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Commission of Experts Meeting Minutes Session 11

M. Cherif Bassiouni 1937-2017

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APPROVED

Adopted
15 April 94

COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO
SECURITY COUNCIL RESOLUTION 780 (1992)
ELEVENTH SESSION (GENEVA, 16 FEBRUARY 1994)

Members Present:

Mr. M. Cherif Bassiouni, Chairman
Ms. Christine Cleiren
Mr. William J. Fenrick
Ms. Hanne Sophie Greve
Mr. Kéba Mbaye

Secretariat Staff Present:

Mr. Vladimir S. Kotliar, Secretary
Ms. Bruna Molina-Abram, Legal Officer/Deputy Secretary
Mr. Julio A. Baez, Legal Officer/Assistant Secretary

Others Present:

Mr. Morten Bergsmo, Assistant to the Commission
Lt. Col. Antonius Kempnaars, Assistant to the Commission

1. The Provisional Agenda was Adopted:

A copy of the said agenda is attached hereto.

2. Minutes of the Tenth Session:

The Chairman said he had received some observations by Professor Cleiren.

Judge Greve said she would like to make some changes to the minutes of the Tenth Session. She pointed to page 5, paragraph 3, sentence number 4, which should be omitted as, in her view, it did not reflect what was said during the session.

The Chairman agreed to have that done.

Judge Greve would as well appreciate if the minutes of the Tenth Session could explicitly reflect that she in no way is involved with the sexual assault project.

The Chairman suggested that that was not expressed at the Tenth Session, but that it could be included in the minutes of the present session.

3. Status of the Commission and of the Talks on the Transition with the Prosecutor and the International Tribunal:

The Chairman reported that on 17 and 18 January he met with the Prosecutor, Mr. Escovar-Salom, and on 18 January, with the "Friends of the Commission" at the Canadian Mission at Geneva together with Mr. Escovar-Salom. The Prosecutor informed the Chairman that he intended not to remain Prosecutor. The Chairman had a meeting with the Secretary-General on 19 January to discuss the transition. The Secretary-General reiterated that the 30 April date was based on budgetary reasons and on the assumption that the Prosecutor would assume his function as of 5 February. He had suggested that some arrangement could be worked out between the Commission and the Prosecutor, especially on specific projects if it was so required. Subsequently, Mr. Escovar-Salom met with the Secretary-General in The Hague and informed him of his intention to resign. An Acting Deputy Prosecutor was appointed, Mr. Graham T. Blewitt, from Australia. A search for a new Prosecutor was in progress and a number of candidates were to be considered by the Secretary-General.

The Chairman had been in contact with Mr. Zacklin about the transition and establishment of the database in The Hague. Two people from the IHRLI had visited the Tribunal in The Hague and had discussions with the Tribunal computer expert, Mr. Falces, on the database transition and on the establishment of a computerized information system for the Tribunal. The entire computer budget of the Tribunal for one year (1994-1995) provides for only \$800,000, which includes the acquisition of hardware for the entire Tribunal. The budget then includes \$180,000 for the maintenance of the database, which is also insufficient. The Chairman expressed concern about security and safety procedures within the Tribunal premises in The Hague in terms of access to computers. He did not think that the existing security measures took into consideration the sensitivity of the information stored in the database, since the information is accessible to the general service staff of the Tribunal.

The Chairman also reported that he had met with the Legal Counsel of the US Mission in Geneva, who asked if the Commission would want to undertake the Ovcarica investigation.

Mr. Fenrick wondered if it would be possible to extend an invitation to whomever was occupying the position of the prosecutor to attend the next meeting of the Commission.

The Chairman suggested an informal meeting the day before the upcoming Twelfth Session.

4. Status of Contracts and Finances of the Commission and of Contributions to the Trust Fund:

The Secretary made a short summary of the status of contracts, financial situation of the Commission and of contributions to the Trust Fund.

The balance of the Trust Fund at the time of the previous session was \$871,800. The Commission had received a contribution from Turkey for \$10,000, specifically intended for the sexual assault investigation. The total balance in the Trust Fund was \$881,800.

