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WEEKLY UPDATE SERVICE 42/92

Contained in this weekly update are external items on Sri Lanka and Malawi and an internal item on War Crimes in Bosnia.

1. NEWS INITIATIVES

INTERNATIONAL NEWS RELEASES

Bosnia-Herzegovina - 23 October

The embargo for the document, news release and Q&A on Bosnia has been confirmed as 0001 hrs gmt, Friday 23 October. The document was posted to sections last week, and you should all have the news release and Q&A.

The following note was sent out to section press officers on 20 October:

At the last minute we have been given some tremendous video footage from the conflict in Bosnia-Herzegovina. We will only have it edited and ready at the last minute, so there is no time to get it to sections before the embargo on Friday. However, we plan to send it to international TV agencies (VISNEWS, WTN, CNN, MBC, BBC WORLD SERVICE TV) in time for the embargo. Most national TV stations subscribe to one of these, so should be able to get the footage from them. We will try to get broadcast quality and viewing copies of the footage to as many sections as possible soon after the embargo.

Myanmar - 28 October

A document and news release on Myanmar have been sent to sections, to go with an action to coincide with the General Assembly of the United Nations.

Turkey - 11 November (New Information)

In case sections intend to reprint the Turkey document (AI Index: EUR 44/75/92), please note that there is an error on page 16. The subtitle should read "Human rights abuses by armed opposition groups" (not violations).

Document to go with the news release and action, Turkey: Walls of glass (AI Index: EUR 44/75/92), has been sent in the Weekly Mailing. Unfortunately it has been printed without an embargo - the document is nevertheless embargoed and should not be used before 11 November.

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The document and news release go with a section level action about a wide range of human rights violations, including torture, extrajudicial executions and "disappearances".

China - 9 December

International news release to accompany document on torture in China.

TARGETED AND LIMITED NEWS RELEASES

Forthcoming weekly updates which the IS will be sending to specialist media include: China, 13 November; Djibouti, tentatively 25 November; Burundi, 27 November. More information to follow.

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2. ASA 37/WU 03/92 EXTERNAL

21 October 1992

SRI LANKA: AMNESTY INTERNATIONAL VISIT TO SRI LANKA

Two Amnesty International delegates are visiting Sri Lanka in late October. They will assess the government's implementation of 30 recommendations the organization made last year on human rights safeguards, and evaluate the present human rights situation in various parts of the country.

The delegates expect to meet government officials responsible for the implementation of the recommendations, and to assess how these mechanisms are working in practice. They hope also to meet representatives of a range of non-governmental organizations and others active in relation to human rights, and to interview victims of human rights abuses.

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3. AFR 36/WU 07/92 EXTERNAL

22 October 1992

MALAWI: AFRICA'S OLDEST KNOWN PRISONER OF CONSCIENCE DIES IN MALAWIAN JAIL

Orton Chirwa, a former Attorney General of Malawi, died in prison in Zomba on 20 October. Aged 73, he had been imprisoned in Malawi for nearly 11 years because of his non-violent opposition to the single-party government of Life-President Dr H. Kamuzu Banda.

Orton Chirwa was both the oldest and, with his wife, Vera, the longest-serving known prisoner of conscience in Africa. Vera Chirwa, aged 60, is still held at Zomba Central Prison where the couple were serving a life sentence for treason. Amnesty International is calling for her immediate release and for an independent judicial inquiry into Orton Chirwa's death.

The cause of death was not immediately apparent. In September a delegation of British lawyers was allowed to visit the Chirwas in prison - the first visit they had received for many years. The lawyers found that Orton Chirwa was in poor health - he was virtually deaf and nearly blind from cataracts. The visit was the first time in eight years that Orton and Vera Chirwa had been allowed to see each other by the Malawian authorities.

Amnesty International said: "Whatever the cause of death, the Malawian Government must bear a heavy responsibility for Orton Chirwa's death. He and his wife were an elderly couple, allegedly abducted from a neighbouring country, then unjustly imprisoned after a rigged trial and held for years in solitary confinement. The conditions Orton Chirwa was held in were harsh - sometimes he was kept in leg-irons for months at a time."

