

# BOSNIA - HERZEGOVINA

## Amnesty International renews calls for IFOR to comply with international law

Amnesty International is dismayed at the response of IFOR (the multinational military Implementation Force in Bosnia) to its open letter of 1 March 1996 calling for IFOR commanders and states contributing forces to IFOR to comply with their obligations under international law to search for, arrest and bring to justice those responsible for grave breaches of the Geneva Conventions of August 12, 1949 for the Protection of War Victims. The organization is also concerned that IFOR regards the protection of mass grave sites as a diversion from its "principal tasks". On 12 March 1996, IFOR informed Amnesty International that it is not bound by the Geneva Conventions and that it is not yet prepared to provide adequate security for all mass grave sites, where those who have "disappeared", gone "missing", or been the victim of extrajudicial execution or arbitrary killing, may be buried. IFOR has an authorized strength of 60,000 and has extensive intelligence gathering capabilities, including monitoring of radio communications and access to satellite and aerial reconnaissance data. It operates at will throughout the country.

### *The responsibility of IFOR and IFOR personnel to comply with humanitarian law*

In response to an open letter issued on 1 March 1996, *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), IFOR denied that it was bound by the Geneva Conventions or Additional Protocol I. On 12 March 1996, Max S. Johnson, Jr., the Legal Adviser to the Supreme Allied Command in Europe (SACEUR), wrote to Amnesty International contending that "neither NATO, nor SHAPE [the Supreme Headquarters of the Allied Powers in Europe] nor IFOR, as an entity, is a party to the 1949 Geneva Conventions or Protocol I thereto". He explained, "IFOR, a multinational force under the operational command and control of NATO, should not be equated to a State in terms of international obligations." He stated that this did "not mean that due regard is not given to international humanitarian law when military forces under NATO command operate", but that IFOR was "not an army of occupation" which was "free to do anything it pleases". IFOR was restricted under the peace agreement to "specific tasks" and had to operate consistently with the sovereignty of Bosnia and Herzegovina. He explained that the role of IFOR concerning detention of suspects had been worked out by the NATO states "after very careful consideration of the political realities in the region. A more aggressive policy might not achieve consensus among the thirty current IFOR participant States and, worse, it could actually compromise IFOR's principal functions".

The contention that IFOR personnel, all of whom are members of armed forces of states which are parties to the Geneva Conventions or successors to states parties, are not bound by those treaties because IFOR is not a party to them is not only wrong as a matter of law, but contrary to the interpretation of these treaties by the International Committee of the Red Cross (ICRC), the collective opinion of states parties and recent practice of the UN in peace-keeping operations. Most of these states are also parties to Additional Protocol I. There are no exceptions to the duties in the Geneva Conventions or Additional Protocol I when "political realities" make implementing humanitarian law inconvenient. Indeed, any other interpretation would lead to absurd results. All any state would have to do to escape from its solemn treaty obligations under the Geneva Conventions and its Additional Protocols would be to participate in a multilateral force and say that the multilateral force was not a party to these treaties.

Peace-keeping forces, including IFOR, must comply with international humanitarian law. The Geneva Conventions are now generally accepted as reflecting customary international law binding upon all states, and, therefore, binding upon intergovernmental organizations, which are established by and composed of states. Moreover, the states parties to the Geneva Conventions have made clear that peace-keeping forces must comply with humanitarian law. The International Conference for the Protection of War Victims (a meeting of states parties to the Geneva Conventions held in September 1993) declared that "peace-keeping forces are bound to act in accordance with international humanitarian law".<sup>1</sup> The ICRC, which is considered as the guardian of humanitarian law, has consistently declared that peace-keeping forces must comply with humanitarian law. For example, on 10 November 1961, the ICRC drew the attention of the UN Secretary-General to the need to ensure application of the Geneva Conventions by the forces placed at the UN's disposal.<sup>2</sup>

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<sup>1</sup> Final Declaration, para. 1.7.

<sup>2</sup> Umesh Palwankar, formerly a member of the ICRC's legal division, states:

"Since the UN as such, is not a party to the Conventions, the ICRC considers that each State remains individually responsible for the application of these treaties whenever it provides a contingent for a PKF [peace-keeping force]. In consequence, the State should do what is necessary, especially by issuing appropriate instructions to the troops before they are posted abroad.

The memorandum also stressed that by virtue of Article 1 common to the four Conventions, which also requires the High Contracting Parties to ensure respect for the Conventions, the States providing contingents *'should each, where necessary, use their influence to ensure that the provisions of humanitarian law are applied by all the contingents concerned as well as by the unified command.'*"

Umesh Palwankar, "Applicability of international humanitarian law to United Nations peace-keeping forces", *International Review of the Red Cross*, No. 294 at 227, 230 (May-June 1993). Amnesty International has stated: "All international peace-keeping forces must abide by the highest standards of international humanitarian and

The ICRC “has systematically spoken up for the applicability of international humanitarian law whenever United Nations forces had to resort to force” and it is the position of the ICRC that, as outsiders to an internal armed conflict, forces serving in a UN peace-keeping operation are subject to the rules of international humanitarian law applicable in international armed conflicts.<sup>3</sup>

Since 1992, the UN has consistently included provisions in its status of forces agreements with host states governing its peace-keeping operations which state:

“Without prejudice to the mandate of [the UN peace-keeping operation] and its international status:

- (a) The United Nations shall ensure that [the UN peace-keeping operation] shall conduct its operation in [host country] with full respect for the principles and spirit of the general conventions applicable to the conduct of military personnel. These international conventions include the Four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the event of armed conflict;
- (b) . . . . [The UN peace-keeping operation] and the Government of [host country] shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.”

