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Commission of Experts Meeting Minutes Session 5

M. Cherif Bassiouni 1937-2017

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Commission of Experts Established Pursuant
to Security Council Resolution 780 (1992)

Fifth Session
(24-25 May 1993)

Provisional Agenda

1. Minutes of the Fourth Session
(File 1)
2. Information on changes in the Secretariat
3. Report on the Mission to the former Yugoslavia
(File 2: - Press Release
- Report)
4. Report by Mr. Fenrick on his Mission to Knin and Dubrovnik
5. Investigation of the Ovchara mass grave and other mass grave sites
(File 3: - Comments, dated 11 May 1993, on Canadian War
Crimes Investigation Team Reconnaissance Trip)
 - (a) Sending of an exploratory mission to Croatia and Belgrade, consisting of Mr. Fenrick, 2 representatives of PHR and 2 Canadian officials
 - (b) Phases II and III of the Ovchara mass grave investigation
 - (c) Other mass graves investigations
6. Report by Mr. Bassiouni on the Database and Data-gathering
(File 4: - March progress report
- Memorandum dated 10 May 1993)
7. Selective in-depth investigations
(File 5: - Revised note on the resources needed for the
conduct of selective in-depth investigations)
 - (a) Identification of camps or detention centres in Bosnia and Herzegovina where on-site investigations are to be carried out

(b) Study of the most effective way to approach the problems of systematic sexual assault and "ethnic cleansing"

(c) Method for selection of personnel for investigative teams

8. Trust Fund

(File 6: - Press Release and other documents re the Trust Fund)

9. Relationship of the Commission, Commission Members and the teams working under its supervision with the media

(File 7: - Memorandum dated 1 April 1993 from the Director, Information Service, to the Assistant Secretary-General for Public Information)

10. Exchange of views on the Report of the Secretary-General on the establishment of an ad hoc international tribunal

(File 8)

11. Discussion on the possibility of a Commission Report to the Secretary-General by the end of July

12. Adoption of a Press Release on the Commission's Fifth Session

13. Dates of Future Sessions*

14. Other Business

*Sixth Session has been preliminarily scheduled for 21 and 22 June. However, there is a possibility of obtaining interpretation services for that Session if it is rescheduled for 23-24 June 1993.

APPROVED

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

FIFTH SESSION (GENEVA, 24-25 MAY 1993)

First meeting

Monday, 24 May 1993, 10.00 a.m.

Members present:

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

Secretariat staff present:

Mr. Ralph Zacklin, Deputy Legal Counsel
Mr. Vladimir S. Kotliar, Secretary
Mrs. Bruna Molina-Abram, Deputy Secretary
Mr. Julio A. Baez, Assistant Secretary

Others present:

LT-Col Ton Kempenaars, Personal Assistant to the Chairman
Mr. Morten Bergsmo, Personal Assistant to Professor Opsahl

1. Before considering the provisional agenda for the Fifth Session, the Chairman called the attention of the Commission of Experts to the possibility of allowing two personal assistants one to Mr. Opsahl, Mr. Bergsmo, and the other to the Chairman, LT-Col Kempenaars - to attend the sessions of the Commission. It was decided that the assistants would be permitted to attend the sessions of the Commission as the duties envisaged for them are directly linked to the assistance they provide to Mr. Opsahl and the Chairman, respectively.

PROVISIONAL AGENDA AND MINUTES OF THE FOURTH SESSION

2. The provisional agenda for the Fifth Session (attached) was adopted.

3. The Commission of Experts took note of the minutes of the Fourth Session prepared by the Secretariat. In this regard, Mr. Opsahl requested that the informal discussions by the Commissioners on the projected plan of work of the Commission during the entire second day of meetings during the Fourth Session be reflected in the minutes. It was so decided.

CHANGES IN THE SECRETARIAT

4. The Commission of Experts was informed by the Chairman of the following changes in the Secretariat:

Mr. Vladimir S. Kotliar has replaced Mrs. Jacqueline Dauchy as Secretary of the Commission of Experts;

Mrs. Bruna Molina-Abram was appointed Deputy Secretary of the Commission (Transfer from the Centre for Human Rights to the Office of Legal Affairs as of 1 July 1993); and

Mr. Julio A. Baez continues his functions as Assistant Secretary of the Commission.

5. Speaking on additional support staff for the Secretariat, Mr. Ralph Zacklin indicated that in view of the Commission's future work programme, Headquarters is in the process of assessing the needs of the Commission to further strengthen its Secretariat by appointing an Administrative Officer in Geneva.

Mr. Bassiouni, in turn, expressed his gratitude to the previous Secretary of the Commission, Mrs. Jacqueline Dauchy, for her assistance. He proposed that she be invited to the next meeting so that all the members could personally express their appreciation. It was so decided.

REPORT ON THE MISSION TO THE FORMER YUGOSLAVIA

6. The Chairman drew the attention of the members of the Commission to the press release and draft report on the mission for consideration and comments.

7. Mr. Opsahl mentioned the references to UNPROFOR in the report and enquired if the Commission had now come to an agreement with UNPROFOR for receipt of information.

8. Mr. Fenrick stated that good relations had been established with UNPROFOR and commented on the distinction of functions between UNPROFOR and the Commission. He was, however, of the opinion that communication between the two remains a problem and noted that there was no liaison officer that could facilitate this.

9. Mr. Mbaye called attention to the part of the report which mentioned that Messrs. Bassiouni and Fenrick had interviewed two young women who had been raped and requested information on the outcome of the interviews.

10. Mr. Fenrick stated that no further information could be given in this regard as he had no in-depth witness statements or detailed notes. He had heard the statements from the alleged rape victims in an accidental manner - while visiting Sarajevo with Mr. Bassiouni- and not for the purpose of taking a formal statement to be conveyed to the Commission for information

purposes.

