

PURSUING JUSTICE, NOT REVENGE :
**Amnesty International's position on bringing to justice those
responsible for the crimes of 11 September and for abuses committed in
Afghanistan**

Bringing to justice the perpetrators of the crimes of 11 September

"No effort should be spared in bringing the perpetrators to justice, in a clear and transparent process that all can understand and accept. Let us uphold our own principles and standards, so that we can make the difference unmistakable, for all the world to see, between those who resort to terrorism and those who fight against it"

(UN Secretary-General Kofi Annan's address to the General Assembly, 24 September 2001)

Amnesty International has condemned in the strongest terms the hijacking on 11 September 2001 of civilian air planes and their use to carry out direct attacks on civilians, resulting in massive loss of life.

Fundamental principles to ensure justice

As with any serious abuses of human rights, Amnesty International calls for those responsible for the crimes of 11 September to be brought to justice, in proceedings which at all stages must be in accordance with international human rights standards, and for the victims to receive full reparation. Anyone reasonably suspected of such crimes should be tried fairly, in accordance with international standards for fair trial, and without recourse to the death penalty or other cruel, inhuman or degrading punishment. Suspects must never be tortured or ill-treated, as such treatment is absolutely prohibited by international law, and the presumption of innocence must be respected in all cases. (see Fair Trials Manual, AI Index Pol 30/02/98, December 1998).

Jurisdiction of the United States of America

The United States of America (US) has jurisdiction over the crimes of 11 September, as the territorial state where the crimes took place. Amnesty International believes that alleged perpetrators of serious human rights abuses should be tried before regular civilian courts. It calls for those suspected of the crimes of 11 September who are apprehended in, or handed over to, the US to be tried before the established civilian courts in the US, in accordance with international standards for fair trial, and without recourse to the death penalty.

Amnesty International believes that no suspect should be tried before the US military commissions provided for by the presidential order of 13 November 2001, as they violate the principle of non-discrimination (as the order applies only to non-US citizens) and lack fundamental safeguards for fair trial provided for in international law. Amnesty International has called for the presidential order to be revoked (see news release, USA: Presidential order on military tribunals threatens fundamental principles of justice, AI Index AMR 51/165/2001, 15 November 2001).

Amnesty International is also concerned that a number of suspects outside of, or not known to be in, the US have been publicly presumed guilty by senior members of the US government. Their comments have the potential to undermine the possibility of a fair trial in any US court. If the fairness of a trial in the US cannot be ensured in such cases, Amnesty International would call for suspects whose cases have been prejudiced in this way not to be handed over to the US but to be tried elsewhere.

International cooperation to apprehend and prosecute suspects

Amnesty International has called on all states to cooperate with each other to ensure that the perpetrators of the crimes of 11 September are brought to justice in fair trials and without recourse to the death penalty. Under international human rights law, the obligation to protect and ensure rights includes a duty to investigate criminal acts and bring suspects to trial. States should assist each other in ensuring that suspects are apprehended and tried in the most appropriate jurisdiction, in full compliance with international human rights standards including those on the use of force by law enforcement officials.

Amnesty International opposes the handing over of suspects of the crimes of 11 September for trial to any country where it believes that they would be at risk of torture or unfair trial, and unless guarantees are given that the death penalty or other cruel, inhuman or degrading punishment would not be imposed. If these conditions are not met, the country where suspects have been apprehended should try them itself or hand them over to another country able and willing to meet those conditions.

Amnesty International maintains neutrality on the issue of resort to military force and does not take sides in any conflict. Accordingly, Amnesty International neither opposes nor supports the use of military action against any country where alleged perpetrators may be found. Amnesty International does urge states to cooperate with each other and exhaust judicial procedures to apprehend alleged perpetrators before resorting to military action. If military action takes place, Amnesty International would oppose abuses of international human rights and humanitarian law that may take place in that context.

Judicial mechanisms other than US courts to prosecute suspects

While the US has jurisdiction over the crimes of 11 September and must ensure that any suspect tried in a US court receive a fair trial without the possibility of being sentenced to death, Amnesty International notes that such conditions may not be met in all cases, especially in the case of suspects facing trial by military commissions. Also, suspects may not be extraditable to the US given legislation in many countries prohibiting extradition if there is a risk of unfair trial or the death penalty being imposed. For these reasons Amnesty International urges that options additional or alternative to trials under US jurisdiction be explored.