Orton Chirwa was a founder of the Malawi Congress Party, which now rules Malawi. A lawyer, he was the country's first Attorney General after independence. However, he was soon forced out of the government and left the country to live in Tanzania, where he set up the Malawi Freedom Movement.

In 1981 he and Vera, also a lawyer, were allegedly abducted from neighbouring Zambia by Malawian agents. Their son, who was with them, was detained for over a year and then released, but Orton and Vera were tried for treason before a "traditional court". Under Malawi's "traditional" court system, judges are directly answerable to the Life President Banda and the accused are not allowed legal representation. In the Chirwas' case, the court had no jurisdiction over the case and the accused were repeatedly abused by judges and denied the right to call witnesses. There were abundant abuses of procedure and rules of evidence - for example, the police officer in charge of the investigation was called as an "independent" handwriting expert. An Amnesty International observer who tried to attend the hearing was expelled from the country.

The court found the Chirwas guilty and sentenced them to death, a decision upheld on appeal. In 1984, however, after widespread international appeals for the couple, their sentences were commuted to life imprisonment.

Amnesty International is calling on the Malawian Government to agree to the request of the Chirwa family to release the body to them promptly as it is obliged to under Malawian law. The organization is also calling for the authorities to meet their legal obligation to hold an inquest into the death. In practice, there have been many deaths in custody in Malawi which have never been the subject of an inquest, despite the legal requirement that they should be. Amnesty International is also seeking assurances that members of the family returning to Malawi for the funeral will not be harassed and will have their safety guaranteed.

The Malawian government has made no public announcement of Orton Chirwa's death and Amnesty

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International is calling for clarification of the circumstances of his death.

Amnesty International said: "The Malawian Government cannot make amends to the family for Orton Chirwa's imprisonment and death. To release Vera Chirwa now, without conditions, is the very least that it could do to acknowledge the gross injustice which has been inflicted on the Chirwa family."

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4. EUR 63/WU 03/92 INTERNAL
22 October 1992

BOSNIA-HERZEGOVINA: 'WAR CRIMES' IN THE FORMER YUGOSLAVIA

For several months some governments, intergovernmental organizations and non-governmental organizations have been calling for individuals in the former Yugoslavia to be prosecuted for what are commonly called 'war crimes'. The United Nations Security Council in Resolution 780 (1992) decided to set up a Commission of Experts to examine and analyze evidence of grave breaches of the Geneva Conventions and other violations of humanitarian law. This could lead to pressure for the establishment of the first *ad hoc* international war crimes tribunal since the Nuremburg and Tokyo trials following the Second World War. The purpose of this update is to explain the background to these moves and AI's position.

What is a 'war crime'?

There is a lot of confusing and inconsistent use of terms in this area. Today, when governments speak about war crimes committed in the Yugoslav conflict, they principally mean "**grave breaches**" of the **1949 Geneva Conventions and the 1977 Additional Protocol I**¹ although the terms are not synonymous.

The list of prohibited acts which amount to a "grave breach" of the Geneva Conventions is long and complex. For our purposes it is sufficient to note that the definition includes several acts which would generally also fall within AI's mandate: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health and the taking of hostages, provided that any of these acts are committed against persons protected by the Conventions (which includes civilians and combatants who are no longer taking part in hostilities). The term 'war crime' is wider than the definition of "grave breaches" of the Geneva Convention because it includes acts which violate other humanitarian law principles.

Who has the duty to prosecute persons suspected of "grave breaches"?

All parties to the Geneva Conventions are obliged "to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches...". They also undertake to search for the guilty parties and bring them to justice before their own national courts or to extradite them to another country which has a case against them. Even a state party to the Geneva Conventions which is not a party to the conflict has a duty to prosecute a suspected war criminal who is in its country, regardless of that person's nationality.

It should be noted, however, that the Geneva Conventions and the Protocols do not deal adequately with states' obligations to prosecute persons suspected of violating humanitarian law in an internal conflict. There has been almost no discussion in the UN about whether the fighting in Bosnia - or indeed the fighting in Croatia last year - is an international or internal conflict. This is a very complex question on which humanitarian law experts disagree. It is not necessary for AI to get involved in this issue.

