

AMNESTY INTERNATIONAL

Open Letter

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Open Letter to the Security Council on Iraq

Re.: UN/NYt/066/04

To all members of the Security Council
The situation in Iraq

2 June 2004

Dear Ambassador,

Amnesty International urges the Council to make human rights a guiding principle of the resolution it is currently drafting about the transfer of authority in Iraq by 30 June 2004. The need to uphold international human rights and humanitarian law by all concerned, and to ensure individual accountability for abuses, should be clearly articulated in the resolution. In this spirit, Amnesty International would like to make the following observations in respect of the second draft presented for consideration by the Council on 1 June 2004.

Need to strengthen human rights provisions

The human rights language in the draft is very weak. The draft does no more than "Noting the commitment of all forces promoting the maintenance of security and stability in Iraq to act in accordance with international law". This vague and non-binding wording can be read as an open invitation, especially by the multinational force, to avoid responsibility and accountability for upholding international human rights and humanitarian law and protect Iraqi citizens and other nationals in Iraq.

The resolution should seek to ensure that after 30 June human rights will not only be promoted but will be effectively respected and protected, and that there will be individual accountability for those who commit and have committed abuses in Iraq. With many thousands foreign troops, civilian officials, private contractors and advisers remaining in Iraq, there can be no gaps or ambiguity about who is responsible for respecting and ensuring respect for human rights in Iraq.

Amnesty International calls on the Security Council to define, as clearly as possible in the operative part of the resolution, the respective powers, authority and responsibilities with regard to human rights of the future Interim and the Transitional Government of Iraq [the Iraqi government] and multinational force. It is particularly important to reaffirm the obligations of both the Iraqi government and the multinational force to respect fully human rights treaties such as the International Covenant on Civil and Political Rights, to which Iraq, and other states which will be members of the multinational force, are parties. The Convention on the Elimination of All Forms of Discrimination against Women also applies in Iraq.

Need to clarify responsibilities under international humanitarian law

As recognized in resolutions 1483 and 1511, foreign forces in Iraq, as occupying powers, are currently bound to observe the Hague Regulations and the Fourth Geneva Convention. The applicability of these provisions to their military forces will not end unless effective control on the ground is transferred to the Iraqi authorities. The draft resolution "welcomes that, also by that date [30 June 2004] the occupation will end...". However, it then goes on to grant broad powers to the multinational force to continue to conduct military operations after 30 June for the maintenance of security and stability in Iraq with the draft specifying that the Iraqi security forces will progressively play a greater role in and assume ultimate responsibility for maintaining security and stability at an unspecified later date. Apparently conflicting statements have been made by various officials about the extent of Iraqi consent required for the operations of the multinational force. Unless the occupying powers can demonstrate that they will no longer be in effective control in Iraq after 30 June, they will continue to be bound by international humanitarian law on belligerent occupation.

The earliest date on which the proposed mandate of the multinational force can be reviewed or terminated is at the request of the Transitional Government established after elections that must be held by 31 January 2005. Amnesty International urges the Council to specify the obligations under applicable international humanitarian law of the Iraqi government and the multinational force. Such obligations should be included in the operative part of the resolution under the binding provisions of Chapter VII of the Charter.

Need to clarify responsibilities for security operations

The draft resolution envisages a broad mandate for the future multinational force with full authority "to take all necessary measures to contribute to the maintenance of security and stability in Iraq including by preventing and deterring terrorism." It does not specify whether the future Iraqi government will have the authority to approve such operations by the multinational force, and the relationship between the Iraqi government and the multinational force is vaguely described as one of "partnership" or "coordination". Such vague language is not conducive to establishing clear command responsibility and accountability for any abuses.

Amnesty International calls on the Council to clarify in the text of the resolution the relationship between the Iraqi government and the multinational force, especially with regard to the conduct of military and law enforcement operations. The resolution should specify the need to strictly observe international law and standards relating to law enforcement by any party that carries out arrests, searches and detentions. Countries providing weapons, equipment and training to Iraqi forces must ensure that they will not be used to commit abuses.

Need to clarify responsibilities for prisoners

The draft resolution does not address what will happen to several thousand prisoners held by the Coalition Provisional Authority (CPA). Iraqis have been subjected to torture and cruel, inhuman or degrading treatment while in the custody of the CPA, and others while in the custody of the Iraqi police. The Council bears a special responsibility for the prisoners' safety, as the torture and ill-treatment was carried out by members of the multinational force whose presence in Iraq was endorsed by the Security Council.

If occupation effectively ends, all prisoners, detainees and internees held by the occupying powers should be released unless there are grounds under Iraqi law, consistent with international human rights law, to continue their detention. In particular, the end of occupation will mark the end of the current international conflict, and therefore all prisoners of war (POWs) should be released and, if necessary, repatriated. However, should the multinational force continue to hold POWs after 30 June 2004, POWs will continue to enjoy the special protection and treatment under the Third Geneva Convention to which they are currently entitled.

