

## **Public Statement**

13 June 2000

### **Amnesty International's initial comments on the review by the International Criminal Tribunal for the Former Yugoslavia of NATO's Operation Allied Force**

The International Criminal Tribunal for the Former Yugoslavia (ICTY) has published today the Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia. The report examines general issues and five specific incidents and recommends to the ICTY Prosecutor not to commence a criminal investigation "in relation to the NATO bombing campaign or incidents occurring during the campaign" (para 91).

Ms Carla Del Ponte, ICTY's Prosecutor, informed the United Nations' Security Council on 2 June 2000 that she had decided to accept this recommendation. She specifies that although some mistakes were made by NATO, "the Prosecutor is satisfied that there was no deliberate targeting of civilians or unlawful military targets by NATO during the campaign".

Amnesty International has received a copy of the 45-page ICTY report and is examining it carefully. All five incidents examined in the report by ICTY's review committee were included in the Amnesty International report, *Collateral Damage or Unlawful Killings?, Violations of the Laws of War by NATO during Operation Allied Force*, published last week (AI Index: EUR 70/18/00).

Amnesty International welcomes the unusual publication by the ICTY of the reasoning behind the decision not to open an investigation related to NATO's bombing campaign. The organization believes that

*this step contributes greatly to the Tribunal's transparency, offering important perspectives on the interpretation of the laws of war.*

*Amnesty International also respects the discretion enjoyed by the ICTY's Prosecutor in deciding whether or not to open criminal investigations. The organization understands that, as with other cases, the Prosecutor may still decide to open an investigation into the NATO bombing should additional relevant information become available.*

*Amnesty International notes that the report of the ICTY assessment indicates that when NATO was requested "to answer specific questions about specific incidents, the NATO reply was couched in general terms and failed to address the specific incidents." The report also points out that the "committee has not spoken to those involved in directing or carrying out the bombing campaign". These facts must have contributed to the information gaps that the committee itself acknowledges in its report. Amnesty International also notes the following overall conclusion of the review committee (para 90):*

*"NATO has admitted that mistakes did occur during the bombing campaign; errors of judgment may also have occurred. Selection of certain objectives for attack may be subject to legal debate. On the basis of the information reviewed, however, the committee is of the opinion that neither an in-depth investigation related to the bombing campaign as a whole nor investigations related to specific incidents are justified. In all cases, either the law is not sufficiently clear or investigations are unlikely to result in the acquisition of sufficient evidence to substantiate charges against high level accused or against lower accused for particularly heinous offences."*

The report does not explain what difficulties are envisaged by the Office of the Prosecutor in gathering sufficient evidence against any NATO or NATO member state official.

With regard to the bombing of the headquarters and studios of Serbian state television and radio (*Radio Televizija Srbije, RTS*) in Belgrade on 23 April 1999, the report states (para 76):

“The committee finds that if the attack on the RTS was justified by reference to its propaganda purpose alone, its legality might well be questioned by some experts in the field of international humanitarian law. It appears, however, that NATO’s targeting of the RTS building for propaganda purposes was an incidental (albeit complementary) aim of its primary goal of disabling the Serbian military command and control system and to destroy the nerve system and apparatus that keeps Milosevic in power.”

Earlier (para 55) the report made the following observation regarding the role of the media in general:

“The media as such is not a traditional target category. To the extent particular media components are part of the C3 (command, control and communications) network they are military objectives. If media components are not part of the C3 network then they may become military objectives depending upon their use. As a bottom line, civilians, civilian objects and civilian morale as such are not legitimate military objectives. The media does have an effect on civilian morale. If that effect is merely to foster support for the war effort, the media is not a legitimate military objective. If the media is used to incite crimes, as in Rwanda, it can become a legitimate military objective. If the media is the nerve system that

*keeps a warmonger in power and thus perpetuates the war effort, it may fall within the definition of a legitimate military objective.”*

*Amnesty International reiterates that the explanation it sought and received by NATO regarding the attack on the RTS headquarters was that the attack was carried out because the RTS was a propaganda organ. In a letter to Amnesty International dated 17 May 1999 and quoted in ICTY’s report (para 73), NATO’s then Secretary General Javier Solana said that NATO made “every possible effort to avoid civilian casualties and collateral damage by exclusively and carefully targeting the military infrastructure of President Milosevic”, adding that the RTS facilities “are being used as radio relay stations and transmitters to support the activities of the FRY military and special police forces, and therefore they represented legitimate military targets”. However, as also indicated in the Amnesty International report published last week, at a meeting with Amnesty International in Brussels on 14 February 2000 NATO officials clarified that this reference to relay stations and transmitters was to other attacks on RTS infrastructure and not this particular attack on the RTS headquarters. They insisted that the attack on the RTS headquarters was carried out because RTS was a propaganda organ and argued that propaganda is direct support for military action.*

*The point relating to propaganda has been made repeatedly, most recently by General Wesley Clark, Supreme Allied Commander in Europe at the time of Operation Allied Force. In an address at the Brookings Institution on 8 June 2000 he is quoted as saying:*

*“I noticed on the news today there is criticism of the attack on the Serb media. Well, of course, that was a controversial target. But the Serb media engine was feeding the war. It was a crucial instrument of Milosevic's control over the Serb population. And it exported fear, hatred and instability into neighbouring regions. And*

*so it was a legitimate target of war, validated by lawyers in many countries and validated by the International Criminal Tribunal. But it sure eased our minds a lot to know that our elected political leaders took the responsibility for that strike.”*

*As explained in its report last week, Amnesty International recognizes that disrupting government propaganda may help to undermine the morale of the population and the armed forces. However, the organization believes that justifying an attack on such grounds stretches the meaning of “effective contribution to military action” and “definite military advantage” -- essential requirements of the definition of a military objective -- beyond the acceptable bounds of interpretation. As such, Amnesty International takes the view that the attack on the RTS headquarters was directed at a civilian object and points out that “Intentionally directing attacks against civilian objects” is a war crime under the Rome Statute of the International Criminal Court.*

*Amnesty International regrets the lack of full cooperation by NATO in responding to ICTY’s inquiries. The organization stresses that the fact that the ICTY Prosecutor has decided not to open a criminal investigation against NATO should not lead NATO to ignore the detailed and nuanced contents of the ICTY report, or dismiss recommendations made by Amnesty International and other organizations.*

*Amnesty International calls again on NATO and NATO member states to heed the recommendations it made in its report published last week, including the need for all NATO member states to ratify without reservations Protocol I Additional to the Geneva Conventions of 1949; ensure a common interpretation of international humanitarian law in line with the highest international standards; reflect these standards in*

*NATO's rules of engagement; and clarify NATO's chain of command, so as to ensure clear lines of responsibility.*

*NATO and NATO member states should also conduct their own investigation into reported breaches of the rules of war during Operation Allied Force, whether or not they may amount to war crimes, so as to take appropriate measures against anyone found responsible, provide redress, including compensation, to victims of such violations, and learn lessons for the future. ENDS.../*

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