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Milosevic's indictment -- Amnesty International welcomes decision that head of state may be held responsible for crimes against humanity and war crimes

"A welcome reaffirmation of the rule of international law that no one, whether a head of state or private soldier, is immune from criminal responsibility for crimes against humanity and war crimes," Amnesty International said today, in response to the decision by the International Criminal Tribunal for the former Yugoslavia to indict President Slobodan Milosevic and other government officials.

"The decision to indict the President of the Federal Republic of Yugoslavia (FRY) should have no adverse impact on peace negotiations with officials of that country," Amnesty International stressed.

The negotiations at Dayton in October 1995 which led to the Paris peace agreement for Bosnia-Herzegovina in December that year were conducted with officials from Serbia and the FRY without any assurances by the United States that they would not be arrested if they were indicted by the Tribunal for crimes committed in Bosnia-Herzegovina.

"All states, including the FRY, have a duty under international law to arrest the Federal Republic of Yugoslavia President and senior officials if an international arrest warrant has been issued," Amnesty International said. *"We have been calling for almost two years upon governments supplying troops to the Stabilization Force (SFOR) deployed in Bosnia-Herzegovina to carry out SFOR's mandate to seek out and arrest those indicted by the Tribunal."*

"We are concerned that to date, only half of those currently publicly indicted have come into the Tribunal's custody - and only a minority of them through arrests secured by SFOR," Amnesty International said. *"The slow and piecemeal way in which suspects have been detained seriously risks rendering ineffective and futile the enormous efforts by the Tribunal to investigate alleged crimes under international law and has hampered considerably prompt and thorough prosecution of those who have been detained."*

Amnesty International has urged that any international military presence which may eventually be deployed on FRY territory be given an explicit mandate to ensure that those indicted by the Tribunal, whether publicly or secretly, will come into its custody.

As Amnesty International argued in the case of the former President of Chile, Augusto Pinochet, before the House of Lords, it is a fundamental rule of law that all persons, including current

heads of state, can be held criminally responsible in national and international courts for crimes under international law, including genocide, other crimes against humanity, war crimes and torture.

This rule, which dates back to the attempt to bring the former Kaiser of Germany to justice after the First World War, was reaffirmed during the Second World War when the Allies planned to indict Adolf Hitler for crimes against humanity and war crimes. It has consistently been included in international instruments such as the Nuremberg and Tokyo Charters, the Statutes of the Yugoslavia and Rwanda Tribunals and the Rome Statute of the International Criminal Court.

“The reported decision to indict the President of the FRY and senior commanders implements the fundamental rule of international law that superiors, civilian or military, may be held criminally responsible for the crimes of their subordinates,” Amnesty International said. “It has long been settled that there is no need to prove that the superior gave direct orders to subordinates to commit the crimes.”

This rule is reflected in international instruments such as Protocol I to the Geneva Conventions of 1949, the Draft Code of Crimes against the Peace and Security of Mankind, the Statutes of the Yugoslavia and Rwanda Tribunals and the Rome Statute of the International Criminal Court. Under the rule, a superior may be held criminally responsible for the conduct of a subordinate if he or she had reason to know that the subordinate was committing or planned to commit the crimes and the superior did not take all necessary measures to prevent or repress the crimes.

“It is important to reiterate that the reported indictment of President Milosevic and senior commanders is not a determination of guilt, and that it is essential that the Tribunal fully respect the right to fair trial -- including the presumption of innocence of all persons indicted, no matter how horrifying the crimes,” Amnesty International stressed.

“If people from all communities involved in the conflict are to accept the findings of individual criminal responsibility -- and thus break the cycle of attribution of collective community guilt followed by crimes -- it is essential that justice not only be done, but be seen to be done,” Amnesty International said.

While Amnesty International praised the Tribunal for this latest milestone in seeking to bring to account those responsible for gross human rights violations in the former Yugoslavia, the organization was also keen to emphasize that this should by no means be seen as an indication that the Tribunal's task is approaching some kind of completion.

The list of outstanding issues not yet addressed by the Tribunal includes bringing to justice those responsible, at all levels of the Croatian political and military leadership, for flagrant violations of international humanitarian law in the wake of Operations "Flash" and "Storm" in Croatia in 1995. Remaining tasks also include the Tribunal's continuing investigations and prosecutions of war crimes committed by all sides in Bosnia-Herzegovina during the armed conflict of 1992-1995 and most recently, possible violations of international

humanitarian law in Kosovo by Serbian forces, the Kosovo Liberation Army and NATO forces.

The Tribunal and the Security Council have found that both the FRY and Croatian authorities have failed, in varying degrees, to cooperate fully and promptly with the Tribunal, as they are required to do as United Nations member states, bound by Security Council resolutions. Both countries have failed to transfer indicted suspects promptly to the custody of the Tribunal, failed to provide the it with information and cooperation, and undermined the Tribunal's effectiveness by challenging its jurisdiction over crimes committed in their countries. The FRY has, in addition, refused the Tribunal's Prosecutor's staff access to its territory on various occasions.

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