The financial structure of how the Commission was to function had been changed by the OLA. Only three staff members were to be paid from the budget of the OLA: the Secretary, the Deputy Secretary and the Assistant Secretary. The remaining staff was to be paid from the Trust Fund of the Commission. Maintaining the office for the four remaining months would cost \$276,800, and with programme support costs in 1993 and 1994 it would add up to over \$431,000. The Commission had not received formal authorization to spend Trust Fund money to maintain the office. However, this was to be received soon.

The authorization for expenditures in respect to the sexual assault investigation had been received. The total expenditures for this investigation was believed to amount to about \$350,000.

This sum plus the expenditures envisaged for the remaining months would come up to \$748,000. The balance available to the Commission in the Trust Fund at the time of the Eleventh Session was \$132,820.

The Chairman commented that the remaining sum could be useful if the Commission was to undertake the on-site investigation in Ovcar. If not, he suggested the money could be used for the publication of the annexes to the final report, which he expected to be very costly and would require some funding in addition to what the UN would be able to pay.

Judge Mbaye said he wanted to know who was going to decide about the publication of the annexes to the final report.

The Chairman answered that the Commission had received several reports and was going to receive others and the criteria for what was to be published would have to be decided by the Commission.

Judge Mbaye expressed doubts about the Commission actually having the power to decide to publish. He recalled that the Commission was expected to make a final report and present it to the Secretary-General and to the Security Council. The Commission could recommend the publication of its report and annexes, but it was up to the Secretary-General to make a decision on that.

The Chairman agreed, but additionally proposed to annex all the reports on field missions as well as the database studies to the final report, with a request to the Secretary-General to publish these annexes as part of the final report after they have been edited by the Commission.

5. Report by the Chairman on the Database and the Data-gathering:

The Chairman said that there were approximately 15,000 pages of documents that were to be included in the database and now there were over 55,000 pages of documents in the database. He had communicated to Mr. Zacklin that before the Commission can pass the database and its documents to the Prosecutor, the Commission needed a formal direction from the Secretary-General to that effect.

6. Formal Submission of Written Reports on Mass Graves Investigations in Sector East and Sector West:

Mr. Fenrick had prepared a number of reports: The material presented to the Commission included the remainder of the Dubrovnik and Medak reports, the police reports concerning Ovcara and Pakracka Poljana, which had quite substantial annexes, a general report by Mr. Fenrick, a brief report on the on-site investigation in Croatia in October/November 1993, a report by the Canadian investigative team and an interim report on Pakracka Poljana. The three latter reports had been prepared by lawyers. In connection with Mr. Fenrick's own report, there was a limited amount of material that had not as yet been turned over to the Commission, inter alia, a box full of physical evidence (bullets, pieces of clothing, etc). This material was still in Zagreb owing to some difficulty in getting it out of the country. Mr. Fenrick was returning to Zagreb in March and would try to get it out of Croatia then. A number of photographs were also to be handed over to the Commission. The Medak report, filed as an interim report, had annexes that were now being prepared by Major Holland in Canada.

The Chairman asked if we could have the diskettes of those reports.

Mr. Fenrick replied that he would check that and if the diskettes were available, they would be sent to Geneva.

7. Progress Reports on Investigations:

A. Destruction of Cultural Property

Judge Mbaye expressed some concern because no additional information on destruction of cultural property had been received. He had a meeting with one staff member and one consultant from UNESCO on 15 February. They discussed the destruction of cultural property and how the conventions (i.e. The Hague Convention, the Convention on the Destruction of Cultural Property (1972) and the Additional Protocols to the Geneva Conventions) could be applied to the conflict in the former Yugoslavia. The two representatives from UNESCO explained how UNESCO applied the conventions, and Judge Mbaye had the opportunity to ask questions and found the meeting very

productive. He might receive various documents from Ms. Hiver concerning the destruction of cultural property, which he thought to be very useful. He was of the impression that Mr. Baez and Mr. Kempenaars had photographs and a report from the third mission to Sarajevo. He requested having copies of the report and photographs. Lastly, he had very much appreciated the assistance of Ms. Bruna Molina-Abram.