Current views about how to prosecute war criminals from the conflict in the former Yugoslavia

There are currently three views about how to bring to justice individuals who may have violated humanitarian law during the conflict in Croatia last year and in Bosnia this year. Firstly, some say it is

1. The modern concept of war crimes, and the fact that individuals can be held responsible for these acts, was developed when members of the Axis powers were tried in Nuremburg and Tokyo after the Second World War. Subsequently, the 1949 Geneva Conventions and the two 1977 Additional Protocols systematised international humanitarian law (ie the laws of war) which had grown up piecemeal since the beginning of the century, including the Nuremburg principles.

entirely **up to national authorities, particularly those in the former Yugoslavia, to prosecute** suspects and the international community should not get involved.

Secondly, some states want to **wait until a permanent international criminal court is established**. The UN has been considering this idea for more than 45 years and the International Law Commission (ILC), which reports to the UN General Assembly (UNGA), is developing the concept. Such a court would not specifically be a war crimes tribunal, though such acts could be included in its jurisdiction. The ILC, however, has been bogged down for years. AI will be watching developments at the current UNGA session, but this is not likely to be a realistic way of bringing perpetrators in the former Yugoslavia to justice in a reasonable time.

Thirdly, some momentum is building to **set up an *ad hoc* international war crimes tribunal**, similar to the Nuremberg and Tokyo war crimes tribunals. The USA has lobbied very hard for this option, some say because of domestic political pressures. Many states, however, are reluctant to go down this road because they fear the precedent could be used in the future against them. The first step, however, came in Resolution 771 (1992) in which the Security Council (SC) called on states and NGOs to provide it with information about violations of humanitarian law. The USA, for example, submitted a nine page list of alleged war crimes and appended NGO reports.

The USA then lobbied for a war crimes tribunal to be set up immediately, but this was opposed by other SC members including UK and France. The compromise resolution, adopted unanimously on 6 October (Resolution 780 [1992]), asks the Secretary-General to establish as a matter of urgency an "impartial Commission of Experts to examine and analyze" evidence of grave breaches of the Geneva Conventions and other violations of humanitarian law. This Commission is now being set up. It may carry out its own investigations and will also consider any information provided by states, UN bodies and NGOs submitted by 5 November 1992. Although the nature of the Commission's work is not at all clear, some states see this Commission as another step towards setting up an *ad hoc* international judicial tribunal.

AI's position

AI is not in a position to comment publicly on all aspects of this war crimes debate since it goes beyond our mandate in some respects. Furthermore, we consider that it is prudent to take a cautious line given the complex political issues that underpin this debate and on which it is not appropriate for us to comment.

AI's position on the war crimes issue, which has been formulated for response, largely reflects our long standing policy on bringing perpetrators of human rights violations to justice:

1. AI believes that anyone in the former Yugoslavia who is responsible for human rights violations or abuses within its mandate should be brought to justice.

Comment: The most important question for AI is whether an act falls within our mandate, such as torture, cruel, inhuman or degrading treatment or punishment and extrajudicial executions/deliberate and arbitrary killings. If so, we take the position that the perpetrator should be brought to justice and it doesn't really matter whether the act is technically characterised as a violation of human rights law or humanitarian law. We would support a prosecution under humanitarian law principles because it is another way of bringing to justice those responsible for acts within our mandate and could also act as a deterrent to possible future violations of this nature.

2. To the extent that abuses committed in the former Yugoslavia amount to violations of international human rights law and/or "grave breaches" of the Geneva Conventions or other violations of humanitarian law, governments in the former Yugoslavia have a responsibility to prosecute perpetrators in their national courts.

Comment: Before the break up of Yugoslavia, the Socialist Federal Republic of Yugoslavia ratified both

the Geneva Conventions and the two Additional Protocols. Croatia and Slovenia have now formally succeeded to the Conventions and Protocols, and all parties to the conflict in Bosnia-Herzegovina - including the Bosnian Government - have repeatedly reaffirmed their commitment to observing the Geneva Conventions. States Parties to the Geneva Conventions are required to prosecute anyone who ordered or committed an act which amounts to a "grave breach".