Status of forces agreements with similar clauses have been reached with Angola, Croatia, Haiti, the Former Yugoslav Republic of Macedonia and Rwanda.

***IFOR and states contributing personnel to IFOR have a duty to search for and arrest those responsible for grave breaches of the Geneva Conventions***

As stated in Amnesty International's 1 March 1996 open letter, IFOR and parties to the General Framework Agreement on Peace in Bosnia and Herzegovina (Peace Agreement) have a duty under the Geneva Conventions, Security Council Resolution 827 of 25 May 1993, and the Peace Agreement to carry out their law enforcement responsibilities to search

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human rights law, especially where they have enforcement authority.” Amnesty International, *Peace-keeping and human rights* 28 (AI Index: IOR 40/01/94).

<sup>3</sup> Antoine Bouvier, “‘Convention on the Safety of United Nations and Associated Personnel’: Presentation and analysis”, *International Review of the Red Cross*, No. 309 at 638, 651-652 (November-December 1995).

for, arrest and transfer to the International Criminal Tribunal for the former Yugoslavia (the Tribunal) all persons who have been indicted by the Tribunal.

In that paper, Amnesty International reminded each state contributing personnel to IFOR that it was obliged under the Geneva Conventions "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. 149). It pointed out that state parties to the Geneva Conventions may not absolve themselves of any liability they may have incurred with respect to grave breaches and that the official commentary of the ICRC to the Geneva Conventions makes clear that the duty to prosecute and punish the authors of grave breaches is "absolute".

The open letter also reminded states contributing personnel to IFOR, which has repeatedly stated that it operates at will throughout Bosnia and Herzegovina, that the refusal to search for and arrest persons who had been indicted by the Tribunal violated their legal obligations under Security Council Resolution 827 establishing the Tribunal "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. The Security Council in Resolution 1031 of 15 December 1995 reaffirmed that all states must cooperate fully with the Tribunal in accordance with Resolution 827. Moreover, as indicated in the open letter, the failure to search for and arrest persons suspected of ordering or committing 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 authorities in both the Federation of Bosnia and Herzegovina and the Republika Srpska have also failed to cooperate fully with the Tribunal and have failed to surrender persons indicted by the Tribunal, including those indicted for grave breaches of the Geneva Conventions.

***IFOR should provide adequate security for grave sites to ensure that those responsible for grave breaches of the Geneva Conventions can be brought to justice***

In its open letter on 1 March 1996, Amnesty International called upon IFOR to ensure that grave sites where victims of extrajudicial executions were believed to be buried were protected. IFOR's response to Amnesty International was to state that it did not have adequate resources to provide the necessary security, but it did not say that it would seek additional resources to permit it to do so. In his letter dated 12 March 1996, the Legal Advisor to SACEUR stated that IFOR did not have the resources to guard all 3,000 grave

sites, but would entertain requests to guard particular sites if the local commanders decide that “such support can be given when balanced against other mission requirements”.

As Amnesty International stated in its 1 March 1996 paper, 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”.<sup>4</sup> 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 or even a substantial number of grave sites. It has not announced a policy applicable to all IFOR commanders or proposed alternative plans of action which would provide security for grave sites, for example, by dividing responsibility between IFOR and local police forces, accompanied by members of the International Police Task Force (IPTF), so that the international community could allocate appropriate resources to IFOR and others to ensure adequate security.

Major Daniel Zajac, who commands American soldiers in IFOR providing security for Tribunal investigators, recently stated that the investigators believed that grave sites where civilians killed after the capture of Srebrenica are suspected of being buried have been disturbed. This statement and other reports of partial destruction of similar grave sites indicate that such aerial surveillance and limited ground security for grave sites where investigators are operating will not adequately protect grave sites. Amnesty International stated that it was essential for IFOR and the international community to ensure that there is adequate security for grave sites, other physical evidence and witnesses.

### *It is time for IFOR to fulfil its responsibilities*

Amnesty International renews its call upon IFOR commanders and states contributing personnel to IFOR to search for, arrest and transfer persons suspected of committing or ordering grave breaches and other crimes within its jurisdiction to the Tribunal. It is unacceptable to the international community to read that IFOR personnel have encountered persons indicted by the Tribunal, have taken no steps to arrest them and have no plans to search for any of these persons, despite the presence of 60,000 personnel and hundreds of intelligence agents monitoring radio communications. Amnesty International also urges that

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<sup>4</sup> General Framework Agreement, Annex I-A, Art. II (4).

IFOR provide the necessary security for all grave sites in Bosnia and Herzegovina where persons who were victims of grave breaches and other serious crimes under international law may be buried. To the extent that IFOR does not have adequate resources to do so, it should propose alternative plans of action, for example, combined operations involving IFOR, national police, accompanied by IPTF personnel and others which would provide the necessary security to ensure that evidence is preserved. It should work with the High Representative in developing such a plan of action as a matter of priority and jointly seek any additional resources from the international community which may be necessary to ensure that evidence of such crimes is preserved so that those responsible can be brought to justice.