B. Prijedor Report

Judge Greve said the information gathering in Norway was going well. She had been able to follow up on information gathering in most of the countries listed previously. Work was in progress in the Netherlands and in Germany. Judge Greve and Mr. Bergsmo would meet the Malaysian authorities which had taken an interest in the project and wanted to help as they have refugees from Prijedor. Ms. Greve has identified a group of women and children who want to be interviewed about deportations. They never left their homes voluntarily and never made any plans to go outside Bosnia. These persons had been forced to leave. Ms. Greve spent most of her time in Zagreb establishing contacts. She had concentrated on background material. She had meetings with people from UNHCR. They had no written material to share with the Commission. UNHCR had three of their staff being held hostage in Banja Luka the week before. The three had been released.

She had been invited to an informal visit to Banja Luka. However, owing to security reasons she decided not to go, namely because she did not think it safe for anyone to meet with her. She met with the Vice President of Croatia, the Chief of Justice of the Supreme Court (the President of the Croatian War Crimes Commission), both of whom have a lot of material about crimes committed in Croatia, but very little on the Prijedor area. She has a list from the Prijedor area of missing people from virtually all over Bosnia and Herzegovina. At the Ministry of Defence, she was informed of the chain of command in Vukovar. This being Mr. Fenrick's area, all the information she received from that meeting has been given to Mr. Fenrick just before the present session started. She had two meetings with the United Nations Military Observers (UNMOs), who had a handbook on the techniques, tactics and procedures of combatants in the former Yugoslavia. She gave one of the UNMOs, who had agreed to go on with the investigation of the chain of command in Prijedor, a letter to certify that he was working to collect information on Prijedor for her as a Commissioner. She has a copy of that letter. She was given maps and data on almost all the UNPROFOR areas in Croatia, information she thought the Chairman would like to have included in the database.

She had asked various Governments about information on the military background of events in Prijedor. She met with the American Ambassador in Zagreb to brief him on the Prijedor project. She was now waiting for feedback from various Governments. She had changed her work hypothesis for the Prijedor study to include genocide. For this reason, she would

like to include genocide among the topics discussed in the final report.

The Chairman thought it very important to focus on the Prijedor area because maybe some of the worst and most brutal crimes were committed there. As it had taken place at such an early stage in the conflict, the mass media had not focused on it and the range of violations is so enormous and covers every possible type of violation of international humanitarian law, as well as human rights law.

Mr. Fenrick had the impression that Ms. Greve operated in a slightly different way than he did in connection with investigatory work in the former Yugoslavia. He was wondering if she could elaborate on how she was functioning there. He, as a military lawyer, relied a lot on UNPROFOR. He did not know if she, as a human rights lawyer, relied as much upon UNPROFOR. He used to travel on UN transport with armed personnel. He wanted to know what security measures she had taken.

Judge Greve stated in relation to what the Chairman had said about the violations in the Prijedor area that she did not believe this to be something unique to that area, but something that they saw happening in a lot of other areas, for example in Brcko, where they saw the exact same strategy and the disastrous consequences. She believed that this was also true of the Vukovar area, if one looked at the overall situation. She asked if some of the database material could be systematized into areas, opstina by opstina, to see if it could meet the criteria for genocide. Then they might see the same distressing overall picture as in the Prijedor area. She thought genocide could be applied to areas like Sanski Most and Bosanski Novi, as well as the other aforementioned places.

As an answer to the question by Mr. Fenrick, she said that she had used the vehicles of UNPROFOR. Lastly, she mentioned that she had a meeting in Ljubljana with a man from the Brcko area, who allegedly had substantial information on paramilitary groups, especially on his experience in Luka camp.

