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WEEKLY UPDATE SERVICE 34/93

Contained in this weekly update are two external items on war crimes tribunals.

NEWS INITIATIVES

UN CAT REPORT - NEW INFORMATION

The dates of reporting to the UN Committee Against Torture have been changed. China is now due to report on 22 April, and Spain on 23 April. A weekly update item on China embargoed for today accompanies our report to the CAT, and we are currently working on a weekly update item on Spain.

USA - RODNEY KING - NEW INFORMATION

We are currently working on a weekly update addressing the civil action going on in Los Angeles at the moment in the case of Rodney King, the black motorist who was beaten up by LA police. We hope to have it with you soon.

IMPORTANT CHANGES TO TEXT RECEIVED LAST WEEK -

The Chad Q&A, which was sent out to you last week, had the wrong index number. The correct number is: AFR 20/13/93. Please amend them as soon as possible.

Sorry about this mistake.

INTERNATIONAL NEWS RELEASES

World Conference - Monday 19 April

A news release and open letter from the Secretary General to all governments of the world was sent to you yesterday, following section suggestions that we target the Geneva Preparatory Committee.

We are currently taking the media pack (for more general World Conference work) through approvals, and hope to have it with you shortly.

Chad - 21 April

The document to go with this campaign has been sent out to sections dated February. Please inform your section campaign coordinators and anyone else who may receive it that it is EMBARGOED FOR 21 APRIL.

Another, short document about recent killings has also now been finalized. It will be sent to you by telex, fax or e-mail on Tuesday next week.

Chad Campaign, document, news release, Q&A and ENR. The news release and Q&A have been sent to you. Please note the change of index number of the Q&A (see above).

Bangladesh - 28 April

Document on serious human rights violations in Bangladesh, accompanied by a news release, which was sent to you today. Sorry it is so late - this was due to staff shortages and sickness in the IS press office.

Tadzhikistan - 5 May

Publication and news release on killings in the context of civil war - with striking similarities to Bosnia-Herzegovina. The news release was sent out to you today.

Indigenous People - 12 May

News release planned to accompany Focus article on Human rights violations against indigenous people worldwide. Indigenous people will be one of the main themes of our work on the World Conference.

Guatemala - 19 May

A document or publication with a news release on a full range of recent human rights violations (in the past year or so) in Guatemala.

Egypt - 26 May

A document or publication and news release on all our concerns in Egypt. These include very high numbers of prisoners and torture.

TARGETED AND LIMITED NEWS RELEASES

China - 16 April

(New Information)

Document and embargoed weekly update item on torture, timed to coincide with China reporting to the UN Committee Against Torture (CAT). China is scheduled to appear on 22 April - please note that this is a change of date. Media are entitled to attend and we will be encouraging contacts to do so.

Brazil - 7 May

Document on prison massacre, including new forensic information. Weekly update item to go with it. Sections are also being asked to carry out campaign work in connection with this document.

Unconfirmed news initiatives

News releases or embargoed weekly update items are being considered on the following subjects:

Malawi (May)

World Conference (early June, or possibly to coincide with AI's anniversary on 28 May)

Nagorno-Karabakh (to go with section-level action, late May)

Aceh, Indonesia (14 July)

Section Initiatives

French Section - European Press Officers' Meeting

The second European Press Officers' meeting will take place in Paris this year. The date of this meeting is now fixed for 15 and 16 May as the majority of you asked for. It will be focused on two themes: Audiovisual work (production and TV experiences) and how to improve it; and the UN World Conference on Human Rights in Vienna.

European World Conference Press Briefing in June

The British Section Press Office has been talking to the EC project office and the Francophone Belgium Press Officer about holding a European press briefing in Brussels for MEPs and for journalists who will be covering the World Conference. The date will probably be Tuesday, June 8th in the morning. The aim will be to look at the EC's role as a whole in terms of its internal shortcomings (Asylum issues, etc), external policies - aid/development, etc, and also to look at Europe's role within the UN.

Although the idea has been suggested by the British Section, it is hoped that all European Section Press Officers will be interested in being involved. For further information please contact either Daphne Davies, in the British Section Press Office or Johannes in the EC project office.

2. EUR 48/WU 04/93 EXTERNAL
16 April 1993

INTERNAL

The following weekly update is being issued in advance of an external document to be released next week on the ad hoc international war crimes tribunal for the former Yugoslavia. It is being released now to allow sections time to generate debate in the media in the week leading up to the AI report and the expected release on 22 April of UN Secretary-General Boutros-Ghali's recommendations to the Security Council about how to set up the tribunal.

We know you have not yet received the external document but hope that this item might enable you to target specialist media or feature/opinion pages or programs. Also included in this edition of the weekly update is an extract from the external document which might be useful for you.

