

AMNESTY INTERNATIONAL

Open Letter

AI Index: MDE 14/031/2004 (Public)
News Service No: 157
18 June 2004

Iraq: Clarification needed on status of prisoners after 30 June Open letter to the Permanent Representative of the United States of America to the United Nations

Re.: UN/NYt/072/04

His Excellency Mr John D. Negroponte,
Permanent Representative of the United States of America to the United Nations
Permanent Mission of the United States of America to the United Nations
799 United Nations Plaza
New York, NY 10017

9 June 2004

Dear Ambassador Negroponte,

Before the Security Council adopted resolution 1546 (2004) on Iraq, Amnesty International wrote to Council members on 2 June, asking the Council to address several concerns arising from the draft text then before it. Among them was the need to clarify responsibility for prisoners currently held by the occupying powers, as well as for any prisoners or detainees to be held by the multinational force under US command after 30 June 2004. As you know, resolution 1546 provides that, after that date, the multinational force (MNF) will have the "authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution". The letter attached to the resolution from Secretary of State Colin L. Powell, specifies that the MNF's activities will include combat operations against forces resorting to violence and will be able to resort to "internment where this is necessary for imperative reasons of security".

Amnesty International welcomes the commitment of all forces in Iraq, expressed in the resolution, to act in accordance with international law, including obligations under international humanitarian law. However, we are deeply concerned that the Security Council failed to ensure that the resolution, or the letters attached to it, clarify what will happen to the thousands of prisoners currently held by the occupying powers. There is no reference to any legal basis or legal safeguards that will apply if any future arrests or internment are carried out by the forces of the United States of America (USA) and other countries contributing troops to the MNF, prominent among them those of the United Kingdom (UK). Amnesty International notes that "Internment...for imperative reasons of security" is a measure provided for in Articles 42 and 78 of the Fourth Geneva Convention relating to occupation and subject to a number of safeguards listed in that convention.

Resolution 1546 also fails to address how those who have subjected Iraqis to widely reported abuses of international human rights and humanitarian law or who may do so in future will be held individually accountable, or how that process will change after the Interim Government of Iraq will assume authority after 30 June 2004. This important question concerns not only members of the multinational forces themselves, but also contractors working for them who have also been implicated in abuses in Iraqi prisons, but who have so far not been held accountable.

Unfortunately, both the US and UK forces operating in Iraq have failed to meet their obligations under the Geneva Conventions as occupying powers and under the human rights treaties to which Iraq is a party to protect detainees and internees in their custody from torture and ill-treatment, and to grant them the legal safeguards to which they are entitled. The Council, on its part, has not discharged the special responsibility for these prisoners which it assumed when it endorsed, in resolutions 1483 and 1511, the specific authorities, responsibilities and obligations under applicable international law on the part of the USA and the UK, as occupying powers.

Amnesty International is therefore asking the United States of America, as leader of the multinational force operating under unified command, to clarify whether all those currently held by US forces and those of its partner in the Coalition Provisional Authority, the United Kingdom, will be released on 30 June 2004. Resolution 1546 states that the occupation will end on that date. If that is indeed the case, we would expect the occupying powers to release all prisoners, detainees and internees. They may only be re-arrested by the Iraqi authorities if there are grounds under Iraqi law, consistent with international standards, to detain them. The observance of the maximum amount of transparency in respect of all those held by the occupying powers, now and during this period of transition, is particularly important.

Furthermore, Amnesty International would like to be informed by the drafters of the resolution whether all Iraqi Prisoners of War, currently held in their custody and entitled to protection under the Third Geneva Convention, will be released by 30 June 2004, consistent with the declared end of occupation and end of international conflict. If they are not to be released, Amnesty International requests to be informed where and in whose custody Prisoners of War will be held, and what protective measures are afforded to them under applicable international law.

Finally, Amnesty International wishes to receive clarification about the respective powers of arrest and detention of the Iraqi forces and the multinational force in the course of the exercise of the latter's broad powers granted in the resolution to take "all necessary measures to contribute to the maintenance of security and stability in Iraq...including by preventing and deterring terrorism". We would appreciate learning which of these parties will authorize arrests, searches, detentions, or internment, on what legal basis such measures are taken, and at what stage any detainees or internees taken by the multinational force will be handed over to Iraqi authorities.

Recalling reports of torture of Iraqis not only by the occupying powers but also by the Iraqi police, Amnesty International would welcome information about the legal and practical safeguards that will apply to arrest, detention and internment; what access international and Iraqi organizations will have to those held; and whether prisons and detention centres will be placed under Iraqi government or other control. The international community should know what measures are in place to ensure that the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment will be strictly observed by Iraqi, US and other forces. In this respect, we would appreciate knowing your views about our recommendation that the United Nations should have a specific monitoring mandate to supervise all places of detention.

We will share the contents of this letter with other Council members, in view of the responsibilities which we believe they share for the welfare of prisoners and detainees in Iraq. We urge you and all other Council members to request that the reports of the Secretary-General to the Council on Iraq will include detailed information on the questions raised in this letter. I would be most grateful to receive your response.

Yours sincerely,

Yvonne Terlingen
Amnesty International Representative at the United Nations

Public Document

For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566
Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

For latest human rights news view <http://news.amnesty.org>