the role of the Assembly in promoting ratifications and implementation of the Rome Statute; the Strategic Plan of the Court; the status of arrears and the interim and permanent premises. Amnesty International, however, continues to have concerns about the lack of transparency of some of the mechanisms established to discuss these issues. In particular, many meetings are not open to non-governmental organizations. Non-governmental organizations played a crucial role in drafting the Rome Statute and its supplementary instruments, lobbying for ratification and implementation of the Rome Statute and, where necessary, implementation of the Agreement on the Privileges and Immunities of the International Criminal Court (APIC) and supporting the effective operation of the Court. As the UN Secretary-General Kofi Anan noted, the "tireless efforts" of non-governmental organizations contributed to the successful adoption of the Rome Statute and its entry into force.¹ Therefore, our organization hopes that sufficient time will be allocated during the Assembly to review the work of the Bureau allowing for open discussion, including all states parties, observers and non-governmental organizations.

¹ Statement at a press conference, Rome, Italy, 11 April 2002 (<http://www.iccnw.org/documents/KofiAnnanPressConf11April02.pdf?PHPSESSID=9a6b3c136133d911a1cd544f85ddf79b>).

In this paper, Amnesty International presents its concerns and recommendations on a number of issues on the agenda of the Assembly and other issues, which the organization believes should be considered by the Assembly this year. In particular, Amnesty International:

- analyses the Report of the Working Group on Ratifications and Implementation of the Rome Statute and calls on the Assembly to ensure that resources are provided to implement it.
- welcomes the Strategic Report on Outreach prepared by the Court and calls on the Assembly to support the new strategy and ensure the resources requested by the Court in its budget request for 2007 are approved.
- summarizes its views on the proposed 2007 budget contained in the Coalition for the International Criminal Court's Budget and Finance Team's paper: *Comments on the Proposed Programme Budget for 2007 of the International Criminal Court and other matters*.
- calls on the Assembly not to delay progress on the permanent premises further and to establish a consultative committee on the permanent premises.
- calls on the Host State and the Court to finalize the Host State Agreement in advance of the fifth session or to report to the Assembly on the status of negotiations.
- sets out some of its concerns about the Strategic Plan of the International Criminal Court.
- calls on states parties to make voluntary contributions to the Trust Fund for Victims at the fifth session.
- calls on the Assembly to make preparations for the Review Conference, including establishing a working group of the Assembly.
- calls on the Assembly to examine declarations made by a number of states upon ratification which amount to reservations and to call on states which made such declarations to promptly denounce them.

Amnesty International will have a delegation present throughout the fifth 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 issued by Amnesty International. Amnesty International is also actively involved in a number of Teams organized by the Coalition for the International Criminal Court on some issues. The Coalition's Teams may issue papers on specific issues before or during the Assembly.

I. The role of the Assembly in supporting ratification and implementation of the Rome Statute and APIC

Since the first session of the Assembly, Amnesty International has recommended that the Assembly consider measures it can take to promote ratification and implementation of the

Rome Statute.² These issues have increased in importance in recent years with the slow-down in ratifications and increasing recognition by the Court and states parties that the lack of effective national implementing legislation in many states parties presents a major obstacle to the work of the Court. The lack of effective implementing legislation will continue to impede its investigations and prosecutions of genocide, crimes against humanity and war crimes if it is not addressed as a matter of the utmost urgency.³ Amnesty International, therefore, welcomed the decision of the Assembly at its fourth session to request the Bureau

to consider measures that could be taken by the Assembly, the Secretariat of the Assembly of States Parties or the States Parties to help increase the number of ratifications and to facilitate full implementation of the Rome Statute, and to report thereon to the Assembly in advance of its fifth session;

Amnesty International has followed the work of the Working Group on the Ratification and Implementation of the Rome Statute and on Participation in the Assembly of States Parties established by the Bureau to implement this request. The organization participated in a meeting of the Working Group on 27 June and presented a number of recommendations on measures the Assembly could take to promote ratifications and implementation. In preparing its recommendations, Amnesty International was conscious that there are many initiatives around the world by inter-governmental organizations, including the European Union, governments and civil society and, accordingly, focused its recommendations on measures that the Assembly could take which would complement and not duplicate these important efforts.

Amnesty International welcomes that a number of its recommendations were incorporated into the Working Group's Report. In particular, the organization welcomes the development of a Plan of Action of the Assembly for achieving universality and full implementation of the Rome Statute and that the Secretariat of the Assembly is requested to support states in their efforts to promote universality and implementation of the Rome Statute. However, we are concerned that the effectiveness of these important measures will be undermined unless there are sufficient resources to implement them. There are two instances where investment is particularly required.