Professor Cleiren stated that she became too involved with the Prijedor project when she addressed the Dutch and German authorities for advice about the location of witnesses. The Germans wanted to concentrate on a specific project. They thought it unrealistic to interview all the refugees presently in Germany. She had told them about the Prijedor project and they were willing to offer their assistance. Two German judges were appointed to do the interviews of refugees from the Prijedor area. In the Netherlands, they are focusing on finding people from the Prijedor area and there are about 200 people which had been in prison camps like Trnopolje, Keraterm and Manjaca. About 50 of them were ready to give their statement. The material would be handed over to Judge Greve by Professor Cleiren, so that she would be able to finish her report by the end of April. Professor Cleiren was going to have meetings with the Dutch authorities about the security and other special measures that would have to be taken in respect to the witnesses and the staff

working for the Tribunal.

The Chairman stated that if any of the members of the Commission wanted to send documents to one another they were free to do so, but that they should make sure that the original was sent to the Secretariat. He also said that before Commissioners made contacts with Governments, it should be cleared with the Chairman or Secretariat. A report for the file on any such contacts should be made by each Commissioner.

The Chairman then discussed some substantive aspects and also pointed out that the conflict in the former Yugoslavia was over the removal of population from certain regions. In his view, the Commission had to come up with an answer to the question of whether there was a policy or a plan to drive people away. It must look for traces of repetition of the same pattern or procedure in different areas - initial terrorization of the population, the setting up of one group of people against another, the use of regular army militia. There is no doubt that what Ms. Greve stated indicates a pattern. There is also no doubt that what happened in Prijedor is crime against humanity. But we have to find evidence of a policy to prove that it was genocide.

Judge Greve added that in the North-Western part of Bosnia and Herzegovina they were issued so-called "exit-visas". This was a form to be filled out to the effect that the person relinquished over all property rights. The person was never to return to the area. By signing this document, the person would become stateless, and after one had signed, one would have 14 days to leave the area. Sometimes there was no way of getting out of the area. Even though extensions to stay had been granted, individuals were hunted when their time was up. Judge Greve hoped to receive more detailed information on these procedures. As for the paramilitary groups, she was hoping to receive an instruction officially given by the JNA or Serb military authorities in Belgrade to the effect that every paramilitary group was under their military command. This might be interesting when investigating the transition from the JNA at an early stage to the Bosnian Serb Army at a later stage, when Bosnian-Serbs replaced the non-Serbs in military positions. During the last elections one way of attacking the parties was to, inter alia, disclose which party was connected to which paramilitary group. The newspapers in Belgrade at that time could be a source.

Judge Greve thought that the Serbs themselves would become the next victims of the paramilitary groups. There were indications that the paramilitary groups are turning against their own. More recently, people coming from purely Serb-populated areas have asked for refugee status because it is impossible to live there.

She mentioned that the iron mine in Prijedor, which before the war was the most important mine in the former Yugoslavia, had in the late 1980s been fully modernized. Now most of the

machinery of significant value had been shipped away. This left Prijedor with virtually no on-going production as the cornerstone of the local economy had been made non-operational. Other factories and industries are likewise not operational. This all seems to be done in some sort of a pattern.

C. Sexual Assault Investigation

The Chairman reported that everything was proceeding according to the plan, but the schedule had been changed due to the fact that OLA authorized funding too late. A number of well-qualified lawyers and mental health professionals were operating in Zagreb, conducting interviews. While in Zagreb, some would go to Slovenia and Austria.

Austria also agreed to allow interviewing of some 20 persons in Vienna.

As for Turkey, it would be necessary to send a team there and some additional information was expected from that Government.

The Chairman hoped that they could accomplish both Phases I and II while in Zagreb.

Mr. Fenrick asked the Commission if there was any need for him to travel to Croatia. He was going to be in Geneva for the period from 8-12 March and if necessary he would be glad to assist in Croatia.

The Chairman thought it very helpful and welcomed Mr. Fenrick's suggestion to travel to Zagreb.

Professor Cleiren would be prepared to be present in Zagreb on behalf of the sexual assault project as a member of the Commission. She would not be responsible or be part of the core group as she had not had any in-put in the preparatory decisions, the development of the methods involved or the selection of consultants.

