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Commission of Experts Meeting Minutes Session 4

M. Cherif Bassiouni 1937-2017

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APPROVED

COMMISSION OF EXPERTS ESTABLISHED PURSUANT
TO SECURITY COUNCIL RESOLUTION 780 (1992)

Fourth Session (Geneva 1-3 March 1993)

First Meeting

Monday, 1 March 1993, 10:00 a.m.

Members present:

Mr. Frits Kalshoven, (Chairman)
Mr. M. Cherif Bassiouni
Mr. William J. Fenrick
Mr. Torkel Opsahl

Secretariat:

Ms. Jacqueline Dauchy, Secretary
Mr. Julio A. Baez, Assistant Secretary

The provisional agenda of the Fourth Session (attached) was approved.

Minutes of the Third Session (1).

The minutes of the Third Session were approved.

Follow-up action on the Interim Report (2)

The Chairman stated that the Commission's Interim Report had been noted by the Commission for Human Rights, which had adopted two resolutions, one on Mr. Mazowiecki's work and the other on rape.

The Secretary indicated that the Office of Legal Affairs had assigned a team of legal officers to the preparation of the report requested by Security Council resolution 808 of 22 February 1993.

The Chairman observed that in view of the Security Council decision concerning the creation of an international tribunal, it was important for the Commission to present some tangible results to the Secretary-General by the end of the summer.

Mr. Bassiouni remarked that the time-frame for the establishment of the international tribunal and the impact of the decision on the work of the Commission remained opened questions.

The Chairman concurred.

Mr. Opsahl said that the Commission should have an idea of the direction of the international tribunal's work so as to orient its own activities accordingly.

Mr. Fenrick concurred. In his opinion, the Commission had gained meaningful experience and should continue to exist, albeit in another form and with additional resources.

The meeting was briefly suspended to allow for an informal discussion of the question of the establishment of an international tribunal.

Investigation of mass graves (3)

The Secretary directed the attention of the Commission to the "Needs Assessment" document from "Physicians for Human Rights", listing the assurances and logistical support required for Phase II of the Vukovar investigation.

Mr. Fenrick mentioned that two representatives of Physicians for Human Rights, Dr. Stover and Dr. Snow, would be arriving in Zagreb on 2 and 3 March and would visit the Vukovar site. He and the two Canadian officials accompanying him were planning to conduct jointly with the PHR representatives a reconnaissance mission to Vukovar to assess the situation. If it appeared that the Vukovar site was a security risk, additional sites would be visited by the reconnaissance team.

Mr. Bassiouni draw attention to the legal and practical problems involved in the exhumation of the bodies and the conduct of the medico-legal examination.

Mr. Fenrick said he was doubtful as to whether UNPROFOR was in a position to provide the logistical support requested by Physicians for Human Rights.

The Chairman said that he was considering approaching individual Governments to obtain the required logistical support.

As regards the mass grave near Pakracka Poljana identified by UNPROFOR, he indicated that the requested additional information had not as yet been received. A Norwegian offer of assistance recently submitted to him could be taken advantage of to deploy a forensic team to this site. Since however the agreement concluded with Physicians for Human Rights was not limited to the Vukovar site, Physicians for Human Rights could also undertake the investigation in question.

Mr. Opsahl pointed out that the assistance so far offered by Norway was in the form of funds or services within the amount suggested.

Replying to a question from Mr. Bassiouni, Mr. Fenrick indicated that the Canadian team would be responsible for the criminal investigation of occurrences in the area of Vukovar and would not confine itself to determining the identities of the people killed in Vukovar. In all likelihood therefore, the April mission would be followed by others.

Mr. Bassiouni added that during the meeting which had taken place in February in Chicago between Physicians for Human Rights, Mr. Fenrick and himself, it had been agreed that PHR would do the forensic pathology work whilst the Canadian team would carry out the criminal investigations.

The Chairman remarked that it would be extremely important for Mr. Fenrick to go to Belgrade as the Vukovar mass grave was under Bosnian-Serb control.

Mr. Fenrick said that, in order to avoid adverse political repercussions, the reconnaissance mission should also visit Sarajevo. He also wondered if the Commission as a whole should not go to Belgrade, Sarajevo and Zagreb to meet with high-level authorities in the near future.

Mr. Bassiouni felt it important for the Commission to meet senior officials in the three capitals before undertaking any investigations into mass graves under Bosnian-Serb control in Bosnia and Herzegovina.

The meeting rose at 12:45 p.m.

COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO
SECURITY COUNCIL RESOLUTION 780 (1992)

Fourth Session (Geneva, 1-3 March 1993)

Second meeting

Monday, 1 March 1993, 3:00 p.m.

Members present:

Mr. Frits Kalshoven (Chairman)
Mr. M. Cherif Bassiouni
Mr. William J. Fenrick
Mr. Torkel Opshal

Secretariat:

Ms. Jacqueline Dauchy, Secretary
Mr. Julio A. Baez, Assistant
Secretary

Database and data-gathering (4)

Mr. Bassiouni stated that 555 cases had thus far been reviewed. The task required the services of five analysts working 60 hours a week. The in-putting would continue to be done in Chicago and the data would be transferred to Geneva as soon as the Secretariat had received the proper equipment. A complete security system had been established at the Institute for Human Rights Law.

The Chairman informed the Commission that the Secretariat had written letters to several missions in Geneva to obtain information in the possession of their Governments. The BBC had also been approached.

The Secretary indicated that the reports sent by UNPROFOR to its liaison office in Geneva had been reviewed by the Secretariat and that excerpts relevant to the Commission's work were available to all members.

Mr. Bassiouni requested that those excerpts be sent to him in Chicago. He suggested that Mr. Fenrick establish contacts during his reconnaissance mission with non-governmental organizations in the former Yugoslavia such as "CARITAS" and "Helsinki Watch" in order to get their reports and ascertain the type of evidence on which they were based.

Mr. Fenrick said that he would also visit the military intelligence authorities in Zagreb to try to have information on orders of battle.

The Secretary indicated that the reports of CIVPOL and ECMM were not available in Geneva and that if the Commission wished the Secretariat to undertake in relation to those reports the same screening exercise as had been conducted for the UNPROFOR reports, a member of the Secretariat would have to go to Zagreb, //

extract the relevant information from the mass of existing reports and establish with the officers concerned channels of communication for the future.

Mr. Opsahl enquired if he could interview refugees from the former Yugoslavia with whom he could come in contact in Norway.

The Commission agreed to authorize him to do so.

Mr. Bassiouni stated that the reports received thus far were related to relatively ancient events and that contemporary violence was not as extensively reported on.

The Chairman observed that this did not mean that the level of criminality had decreased.

Mr. Bassiouni, referring to financial aspects, said that funds were available for the preparation of the database until 31 July 1993 and that he had requested a one million dollar grant from the Souros Foundation. He confirmed that there was no need for a formal agreement between DePaul University and the United Nations. Instead, the Chairman should send him a letter describing the services requested and making provision for the confidentiality aspect.

Selective in-depth investigations (5)

The Chairman suggested that the Commission revert to the question of a visit to the three capitals, i.e. Belgrade, Sarajevo and Zagreb. He suggested that only two or three members should go to the said capitals.

Mr. Opsahl concurred with the Chairman.

The Commission tentatively agreed that the trip would take place in the second half of April 1993 on the understanding that the exact timing would be determined in the light of the results of Mr. Fenrick's reconnaissance mission.

The meeting was briefly suspended.

The Chairman said that the Secretariat would consult Mr. Mbaye to ascertain his availability for the whole or part of the planned trip.

Mr. Opsahl indicated that he would not be available for the trip.

Mr. Bassiouni suggested to have a member of the Secretariat accompany members of the Commission on the April trip to the three capitals.

It was so agreed.

Reconnaissance mission to the Vukovar area

Mr. Fenrick recalled that at the previous meeting, he had informed the Commission of his intention to go to the area of Vukovar and other areas on a reconnaissance mission during which he would be accompanied by two Canadian officials, Lieutenant-Colonel Carter and Captain René. The team would be joined during part of the mission by Physicians for Human Rights representatives. Its purpose would be to prepare for the investigations described in paragraph 67 (a) of the Commission's Interim Report (S/25274, Annex I).

The Commission decided that the reconnaissance mission should be undertaken from 5 to 18 March 1993 and should encompass, in addition to the Vukovar area, Belgrade, Zagreb, and other places in Croatia which the mission would find it appropriate to visit. The Commission further agreed to authorize the Rapporteur on On-Site Investigations to oversee the work of Physicians for Human Rights and the conduct of the mission in general and to act as representative of the Commission with UNPROFOR and any other authorities he might find appropriate and desirable to contact.

Mr. Bassiouni indicated that if the financing of the travel and subsistence costs of investigators other than the members of the Commission posed a problem to the Secretariat, private foundations might be canvassed; the account of the International Human Rights Law Institute at DePaul University could be used as a conduit for additional funding. ||

The Chairman said that he had suggested to members of the Office of Legal Affairs that Mr. Fenrick, in his capacity as Rapporteur on On-Site Investigations, be permanently posted in Geneva to direct operations and conduct missions to the area. The Commission would be kept informed of developments in this respect.