² Amnesty International has made universal ratification of the Rome Statute and APIC and implementation a fundamental component of the organization's work to support the Court since July 1998. It has published a guide to implementation of the Rome Statute, *The International Criminal Court: Checklist for Effective Implementation*, AI Index: IOR 40/011/2000, 1 August 2000 (<http://web.amnesty.org/library/index/engior400112000?open&of=eng-385>), and it has commented on numerous draft laws and enacted legislation. These comments are available on the organization's website at: <http://web.amnesty.org/pages/icc-implementation-eng>.

³ Amnesty International drew the attention of the Assembly to this issue at its third session in its paper, *International Criminal Court: The Failure of States to Enact Effective Implementing Legislation*, (AI Index: IOR 40/019/2004), 1 September 2004.

Firstly, Amnesty International is concerned by a requirement in the Report of the Bureau's Working Group that the Secretariat must perform tasks supporting ratification and implementation "within existing resources." The Secretariat, which has limited staff and resources, will in reality be unable to provide meaningful support to ratification and implementation efforts without an increase in staff and resources. In particular, Amnesty International believes that staff should be appointed to the Secretariat to undertake a number of tasks to promote ratification and implementation complementary to the efforts of the many actors active on the issue. In particular, the Secretariat could:

- correspond regularly with states parties and non-states parties on their status of ratification and implementation;
- correspond with intergovernmental organizations, states parties and other actors on their efforts to promote ratification and implementation;
- collate and develop information to facilitate ratification and implementation;
- collect and disseminate relevant information to states parties and non-states parties to support ratification and implementation efforts;
- respond to requests for information and assistance from states, including bringing such requests to the attention of relevant actors promoting ratification and implementation;
- where appropriate, provide technical assistance;
- report annually to the Assembly on the implementation of its Plan of Action.

Secondly, an effective forum needs to be established for the Assembly to review the Plan of Action regularly, taking into account the views of all actors, including the needs of states considering ratification and implementation and the experiences of actors promoting ratification and implementation. The current proposal in the Bureau's report that it will review the Plan of Action is inadequate based on the size of the Bureau and the inaccessibility of some important actors to that process. Amnesty International believes that the Assembly itself should establish a Working Group on Ratification and Implementation to meet during each session of the Assembly to consider a report prepared by the Secretariat on the implementation of the Plan of Action and other relevant submissions. This Working Group should be open and encourage the participation of governments (including observer states), intergovernmental organizations, parliamentary organizations, civil society groups and other actors promoting ratification and implementation of the Rome Statute and APIC.

A relatively small investment by the Assembly in these areas will ensure the effectiveness of its measures to promote ratification and implementation. It would ultimately strengthen support for the Court and benefit all states parties financially with the expansion of the Assembly and the reduction of assessed contributions.

Amnesty International urges states parties to ensure that adequate time is provided to review the Plan of Action during the fifth session and to call for more resources, in particular for Secretariat of the Assembly, to ensure that the Plan of Action is implemented effectively.

II. The Strategic Plan for Outreach

Amnesty International welcomes the attention given by the Assembly to the important issue of outreach at its fourth session. Responding to concerns raised by states and non-governmental organizations about the inadequate level of outreach activities conducted by the Court in its first years, the Assembly included the following paragraph in its Resolution on Strengthening the International Criminal Court and the Assembly of States Parties:

Recognizes the importance for the Court to engage communities in situations under investigation in a process of constructive interaction with the Court, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process and, to that end, encourages the Court to intensify such outreach activities and requests the Court to present a detailed strategic plan in relation to its outreach activities to the Assembly of States Parties, in advance of its fifth session.⁴

This important affirmation of the Assembly's support for outreach has been fundamental to important progress made by the Court this year to address the challenges it faces.

In particular, on 29 September 2006, the Court issued its Strategic Plan for Outreach of the International Criminal Court.⁵ This Strategic Plan is a major step towards addressing previous concerns raised about outreach. Amnesty International believes that it provides for a comprehensive strategy for two-way communication between the Court and communities affected by Court investigations and prosecutions. It identifies a broad range of groups that the Court will need to be in contact with and proposes specific measures that will need to be taken at different stages of the Court's proceedings. The organization is working with the Coalition for the International Criminal Court's Communications Team to provide detailed input and recommendations to the Court in order to further strengthen the Strategic Plan on Outreach in some areas and to provide input on situation-specific strategies.⁶ The Plan will need to be regularly reviewed, especially in its first years, to take into account situation-specific issues and lessons learned. We, therefore, urge the Assembly to welcome the Strategic Plan for Outreach and to request that the Court report to it at each session about its outreach activities.