11. Mr. Bassiouni stated that although the report drafted by Mr. Baez is an excellent one, it does not give a feeling for certain matters. He said that a case in point was the matter of the number of victims of rape. It appeared from his discussions in Sarajevo that the figure of rape victims had been inflated purposefully.

12. Mr. Mbaye thanked Mr. Bassiouni for the information he presented. However, he disagreed with Mr. Fenrick and stated that the mission did not go to the territory of the former Yugoslavia just by chance. As an Expert of the Commission, Mr. Fenrick should have communicated the impressions and details of such interviews and his failure to relay this matter to the Commission was a unique opportunity lost as the young women were apparently victims of a war crime.

13. The Chairman stated that the respective authorities in each of the capitals of the former Yugoslavia had been informed before-hand of the nature of the visit of the Commission. The visit was not for fact-finding but, rather, to establish contacts with authorities, specially for future on-site investigations.

14. Mr. Fenrick emphasized that the nature of his trip was, essentially exploratory and not fact-finding. He stated as an example that the mission to Knin and Dubrovnik was not designed to hear witnesses. However, he will endeavour in the future to include in his mission reports impressions and other details although they may be ancillary to the main task of his missions, which have been thus far exploratory and not for fact-finding purposes.

15. Mr. Bassiouni stated that although the visit was not fact-finding in nature, they had, nevertheless, heard witnesses. He highlighted the interview with the women in charge of the rape centre. The ladies provided detailed accounts on 8 muslim girls - between the ages of 11 and 17 - who had been raped by local militia and were detained to be traded-off at a later date as hostages. He also stated that the local hospital had been bombed 56 times - an occurrence that created panic, specially in the operating rooms. In addition, in the city, the cultural buildings, Catholic churches, mosques and the Olympic Stadium had been repeatedly shelled. The field of the Olympic Stadium had been converted into a cemetery.

16. Mr. Zacklin stressed the need for recording all aspects of a given mission whether the mission was merely exploratory or for fact-finding purposes. He thanked Mr. Bassiouni for his account of the details of the mission.

17. Mr. Fenrick was of the opinion that personal feelings were impressionistic and could not be considered serious legal work. The interviews in Sarajevo were not intended to be compilations of potentially usable evidence.

18. Mr. Opsahl agreed that fact-finding was not the mission's main aim as he recalled from its planning stage. He also stated that the Commission was to organize fact-finding missions in the future.

19. The Chairman stressed that the purpose of the visit was not fact-finding; thus the members only came back with impressions.

20. Mr. Bassiouni remarked that, in specific instances, impressions could become important. He stated that it is true that impressions are not evidence, but they are not entirely devoid of relevance.

21. Mr. Mbaye simply referred to the rules of procedure adopted by the Commission of Experts to the effect that all information related to grave breaches of the Geneva Conventions and other violations of international humanitarian law at the disposal of the Commission should be transmitted to the Secretary-General. It was extremely useful to learn that mosques and catholic churches had been systematically destroyed and that two of his colleagues had been witness to this destruction.

22. The Chairman stated that in view of the discussion, the Secretariat would complete the report by adding some concluding remarks on the impressions of the members of the Commission during their mission.

The report was provisionally adopted.

REPORT ON THE MISSION TO KNIN AND DUBROVNIK

23. Mr. Fenrick informed the Commission of his visits to Knin and Dubrovnik. He said that the objective of the visit to Knin was to obtain permission from the Serbian Republic of Krajina authorities to conduct the mass grave exhumation at Ovcar near Vukovar (Sector East) and establish a working relationship with the local authorities. It was expected that by 15 June, the permission for the exhumation of Ovcar would be sent to the Commission. He stated that Zadar had been mentioned by the Knin authorities as a mass grave site that would merit the attention of the Commission. He mentioned that he had given a press conference to clarify certain points related to what constituted a war crime. As for Dubrovnik, he stated that Dubrovnik was not a good place for an on-site investigation as witnesses had moved from the area. Regarding the destruction of cultural property, since UNESCO and the Council of Europe had carried out studies on the destruction of cultural property, perhaps 1 or 2 lawyers could be sent to Dubrovnik to write a report on the battle of Dubrovnik.

24. The Chairman enquired as to whom would the permission to dig at Ovcar be addressed.

25. Mr. Fenrick replied that the written permission would be addressed to the Commission through Civil Affairs, UNPROFOR, Knin, and would be forthcoming by early June to the Secretariat.

26. Mr. Bassiouni expressed scepticism on the verbal assurances from Zagreb to permit the dig in Sector West. In this connexion, he noted that only verbal assurances had been given to Mr. Fenrick about the dig in Sector East.

27. The Chairman informed the Commission that the particular site in Sector West had not been disclosed to the authorities in Zagreb. What the Commission has received was an agreement, in principle, to exhume a mass grave in Sector West and that bodies will be transported to facilities within Croatia.

28. Mr. Bassiouni stated, for the record, that caution should be exercised with respect to verbal assurances in case the authorities changed their minds at a later stage.

29. The Chairman said that it should be assumed that permission had been given as of the day that the assurances had been made to the Commission, subject of course to whatever changes that might be made by the authorities.

30. Mr. Bassiouni, speaking of the investigations to be carried out, stated that the guiding principle that should be adopted should be one of balance as the Commission moved into the implementation stage of its work. Also, it might be useful to de-emphasize the high level of legality with these investigations as the details required of the Commission were not be as strict as those required of a prosecutor. In addition, he stated that he agreed with Mr. Fenrick that the Dubrovnik project on the destruction of cultural property should not be pursued.