Sections should refer to two previous internal weekly updates which set out a strategy on the proposed tribunal for the former Yugoslavia: 24 March 1993 (EUR 48/WU 02/92 NWS 11/24/93) & 7 April 1993 (EUR 48/WU 03/93 NWS 11/32/93). The external weekly update below summarises some of the main points Amnesty International is making in the external document and in a Memorandum to UN Secretary-General Boutros-Ghali. It builds on weekly updates issued on 22 October 1993 (NWS 11/42/92, EUR 63/WU 03/92) and 26 February (NWS 11/16/93, EUR 48/WU 01/93).

EXTERNAL

FROM NUREMBERG TO THE BALKANS: SEEKING JUSTICE AND FAIRNESS IN THE INTERNATIONAL WAR CRIMES TRIBUNAL FOR THE FORMER YUGOSLAVIA

For the first time since the Nuremberg and Tokyo tribunals more than 40 years ago, the world is poised to create a court to try war criminals. One week before the UN Secretary-General is due to report to the Security Council on how to set up an ad hoc international war crimes tribunal for the former Yugoslavia, Amnesty International is urging the UN to learn from the mistakes of Nuremberg and take account of the radical development of human rights principles since the Second World War.

On 22 February, the UN Security Council decided in principle to set up an ad hoc international tribunal to try violations of humanitarian law committed during the conflicts in the former Yugoslavia. In Resolution 808 the Security Council asked Secretary-General Boutros-Ghali to make his recommendations, if possible, by 22 April 1993. This week Amnesty International has submitted a 26 page Memorandum to the Secretary-General setting out the fundamental principles which should be followed if the Tribunal is to be fair, just and effective. Next week Amnesty International will publish these recommendations in a public document.

"The real danger is that this tribunal will be no more than a token political gesture, set up to satisfy short-term political interests of states" said Amnesty International. "The UN will be discredited if the Tribunal is only an empty shell and doesn't actually prosecute and bring to justice people who have blatantly committed gross crimes." Equally, the UN will violate detailed human rights standards it has developed over the last 47 years if the trials fail the tests of objectivity, independence, impartiality and fairness. "This Tribunal may not be victor's justice, but will it be disinterested justice?" asked Amnesty International.

It is likely the Tribunal will be established by a resolution of the Security Council using its authority under Chapter VII of the UN Charter "to maintain or restore international peace and security". While this would be a quick and effective method, the Tribunal could be dissolved by the Security Council for political reasons as swiftly as it is created, perhaps after the conclusion of any peace settlement. Amnesty International is urging the Security Council expressly to recognise that the Tribunal should continue to operate as long as is necessary to bring to justice gross violators of human rights and humanitarian law in the conflicts in the former Yugoslavia.

Judges must have proven competence as criminal law judges and be acknowledged as independent and impartial. They must be free to carry out their duties without external interference. The appointment of judges should not be controlled by a small group of

states. To enhance the Tribunal's legitimacy and ensure a broad cross-section of different legal systems and regional experience, both the Security Council and the General Assembly should be involved in the selection process, with candidates nominated by the International Court of Justice.

Since Nuremberg, many acts have been recognised as international crimes, and many of these should be punishable by the Tribunal. Because of its specific mandate, Amnesty International's starting point will be to ask whether the Tribunal is able to try acts which violate people's rights to be free from arbitrary deprivation of life, from torture and from cruel, inhuman or degrading treatment or punishment, arbitrary detention and "disappearance" and the right of political prisoners to receive a fair trial. The punishable crimes should include violations of the 1949 Geneva Conventions (and 1977 Additional Protocols), crimes against humanity, genocide and torture. Rape, forced prostitution and sexual abuse should be separate indictable crimes. The Tribunal cannot, however, create new crimes which did not exist when the acts were committed; this would violate the basic rule against retroactive effect of criminal law.

Justice will not be done - nor seen to be done - unless both leaders and subordinates are prosecuted. Those who have committed or ordered or acquiesced in gross human rights violations should be brought to justice. Furthermore, perpetrators from all parties to the conflict should be brought to justice.

Investigators and prosecutors will need wide powers to act quickly and effectively, including summoning witnesses for questioning and carrying out thorough investigations within the former Yugoslavia, including the power to search and seize evidence. The Security Council must make sure that states are obliged actively to cooperate with the investigators, including carrying out investigations themselves, arresting suspects and delivering them to the Tribunal.

