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Fr. J. R. S.

Cde Chris Hani
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Dear Chris,

Further our discussion two days ago, here is a fuller statement of the problem and some of the specific issues that present themselves. Hopefully, the problem of political trials — including those the regime refuses to think of as political — will soon be an historical problem. However, I am of the opinion that the regime's movement in the correct direction is slight and limited and that the courts will remain as one of the major upholders of the system as we know it. Hence, I assume that this work needs to be continued and, if possible, improved.

The primary issues fall into two categories:

- (1) relating to comrades charged for "acts" performed prior to the (limited) unbanning of ANC, MK and PCB.
- (2) relating to comrades charged for "acts" committed after the 2nd February.

Gazette
unbans
P.O. P.O.
ANC, CP,
PAC, MK
All FP
banned
org are
unbanned

Within the context of these two categories ANC policy, strategies and tactics are dealt with at essentially three different though related places in the trial:

- (a) during the main section of the trial before judgement;
- (b) during "trials-within-trials"; and
- (c) mitigation, before sentence is passed.

Major General
of SAP

During (a) the state normally brings someone like Studler or his juniors to testify about the ANC. Normally, the picture they paint is as follows: They accept that the formation of the ANC is

up to this time ~~the~~ defence tackled the challenge of the state's version of history of A.N.C

1912 and its first years of existence were legitimate and that it had a legitimate programme. However, according to the state, various influences develop (either the Youth League or Party of Home, or both depending on the needs of the trial!) to move the A.N.C towards what they see as the modern form: a simple, fervent organization with an out-of-date policy. Only recently have Defence Teams decided to oppose the state's nonsense with rebutting evidence. Our evidence has tended to be general and widely focused, putting the development of policy (political and military) into historical and political context.

Sept '88 Prosecution values passages from article re secretary not in ordinary way. Defence witness like Sam deny

The second category, (b), is slightly more complicated. Here the state acts to protect its informants/askaris not so much for their safety, but rather to frustrate attempts to uncover the lies and false stories they provide. Normally, they argue that state witnesses are in danger, quoting from pamphlets and the extremely few incidents where people who have been state witnesses at some stage or another have ended up dead, wounded or attacked. To my knowledge, my evidence in Tony's ^{matter} based on Jacob Zuma (and Thabo's Mbeki confirmation of this in Cape Town), was the first time his testimony was used. We lost that bit on the basis of the judge arguing that we did not call any of the leaders to testify about policy in this regard. One of his problems, which he thought our answers were inadequate, was how shifts in policy at the top were communicated to (a) cadres in the field; and (b) communities. (Our fly response to (a) was that first of all cadres are deployed with specific tasks from military HQ; second, those in the field received orders via clandestine means; third, if state allegations about the existence of ^{SS} Assassination Squad existed, then that would do these things and not normal cadres. A.N.C membership (X) structural change

With regard to the community, I argued (i) ANC's popularity and acknowledged authority, (ii) the leadership given by community organisations; (iii) if people felt victim it was more likely to be as a result of their activities (here, rather than an incident of testifying).

The third category, mitigation, presents an always with a slight problem. Different defence lawyers have different attitudes here. Formally, the evidence is meant to emphasise factors to reduce the "moral blameworthiness" of people found guilty; here to secure as low a sentence as possible. (The response of the state depends on notions of remorse on the part of the accused. I have made it clear that I am not prepared to argue in court that a comrade feels sorry for legitimate acts committed in the name of armed struggle under ANC or, indeed, the interests of the community, influence). What happens, in fact, is that the evidence becomes a platform ^{from} which the proper policies of the movement are outlined, explained and ultimately justified. The state is challenged therefore in a manner that does not directly involve ANC participation in the proceedings, getting around the issue of the illegitimacy of the courts problem.

MK
accused
don't
express
remorse
- loyalty
to MK
survived

Points (a), (b), and (c) reflect back into the two major categories in the following way, (or rather it seems that they do):

1. pre-February 2, 1990. Here, as indicated above, the evidence is presented in a straight-forward manner. The analysis is placed within the context of an inflexible, militaristic regime bent on retaining the privileges and rewards of white minority domination. To defend

that position, it necessarily has to repress all challenges to it. Because it is a minority domination based on injustice and exploitation, the state's struggle necessarily involves extending the definition of combatant within its own ranks to include more and more sectors of our society. Hence, to include local government structures into JMC's or white farmers into commandos is for the state to re-define them out of the category civilian into that of combatant. That extension occurs within a context of refusal to submit by the majority, hence the extension of the armed struggle — in the broad definition of people's war — by MK.