8. Draft Plan of Action for Vukovar On-site Investigation:

Mr. Fenrick stated that the Commission would have difficulties concluding the investigation before the end of April. He concluded that the Commission should not continue the on-site investigation in Vukovar. He suggested that Mr. Kempenaars, who had done a substantial amount of work, should prepare a "note for the file" concerning the battle of Vukovar study. And while in Zagreb, assisting the sexual assault project, Mr. Fenrick and Mr. Kempenaars could meet with the Croatian Ministry of Defence and take a detailed record of what they might have on the issue and combine it with existing material, which could be sent to the database people who could do research on the Vukovar.

The Chairman suggested to do it the reverse way: take the report from the database, add what he and Mr. Kempenaars had and also enlist the assistance of Colonel Bor and from that make a report.

Mr. Fenrick replied that he certainly would make a report and try to make it as comprehensive as possible. It could not be as substantial as the studies on Sarajevo and Dubrovnik.

The Chairman went on to Judge Greve's comment earlier, concerning a witness in Slovenia that allegedly could provide information on "special forces".

Judge Greve confirmed that she had been in contact with the person, but it turned out that he only had information on how Arkan's men behaved in the Luka camp. He had no overall information on Arkan's men or the White Eagles. He had only seen their emblem and therefore knew that they had been present. What they had learned from him was that the procedures used were similar to the procedures in Brcko as well as in the Prijedor area. The person had very little substantial information on paramilitary groups.

9. Draft Outline of the Final Report:

The Chairman informed the members that Mr. Fenrick had sent a redraft of the 17 January draft outline of the final report and subsequently the Commission, during the informal meeting the day before, had produced another draft dated 15 February. The Commission had three texts of the outline of the final report. The Commission had nearly agreed yesterday to the outline of parts 1 and 2. One question was raised in connection with the presentation with respect to parts III and IV and two suggestions were: 1) to make a distinction between projects depending on the methods used, namely investigatory or research, and 2) to combine the two without eliminating the original method under which each was done. One should keep in mind which of the two approaches will be clearer to the reader.

The Chairman concluded by saying that the matter should be left until the parts in question had been drafted before a decision was made.

Mr. Fenrick preferred to maintain the present differentiation between parts III and IV depending on whether or not they were talking about research projects or investigatory projects.

Judge Greve added that she would like to include under part II, item 18 "genocide" and she was happy to be responsible for drafting that. That would correspond to part II subparagraph 20 in Mr. Fenrick's draft.

Judge Mbaye could not give his point of view on the matter because the draft reports were only submitted in English. He

would reserve his comments until later. However, he thought that the report should try to answer the question posed by the Security Council.

The Secretary, speaking in his personal capacity, said that the purpose of the final report was to answer the question the Commission was asked to answer and which they promised to address in the First Interim Report. The Commission should give its reply to the questions related to the four major fields stated in the First Interim Report. But they would repeat them twice. The first time would be in the description of the missions, while the second time would be when they described the analytical studies produced by the database. He suggested it would be easier if they kept the description of the missions as brief as possible, just enough to give readers an understanding of what a tremendous amount of work has been done. Then they could concentrate the conclusions of the Commission in a section which would fuse together the results of missions and analytical studies. This would give the reader an impression of what the Commission has achieved and how.

Mr. Fenrick preferred to keep it as suggested in the draft. He did, however, bear in mind that the Commission would have to address certain questions in keeping with its mandate.

Judge Mbaye thought it important to think about what a tribunal asks: what was the method used, what was the problem in question, what is the effect, what were the facts verified during the investigations, what was the applicable law and how is it applied to the facts. But he did not understand what was being said in the document and therefore could not give his point of view until he had been given the French text.

Judge Greve suggested that one could have a report detailing the kinds of efforts the Commission had made in the terms of the duration of the Commission, its structures and approaches. Another part could focus upon the different issues addressed. The first part could be used to describe how the Commission operated and why it focused on certain projects and then to take each project and answer the different questions covered in the different chapters.

