

AMNESTY INTERNATIONAL

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Appeal to the United Nations Security Council to ensure that the International Criminal Tribunal for the former Yugoslavia fulfils its mandate

On 15 December 2006 the United Nations (UN) Security Council will conduct its biannual review of the implementation of the “completion strategy” for the International Criminal Tribunal for the former Yugoslavia (ICTY). The “completion strategy” sets an arbitrary 2010 deadline for all trials, including appeals, to be completed even if the most senior accused have not been arrested and national courts are unable or unwilling to conduct genuine and effective criminal proceedings in accordance with international standards for fair trial. Amnesty International remains concerned that the “completion strategy” is hampering the delivery of justice for victims of genocide, crimes against humanity and war crimes committed during the wars in the former Yugoslavia and may result in impunity for such crimes.

As a result of a lack of cooperation from states, six accused, including former political and military leaders such as Radovan Karadžić and Ratko Mladic, both indicted on charges which include genocide, have not yet been arrested and surrendered to the ICTY. The current completion strategy fails to address this and risks shutting down the ICTY before it has completed its mandate. As the President of the ICTY noted in his November 2006 assessment and report to the Security Council:

“It would be a lasting stain on the legacy of the Tribunal if these accused were to remain untried by the Tribunal and would send the wrong message with respect to the international community’s commitment to the former Yugoslavia.”

Amnesty International does not consider that it would ever be appropriate for complex proceedings against such senior accused to be conducted in a court other than the ICTY.

The organization notes that a number of steps dictated by the arbitrary deadline – adopted against the advice of the ICTY – imposed by the “completion strategy” have already been taken. They include the joining of trials, despite the risks that such joinders could infringe the right to fair trial, and the referral of cases involving less senior alleged perpetrators to national courts in the former Yugoslavia, even though these courts will not always be able to ensure fair and effective trials. These steps are an indication of how difficult it is for the ICTY to deliver justice, facing such tight time and other constraints. Furthermore, in some cases, referrals to national courts have met with strong resistance from victims and their families.

If implemented without addressing these problems, the current “completion strategy” would leave courts in the former Yugoslavia to deal with cases of serious violations of international humanitarian law. Despite progress in the investigation and prosecution of such crimes by some local criminal justice systems, major obstacles remain. In most countries of the former Yugoslavia a lack of political will, and sometimes even deliberate obstruction, continue to block the investigation and prosecution of war crimes. In some cases national laws are inadequate and define crimes and criminal responsibility in a way that limits the scope of war crimes proceedings. A major potential obstacle to justice is the principle of non-extradition of nationals, included in constitutions or laws of countries of the former Yugoslavia, which can prevent the extradition of suspects to countries willing to prosecute war crimes. Moreover, it is yet unclear if, and to what extent, the ICTY’s jurisprudence will be followed by local courts.

Victim and witness protection systems are in many cases insufficient to permit effective investigations or successful prosecutions. Victims do not have an effective role in the national proceedings and most court staff are neither sensitive to gender concerns nor trained in how to deal with crimes of sexual violence.

Moreover, sheer lack of capacity of courts, prosecutors, and in general the criminal justice systems of countries of the former Yugoslavia, limits their ability to deal with a huge number of cases, involving potentially thousands of suspected perpetrators. Criminal justice systems in the countries of the former Yugoslavia are already experiencing difficulties in dealing with existing massive backlogs of cases.

As long as the authorities of countries in the former Yugoslavia are unwilling or unable to tackle impunity for such

crimes, it remains the responsibility of the international community to ensure that justice is done, both at the international level and at the national level. In establishing the ICTY under Resolution 827, the Security Council said it was determined “to take effective measures to bring to justice the persons who are responsible [for widespread and flagrant violations of international humanitarian law]”. Accordingly, Amnesty International urges the Security Council and UN member states to ensure that the following steps are taken:

Extension of the ICTY’s mandate. Amnesty International notes that recent statements by the ICTY Prosecutor indicate that she intends to request that the “completion strategy” be extended. Although the assessment report submitted by the Prosecutor to the Security Council on 15 November 2006 does not make such a request to the Security Council at this meeting, the organization would like to state its support for an extension so that the ICTY can complete all its cases. Amnesty International therefore calls on the Security Council to approve the Prosecutor’s request for an extension when it is made and not to preclude further extensions that may be necessary if persons at large are arrested and surrendered to the ICTY.

Reinforce its determination for the six persons at large to be arrested and surrendered to the ICTY. It is imperative that the ICTY should prosecute all indicted persons and that no individuals should benefit from impunity as a result of the “completion strategy”. Amnesty International calls on the Security Council, which continues to consider the situation under Chapter VII of the Charter of the United Nations as a threat to international peace and security, to increase its efforts to ensure that the remaining six persons are arrested and transferred to the ICTY’s custody without further delay. As the ICTY Prosecutor stated in her November 2006 assessment report on the progress of the “completion strategy”:

“The successful implementation of the completion strategy, however largely depends on the authorities of Serbia and of Bosnia and Herzegovina. They must now take decisive action to bring all six remaining fugitives to The Hague as soon as possible.”

Commit to providing sufficient resources to the ICTY. In order to complete its work, the ICTY will require continuing funding of its work. Amnesty International calls on the Security Council to commit itself to providing sufficient resources for the ICTY until it has completed its work and not to change the existing system of paying for the ICTY from the assessed budget of the UN. The reliance of international criminal courts in Sierra Leone and Cambodia on voluntary funding has hampered their work and undermined their independence.

Establishment of a long-term comprehensive action plan in the former Yugoslavia to end impunity. Amnesty International urges the Security Council to use this opportunity to promote other efforts to address impunity in the former Yugoslavia, including taking measures to ensure the investigation and prosecution of the thousands of other crimes which the ICTY has not been able to investigate or prosecute. In particular, the organization requests that the Security Council call on all states to contribute sufficient personnel, material and financial resources to the countries of the former Yugoslavia enabling them to develop a long-term, comprehensive action plan to end impunity by addressing all crimes committed during the conflict. They should do so in a transparent manner in close consultation with civil society.

Furthermore, Amnesty International urges the Security Council to call on all states outside the Balkans to cooperate in the investigation and prosecution of crimes under international law committed in the former Yugoslavia, and to exercise universal jurisdiction to investigate and prosecute crimes committed in the former Yugoslavia before their national courts.

Convene expert meeting to improve extradition and legal assistance regarding crimes under international law. The organization also urges the Security Council to invite the UN Office on Drugs and Crime and the UN Office of the High Commissioner for Human Rights to convene a meeting of experts early next year to study the question of improved extradition and mutual legal assistance procedures regarding crimes under international law, including the possibility of convening a diplomatic conference to draft a multilateral extradition treaty covering such crimes and eliminating inappropriate obstacles such as bars on the extradition of nationals and immunities, as well as a similar multilateral comprehensive legal assistance treaty.