INVESTIGATION OF THE OVCARA MASS GRAVE AND OTHER MASS GRAVE SITES

31. The Chairman drew the attention of the Commission to the next phase of the investigation into the Ovcara mass grave. He said in this regard that he had held consultations with "Physicians for Human Rights" (PHR) in order to ascertain their availability and plan for the exhumation. It appeared that the exhumation could take place around late August or early September, together with the study of the Vukovar battle. The Chairman further informed the Commission that proper logistic support and equipment would be required as this would be a major operation. This would also apply to the Sector West mass grave exhumation. It would probably take four weeks to complete the exercise although not all the bodies would be exhumed - just 20 or 25, enough to establish the identity of the victims and a link with the Vukovar Hospital patients.

32. Mr. Fenrick in this connexion said that the following would be required for the exhumation of one mass grave: a "PHR" team, approval from the local authorities, a combat engineering unit and a small investigative team to work on the related atrocities and battle in the area. Thus far, the only investigative team that the Commission had was the Canadian team. However, a second investigative team would be required in order to investigate a second mass grave.

33. The Chairman said that it would have to be ascertained whether a reduction in the size of the operation would still necessitate a combat engineering unit. He also added that the US Government had been requested to provide a combat engineering unit. But, the US Government has refused to let its troops get involved. However, other Governments could be approached in this respect. The Russian Federation might support the project but they do not have the required funds. Denmark has also volunteered to help.

34. Mr. Fenrick mentioned that the Chairman's Personal Assistant, LT-Col Kempenaars, a military lawyer, might enquire with the Dutch Military about the requisite size of the combat engineering unit and the equipment that would be required for such an operation.

35. Mr. Opsahl, referring to the scope of the exhumation, mentioned that it would not be necessary to identify all the bodies as the Commission never intended to do so. However, it was the Commission's duty to establish responsibility for the atrocity.

36. The Chairman said that PHR has the money for the Ovcara exhumation. He added that they could probably obtain funds for a second exhumation and are prepared to carry out another exhumation apart from Ovcara.

37. As regards another mass grave exhumation, Mr. Fenrick reiterated the point that he had been told by the Knin authorities of a mass grave site near Zadar. But he did not have any details as yet. In any event, he thought that such a site would be a reasonable quid pro quod for the Ovcara mass grave. He also said that at this stage, he would not be willing to give up the planned investigation of the other mass grave site in Sector West and instead proceed with the mass grave near Zadar since the Commission did not have any tangible information on the latter mass grave site.

The meeting rose at 12.45 p.m.

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

FIFTH SESSION (GENEVA, 24-25 MAY 1993)

Second meeting

Monday, 24 May 1993, 3.00 p.m.

Members present:

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

Secretariat staff present:

Mr. Ralph Zacklin, Deputy Legal Counsel
Mr. Vladimir S. Kotliar, Secretary
Mrs. Bruna Molina-Abram, Deputy Secretary
Mr. Julio A. Baez, Assistant Secretary

Others:

LT-Col Ton Kempenaars, Personal Assistant to the Chairman
Mr. Morten Bergsmo, Personal Assistant to Professor Opsahl

INVESTIGATION OF THE OVCARA MASS GRAVE AND OTHER MASS GRAVE SITES

1. Mr. Opsahl said that with respect to getting a Norwegian team to join the investigation at Ovcara in September, he would pursue the matter with the authorities in Norway.
2. The Chairman enquired if the scale of the operation at Ovcara and Sector West were to be reduced, whether PHR would be in a position to advance the date of commencement of the operation. He would seek a reply from PHR.
3. Mr. Fenrick indicated that it is not PHR which poses difficulties but rather the fact that the Commission does not have the supporting resources.
4. The Chairman announced that the United States will make available US\$ 500,000.00 to the Commission for its work.

5. Mr. Fenrick proposed that an investigation be carried out of the Ahmici and Vitez battle. In addition, he suggested that it may be possible to use Sarajevo for a pilot study on sexual assault and a law of war battle study. He did not feel that the Dubrovnik investigation should proceed with the Canadian team, which is designed to do criminal investigations. It was agreed that the Canadian team should proceed with the investigations of the battle at Ahmići and Vitez.

6. Mr. Fenrick in this connexion said that the Cooperation Service Agreement with Canada should be concluded as soon as possible so that the Canadian team could leave by mid-June. He also suggested that a lawyer from Mr. Bassiouni's collaborators and a lawyer from Norway should accompany the team on the mission to Ahmici and Vitez.

7. The Chairman stated that Sarajevo mission should not be done, together with the Ahmici and Vitez investigations. On the issue of Dubrovnik, the Chairman said that the case should be placed under the chapter of scholarly studies. Other reports on this event, including the information collected by UNESCO, should be the leading sources for its preparation.

8. Mr. Fenrick observed that the on-site investigation planned for the near future will require financial support and assistance from UNPROFOR. Also, a letter from the Chairman to the Canadian Ambassador would, therefore, be needed to secure the Canadian team for the Ahmici and Vitez on-site investigations, subject to the Cooperation Service Agreement being concluded. He also asked that the United Nations do a costing of the Ahmici-Vitez project, which is to be funded from the Canadian contribution to the Trust Fund. He also enquired how long it would take to obtain the necessary funds from the Trust Fund.

9. Mr. Kotliar mentioned that he was informed by the UN Office of Legal Affairs that to obtain funds from the Trust Fund would take approximately three weeks. However, he asked that a

simplified procedure be worked out that would take less time to recover money from the Trust Fund. He also said that for the project on sexual assault the Secretariat was currently in the process of preparing a list of names of experts, which includes female doctors as well as lawyers with experience in a prosecutor's office.

10. Mr. Bassiouni, stated that as regards sexual assault, he has identified 25 organizations that are actively engaged in sexual assault investigations, for example CARITAS which has volunteers working in the field. The American Jewish Committee has contributed affidavits on sexual assault. He mentioned that information in this regard was readily available as many affected women are willing to talk. However, such information should be studied first before on-site primary investigations are undertaken by the Commission. He mentioned that a lawyer in his team has been made the focal point for sexual assault.