Amnesty International is concerned that the Tribunal may be allowed to hold trials *in absentia* - without the presence of the accused - if he or she cannot be arrested. Trials *in absentia* were the exception at Nuremberg, but here, where the difficulties of bringing accused before the court are far greater, the temptation is that this will become the norm. Such trials would be more like political show trials. The role of a court is objectively to determine the guilt or innocence of the accused and anything which prejudices this must be avoided - given the likely complexity of the cases, the reliability of the verdict will always be slightly in doubt unless the accused is present to challenge the prosecution case. To ensure the truth is revealed and evidence preserved, the Tribunal could still hold a preliminary hearing if the accused wilfully refuses to appear.

The court should have the power to order a convicted person to pay compensation or return property if the victim has suffered because of the crime. But this will not be sufficient and Amnesty International is calling on the Security Council to indicate what mechanism will be established to protect the rights of victims to receive compensation, restitution and rehabilitation, including the establishment of a separate international commission to process claims against individuals, as well as claims against states, like the fund set up following the 1991 Gulf War.

"It would be unthinkable for a UN court to fall below human rights standards approved by the General Assembly," said Amnesty International. "Some of these standards have been the result of 40 years of progress in human rights since Nuremberg." The Tribunal should be obliged to comply scrupulously with all internationally accepted fair trial guarantees and standards for treatment of detainees. These safeguards apply from the time of arrest until the exhaustion of all judicial and other remedies.

Victims, their families and witnesses will be particularly vulnerable to intimidation and retaliation, sometimes long after the trial. The Tribunal should be given wide powers to protect victims, their families and witnesses from reprisals and unnecessary mental anguish, including obtaining expert advice about how to minimise the psychological impact of the proceedings; in exceptional cases excluding public and the press, and ordering extraordinary measures to protect the identity of witnesses from the accused. In all cases the interests of the witnesses should be balanced against the right of the accused to hear all the prosecution evidence and to cross-examine witnesses. A special unit should be set up to deal with the protection of victims and witnesses at every stage of the proceedings.

In light of the scale of reports of rape, sexual abuse and forced prostitution, and the particular difficulty of investigating and prosecuting such crimes, special measures will be needed to protect victims and to collect evidence effectively and sensitively. How will the Tribunal deal with a female rape victim who may be willing to testify against an accused, but only if her husband and community do not find out what happened to her? The Tribunal will need investigators, prosecutors and judges with specific knowledge and experience to deal with such issues.

Even if this *ad hoc* tribunal is fair, the Security Council is still guilty of double standards by setting up a Tribunal only for this conflict. Universal principles must be complied with everywhere. Amnesty International is therefore calling on the UN expressly to recognise that this *ad hoc* Tribunal is only the first step in establishing a permanent, international criminal court to try cases involving grave violations of humanitarian and human rights law, wherever they occur.

3. EUR 48/01/93 (Extract) EXTERNAL
16 April 1993

INTERNAL

The following item is an extract of the external report referred to in the preceding item, which we think provides a useful explanation of our expectations for the ad hoc war crimes tribunal being set up in the Former Yugoslavia. You may send it to the media.

EXTERNAL

In the external document to be released next week, Amnesty International is calling on the UN to ensure that the *ad hoc* war crimes Tribunal for the former Yugoslavia abides by 15 fundamental principles:

1. It must be **INDEPENDENT** from political manipulation by one or more states and free to complete its work, however long it takes.
2. It must be **GLOBAL** in its establishment, composition and operation.
3. It must be **COMPETENT**, with appropriately qualified judges, prosecutors, investigators and expert advisers.
4. It must have **JURISDICTION** over a broad enough range of crimes to cover all gross violations of human rights and humanitarian law.
5. It must be **IMPARTIAL** by prosecuting perpetrators from all parties to the conflict and making no distinction between leaders and subordinates.
6. It must be **EMPOWERED** to carry out thorough investigations in the former Yugoslavia with states obliged to cooperate, to arrest and deliver suspects.
7. It must be **FAIR** by scrupulously observing all internationally accepted guarantees for fair trial at every stage of proceedings.
8. It must **CONVICT** those responsible for gross violations of human rights and humanitarian law.
9. It must be **OBJECTIVE** in its determination of guilt or innocence and not hold trials *in absentia*.
10. It must **PROTECT** victims, their families and witnesses from reprisals and unnecessary mental anguish and be able to order compensation.
11. It must **RETRY** anyone convicted or acquitted in a national trial which was manifestly unfair or a sham.
12. It must **NOT IMPOSE THE DEATH PENALTY**.
13. It must be **RESOURCED** properly to carry out its work at all stages.
14. It must be a **MODEL** in its rigorous compliance with international human rights standards, including those developed by the UN itself.
15. It must be the **FIRST STEP** in the creation of a permanent international criminal court to try gross violations of human rights and humanitarian law wherever they occur.