

7-13-1993

## Commission of Experts Meeting Minutes Session 6

M. Cherif Bassiouni 1937-2017

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

Sixth Session  
(13-14 July 1993)

Provisional Agenda

1. Minutes of the Fifth Session (File to Agenda item 1)
2. Report by Mr. Fenrick on his Mission to Sarajevo  
(File to Agenda item 2: - "Study of Sarajevo Battle and  
Siege"<sup>1</sup>  
- Report)
3. Programme of work of the Commission for August-September  
1993:
  - a) Investigation of the Ovcara mass grave and other  
mass grave sites  
[To be presented by Mr. Fenrick]
    - (i) Phases II and III of the Ovcara mass  
grave investigation
    - (ii) Other investigations of mass graves
  - b) Selective in-depth investigations  
[To be presented by Messrs. Bassiouni and Fenrick]
    - (i) Identification of camps or detention  
centres in Bosnia and Herzegovina: to  
be made the subject of further study,  
including methodology
    - (ii) Study of the most effective way to  
approach the problems of systematic  
sexual assault, "ethnic cleansing" and  
destruction of cultural property
4. Report by the Chairman on his Mission to United Nations  
Headquarters and to the IHRLI (database site) in Chicago
5. Report by Mr. Bassiouni on the Database and Data-gathering

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<sup>1</sup> (Owing to their size, it was not possible to reproduce  
the four missing maps. However, they may be consulted at the  
Secretariat.)

6. Discussion of the structure of a Second Interim Commission Report to the Secretary-General by the end of July  
(File to Agenda item 6: - Working Paper)
7. Adoption of a Press Release on the Commission's Sixth Session
8. Dates of Future Sessions
9. Other Business

- For information:
- Amended Minutes of the Fourth Session
  - Revised Report on the Mission to the Capitals of the Former Yugoslavia
  - Report by Mr. Fenrick on his Mission to Knin and Dubrovnik
  - Letter to the Permanent Representative of Canada to UNOG
  - Letter to Mr. Bassiouni
  - Index to File No XI (up to date as of 30 June 1993)

APPROVED

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

SIXTH SESSION (GENEVA, 13-14 July 1993)

First Meeting

Tuesday, 13 July 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. Vladimir S. Kotliar, Secretary  
Mrs. Bruna Molina-Abram, Legal Officer/Deputy Secretary  
Mr. Julio A. Baez, Legal Officer/Assistant Secretary

Others present:

Lt-Col. Antonius Kempenaars, Personal Assistant to the  
Chairman

Mr. Morten Bergsmo, Personal Assistant to Mr. Opsahl

The Chairman opened the meeting.

The Provisional Agenda was adopted. A copy of the said agenda  
is attached herewith.

1. Minutes of the Fifth Session

Mr. Fenrick asked whether the additional comments of Mr.  
Bassiouni were going to be incorporated in the Report on the  
Mission to the capitals of the former Yugoslavia.

The Chairman replied that they were not going to be  
incorporated as such owing to their length. He said that the  
Secretariat would ensure that one or two paragraphs from Mr.  
Bassiouni's comments reflecting the basics would be added to the  
Mission Report.

2. Report by Mr. Fenrick on his mission to Sarajevo

(Mr. Fenrick gave the other members an outline of his oral report and sample statements on rape that he found in the files of the Bosnia and Herzegovina State War Crimes Commission. The names of the persons concerned were blocked out on the statements.)