Establishment of a trust fund (6)

The Secretary mentioned that the draft guidelines prepared by the Office of Legal Affairs had been submitted for review to the Office of Financial Services. It would probably be helpful to potential contributors to have some idea of the order of magnitude of the Commission's needs.

Mr Bassiouni concurred.

Mr. Fenrick suggested that the Commission hold informal consultations on the matter.

It was so agreed.

The meeting rose at 5:55 p.m.

COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO
SECURITY COUNCIL RESOLUTION 780 (1992)

FOURTH SESSION (GENEVA, 1-3 MARCH 1993)

Third meeting*

Wednesday 3 March 1993, 10 a.m.

Members present:

Mr. Frits Kalshoven, Chairman
Mr. M. Cherif Bassiouni
Mr. William J. Fenrick
Mr. Torkel Opsahl

Secretariat:

Ms. Jacqueline Dauchy, Secretary
Mr. Julio A. Baez, Assistant Secretary

Establishment of a trust fund (6) (continued)

The Chairman introduced the Note on the resources needed for the conduct of selective in-depth investigations worked out in the course of the informal consultations held the previous day. (attached). In his view this note could usefully be attached to the circular note which would be sent in due course to Member States and organisations.

He then asked if contributions could be made in kind or only in cash and if donors would be allowed to earmark their contributions for a specific purpose.

The Secretary said that she had raised both question with OLA but had received no reply as yet. Even if the answer to the second question were in the affirmative, it might be inadvisable to expressly allow potential donors to restrict the use of their contribution to a specific purpose.

Mr. Opsahl pointed out that the note covered only the short-term objectives of the Commission. Governments should be warned that the calculations had been made without prejudice to the long-term requirements of the Commission.

Mr. Bassiouni suggested that the request to be addressed to Governments specify that the estimates covered the needs of the Commission for the period March-July 1993 and that the Commission reserved to present a long-term programme for the subsequent period.

Mr. Opsahl concurred, adding that Governments should be encouraged to consider the possibility of contributing to the long-term programme even before that programme had been formally put together.

* The meetings of the second day, 2 March 1993, were devoted to informal consultations amongst the Commission Members on the Commission's Projected Plan of Work.

Mr. Fenrick remarked that advance planning was needed not only as regards financing but also for the hiring of personnel and the administrative and logistical arrangements to be made. A case in point was the project on sexual assault which envisaged the recruitment of ten teams of investigators and a group leader. He felt that one member of the Commission, either the Rapporteur on On-Site Investigations or someone else would have to be employed full time on those matters.

Mr. Bassiouni said that in the case referred to by Mr. Fenrick, the group leader could be called upon to identify the investigators, while the Secretariat in Geneva would take care of finding linguistic assistants. Even with such a division of labour, a considerable amount of administrative work would be involved. This was why the last paragraph on p. 10 of the Note provided for an additional 20% to cover planning and preparation costs. He suggested that in order to give potential contributors a sense of urgency, the request for financial help should specify that, once financing had been secured, the priority projects identified by the Commission would still be four months away from completion (two months of preparatory work and two months for actual implementation).

Mr. Opsahl, referring to project No III, said that it might be useful to enlist the help of a person well placed to advise the Commission on the official policies of the countries concerned. The person he had identified to this end would be ready to write a professional essay on the relevant issues for the benefit of the Commission and to do so as a consultant. This effort would have to be coordinated with the Commission's work.

Mr. Bassiouni agreed with the idea of in effect starting project No III in a modest way, at limited costs to the Organization. Once the project was funded, the Commission could build on this modest beginning.

The Chairman said that a step in the same direction had already been taken by asking the BBC to provide the kind of material referred to by Mr. Opsahl.

Mr. Fenrick asked if funds appropriated to the Commission under the UN budget could be re-allocated for purposes other than those for which they were originally intended, for instance for the conduct of small research projects.

The Secretary replied that the relevant financial rules were very strict and that in principle funds had to be used for the purposes for which they had been appropriated.

Mr. Fenrick suggested that the Commission place on record its concern about the financial problems with which it was repeatedly confronted.

The Chairman agreed that the financial rules seemed to have the effect of slowing down the progress of work.