11. The Chairman said that the Mazowiecki Secretariat has recently engaged a consultant for their Zagreb Office to look into the question of sexual assault in the former Yugoslavia.

12. Mr. Bassiouni enquired as to what the Commission's end product should be. He thought that to maximize resources and available time, it may be better to reduce the time spent on on-site investigations and give over-views of the general situation instead of concentrating on details. This would be particularly so if the objective is to use one case as a model for the purpose of adopting a standard methodology. Mr. Bassiouni also suggested that smaller projects, with ad hoc teams, could be envisaged.

13. Mr. Fenrick said that what has to be borne in mind is the limited resources of the Commission.

14. Mr. Mbaye explained that the information on mass sexual assault should be linked with the database and the work being done by Mr. Bassiouni as well as with the person entrusted to

follow-up this issue in order to have more precise information before the Commission.

15. The Chairman asked whether it would be possible for Mr. Bassiouni to provide the Commission with information on all allegations of sexual assault contained in the database. He also wanted to know whether the allegations had been verified in which case some of these cases could be used for analysis. He went on to say that, if the investigation into sexual assault is to be undertaken, it cannot start before July 1993.

16. Mr. Fenrick said that the pilot study on mass sexual assault was designed as an intensive criminal investigation. On the issue of support, he wondered whether payment of per diem and travel to consultants was possible in order to have more people available to the Commission.

17. The Chairman stressed that the purpose for using such consultants should be clarified.

18. Mr. Fenrick stated that his idea was to deploy one lawyer to work on the database and another to support the Rapporteur during the on-site investigation at Ahmici and Vitez.

19. Mr. Zacklin said that this type of arrangement for an independent contractor should not pose any problem as the individuals would enter into a special services agreement with the UN. He also stated that the functions to be performed should be specified.

20. Mr. Fenrick stated that he was very much interested in this type of arrangement for future missions.

21. The Chairman enquired from the Secretary how long it would take to complete the procedure for obtaining the services of an independent contractor.

22. Mr. Kotliar replied that once in possession of the required details concerning the individual, he would inform OLA in New York. He thought that the special services agreement could be finalized in a matter of days.

REPORT ON THE DATABASE AND DATA-GATHERING

23. Mr. Bassiouni, explained the functioning of the database, stating that while printouts of data are not in themselves useful, they are important as a written record for the Commission of all that has been done thus far in Chicago. If the Commission Secretariat sets up a link with Chicago, data could be transmitted to Geneva and, if linked with the INTERNET system, a dialogue could be established. At present, five different computers are operational in Chicago, with four being reserved for data input and one for documentation purposes. Mr. Bassiouni proceeded to explain how the database works, i.e. it is incident-driven, with basically two key components - date of incident and its location. The process of inputting information is extremely time-consuming. The information basically comes from the Commission Secretariat in Geneva and is supplemented from newspaper articles and television footage.

[The members heard two representatives from ICRC, Messrs. Germond and Sassoli, on the views and policies of the ICRC as regards the distribution of information to the Commission. The representatives of ICRC informed the Commission that their organization was unable to provide specific classified information on places of detention in the former Yugoslavia since that would jeopardize their relations with the authorities of the States involved in the conflict as well as compromise their impartiality and relief efforts in future situations. However, ICRC is more than willing to provide to the Commission all information in the public domain.]

The meeting rose at 6.15 p.m.

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

FIFTH SESSION (GENEVA, 24-25 MAY 1993)

Third meeting

Tuesday, 25 May 1993, 9:30 a.m.

Members present:

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

Secretariat staff present:

Mr. Ralph Zacklin, Deputy Legal Counsel
Mr. Vladimir S. Kotliar, Secretary
Mrs. Bruna Molina-Abram, Deputy Secretary
Mr. Julio A. Baez, Assistant Secretary

Others present:

Lt-Col Ton Kempenaars, Personal Assistant to the Chairman
Mr. Morten Bergsmo, Personal Assistant to Professor Opsahl

Selective in-depth investigations and Trust Fund

1. Mr. Zacklin informed the Commission of the draft resolution on the approval of the Secretary-General's Report concerning the establishment of the tribunal, including the annexed statute of the tribunal, that was to be before the Security Council on 25 May in New York, and drew attention to a preambular paragraph in the draft resolution to the effect that "Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274)". As to the interpretation of this preambular paragraph as far as the work of the Commission is concerned, the Office of Legal Affairs concludes that the Security Council considers that the collection of information, i.e. the proposed investigations contained in the Commission's interim report, should proceed with due speed. However, the relationship between the tribunal and the Commission is not specified in the draft resolution. But it is the understanding of the OLA that the Commission is expected to make its conclusions to the Secretary-General probably by the end of 1993.

2. The Chairman thanked Mr. Zacklin for the information on the tribunal. He also added that, in the light of this information, the life-span of the Commission would continue after 31 July and that the Commission's work would have to be speeded up.

3. As to the other matters, Mr. Fenrick stated that he Ahmici and Vitez investigations would commence under his supervision on 20 June until 9 July.

4. The Chairman mentioned that a member of the Secretariat should accompany Mr. Fenrick and the Canadian team on this mission. He therefore proposed Mrs. Molina-Abram, who indicated to him that she would be willing to go on this mission.

5. Mr. Fenrick said in this connexion that some limit should be put on the number of people that are to go on the mission. However, he thought that it would be an advantage to have someone from the Secretariat, such as Mrs. Molina-Abram, accompany him on the mission as that person would be able to liaise with UNPROFOR and the Geneva Commission Secretariat. He went on to enquire about what would the press policy be for the mission. Initially, he wanted press coverage for investigations. However, he is not in favour of having a group of reporters covering a criminal investigation, such as the one at Ahmici and Vitez.