Mr. Fenrick mentioned that this was the first on-site investigation of the Commission. The mission to Ahmici-Vitez, which had been initially approved by the Commission at its Fifth Session, was not carried out for a variety of reasons. Therefore, the mission changed on short notice and on 11 June it was decided to go instead to Sarajevo. He thanked everyone who made the mission possible, including the Secretariat staff. Mr. Fenrick felt that he learned several lessons from this investigative mission which would be useful for future missions in order to minimize problems. Mr. Fenrick then proceeded to recount a number of issues that came up during the preparatory stage as well as during the mission. He underscored the fact that there is a real threat from snipers and artillery in Sarajevo and thus the movement of the participants in the mission was restricted by UNPROFOR, which was responsible for the security of the team. In this connexion, Mr. Fenrick mentioned that for any of the on-site investigations in Bosnia and Herzegovina, Croatia, UNPA, Pink Zones or Blue Zones all participants must have adequate insurance coverage for acts of war, death, medical care and long term disability. Mr. Fenrick also mentioned that he could not take photographs during the mission and therefore the team did not obtain any photographic evidence owing mainly to the security concerns of UNPROFOR. He said that he would prepare an analytical legal study on the mission to Sarajevo. In addition, he thanked Lieut-Col. Carter and Mrs Molina-Abram, Deputy Secretary of the Commission, for their invaluable assistance throughout the mission.

Mrs. Molina-Abram concurred with Mr. Fenrick in that the investigatory mission was carried out in a war zone. She mentioned that for future missions it would be extremely useful if the Secretariat could be provided with a mission plan by the mission leader. This will be an invaluable tool in the preparation of the mission by the Secretariat and in liaising with UNPROFOR and other counterparts in the field.

The Chairman thanked Mr. Fenrick and Mrs. Molina-Abram on their comments on the mission. He also said that thank you letters would be sent to the Canadian Minister of National Defence and the Canadian Secretary of State for External Affairs.

Mr. Bassiouni extended the collective appreciation of the members to Mr. Fenrick and Mrs. Molina-Abram for having undertaken the mission. He also stated that at this stage of the work the Commission would have to draw on all its resources to integrate skills and produce ultimately a final product. Therefore, he felt that it was indispensable to build on, add to and complement each other's work in a team spirit.

The Chairman sought clarification from Mr. Fenrick on the question of earlier incidents, for example the bread-line incident, in the territory of the former Yugoslavia and asked whether such earlier incidents could still be verified by on-site investigations.

Mr. Fenrick stated that the bread-line incident occurred one year ago before the Bosnia and Herzegovina Command had been established and that it was easier to gather information on more recent incidents. As regards Mr. Bassiouni's comments, Mr. Fenrick agreed that there should be a certain degree of complementarity. Although he did not know how it should be achieved.

Mr. Mbaye congratulated Mr. Fenrick and Mrs. Molina-Abram for their work on the mission. He added that the on-site investigations should complement and not contradict the work being done on the database in Chicago as they are both two forms of investigations having their intrinsic value and are in line with the mandate given to the Commission by the Security Council. He also mentioned that it was important to insist on the fact that the destruction of cultural property as well as the attacks on civilians are deliberate and not haphazard in nature. But this must be proven. In addition, it is important to communicate to States and international organizations that their contributions are important and appreciated by the Commission as a way of encouraging others to do the same. As regards command responsibility, he felt that if orders are given to subordinates it could be concluded that responsibility exists for the carrying out of such orders.

The Chairman questioned Mr. Fenrick on the sniper issue and the conclusion that attacks on civilians are deliberate, as was the case of having targeted the National Library of Sarajevo.

Mr. Fenrick replied that there was no doubt in his mind that the shelling of the National Library was a deliberate attack on civilians as 26 projectiles hit the building in a 24-hour period and set it afire. There were no military targets in the immediate area and the projectiles were fired from close range. As regards the soccer game incident, there were two mortar bombs. The perpetrators could obviously discern that they were shooting at a soccer game. The police report did not arrive at this conclusion. However, he felt that it was a deliberate act and therefore a war crime. But he would need more evidence to substantiate his conclusion.

The Chairman announced that the Norwegian Government had written to him to inform him that they would provide a team to the Commission for on-site investigations.