The success of the Strategic Plan for Outreach will, however, be dependent on ensuring that the Court receives the resources it has requested to implement the strategy.

⁴ Resolution ICC-ASP/4/Res.4, Strengthening the International Criminal Court and the Assembly of States Parties, para.22.

⁵ ICC-ASP/5/12.

⁶ A copy of the Communications Team submission to the Court will be available shortly on the Coalition's website: www.iccnw.org.

Amnesty International believes it is vital that the new resources requested in the proposed budget for 2007, especially in the field, are approved by the Assembly.

III. The 2007 Budget

Amnesty International is an active member of the Coalition for the International Criminal Court's Budget and Finance Team. On 6 October, the Team issued *Comments on the Proposed Programme Budget for 2007 of the International Criminal Court and other matters*.⁷ In that paper the Team welcomes a number of aspects of the proposed budget, in particular, the increased investment in outreach functions, the Victims and Witnesses Unit and the development of the Permanent Premises. The Team, however, also raises concerns in some areas, in particular the apparent lack of resources for monitoring and supervising interviews of victims during investigations and the continuing lack of clarity about the legal aid budget for defence and financial assistance for victims' representatives. The Team has recommended that the Court be requested to report publicly on these issues. Amnesty International shares the concerns of the Team and endorses its recommendations.

At the time of writing the Report of the Committee on Budget and Finance's seventh session has not been issued. The Committee's report analyses the proposed budget and makes recommendations to the Assembly. Amnesty International will work with the Coalition's Team to review the report and may issue a further statement or paper to the Assembly addressing issues raised in that report.⁸

IV. Premises of the Court

Amnesty International supports the prompt establishment of permanent premises of for the Court in The Hague. Our organization is disappointed by the lack of progress made since the fourth session on this issue. It is now likely that the permanent premises will not be ready, as many had hoped, before the rent-free period of the interim premises expires.

Although, the establishment of a Project on Permanent Premises has been established within the Court, progress on this issue demands that states must commit to the process. Amnesty International is concerned that a number of states parties are preventing the commencement of essential preliminary work by demanding certainty on issues such as long-term staffing estimations and strategic planning. In reality, work could start immediately on defining and preparing the design of the permanent premises which could be adjusted at a later date, when clearer information on these issues is available.

⁷ Available at www.iccnw.org.

⁸ The Team's statement or paper will be made available on the Coalition's website: <http://www.iccnw.org>.

Amnesty International urges the Assembly not to delay this issue further and to establish promptly 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. Headquarters Agreement

Amnesty International is concerned that despite the adoption of the Basic principles governing a headquarters agreement to be negotiated between the Court and the host country at the Assembly's first session in September 2002, such an agreement has still not been agreed and negotiations are continuing between the Court and the Host State leading up to the fifth session. Although an interim agreement remains in force, as the Court is about to start its first trial, it is not designed for the special requirements of the Court and it is unsatisfactory in a number of important respects. Therefore, 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. The organization calls on the Host State and the Court to work towards completing an effective agreement in advance of the fifth session and to focus negotiations on concluding all issues essential for the independent functioning of the Court.

In the event that an agreement has still not been completed by the start of the fifth session, Amnesty International urges the Assembly to convene an open meeting during the session in which the Host State and the Court will report on the status of discussions and outstanding issues.

VI. Strategic Plan of the Court

On 4 August 2006, the Court issued the first Strategic Plan of the International Criminal Court,⁹ which sets out the Court's mission, goals and objectives for the next 10 years, with specific focus on the next three years. As evidenced by the way the Strategic Plan is reflected in the proposed 2007 budget of the Court, the document will be a very important guiding instrument for the work of the Court.

Amnesty International has analysed the Strategic Plan and has a number of concerns which will be submitted to the Court for its consideration. Our organization hopes these concerns will be reflected in revised versions of the Strategic Plan. The fifth session of the Assembly will be an important opportunity for states to communicate their views about the

⁹ ICC-ASP/5/6.

Strategic Plan to the Court for its consideration. The following summary of Amnesty International's concerns is provided for states parties' consideration.