6. Mr. Zacklin added that it is the practice on missions such as the one envisaged to have a member of the Secretariat on the mission since it is necessary to have someone familiar with UN procedures and practices and that person would write-up the mission report, which should only be done by a member of the Secretariat or at least with the assistance of a member of the Secretariat. Lastly, it is for the head of the Secretariat and in the final analysis, the Legal Counsel, to decide who should go on missions of the Commission. The Chairman or the Commission as a whole may suggest or recommend that a specific member of the Secretariat go on a particular mission. But, it is for the head of the substantive office to decide these matters. In this case, there would be no objection to have Mrs. Molina-Abram go on this mission.

7. The Chairman asked Mr. Fenrick about the Sarajevo mission and the rape project and who will conduct and prepare them in view of the Ahmici-Vitez mission.

8. Mr. Fenrick replied by saying that when the Sarajevo mission is conducted he would have no difficulties in doing the rape project. However, that was not the initial intention, which was to interview a small number of women to attempt to develop prima facie cases. In general, he thought that what was needed was less emphasis on criminal investigators and more on lawyers with experience as criminal prosecutors and lawyers with knowledge in the law of armed conflict. If the Sarajevo mission and the rape project were to be done at separate intervals, the Canadian team could be ready, if necessary. But, he suggested that it would be more desirable if another team could be found in order to have other countries involved in the process. He also said that he has been working full time for the Commission for several months. Therefore, he suggested that the Canadian Government be sent a

letter requesting his release in order to continue working as Rapporteur for On-site investigations from Ottawa after 31 July. Otherwise, some of the responsibilities that he has been discharging may have to be reassigned to the Chairman's personal assistant.

9. The Chairman replied by stating that he could not assign those responsibilities to his personal assistant as he is not a member of the Commission. He advised that it was up to the Chairman to make the decision as to the tasks that would be assigned to him.

10. Mr. Opsahl supported by Mr. Bassiouni and Mr. Mbaye proposed that the Commission express its wish that Mr. Fenrick continue to work on Commission matters for a limited period of time after 31 July. It was so decided.

11. The Chairman asked Mr. Opsahl whether he expected Norway to contribute an investigative team to the Commission.

12. Mr. Opsahl said that according to his talks with the Ministry for Foreign Affairs of Norway it would be feasible to provide a team of Norwegians by 1 September. However, financial details would have to be worked out. In any event, the Rapporteur for On-site Investigations should prepare such a team for the mission.

13. Mr. Fenrick in this connexion mentioned that he did not believe that there were any resources available to carry out the Sarajevo investigation by the end of July. He thought that such an investigation could be done by another group, instead of the Canadian team as now composed, with expertise in the law of war.

14. Mr. Bassiouni said that as regards Sarajevo, in two weeks time he would send to the Chairman a report with an analysis of the information in the database on Sarajevo. He said that he has a list of 57 public and private buildings destroyed, with pictures, as well as a list of casualties, which would appear in his report. He thought that from his report a determination as to the scope of the work could be made. Also, the information available from local and municipal authorities of Sarajevo as well as from UNPROFOR could be used for the Sarajevo investigation.

15. The Chairman took due note of Mr. Bassiouni's upcoming report on Sarajevo and mentioned that it would also be useful to have a similar report on Dubrovnik to the extent that the Commission would wish to do an investigation there. He also said that, therefore, Mr. Bassiouni would do the analysis of the available information on Sarajevo and that on that basis Mr. Fenrick could establish a list of the information to be sought from the Sarajevo authorities so that the mission would be fully prepared before going to Sarajevo.

16. Mr. Fenrick added that he thought that it would not be feasible to conduct these investigations before September.

17. Mr. Mbaye stated that, as to on-site investigations, in view of the draft resolution that Mr. Zacklin had just read out, it appeared that the Commission had to complete its work in a relatively short period of time. He, therefore, asked what measures had been envisaged for the purpose of carrying out the projected plan of work as mentioned in the Commission's Interim Report as soon as possible.

18. The Chairman replied that the means to accelerate the work are those that are now coming into the Trust Fund. The resources now available to the Commission are \$ 300,000 Canadian dollars minus 13% (approximately \$ 200,000 US dollars), the US Government will contribute \$ 500,000 US dollars minus 13%, the Norwegian Government had offered \$ 50,000 US dollars minus 13%. A letter from the Secretary-General to the Permanent Missions in New York will be sent shortly requesting contributions and giving the particulars of the Trust Fund.

19. Mr. Opsahl in this connexion stated that in view of the tenor of the draft resolution to the effect that the Commission should proceed on an urgent basis with its plan of work, it is not for the Commission to worry about financial questions.

20. Mr. Mbaye reminded that, according to the needs assessment, the Commission, in order to pursue the investigation into systematic sexual assaults, treatment of prisoners and detainees, "ethnic cleansing" and mass killings and destruction of property, required the sum of \$ 1, 816,700.00 U.S. dollars. He asked if the Commission is sure to have that sum and what is the alternative if it did not dispose of the money.

21. The Chairman replied that the sums deposited thus far into the trust fund are quite modest. But, that is not the entire source of the Commission's funding. It is hoped that it would be possible to find alternative resources for the remainder of the operation. He also thought that if the Commission could not conduct a camp investigation in the field, some of the work on camp analysis, as well as on the other issues mentioned by Mr. Mbaye, compiled by Mr. Bassiouni could be quite useful.

22. Mr. Opsahl stated that the projected plan of work of the Commission should be seen in the wider context of the establishment of the tribunal. He further stated the Commission should not worry about the lack of financial resources as he thought that this was a matter for the United Nations to resolve.