Mr. Bassiouni said that the United Nations bureaucracy should not be suspected of deliberately attempting to act as a brake on the Commission's activities. The difficulty rather stemmed from the Security Council's decision to use existing resources to cover the Commission's needs at a time when the Organization was on a cost-cutting campaign. He added that by UN standards the establishment of a trust fund was proceeding at a fairly fast speed.

Relationship of the Commission and the teams working under its supervision with the media (7)

The Chairman described the procedure devised by the Secretariat to allow television networks to use videotapes made by the PHR team (see the letter to Yorkshire Television attached).

He then drew attention to the attached letter from ITN, requesting exclusivity for the filming of Phase II of the investigation into the Ovcar Mass Grave.

Mr. Fenrick said that he had discussed the matter with Mr. Stover, from PHR, who had remarked that while it was not possible to prevent television crews from filming the exhumation from a distance, it would be necessary to draw a perimeter some distance away, in order to avoid undue interference. Some guidelines could be drawn in this respect.

Mr. Opsahl doubted whether ITN's request should be granted. It was probably motivated by the desire for profit and oriented toward entertainment rather than information. He detected in the letter an attempt at placing the Commission before a fait accompli, which prompted him to react even more negatively to its content.

Mr. Bassiouni recalled that he had chaired the US Department of Justice Task Force on Television and the Mass Media, which had developed guidelines for media coverage of terrorism events (on security of evidence, right to privacy of individuals, threats to the life of hostages, etc.). Possible techniques consisted in drawing a large perimeter to avoid undue interference or asking reporters to designate one or two among them to act as their representatives and gather information on their behalf. A balance had to be struck between, on the one hand, the usefulness of having some media coverage in order to re-inforce the security of the investigators and, on the other hand, the need to protect the investigators from undue interference. Other elements to be taken into consideration included the right to privacy and evidentiary concerns.

He further suggested that the video material produced on behalf of the Commission should clearly indicate that the material was property of the UN by way of a copyright notice.

Mr. Fenrick stressed that copyright problems were unlikely to arise in practice since investigators would not normally use videotapes for purposes other than those of the investigation.

Mr. Opsahl said that in dealing with the question of its relations with the media, the Commission should always be aware of the quasi judicial nature of its functions. It had to insist that no information obtained through its own investigations be disclosed without its prior consent, even if it thereby exposed itself to being accused of practising censorship.

Mr. Fenrick said that he was less and less attracted to the idea of having media teams involved in the investigations which the Commission was contemplating.

Mr. Bassiouni suggested that the request of ITN be brought to the attention of the United Nations Public Information Service.

It was so agreed.

The meeting was briefly suspended.

The Secretary said that she had contacted the Director of the Information Service in Geneva who had indicated first that the UN sometimes selected a specific TV network to cover specific events (for instance TF1 had, under a contract with the UN, covered the recent trip of the Secretary-General to Sarajevo); second that the UN itself might be interested in covering Phase II of the investigation into the Ovcarica mass grave and third that the Croatian authorities might object to a foreign TV channel being granted exclusive rights for the filming of an event taking place in Croatian territory. The Director of the Information Service had expressed readiness to raise the problem with the Public Information Office at Headquarters. Once a decision had been arrived at, ITN would be informed accordingly.

Mr. Fenrick, referring to the CBC request (attached), indicated that he would inform CBC of the constraints which any coverage of the Canadian team's investigations would have to be subjected to in order not to interfere with the investigatory work nor impose undue burden on the United Nations.

The meeting rose at 12.30 p.m.

COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO
SECURITY COUNCIL RESOLUTION 780 (1992)

FOURTH SESSION (GENEVA, 1-3 MARCH 1993)

Fourth meeting

Wednesday 3 March 1993, 2.30 p.m.

Members present:

Mr. Frits Kalshoven, Chairman
Mr. M. Cherif Bassiouni
Mr. William J. Fenrick
Mr. Torkel Opsahl

Secretariat:

Ms. Jacqueline Dauchy, Secretary
Mr. Julio A. Baez, Assistant Secretary

Adoption of a press release on the Commission's fourth session (8)

The Commission adopted the draft press release prepared by the Secretariat in a slightly amended form (see attached).

As regards the paragraph concerning the dates of the next session, the Commission noted with regret that Mr. Mbaye would probably not be able to participate in the April session.

Dates of future sessions (9)

The Commission agreed on the following calendar of meetings:

Fifth session: 22-23 April

Sixth session: 24-25 May

Seventh session: 21-22 June

Other business (10)

The Commission agreed to send to the Office of Legal Affairs the attached note on the applicable law worked out the previous day in the course of informal consultations.

The meeting rose at 2.45 p.m.