The strategic plan does not clearly reflect the need for positive complementarity. Although Amnesty International welcomes a commitment by the Court in its Mission to "contribute to long lasting respect for and the enforcement of international criminal justice, to the prevention of crime and the fight against impunity," efforts to promote complementarity are not reflected elsewhere in the Strategic Plan. The only explanation of this provision of the Mission in the Strategic Plan states:

Through investigations and proceedings, the Court will help to ensure accountability for the perpetrators of the most serious crimes. In doing so, the Court is intended thereby to contribute to the prevention of crimes and to long-lasting respect for the enforcement of international justice. Other core activities such as outreach to local populations will also have an impact on the Court's contribution to respect for and enforcement of international criminal justice as well as the prevention of crime and the fight against impunity.¹⁰

Although these measures are important, Amnesty International is concerned that the Strategic Plan does not spell out the catalytic role of positive complementarity envisaged for the Court by the drafters of the Rome Statute and incorporated three years ago into the September 2003 *Paper on some policy issues before the Office of the Prosecutor* to encourage states to fulfil their primary responsibility to investigate and prosecute genocide, crimes against humanity and war crimes.¹¹ In that policy paper, the Office of the Prosecutor made clear that positive complementarity was to be an essential component of its functions:

The Office will function with a two tiered approach to combat impunity. On the one hand it will initiate prosecutions of the leaders who bear most responsibility for the crimes. On the other hand it will encourage national prosecutions, where possible, for the lower-ranking perpetrators, or work with the international community to ensure that the offenders are brought to justice by some other means.¹²

The policy paper also expressly recognized the importance of encouraging states to enact effective implementing legislation to avoid an impunity gap by enabling national authorities

¹⁰ *Ibid.*, at para. 23.

¹¹ Office of the Prosecutor, Paper on some policy issues before the Office of the Prosecutor, September 2003 (http://www.icc-cpi.int/library/organs/otp/030905_Policy_Paper.pdf).

¹² *Ibid.*, at 3.

to investigate and prosecute all the crimes and suspects the Office of the Prosecutor could not.¹³

Our organization continues to believe that positive complementarity is an essential component of the Court's responsibilities under the Rome Statute. The success or failure of the Court will not be determined solely by whether it is able to investigate a handful of representative crimes and prosecute a handful of senior leaders in a few situations each year, but also on the extent to which it has encouraged legislators to enact effective implementing legislation and police, prosecutors and investigating judges to investigate and prosecute all the crimes and suspects where the Court has not acted. The organization is, therefore, urging the Court to develop and implement an effective strategy focusing on positive complementarity to be incorporated into a revised version of the Strategic Plan.

The strategic plan does not clearly reflect the importance of implementing the Court's mandate for victims. Amnesty International believes that the progressive provisions on victims in the Rome Statute, including those setting out their rights in relation to protection, support, information, participation and reparation represent a breakthrough for international justice, which place victims at the centre of the justice process. Indeed, the drafters of the Rome Statute made this point clear when they declared in the second paragraph of the Preamble of the Rome Statute that they were “[m]indful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.” Many of the provisions for victims are unique to international justice and the Court will need to focus in the next years on ensuring that the systems are established and operate effectively. It is, therefore, disappointing that victims are not mentioned in the Mission and are only generally referred under the umbrella of “participants” in the goals. Amnesty International, therefore, urges the Court to develop detailed strategies on victims’ issues and to ensure that they are more clearly set out in future revisions of the Strategic Plan.

The strategic plan does not clearly reflect the importance of the rights of the defence. The right to a fair trial is a fundamental principle of international law and is comprehensively incorporated into the Rome Statute. It is, therefore, disappointing that, although general reference to fair trial are made in the Mission, the Goals and the Objectives, that there is only very general reference to the rights of the defence, including equality of arms. Amnesty International urges the Court to develop and implement effective strategies to guarantee the rights of the defence and incorporates them more clearly into future revisions of the Strategic Plan.

Over-emphasis on administration, managerial and organizational issues. Amnesty International is concerned not only that a number of important substantive issues are not reflected in the Strategic Plan, but also that a major focus of the Plan appears to be on administration, managerial and organizational issues. Of the 30 objectives, 15 are concerned

¹³ *Ibid.*

with organizational, management and administrative aspects of the Court's work. Although these are important issues, Amnesty International believes the Strategic Plan should focus on addressing substantive non-judicial issues presented by certain provisions of the Rome Statute and that the very detailed focus on administration, managerial and organizational issues should be dealt with in other appropriate documents.