In 1980 O.A.
deposited with
Geneva Red Cross

The development of an armed offensive by MK, ie initiating actions directly attacking rather than responding to state actions/policies, is justified in our terms because of (a) the position in international law outlined in the 1977 Geneva Additional Protocols 1 defining the national liberation war as an international conflict (I get worried when I see Soviet comrades referring to our conflict in the restrictive terms of a regional conflict!), and (b) the need to take control of our own to direct the spontaneous activity of the masses.

Categories (b) and (c) are slightly more problematic, perhaps, given the delicate balance at the present time between the negotiation approach and the continuation of the armed struggle as an essential component of the all-round strategy. The difficulty relates to the precise definition — if this indeed is possible — of the relationship between (and

5)

(tactical considerations within) negotiation as additional strategy and not a replacement of other time-tested ones, and armed struggle, as a continued necessity will controlled by the processes outlined by in the Horare Declaration. (The differences between Horare and the UN resolution are significant; the more favourable terms of Horare being the reason ANC emphasises them rather than the UN document).

Always, at the third stage, the nature of proceedings change quite dramatically — the ANC as an organisation goes on trial, rather than the comrades themselves. So, if the propaganda element of political trials is considered to be important in its own limited way, then we at home need to know to what extent we emphasise the limitation of this transitional phase, thus justifying the a.s. (to a hostile press etc) whilst at the same time applauding the positive developments (without going "soft").

(This last paragraph highlights one of the more dramatic changes that has accompanied the De Klerk counter-initiatives. There has been a noticeable shift in the form of a retreat by sectors of the commercial media, liberal intellectuals, and even political parties and elements within the fragile international anti-apartheid coalition from reluctantly coming to 'tolerate' the armed struggle because they claimed to understand the reasons for it, to a position of condemnation of ANC with even more vigour than before. I realise that the struggle, clearly, is not nor should it be motivated by a desire to appease the enemy and its supporters. But what is needed is an effective strategy to repulse the propaganda whilst at the same time advancing the cause of liberation).

b)

2. period after February 2. The points made on pp 4-5 above are relevant here too. More specifically, however, is my concern with the new situation in which the Internal Security Act still operates. It is perhaps well to remember that the Act was used to unban the movements, etc. rather than sections of it repealed. The unbanning of ANCL and MK, except the activities of the army enables the state to depoliticise completely acts of violence conducted under the umbrella of the armed struggle. I think FW's speech makes this quite clear. The implications of this new situation seem to me to affect directly the definition of ANC as a national liberation movement, of the a.s. as a justified ^{+ lawful} strategy in the context of an internationally accepted national liberation struggle, and of the position of the Geneva Protocols. (Other aspects, ~~to~~ such as the juridical authority of MK in particular to implement its Code of Conduct are not ~~an~~ my immediate concern, although I fear that that authority is going to be challenged here and now).

A final part of general concern, already touched upon, arises from the Yengeni trial itself. The judge's complaint that ANCL leaders, although available and legal, did not explain the organisation's policy. I think that this in effect means that the state may now legitimately demand the presence of ANCL leaders in court, thus (i) opening them up to questions about ANCL in general, and (ii) legitimating the courts by their presence.

Within the context of the above, some of the specific areas that always come up include the following:

- i) Reference to Kabwe and the alleged shift to civilian targets. I challenge them on at least 3 levels:
 - i) development of the conflict brings about qualitative changes as the situation demands, rather than changes developing out of policy changes in themselves;
 - ii) statistics on the ground don't really support the state allegations; particularly because of the
 - iii) issue of definitions.
- 2) precise definitions of targets: the state always take the general categories (bushwar leaders; stooges; sell-outs; collaborators, etc.) to mean specific individuals. I counter that by suggesting that there are demarcations within those categories, for example, Buthelezi not treated like Mabuza.
- 3) differences/similarities in the conceptualisation of the political and military between internally and externally trained cadres.
- 4) issues of control.

Of course, the pressure is on always to provide details about specific policies. I interpret my job as providing general statements backed up by specifics (for example, the deployment of landmines in the context of Area defence provides evidence of a continuity in ANC policy rather than changes from 'hard' to 'soft') only where the information is either well-known to state and us, or indeed does not involve confidential matters pertaining to specific missions, etc.

I hope this lot will be of some help. I could elaborate on the points if need be.

Law.