The Chairman suggested that one could take the investigatory projects and the research projects and simply describe them as research projects and field investigations, but have them follow topically. The Chairman also suggested that one could then take the different legal issues from the legal part and apply the legal concepts to certain facts that arise out of the research projects. He thought that the different projects had merits on their own and that all of them could reach certain conclusions. Some of the conclusions could be extrapolated to illustrate larger questions of law.

Mr. Fenrick said the important issue was the building blocks and how they led to the conclusion. There were two different building blocks used, one was the on-site

investigations and the other was the analytical studies. It is the contents of the building blocks that are important. He pointed out that the studies should be treated differently and addressed separately.

The Chairman raised two questions in response to Mr. Fenricks's suggestion: 1) how were the building blocks listed, how they were lined up and how to reach some conclusions in part VI? and 2) When they got to the last part of the conclusions, do they then draw upon the conclusions reached in these building blocks? They could separate the specific conclusions arising out of specific studies from the general conclusions that they may draw at the end.

Judge Mbaye thought that it was not sufficient to conclude that an act was a "crime against humanity", but rather to explain how one reached that conclusion: witness statements, photographs, video material, etc. All the information received by the Commission and stored in Chicago may give the result of "crimes against humanity". The Commission should be able to present how the work has been done, the methodology used, the facts obtained from a number of sources and the applicable law and the conclusions drawn from the findings of the Commission. In his view, the Prosecutor would then be able to accuse persons for committing certain criminal actions according to International Humanitarian Law. If the Commission finds that violations had taken place, it would then be necessary to show how they got to that conclusion.

The Chairman suggested that part II follows the findings of facts (parts 3 and 4). When they deal with the statements of applicable law, they should draw some conclusions relating to each question of law. They should then put them after the facts as opposed to the facts before the law. In that way, one could conclude that "crimes against humanity" had taken place.

Mr. Fenrick thought it easier at that point in time, to write a report according to the format they already had and that they later could make changes.

The Chairman suggested a two stage approach which would be: 1) applicable law and 2) when parts 3 and 4 of the report have been done, see how it is to be put together. At the conclusion stage, they could make changes and instead of putting the conclusion in one part they could integrate the parts that are relevant under the specific law part.

Professor Cleiren suggested, keeping in mind the needs of the Prosecutor and the Tribunal, to take the last draft as a starting point and that the Commission could later discuss the order in which to put it.

The Chairman concluded that they would have to wait until they had all the different reports in front of them. He added that to get that done they might have to accelerate the schedule to give themselves more time in March to look at things. He

suggested that they should add in another day for the April session to allot time if there were some major changes that would have to be done.

Judge Mbaye thought the Commission was about to embark upon a theoretical discussion more than anything else. He thought that when they had the different parts of the report drafted they would be able to determine whether the question posed by the Security Council had been answered.

The Chairman stated that the "15 February draft outline" should read "the 16 February draft outline". He wanted the changes made, such as adding "genocide" to part II, which should be re-ordered, and moving the Battle of Vukovar from the on-site phase to the research phase, to be reflected in the outline. Also, Mr. Fenrick would be the co-author of the Battle of Vukovar part, if he could contribute to it.

Professor Cleiren preferred the outline as it was.

The Chairman pointed out that it was impossible to keep it as it was because genocide was being added, the legal topics had now been reorganized under part II and that item 3 was removed from part 3 and added as item 34 under Part 4. Therefore, the amended February 16 draft outline is to be the working outline needed for the April discussion on the final report.

10. Other Matters:

Mr. Fenrick requested a complete set of the revised minutes of all of the sessions of the Commission.

It was agreed to have the complete set of minutes sent to the Commission members before the next session.

11. Future Sessions:

The Commission agreed that there would be no session in March. Instead, the members would submit their parts of the report to the Secretariat by March 30 for distribution to the Commission members so that when they met on 11 April, they all had a chance to read the report before the session. The final Twelfth Session was to commence on 11 April and end on 15 April.

12. Press Release:

The draft press release was adopted with minor changes.

The meeting rose at 13:25 p.m.