

ASSEMBLY OF STATES PARTIES SESSION

At the end of October 2017, Amnesty International issued *Initial Recommendations to the 16th Session of the Assembly of States Parties*¹. Since then a number of issues identified in that paper appear to have been addressed, agreed upon, or deferred to next year's session. However, important new issues have also emerged. This updated short paper sets out Amnesty International's three key recommendations going into the 16th session that it urges all states parties to consider and the Assembly to address.

RECOMMENDATION 1. THE ASSEMBLY SHOULD ADOPT AMENDMENTS TO ARTICLE 8 EXPRESSLY DEFINING THE EMPLOYMENT OR USE OF CERTAIN WEAPONS AS WAR CRIMES

Amnesty International supports the proposal submitted by Belgium in advance of the 16th session to amend Article 8 to expressly recognize that the employment or use of the following weapons amount to war crimes in both international and non-international armed conflicts:

- Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production;
- Using anti-personnel mines;
- Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;
- Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.

Under rules of customary international humanitarian law, the use of biological and chemical weapons,² weapons “the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body”³ and blinding laser weapons⁴ are prohibited in both international and non-international armed conflicts. Although the ICRC has yet to conclude that anti-personnel mines are prohibited outright by rules of customary international humanitarian law,⁵ their use violates the prohibitions of using weapons of a nature to cause superfluous injury or unnecessary suffering⁶ and weapons that are by nature indiscriminate.⁷ The vast majority of states have ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction⁸ and the ICRC states that this and other practice indicates an “obligation to eliminate anti-personnel landmines is emerging”.⁹ Biological and chemical weapons are also by their nature indiscriminate. All of the weapons are of a nature to cause superfluous injury or unnecessary suffering. Amnesty International opposes their manufacture, stockpiling, transfer and use worldwide.

¹ Available at: <https://www.amnesty.org/en/documents/ior53/7291/2017/en/> and hrij.amnesty.nl

² ICRC, Customary International Humanitarian Law, Rules 73 and 74.

³ *Ibid.*, Rule 79; see also: Convention on Certain Conventional Weapons, Protocol I on Non-Detectable Fragments.

⁴ *Ibid.*, Rule 86; see also: Convention on Certain Conventional Weapons, Protocol IV on Blinding Laser Weapons.

⁵ *Ibid.*, Rule 81.

⁶ *Ibid.*, Rule 70.

⁷ *Ibid.*, Rule 71.

⁸ At the time of writing it has 162 states parties.

⁹ *Ibid.*, Rule 81.

RECOMMENDATION 2: THE ASSEMBLY SHOULD MAINTAIN THE CONTINGENCY FUND AT A LEVEL OF AT LEAST €7 MILLION IN 2018 AND REPLENISH IT FULLY

With a new investigation of crimes committed in Burundi and a decision pending on the Office of the Prosecutor's request for authorization to open an investigation in Afghanistan – neither of which are fully reflected in the 2018 budget request under consideration by the Assembly - it is essential that sufficient resources are available in the Contingency Fund next year in order for the ICC to conduct these and other new investigations or unforeseen activities.

The level of the Contingency Fund has been set at €7 million since 2017.¹⁰ In light of the potential for new activities of the Court in 2018, the Fund should be maintained at this level unless the ICC specifically requests an increase. Under no circumstances should the level of the Fund be reduced by states, as it may interfere with the Court's ability to perform its work independently and effectively.

Moreover, recognizing that in the last two years the Assembly has set the 'notional level' of the Fund at €7 million but has not fully replenished the Fund so that its actual level in 2017 was €5.8 million,¹¹ the Assembly should fully replenish the Fund in 2018 so that the resources are readily available should the ICC require them.

RECOMMENDATION 3: THE ASSEMBLY SHOULD DELETE LANGUAGE IN THE DRAFT 'OMNIBUS RESOLUTION' THAT SEEKS TO IMPOSE ARBITRARY BUDGET RESTRICTIONS ON THE ICC'S REVIEW OF ITS LEGAL AID SYSTEMS

Amnesty International supports the current review of the ICC's legal aid system and recognizes the need for significant reforms to ensure that the accused is able to fully prepare and present an effective defence and that victims are able to present their views and concerns at appropriate stages of the proceedings through legal representatives. Our organization is therefore dismayed that the Committee on Budget and Finance's report¹² appears to oppose any additional resources in legal aid before the review has even been completed. This unfortunate position has subsequently been reflected in the following draft paragraph of the Omnibus Resolution of the Assembly:

“With regard to Legal Aid, requests the Court to reassess the functioning of the legal aid system and to present, as appropriate, and without pre-empting the discussion, proposals for adjustments *within existing resources* to the legal aid remuneration policy for the consideration of the Assembly at its seventeenth session”¹³ (emphasis added)

Although the Assembly should encourage the ICC to conduct its review with a view to achieving efficiency where possible, seeking to impose such arbitrary and pre-determined budget restrictions on the ongoing process reflects poor management oversight of the Court and disregard for the effective implementation of the rights of the accused and victims in the Statute. This should be the ICC and Assembly's primary concern. At a minimum, the reference to 'within existing resources' in this paragraph should be deleted.

¹⁰ See for example: Resolution of the Assembly of States Parties on the proposed programme budget for 2017, the Working Capital Fund for 2017, the scale of assessment for the apportionment of expenses of the International Criminal Court, financing appropriations for 2017 and the Contingency Fund, ICC-ASP/15/Res.1, Section D.

¹¹ *Ibid.*

¹² Report of the Committee on Budget and Finance on the work of its twenty-ninth session, ICC-ASP/16/15, 17 October 2017, para.181: the Committee called for the revision of the system to be 'respectful of the budgetary limits approved by the Assembly'

¹³ Draft Omnibus Resolution, Annex I, para. 8.