23. Mr. Zacklin in this connexion thought that he should have intervened earlier in the debate. He thought that the entire discussion about the financing of the Commission's projects of investigations is misplaced. The funding of the work of the Commission as all know is based on funds assessed in the regular budget of the United Nations, the Trust Fund and contributions made by other parties, such as Mr. Bassiouni's Institute. These are the resources available to the Commission. What the Commission should decide in keeping with its mandate is what it should do and not how it should be paid for, taking into

consideration that in a resolution that will be adopted today by the Security Council the Commission is requested to continue investigations on an urgent basis. He urged the Commission to leave it up to the Secretariat and the Controller of the United Nations to try to find the money to meet the needs of the Commission.

24. The Chairman thanked Mr. Zacklin for his clarification and said that therefore it is decided that the on-site investigations of Sarajevo and Dubrovnik would be conducted. As for the Ovcar mass grave and the other mass grave site in Sector West, he said that they would take place in September and that they would be down-scaled. He wanted to know, however, from Mr. Fenrick what were the requirements for these investigations in view of their being down-scaled.

25. Mr. Fenrick said that he would approach the Canadian UNPROFOR engineering officer on the assessment of needs for these missions. He also wanted to know if the Commission had decided on the nature of the rape investigation, i.e. a pilot study consisting of interviews of individual victims and an analytical part. Also, he enquired whether an individual had been appointed to coordinate the rape investigation and if that work was to be supervised by the Rapporteur for On-site Investigations.

26. The Chairman replied by saying that, as to the rape pilot study, information has begun to be collected for the hiring of individuals with the approval of the Office of Legal Affairs in New York. Thought also has been given as to how to carry out that investigation because victims of events in the former Yugoslavia are dispersed all throughout the world. The investigation would have to be confined to the victims to be found in the territory of the former Yugoslavia unless the database identifies certain specific victims, which are to be found outside the former Yugoslavia, that the Commission should interview. The rape investigation will be coordinated with UNHCR and the Mazowiecki team in Geneva and Zagreb. As for the special person to oversee the rape investigation, it was initially envisaged that Mrs. Françoise Hampson would fulfil that role. However, it appears that she will not be available for this purpose although she may have time to work on the investigation as a team member. As for the Secretariat person, Mrs. Bruna Molina-Abram has been charged with that task. As for the Rapporteur for this investigation, he asked whether Mr. Fenrick would be willing to do it.

27. Mr. Fenrick replied that if his Government would make him available, he would have no objections to taking on the rape investigation as it is related to his functions as Rapporteur for On-site Investigations. However, it all depends on his being available to the Commission.

28. Mr. Bassiouni stated that the Commission should try to determine the given scope of a mission or project as Mr. Zacklin had suggested. On that basis we could determine whether we need to send as many or less missions as we plan now. He did not

think that the Commission should adopt a "micro approach" by having teams of people who would interview women in the field, as initially envisaged. He preferred a "macro" analysis by looking at what others had done. This way, Mrs. Molina-Abram, as Deputy Secretary, in Geneva can assemble that material and he would provide to her whatever assistance needed. She could then contact these organizations and people with the help of the Secretariat staff. She would do what the lawyer-analyst does for any given case. On the basis of that initial finding, conclusions could be drawn, the Commission would determine whether there exists indeed a systematic pattern of behaviour at all times and in all contexts or if it was limited, or did the pattern develop instantaneously and then spread out or if there are any indications of there being a concerted policy or if it has been executed in different ways which are qualitatively different to conclude that there are rapes done by unruly soldiers or civilians, which has happened in every conflict in the world, or did it occur in the context of confinement or occupation. These observations are extremely valuable and can be undertaken without incurring the cost, risks or the time that it would take to send people to interview victims. Consequently, after this original analysis, people can be sent to the field to interview victims who fall in these different categories for verification purposes of what the Commission discerned as a general pattern of behaviour.

29. The Chairman fully agreed with Mr. Bassiouni. However, he would want to send teams of investigators to the field not for the purpose of determining whether rape occurred but specifically to establish responsibility for it since it is well known that numerous cases of rape have occurred.

30. Mr. Fenrick expressed the view that the Commission should be clear on what type of rape investigation it was to conduct.

31. The Chairman said that a proposal would be elaborated perhaps in writing at a later stage on the rape study for comments.

Report on Database and Data-gathering

32. The Chairman took due note of the confidential printout containing a preliminary analysis of cases. He said that he was impressed with those studies. However, he did not expect that the Chicago team would do such an analysis of every case as it appeared to be time-consuming. He hoped nonetheless to get more of those studies and to perhaps include or annex them to the Commission's end report to the Secretary-General. He concluded by thanking Mr. Bassiouni for his efforts.

33. Mr. Bassiouni said that he would convey the Chairman's appreciation to his staff. He suggested that members of the Commission read the reports so that he may benefit from their comments or observations as two approaches were used in finalizing the different reports, for example, the prison camp reports contain either source information or general references

in the footnotes. The next stage would be to extract from the case reports what would be useful for the final report, such as patterns of behaviour or typology of violations, in general. Thus, the first phase would be the analysis of the information in the database, with the Commission members reviewing it, and the second phase would consist of devoting meetings to understanding the analysis.

34. Mr. Opsahl said that he was very much impressed by the preliminary analysis of some cases. He enquired whether the named individuals would remain named when the documents are no longer confidential.

35. The Chairman said that the Commission might choose not to reveal the names but keep a list of them available.

36. Mr. Mbaye expressed his thanks to Mr. Bassiouni for his work. He thought that the analysis of cases could be annexed to the Commission's report. But he wondered how the credibility of what is mentioned in the different cases could be tested.