With the end of occupation, the multinational force operating in Iraq after 30 June should no longer have any ordinary powers of arrest or detention unless with prior authorization of the Iraqi authorities. In the event that members of the future multinational force detain people in the course of security operations, they should immediately hand them over to the Iraqi authorities. Detainees in Iraqi custody should be provided with all the legal safeguards specified in human rights law, including regular access to their relatives, to lawyers, to effective judicial supervision of detention and to appropriate international bodies.

Amnesty International calls on the Security Council to articulate explicitly the responsibilities of the Iraqi government and the multinational force with regard to arrest, search, detention and trial. The Council should also reaffirm the obligation to respect the absolute prohibition of torture and cruel, inhuman or degrading treatment by any detaining authority, Iraqi or foreign.

Need to ensure full accountability for abuses

The draft resolution does not address the need to ensure accountability for those committing crimes under international law, including members of the multinational force as well as Iraqis. Reports suggest that questions regarding immunity from prosecution by the Iraqi justice system for members of the multinational force or their contractors could be addressed in an exchange of letters outside the Council's deliberations.

Amnesty International calls on the Council not to permit immunity from legal proceedings for abuses committed by the multinational force or their contractors through special clauses or agreements. While the domestic jurisdictions of the states who are members of the multinational force will be expected to play a key role in prosecuting abuses by their nationals, Iraqi courts should also be able to exercise jurisdiction over any crime committed in Iraq. Any such trial must conform fully to international standards for fair trial and exclude the death penalty.

Other countries can assist in ensuring that there is no impunity for serious human rights violations in Iraq, past and future. Governments could exercise universal jurisdiction over serious crimes under international law, including war crimes and, where appropriate, crimes against humanity. The International Criminal Court could also exercise jurisdiction over persons in Iraq whose states have ratified the Rome Statute. Ultimately, however, the Iraqi criminal justice system must be put in a position to ensure effective justice for all in Iraq.

Amnesty International urges the Council to remind all states of their obligations to bring to justice those accused of crimes under international law, including war crimes and crimes against humanity.

The International Advisory and Monitoring Board

Amnesty International has argued for better mechanisms of accountability to ensure that the reconstruction process benefits the Iraqi people and delivers better protection of all human rights of Iraqis. On the question of financial accountability, the draft resolution provides for funds in the Development Fund for Iraq to be disbursed at the direction of the Interim Government of Iraq, when the CPA is dissolved. The International Advisory and Monitoring Board (IAMB) – which the Council named in May 2003 in resolution 1483 – would continue its monitoring activities of the Development Fund with the help of an additional member, representing the government of Iraq.

Amnesty International welcomes these provisions in the draft resolution as it is concerned that large sums of money – approximately 18 billion dollars - have been spent by the CPA from the Development Fund, but that there has been little transparency, less accountability and very limited involvement of the Iraqi people in the process. The IAMB has been slow to start its work: it was not established until October 2003, and its terms of reference were only adopted in December 2003.

Moreover, the IAMB has apparently not received the necessary cooperation in its work. It had to press one CPA member as late as February this year to appoint auditors so that the IAMB could proceed with carrying out its own oversight mandate in earnest. As there has been little transparency about the disbursements of the Fund, it is of vital importance that the IAMB continue its work of oversight and ensure that the funds are only used for their stated purpose.

Amnesty International calls on the Council to provide, in the resolution, that there must be a transparent and effective process which ensures that the money spent from the Development Fund for Iraq is fully accounted for, and that the states administering the Development Fund be urged to cooperate fully with the IAMB in its efforts. The Council should also ensure that the Iraqi people will be fully informed of how the money was spent and that they are involved in decision-making about how it will be spent in future.

The role of the UN

Amnesty International notes provisions in the draft resolution assigning to the United Nations Assistance Mission for Iraq (UNAMI) a key role in promoting the protection of human rights, emphasizing the need for judicial and legal reform to strengthen the rule of law in Iraq. The Council should ensure that the UN will be able to play its role in the promotion and the protection of human rights, that its tasks in this area are facilitated by the Iraqi authorities and the multinational force, and that the UN receives adequate resources and political support.

Amnesty International urges the Council to stress the importance of the early deployment, as circumstances permit, of UN human rights monitors. The Council should also encourage early visits by the appropriate special procedures of the Commission on Human Rights, including the Special Rapporteur on Torture.

In view of the evidence of war crimes in Iraq, including murder, torture and inhuman treatment in prisons, Amnesty International urges the Council to take special measures to ensure that Iraqi prisoners and detainees will not be further subjected to such treatment and be held in conditions that meet international standards. Special measures could consist of a dedicated unit of UN monitors explicitly mandated by the Council to supervise all places of detention. They would need to enjoy full access to all places of detention, have the power to carry out unannounced visits, and make recommendations to the detaining authorities. Their findings and activities should be regularly included in the Secretary-General's reports to the Council.

The Council should also request the development of a coherent and effective international program of assistance for rebuilding the Iraqi criminal justice system, and ensure without delay effective mechanisms in Iraq for victims of abuses to have ready access to remedies including reparation.

Yours sincerely,

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Public Document

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