

# **BOSNIA-HERZEGOVINA**

## **THE DUTY TO SEARCH FOR WAR CRIMES SUSPECTS:**

### **AN OPEN LETTER FROM AMNESTY INTERNATIONAL TO IFOR COMMANDERS AND CONTRIBUTING GOVERNMENTS**

AI Index: EUR 63/08/96

London, 1 March 1996

Amnesty International is deeply concerned that the multinational military Implementation Force (IFOR) is continuing to refuse to search for persons suspected of genocide, other crimes against humanity and serious violations of humanitarian law. The failure to carry out this law enforcement duty is a clear breach by states contributing troops to IFOR of their obligations under the four Geneva Conventions of 1949 and Security Council Resolution 827. It is also inconsistent with the principles of the General Framework Agreement on Peace in Bosnia and Herzegovina reached in Dayton, Ohio in November 1995 (the peace agreement). It sends a clear message to all those responsible for such crimes that to ensure impunity they need only avoid coming into direct contact with IFOR as long as it is in Bosnia-Herzegovina.

Since the first IFOR troops arrived in Bosnia-Herzegovina last year, spokespersons for IFOR and troop-contributing states have repeatedly stated that they would not search for persons indicted by the International Criminal Tribunal for the former Yugoslavia (the Tribunal), but would arrest suspects only if they encountered them. IFOR spokesperson, Lt. Col. Mark Rayner, stated on 12 February, "IFOR troops have the authority, but not the obligation, to detain indicted war criminals". According to reports, troops have encountered more than one person who has been indicted by the Tribunal, but failed to arrest them. Amnesty International welcomes the recent announcement that IFOR is now informing its personnel of the identities of people who have been indicted by the Tribunal by providing them with photographs of some of the accused and instructing them to arrest any accused they happen to encounter, if feasible. This step, however, fails to fulfil state obligations to search for, arrest and bring to justice those responsible for grave breaches of the four Geneva Conventions of August 12, 1949 for the Protection of War Victims and its Additional Protocol I.

The refusal to search for people who have been indicted by the Tribunal for grave breaches of the Geneva Conventions is a clear violation of international law. All the states contributing troops to IFOR are state parties or successor state-parties to the Geneva Conventions and each is therefore obliged "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts", the courts of another state or an international criminal court (Geneva Convention No. I, Art. 49; Geneva Convention No. II, Art. 50; Geneva Convention No. III, Art. 129; Geneva Convention No. IV, Art. 146). This obligation applies in all cases, not just when the Tribunal or a national court has indicted an accused or asked for a suspect to be provisionally arrested. Thus, the duty to search for people suspected of having committed or having ordered to be committed such grave breaches is independent of any action taken by the Tribunal or a national court. The Geneva Conventions expressly provide that states parties to the Geneva Conventions may not absolve themselves of any liability which they or other states parties have incurred in respect of grave breaches (Geneva Convention No. I, Art. 51; Geneva Convention No. II, Art. 52; Geneva

Convention No. III, Art. 131; Geneva Convention No. IV, Art. 148). The official commentary by the International Committee of the Red Cross makes clear that this common provision removes any doubt that the duty to prosecute and punish the authors of grave breaches is “absolute”.

The refusal to search for people who have been indicted by the Tribunal also violates troop-contributing states’ legal obligations to implement Security Council Resolution 827 of 25 May 1993 establishing the Tribunal. That resolution requires all states “to cooperate fully with the International Tribunal” and to “take any measures necessary” to implement the resolution, including compliance with Tribunal orders or requests for assistance. There are no exceptions. The Tribunal has so far issued 13 indictments against 53 individuals. All but two have been indicted for grave breaches. Only one person indicted, who was in custody in the Federal Republic of Germany, has been transferred to the custody of the Tribunal in the Hague, the Netherlands. None of the arrest warrants issued by the Tribunal has been served, apart from provisional arrest warrants for two individuals held in the custody of the authorities of Bosnia-Herzegovina and transferred to the Hague. Most of the individuals indicted are believed to have remained in the former Yugoslavia.

The failure to search for and arrest persons suspected of having committed or ordered grave breaches of the Geneva Conventions is inconsistent with the principles of the peace agreement. IFOR is obliged under the peace agreement “to take such actions as required” to ensure compliance with Annex I of the peace agreement. That Annex requires the parties “to cooperate fully with any international personnel, including investigators” of the Tribunal. The members of the Security Council understood when adopting Resolution 1031 on 15 December 1995 that resolution and the peace agreement gave IFOR the authority to detain and transfer persons indicted by the Tribunal.

All the parties to the peace agreement are required to cooperate fully with the Tribunal and FOR is responsible for implementation of the agreement. The parties’ cooperation has been limited. Bosnia-Herzegovina has enacted legislation, deferred prosecutions at the request of the Tribunal and provisionally arrested and transferred suspects to the Tribunal. Croatia has permitted Tribunal investigators to operate on its territory, but has not yet enacted necessary legislation. The Bosnian Serb authorities have recently permitted investigators to operate in territory under their control. It is a matter of serious concern, however, that, in clear violation of the peace agreement, the Bosnian Serb authorities, the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Croatian authorities and the Bosnian Croat authorities have all failed to transfer persons who have been indicted to the Tribunal. Although it has promised to do so, the Federal Republic of Yugoslavia has not yet permitted the Tribunal to open an office or its investigators to operate freely in its territory.

IFOR is obliged under the peace agreement to establish a durable cessation of hostilities, which includes ensuring that the parties “cooperate fully with any international personnel including investigators . . . including facilitating free and unimpeded access and movement and by providing such status as is necessary for the effective conduct of their tasks” (Annex I-A, Article II, para. 4). On 24 November 1995, Tribunal President Cassese and Prosecutor Goldstone stated that they “trust the Agreement will be fully and rigorously implemented by all the Parties concerned” and that “NATO forces, as well as the competent authorities, will render appropriate assistance to the Tribunal’s officials to enable them to carry out their mission”. IFOR is now providing logistical support and security for Tribunal investigators to visit grave sites

and other locations, as well as aerial surveillance of grave sites, but it has not agreed to provide round-the-clock security for all grave sites. Whether such surveillance will adequately protect grave sites, particularly when the spring thaw makes it easier to destroy such sites and other evidence remains to be seen. It is essential for IFOR and the international community to ensure that there is adequate security for grave sites, other physical evidence and witnesses.

Amnesty International is renewing its call made on 22 January 1996 to IFOR and the parties to the agreement to fulfil their responsibilities under the Geneva Conventions, Security Council Resolution 827 and the peace agreement to carry out their law enforcement responsibilities to search for, arrest and transfer to the Tribunal all persons who have been indicted by the Tribunal. IFOR should also immediately respond to requests by Tribunal investigators to protect grave sites, other physical evidence and witnesses in Bosnia-Herzegovina.

Half a century after the Nuremberg trial began, the international community must not allow those responsible for genocide, other crimes against humanity and serious violations of humanitarian law to escape justice. There cannot be a lasting peace in Bosnia-Herzegovina without justice.

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