Trials outside US jurisdiction may also be appropriate for other reasons. The global impact of the 11 September attacks, and the fact that the victims came from many different countries around the world, have given this case a significant international dimension. Moreover, the very nature of the crimes means that many suspected perpetrators are believed not to be in the US, and may not be nationals of the countries where the crimes were allegedly prepared. To ensure that these suspects are brought to justice will require extensive international cooperation, likely to involve multiple jurisdictions. Within such a framework, it may be necessary to explore flexible alternatives consistent with international law. There is a need to ensure that justice is not only fair but is seen to be fair around the world.

Mechanisms, not necessarily mutually exclusive, for trials other than under US jurisdiction may include:

- a. Bringing suspects to trial in the national courts of a second country which could exercise jurisdiction over the offences. This option is outlined in Security Council resolution 1267 (1999), which requested the Taliban to hand over Usama bin Laden in connection with the 1998 attacks on US embassies in Africa. Paragraph 2 of the resolution demands “that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice.”
- b. Establishing an international ad hoc tribunal with jurisdiction over the crimes of 11 September. Such an ad hoc tribunal should be modelled closely on the proposed International Criminal Court, and should only have jurisdiction over crimes which have been recognized in international law.

Bringing to justice perpetrators of abuses committed in Afghanistan

The impunity that continues to pervade Afghanistan must be ended if a stable institutional order respectful of human rights is to be ensured. The truth about past abuses of international human rights and humanitarian law must be established; perpetrators of abuses must be brought to justice regardless of rank or other status, in fair trials and without recourse to torture, the death penalty or other cruel, inhuman or degrading treatment or punishment; and victims must receive full reparation.

No amnesties for past abuses

There should be no amnesties, pardons and similar measures for alleged perpetrators of serious abuses of international human rights and humanitarian law, if such measures would prevent the emergence of the truth, a final judicial determination of guilt or innocence, and full reparation to victims and their families.

Amnesty International takes no position on the granting of amnesties for the mere fact of having been involved in armed activities, as long as such amnesties do not also cover serious abuses under international law.

Judicial mechanisms to address impunity in Afghanistan

Amnesty International welcomes the establishment of a Judicial Commission to “rebuild the domestic justice system” in Afghanistan, as in the Bonn agreement of 5 December. Amnesty International stresses the importance of ensuring that priority is given to this task and that the new judiciary operates fully in accordance with international human rights standards.

Pending the establishment of a functioning and fair judiciary in Afghanistan – a task that will require time – Amnesty International is proposing that an expert commission be set up to examine without delay what mechanisms are best suited to address past and current human rights abuses in Afghanistan. The expert commission should ideally be established by the United Nations and include Afghan and international experts. Options for bringing alleged perpetrators to justice which the commission may consider, and which are not mutually exclusive, include:

- a. Establishing a national tribunal in Afghanistan capable of speedily initiating criminal investigations and holding trials in accordance with international standards for the most serious abuses of international human rights and humanitarian law. International investigators, judges and other judicial officials may be called on to assist such a tribunal;
- b. Asking states other than Afghanistan to exercise universal jurisdiction for war crimes, crimes against humanity and other serious abuses of human rights committed in Afghanistan, and to ensure that alleged perpetrators are tried in accordance with international standards for fair trial and without the death penalty or other cruel, inhuman or degrading punishment;
- c. Establishing an international ad hoc tribunal for Afghanistan with jurisdiction over the most serious crimes under international law committed in Afghanistan. Such a tribunal could be similar to the existing international tribunals for the former Yugoslavia and Rwanda, and should be modelled on the proposed International Criminal Court (the ICC, expected to come into force in 2002, will have jurisdiction only over crimes committed after its establishment).

Judicial mechanisms to address any abuses by US-led Coalition forces in Afghanistan

Members of US, UK or other Coalition forces who may have committed serious violations of international humanitarian law in Afghanistan should be brought to justice in fair trials in the courts of their own countries, as long as they are tried fairly and without recourse to the death penalty.

If there is evidence of crimes amounting to grave breaches of international humanitarian law by Coalition forces, and their governments are unwilling to investigate them, other states should exercise universal jurisdiction and initiate criminal investigations, as required by international humanitarian law. An international ad hoc tribunal for Afghanistan may also be given jurisdiction over such crimes.

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