VII. Trust Fund for Victims

As the Report of the Board of Directors shows, as of 30 June 2006, the Trust Fund for Victims (Trust Fund) has already received €1,449,230.90 in voluntary contributions. This is an important start to the Trust Fund. It is hoped that this amount will increase significantly when the Secretariat of the Trust Fund is fully established in the next few months and a fundraising strategy is established and implemented to promote voluntary contributions from all possible sources; these being "[g]overnments, international organizations, individuals, corporations and other entities."¹⁴

At a time when the Court is starting its first case and conducting investigations into three situations where there are a large numbers of victims, it is essential to ensure that the greatest numbers 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.¹⁵

To support the essential initial fundraising effort, on International Justice Day (17 July) this year, Amnesty International's launched an initiative for its members around the world to request their governments to make voluntary contributions to the Trust Fund before or during the fifth session of the Assembly and for their governments to commit to making regular voluntary contributions. Amnesty International urges all states parties to show their support for the Trust Fund by making voluntary contributions to the Trust Fund at the fifth 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.

VIII. Preparations for the review conference

Amnesty International is calling on the Assembly to follow up on its decision at the third session to appoint Rolf Einar Fife of Norway as the focal point on the Review Conference by including the subject on the agenda of this session. Furthermore, the Assembly should ask the Bureau to establish a working group or similar body to review what steps are needed to ensure

¹⁴ 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.

¹⁵ Preamble, UN Security Council Resolution 1593 (2005).

that the Review Conference, which the UN Secretary-General must convene in 2009, is a success and report to the sixth session in New York in 2007.

The urgent need for a working group and its mandate. The decision by the Assembly two years ago to appoint a focal point to receive views of states concerning the review of the Rome Statute was an important first step in preparing for the Review Conference. However, it appears that, apart from the states participating in the Working Group on Aggression, few states parties have given any thought to what further steps are necessary to prepare for a successful Review Conference, including what should be the agenda and goals of the Review Conference, where it should meet and for how long or what amendments, if any, they would wish to discuss at the Review Conference. The Secretary-General will convene the Review Conference in July 2009, only two and a half years after the fifth session of the Assembly ends, which leaves little time to complete preparations for a successful Review Conference. There will only be two further ordinary sessions of the Assembly before the Review Conference is convened and, possibly, a third before the Review Conference actually takes place.

There is a huge amount of work that has to be undertaken between now and the Review Conference. Indeed, the Assembly will need to have the benefit of detailed studies and draft solutions to help it decide a range of important issues. It would be unfair to ask the focal point to undertake these enormous tasks. Therefore, the Assembly should take two further steps at its fifth session to ensure that the Review Conference is a success. First, it should establish a working group of the Assembly to meet at each of its sessions before the Review Conference takes place to discuss all issues related to the Conference. Second, it should request the Bureau to establish a working group or similar body to meet between sessions of the Assembly, and allocate sufficient resources to the Secretariat in its budget so that it can assist the working group or other body.

The working group or other body should be open to all states parties and observers and non-governmental organizations. Its sessions should be public (unless sensitive matters require closing parts of the meeting) and announced well in advance with the agenda. A summary of its discussions and its conclusions should be promptly posted on the section of the Court website allocated to the Assembly. The working group or other body should be requested to study the experiences of review conferences of other treaties, including, but not limited to, treaties establishing international organizations, with a view to identifying best practices as well as experiences to avoid. In addition, it should be asked to prepare a draft set of rules of procedure for the Review Conference based on the Rules of Procedure for the Assembly. The rules should take into account the decision of the Working Group on Aggression to set a deadline for completing any draft amendments and its report 12 months before the start of the Review Conference. The working group or other body should consider recommending that any amendments to be discussed at the Conference should be submitted a sufficient time before it opens to permit careful consideration, for example, at least six months. It could also compile article-by-article any amendments proposed by states parties. In addition, the working group or other body should be asked to clarify the respective roles of the UN

Secretary-General and the Assembly Secretariat in providing support to the Review Conference, consider the advantages and disadvantages of particular locations and dates, prepare draft budgets based on a variety of possible durations of the Review Conference, draft a proposed agenda and consult civil society and independent experts at all stages.