37. Mr. Bassiouni replied that the Commission's final report should start with a disclaimer since under resolutions 771 and 780 the Commission is mandated to make its findings of facts and conclusions of law on the basis of the reports received from Governments, inter-governmental and non-governmental organizations as well as from whatever other information obtained or specific investigations undertaken by the Commission. But the Commission cannot make any representations as to the verifiability or actual existence of the information. This is important because the final report of the Commission should not be the subject of any controversy either within the tribunal or by the prosecutor or defence. This is why the more specific the Commission becomes in any given investigation the more the facts are going to be binding and the less the Commission will be able to say that it does not want to be bound by those facts. From the prosecutor's point of view, it would not be desirable to limit the prosecutor, for example, by a finding of facts. Thus, a macro analysis will be much appreciated by all in the end.

38. The Chairman said that there is much merit in what Mr. Bassiouni said.

39. Mr. Mbaye stated that the Commission must decide exactly what its end product should be, as has been mentioned by Mr. Bassiouni. Should the Commission say that a given officer committed a breach of international humanitarian law under the provisions of a given article of a specific convention or should the Commission simply say that the facts if proven constitute without a doubt a breach under a particular article of a given international treaty. But in practice there is no grave breach without a perpetrator. He asked therefore, if as mentioned by Mr. Opsahl, the Commission would be impeded from indicating that from the information at its disposal a given individual or group has been named. It would be up to the prosecutor then to use that invaluable information provided by the Commission and for

the tribunal to establish the evidence as to the facts and as to the culpability of an individual or group.

40. The Chairman said that the matter is of extreme importance and the Commission should decide this question at some point.

The meeting rose at 12.30 p.m.

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

FIFTH SESSION (GENEVA, 24-25 MAY 1993)

Fourth meeting

Tuesday, 25 May 1993, 2.45 p.m.

Members present:

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

Secretariat staff present:

Mr. Ralph Zacklin, Deputy Legal Counsel
Mr. Vladimir S. Kotliar, Secretary
Mrs. Bruna Molina-Abram, Deputy Secretary
Mr. Julio A. Baez, Assistant Secretary

Others:

LT-Col Ton Kempenaars, Personal Assistant to the Chairman
Mr. Morten Bergsmo, Personal Assistant to Professor Opsahl
Ms. Jacqueline Dauchy (only for a portion of the meeting,
as indicated below)

1. The Chairman welcomed Ms. Jacqueline Dauchy to the meeting and expressed his extreme gratefulness as well as the gratitude of the Commission for the work that she had done for the Commission in circumstances that were more difficult than they are now in the earlier period of the Commission.

2. Ms. Dauchy expressed her heartfelt thanks although she mentioned that she was just carrying out her duty. She said that one of the nice things of being the Secretary of a group like the Commission is that praise is concentrated on the Secretary when in fact it is owed to other people, including her collaborator, Mr. Julio Baez, who was extremely dedicated during that period. Also, the glory of the members of the Commission reflects on the Secretary as if one is doing everything when in fact the input comes from them. She said that in all sincerity she would keep an extremely happy memory of her association with the Commission.

She knew that it was an important Commission and she was at all times aware of the quality of the members of the Commission. She said that it had been a privilege and honour to work with the Commission. She also thanked Mr. Zacklin, who was instrumental in assigning her to the Commission.

The members applauded.

Relationship of the Commission, Commission Members and teams working under its supervision with the media

3. The Chairman said that as Mr. Fenrick had mentioned earlier it would be undesirable to have a television crew accompany a team on a criminal investigation. The exhumation of the mass grave at Ovcará has brought about competition amongst various television companies wanting exclusive rights. The conclusion has been that for reasons of discretion the UNOG Information Service (United Nations Department of Public Information) would cover the exhumation.

4. Mr. Fenrick said that in view of the limited resources of the Commission it was disconcerting to have the United Nations Department of Public Information have the exclusivity of coverage and use up the Commission's modest budget unless the staff concerned travel on their own funds.

5. The Chairman said that information or pictures of the exhumation at Ovcará should not be released before the conclusion of the exhumation of the other mass grave in Sector West. That is the reason why preference was given to the United Nations. Mr. Fenrick was reminded that he had in March written to a television company stating that the exhumation coverage would be done by the UN. In addition, Mr. Bassiouni told the Belgrade officials that the UN would do the exhumation coverage. Therefore, the Commission has tied its hands.

6. Mr. Fenrick reiterated his point that he was against the UN doing the coverage of the exhumation in view of the Commission modest budgetary resources.

7. The Chairman said that if the Commission could be assured that the private television company would respect the terms of a contract there would be no difficulty.

8. Mr. Fenrick followed-up by stating that it would be useful if the Commission had an idea as to the costs entailed in having the United Nations do the coverage.

9. The Chairman stated that he would like to have a definitive decision on the matter now instead of coming back to it at a later date.

10. Mr. Bassiouni said that he had spoken to Lord Owen, who was not very pleased to learn that the exhumation at Ovcarica has been postponed until September. He thought that by September the judges to the ad hoc international tribunal would most probably be elected. It is in the best interest of the Commission to accomplish these investigations on a down-scaled level (20 bodies) as early as possible. The relevance of the Commission to the tribunal and to the prosecutor will be more important if the Commission were to have already begun the exhumation in order to have the Commission continue its work instead of doing something new in September when the tribunal machinery will already be in place.

11. The Chairman said that the time-frame for the composition of the tribunal is not necessarily tied to that of the work of the Commission.

12. Mr. Fenrick expressed his concern for the acceleration of the Ovcarica mass grave exhumation since only limited human resources were available. But, he admitted that he did not know what the scaling down of the operation would entail vis-à-vis the resources that would be required. The mass grave exhumation would require criminal investigators and since the Canadian criminal investigators would be doing the Amici and Vitez criminal investigation, they would not be available for the

operation at Ovcara before September.

13. Mr. Zacklin added that he was unable to speculate on the date of the coming into operation of the tribunal. He therefore cautioned against relying on a presumed date for the establishment of the tribunal and preferred to leave it out of the picture in planning the operations of the Commission.