Customary humanitarian law also obliges states to bring to justice their own nationals guilty of war crimes.

Some perpetrators of abuses within AI's mandate could escape conviction under humanitarian law because of the technicalities of the Geneva Conventions. For example, the act may have taken place before hostilities began. But this is not an excuse for failing to bring perpetrators to justice and governments still have a duty to prosecute under human rights law principles.

4. Given the highly charged atmosphere, it is particularly important to ensure that all such defendants tried by national courts are given a fair trial in full conformity with accepted international standards. Furthermore, Amnesty International would oppose the imposition of the death penalty on any person convicted.

Comment: AI is concerned that trials by both the Croatian and Yugoslav authorities earlier this year of people suspected of war crimes during the conflict in Croatia, may not have conformed with international standards of fairness. Furthermore, the authorities usually only try people who fought against their forces.

5. If governments are unwilling or unable to prosecute persons in their national courts, AI is not opposed to such perpetrators being brought to justice through an international judicial process, provided that this process strictly conforms with well established safeguards and guarantees for fair trial and that the death penalty may not be imposed on anyone convicted.

6. AI is concerned, however, that the current debate about creating an *ad hoc* international tribunal to try individuals suspected of grave breaches of the Geneva Conventions and other violations of humanitarian law in the Yugoslav conflict, may not adequately take account of fundamental principles of justice and fairness:

Firstly, AI would oppose an international judicial body which failed to bring to justice suspected perpetrators from all parties to the conflict in the former Yugoslavia.

Secondly, the process of establishing any such international judicial body, the determination of its procedures and selection of judges and other officials must be carried out by a competent and impartial body which is manifestly independent of the control or influence of individual states or groups of states.

Thirdly, all defendants must enjoy all internationally accepted guarantees for fair trial. All judges and other officers of the court must have proven competence, independence and impartiality and be free to carry out their duties without external interference, applying well established and fair procedures.

AI would be concerned if an *ad hoc* international judicial body were to be created solely for the purpose of trying individuals in relation to the conflict in the former Yugoslavia. By its very nature an *ad hoc* body is not likely to conform in every respect to the above principles and is much more susceptible to being manipulated to serve the political interests of any particular state or states.

AI considers that if an international judicial body is to be established in this context, it should conform to all the above principles and it should be the first step in the establishment

of a permanent international judicial body with jurisdiction over specified breaches of humanitarian law wherever they may occur.

Comment: AI should always emphasise that the primary responsibility for bringing perpetrators to justice rests with national governments. However, in the current volatile political climate it may be necessary to ensure that perpetrators in the Yugoslav conflict are brought to justice by involving the international community; provided that fundamental principles of fairness and justice are not violated. One of the main dangers is that states will try to set up an *ad hoc* tribunal only for this conflict and veto any proposal for a permanent institution.

Ad hoc judicial tribunals tend to be highly unsatisfactory. By their very nature their structure, organization and procedures are very likely to be adjusted to fit the particular circumstances, rather than being based on objective and impartial standards of justice and fairness. They are also much more capable of being manipulated for political ends. There is no clear indication yet as to whether an ad hoc tribunal might be set up in this situation or, if so, how it would be structured or how it would function. However, AI is concerned about this possibility for the reasons above. AI therefore considers that if any international judicial body is established it should be as part of a process to establish a permanent institution that would have global jurisdiction. This would help to avoid the many problems typically associated with ad hoc tribunals and is in line with AI's position that all perpetrators of human rights violations and breaches of humanitarian law within its mandate should be brought to justice - there is no reason why the former Yugoslavia should be the only situation on which the international community is prepared to act in this way.

This statement of AI's position should be used by sections to respond to queries on this subject. The issue of a war crimes tribunal is highly politicised and it is important that AI is not associated with the political motives of some governments. There are other, more urgent issues of immediate concern on which AI should be actively lobbying, such as the unconditional release of all civilian detainees held solely as hostages or because of their national origin; an end to extrajudicial executions/deliberate and arbitrary killings and torture and ill-treatment, and immediate access for the ICRC to all places of detention. We will keep sections informed about AI's response to the rapidly developing international debate on this subject.