The agenda of the Review Conference. Article 123 (1) of the Rome Statute provides:

Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

There are four items which the Review Conference must consider or which it has been recommended to consider. First, transitional Article 124 expressly requires that “[t]he provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.” Second, the Review Conference will have before it proposals concerning the crime of aggression, including its definition and elements and the circumstances under which the Court will exercise its jurisdiction over this crime, and a report on the subject prepared pursuant to paragraph 7 of Resolution F of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Final Act). The Assembly has established a special working group on the subject pursuant to Resolution ICC-ASP/1/Res.1 (2002), adopted at its first session. Third and fourth, Resolution E of the Final Act recommends that a Review Conference “consider the crimes of terrorism and drug crimes with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court”.

In addition, since it will be a Review Conference, it will present an excellent opportunity for states parties to conduct a broad review of the work of the Court since the entry into force of the Rome Statute on 1 July 2002. That review should also examine the extent to which states parties and states that have made declarations pursuant to Article 12 (3) recognizing the Court’s jurisdiction have implemented their complementarity and cooperation obligations under the Rome Statute and APIC.

States could also use the opportunity to consider whether other aspects of the Rome Statute might warrant amendment at a future Review Conference. In that review, proponents of amendments would need to bear in mind that amendments require super-majorities for adoption and entry into force. Amnesty International believes that the current political environment would suggest that proponents of changes in the Rome Statute should agree to push for adoption of amendments at the first Review Conference only if there is overwhelming support for them. Instead of seeking major changes at the first Review Conference, states parties should use the opportunity for a comprehensive review as a way to

initiate discussion to lay the groundwork for successful action at a future review conference or Assembly session. Absent a significant change in current circumstances, it would appear that the only amendments that might be adopted at the first Review Conference, other than the four items mentioned above, would be amendments that involved only minor, technical corrections where there was a consensus that they were necessary and would not risk unravelling the compromise reached at Rome.

The appropriate scope of the Review Conference. The Court will still be in its infancy in 2009 when the Review Conference is convened. It will have been fully operational for only a few years and, under the current prosecution strategy, it is likely that it will have completed only a few trials and appeals. Thus, it will have had only a limited amount of time in its jurisprudence and practice to address the numerous areas of ambiguity in the Rome Statute regarding definitions of crimes and offences against the administration of justice, principles of criminal responsibility and defences, the application of the principle of complementarity, relationships between organs of the Court and the scope of state cooperation obligations. The Court should be given a chance to address these issues before any attempt is made to address any problems by amendment.

The Rome Statute is not perfect. It represents a delicate and not always happy compromise, balancing many unrelated articles and provisions. Although it may well have been almost the best that could have been achieved in the circumstances, Amnesty International made clear on the eve of the adoption of the Rome Statute that it was dismayed by many important provisions. Indeed, it continues to believe that many of the articles could be significantly improved. However, the organization recognized from the moment the Rome Statute was adopted that any attempt to make major changes at the early stages of the new permanent court's existence in one area could lead immediately to calls for changes in other areas that are completely unconnected, but which are in their current form as part of the general political bargain reached at Rome. For that reason, when the Court was under intense attack by one state, Amnesty International joined the international consensus shared by other members of civil society and the Like-Minded Countries that it was essential to protect the integrity of the Rome Statute. Although the threat to the Court's existence has receded somewhat, it has not yet gone away. The state which has campaigned against the Court can participate as an observer at the Review Conference and, if it decides to participate, it might well press for amendments in return for ending its campaign and agreeing to cooperate with the Court. For these reasons, Amnesty International continues to believe that until the Court is firmly on its feet and the campaign against it has been decisively defeated that it would be very risky to seek substantive changes other than the four envisaged under the Rome Statute or the Final Act mentioned above.¹⁶

¹⁶ Deleting transitional Article 124 would not upset the delicate balance agreed at Rome. It was inserted solely to secure approval of the Rome Statute by France. However, the declarations by France and by Colombia, the only two states to make declarations under this article, will have expired by the time the Review Conference actually takes place and, once expired, these declarations cannot be made again. No other state has made such a declaration, even states in armed conflict at the time of

IX. 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 expressly prohibited. In its report: *International Criminal Court: Declarations amounting to prohibited reservations to the Rome Statute*,¹⁷ the organization examines declarations made by states parties to date and concludes that a number of them amount to reservations, including unilateral declarations made by Australia, Colombia, France, Malta, United Kingdom and Uruguay. 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.

Amnesty International urges the Assembly of States Party to examine this issue and to call on states which made such declarations promptly to withdraw them.

ratification and no state has announced that it would only ratify the Rome Statute if Article 124 were continued.

¹⁷ AI Index: IOR 40/032/2005, available at: <http://web.amnesty.org/library/index/engior400322005>