

**AMNESTY INTERNATIONAL
PUBLIC STATEMENT**

**Review Conference of the Rome Statute of the International Criminal Court,
31 May to 11 June 2010**

11 June 2010

**Comments regarding the language included in the resolution amending
Article 8 of the Rome Statute, adopted in plenary on 10 June 2010.**

Amnesty International welcomes the adoption of the amendment to Article 8 of the *Rome Statute* proposed by Belgium, which is broadly consistent with customary international humanitarian law and which further harmonizes the list of war crimes applicable to international and non-international armed conflicts. However, Amnesty International has comments regarding some aspects of the language included in the resolution.

First, regarding the second un-numbered paragraph of the resolution, Amnesty International believes that the phrase “and confirming its understanding that in respect to this amendment the same principle that applies in respect to a State Party which has not accepted the amendment applies also in respect of States that are not parties to the Statute” unduly seeks to prevent the International Criminal Court from investigating and prosecuting these new crimes if they are committed by nationals of countries which have not ratified the *Rome Statute* or by nationals of states that have ratified the *Statute*, but not accepted the amendment.

Second, regarding the seventh un-numbered paragraph, Amnesty International recalls that the Assembly of State Parties does not have the competence to confirm the exclusion from the International Criminal Court’s jurisdiction of law

enforcement situations through a simple resolution. Therefore, the clarification of the International Criminal Court's jurisdiction regarding "law enforcement situations" in the seventh un-numbered paragraph should not be understood as modifying the threshold standards which govern the material field of application of customary and conventional international humanitarian law.¹

Third, the exclusion from the International Criminal Court's jurisdiction of "law enforcement situations" in the seventh un-numbered paragraph should not be understood as in any way authorizing the use of weapons in a manner inconsistent with international human rights law and standards applicable to law enforcement officials. In this regard, although Amnesty International recognizes the right of law enforcement officials to use force when strictly unavoidable in order to protect life, it opposes the use of poison or poisoned weapons, chemical weapons and bullets which expand or flatten easily in the human body in all circumstances. In particular, as Paragraph 11 (c) of the 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* makes clear, "rules and regulations on the use of firearms by law enforcement officials should include guidelines that . . . prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk".²

Finally, the expression in the ninth un-numbered paragraph "understanding that the crime is committed only if the perpetrator employs the bullets to uselessly aggravate suffering or the wounding effect upon the target of such bullets" should

¹ The material field of application varies: for international armed conflicts, see *Geneva Conventions*, common Article 2 and *Additional Protocol I*, Articles 1 (3) and (4); for non-international armed conflicts, see *Geneva Conventions*, common Article 3 and *Additional Protocol II*, Article 1. Nonetheless, it is well understood that international humanitarian law does not apply to a "situation of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature." See *Additional Protocol II*, Article 1 (2) and *Rome Statute*, paragraphs 8 (2) (d) and (f).

² *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, 1990, p. 112. Paragraph 5 of the *Basic Principles* also provides that "Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: . . . (b) Minimize damage and injury, and respect and preserve human life".

be understood as being included only as a reiteration of the elements necessary to give rise to individual criminal responsibility in trials before the International Criminal Court and not as detracting from the absolute character of the prohibition of such bullets in customary and conventional international humanitarian law.³ Accordingly, this expression should be understood as being consistent with the knowledge element specified in paragraph 3 for Article 8 (2) (e) (xv) which refers to awareness on the part of the perpetrator “that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.”⁴

In conclusion, Amnesty International has long supported the expansion of the use of prohibited weapons as war crimes in non-international armed conflicts and thus reiterates its support for this proposed amendment to Article 8 of the *Statute*. In making the above comments, Amnesty International seeks to clarify the understanding that the language included in the resolution does not and cannot in any way affect other provisions of the *Statute*, customary and conventional international humanitarian law or international human rights law and standards.

³ Rule 77 of the Rules of Customary International Law, which applies in both international and non-international armed conflict, expressly states: “The use of bullets which expand or flatten easily in the human body is prohibited.” The prohibition in international armed conflict dates at least to the Hague Declaration concerning Expanding Bullets of 1899. See Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law* (Geneva: ICRC, 2005).

⁴ *Report of the Preparatory Commission for the International Criminal Court, Addendum: Finalized Text of the Elements of Crimes*, U.N. Doc. PCNICC/2000/INF/3/Add.2 (2000), elements of Article 8 (2) (b) (xix).