14. The Chairman said that the Commission failed to undertake the exhumation in late winter/early spring 1993 for various logistical reasons. Physicians for Human Rights and Mr. Fenrick have suggested to do a down-scaled exhumation in September. Therefore, as they will be responsible for the exhumation, the Commission should abide by that decision. As for the cost of the UN doing the coverage of the operation, it will be investigated.

15. Mr. Opsahl said that the Commission should leave the question of the cost of having the UN do the coverage of the Ovcara exhumation for future examination.

16. The Chairman was in agreement and added that if it appeared that the cost of having the UN do the coverage was very high, the Commission might have to resort to ITN.

17. Mr. Mbaye said that if the Commission did not take into consideration the draft resolution on the establishment of the tribunal, the Commission might not have enough time to fulfil its mandate. On the other hand, he did not see how the Commission would continue to function when a prosecutor would be in place unless the Commission becomes an auxiliary to the prosecutor which is inconceivable. Therefore, the Commission's work would have to be accelerated.

18. The Chairman said that the Commission should count on finishing its work by the end of 1993.

19. Mr. Zacklin said that there are two things being discussed, i.e. the programme of investigations and the timing of the investigations. With regard to timing of the investigations, the Commission should be guided by its mandate and the draft resolution to be adopted on 25 May as it makes specific reference to the Commission by the phrase "to continue on an urgent basis". He understood the point made by Mr. Fenrick who believes that in order to conduct these investigations it is necessary to bring to bear the organizational aspects so that the investigation can be carried out. Mr. Mbaye is completely correct in stating that in the light of the draft resolution there is now some urgency to the work of the Commission. Therefore, all that can be done to speed up the Commission's work should be done. As regards the relationship between the Commission and the tribunal or between the Commission and the future prosecutor, he did not believe that as soon as the prosecutor is named the work of the Commission would cease. Of course, in the long run it is inconceivable that the Commission and the prosecutor would proceed doing essentially the same thing in parallel.

20. The Chairman stated that he considered therefore the question of the timing of the exhumation at Ovcaras as having been decided. He drew attention to the guidelines for matters concerning the media and the Commission in the possession of the members. He expected that all the members would respect them.

21. Mr. Fenrick said that he did not know what the guidelines meant. He recalled that there was a provision in the Rules of Procedure of the Commission which requires essentially the members to act with discretion.

22. The Chairman stated that he did not expect the guidelines to help the members to arrive at concrete decisions in specific circumstances. The gist of the guidelines is clear. The important aspect of the matter is that a strong focus is placed in the UNOG Information Service. In the Secretariat of the Commission, the guidelines work quite well since Mrs. Gastaut of

that Service is the one who speaks to the press for the Commission after consultations with the Chairman and the Secretariat. However, in the field, the members are on their own and basically should be guided by the provision on discretion as regards the media in the Rules of Procedure.

23. Mr. Fenrick spoke regarding the Canadian Broadcasting Corporation which was to follow the Canadian team on an investigation and mentioned that the matter has been overtaken by events since the investigation at Ahmici and Vitez is a criminal investigation and he did not deem it useful to have press coverage. However, he did say that he would probably make a few extremely general remarks in Sarajevo at the UNPROFOR press briefing.

Exchange of views on the Report of the Secretary-General on the Establishment of an ad hoc International Tribunal

24. Mr. Fenrick enquired what was the reason why Protocol I was not listed as one of the grave breach provisions (para. 40 of the Report) since all the parties in the conflict are legally bound by the Protocol. In addition, with regard to crimes against humanity, he was surprised that the discussion indicates what those crimes are and then article 5 of the Statute ignores the qualifications as to what constitutes crimes against humanity and stipulates what are international crimes, such as torture, rape, murder, etc.

25. Mr. Zacklin preferred not to comment on the reasoning behind why the report was written in that manner. He did not think it would be appropriate for him to comment officially, although he would be glad to speak to Mr. Fenrick after the meeting.

Discussion on the possibility of a Commission Report to the Secretary-General by the end of July

26. The Chairman said that one of the members had requested that this item be placed on the agenda. He wanted to know whether the Commission wanted a second interim report.

27. Mr. Bassiouni did not think it would be advisable to have a second interim report in July and he did not think it would be advisable either to transmit to the Secretary-General reports of specific missions or investigations. He personally felt that it would be more useful to have a final report at a later stage.

28. Mr. Opsahl thought that it would be natural to have a second interim report indicating the Commission's efforts during the last half year, including the good and the bad experiences.

29. Mr. Fenrick stated that he would favour a second interim report. He also thought that reports on on-site investigations should be disseminated broadly, together with the analytical studies that have been produced and will be produced by Mr. Bassiouni. They are both innovations in the area of law and it is worth telling people how well the Commission is doing and how it is working.

30. Mr. Mbaye favoured also the submission of a second interim report to the Secretary-General. He was also of the opinion that the on-site investigation report that would be adopted by the Commission after Mr. Fenrick's mission to Ahmici and Vitez should also be included in the second interim report, together with the analytical reports being done in Chicago by Mr. Bassiouni.

31. The Chairman said that he was also in favour of a second interim report to the Secretary-General by the end of July. Such a report should not develop further the legal arguments of the Commission. The report should contain two annexes, one would be the full report of the Ahmici and Vitez on-site investigation, the other, the declassified analytical report by Mr. Bassiouni, with the comments of the members. It was so decided.

Press Release

32. It was decided that the Secretariat would prepare the usual press release on the session

Dates of future sessions

33. It was decided that the next Sixth Session of the Commission would be on 13 and 14 July 1993.

Other business

34. Mr. Opsahl and Mr. Mbaye expressed the wish to have session documents sent to them in advance of each session to better prepare for the sessions.

The meeting rose at 5.00 p.m.