Mr. Bassiouni mentioned that it was interesting to note the increase in the number of shelling in Sarajevo in relation to the particular political events, such as on-going negotiations. He added that it was doubtful that such shelling was done at random over a 15-month period. Therefore, it would be impossible for a tactical commander or area commander not to have known over a period of 15 months what was occurring in the light of all the casualties and destruction. He thought that if the Commission would focus on 5 to 6 incidents with more specific details to arrive at the conclusion as to the knowledge of the commander and the imputation of knowledge, it could result in an inference or conclusion on responsibility.

The Chairman stated that this confirmed to him the need for co-operation between the two Rapporteurs as well as the importance that the final report to the Secretary-General reflect the results of both the database and on-site investigations.

Mr. Opsahl also thanked Mr. Fenrick for his mission. In relation to Mr. Bassiouni's "Draft Sarajevo Battle Study", he was of the opinion that the main task was to integrate this effort with Mr. Fenrick's on-site investigation and to reconsider the Commission's methodology in the study of the fighting and other aspects related to it. He also wondered if there would be other Sarajevo missions.

Mr. Fenrick stated that it was extremely difficult to have worked in a war-time environment. He did not feel however that Sarajevo as a topic had been exhausted. He felt that the rape issue in Sarajevo had been exhausted. But other issues in Sarajevo could be pursued as it is the centre of the fighting.

Mrs. Molina-Abram mentioned that Mr. Stoltenberg as the Special Representative of the Secretary-General for the former Yugoslavia offered his co-operation for future missions of the Commission to the territory of the former Yugoslavia. From now



onwards owing to the recent reorganization, he is the person to be approached in this regard and not UNPROFOR directly.

Mr. Opsahl raised the question of having certain entities present in the territory of the former Yugoslavia liaise directly with the Commission to report events as they occurred.

The Chairman replied that this would have to be investigated further.

Mr. Bassiouni stated that he supported Mr. Fenrick's suggestion for another visit to Sarajevo of a more limited scope with fewer people. He added that a study consisting of three consecutive visits, with 4 or 5 case studies and half a dozen instances of verification would be a comprehensive solid study.

The meeting rose at 12:50 p.m.

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

SIXTH SESSION (GENEVA, 13-14 July 1993)

Second meeting

Tuesday, 13 July 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. Vladimir S. Kotliar, Secretary  
Mrs. Bruna Molina-Abram, Legal Officer/Deputy Secretary  
Mr. Julio A. Baez, Legal Officer/Assistant Secretary

Others present:

Mr. Antonius Kempnaars, Personal Assistant to the  
Chairman

Mr. Morten Bergsmo, Personal Assistant to Mr. Opsahl

2. Report by Mr. Fenrick on his mission to Sarajevo

Mr. Bassiouni said that he had discussed with Mr. Fenrick the possibility of their both going on another mission to Sarajevo, possibly with Mr. Kempnaars. Mr. Fenrick would be the team leader and the purpose of the mission would be to investigate further several cases, such as the bread-line case, the National Library case, the funeral case, etc., to reinforce the study on Sarajevo.

Mr. Fenrick said that he would like to add on Ahmici-Vitez to the Sarajevo trip and that Mr. Kempnaars' participation would be very useful.

The Chairman added that flexibility was necessary if Ahmici-Vitez might not be possible to include in the itinerary. In this connexion, he asked if that were the case whether the Sarajevo mission would still be feasible.

Mr. Fenrick replied by saying that the Sarajevo mission would still be conducted if a visit to Ahmici-Vitez was not possible. He thought that the mission could commence immediately after the Seventh Session of the Commission, at the beginning of September.

The Chairman said that, as regards Mr. Kempenaars' participation in the mission, the matter would have to be discussed with him and others concerned.

Mr. Mbaye sought clarifications on the nature of the mission to Sarajevo, viz. that it would entail going to several places but that it would deal only with the systematic destruction of cultural, religious and historical property and that the objective, therefore, would be limited in scope.

The Chairman replied by saying that destruction of property would be a main focus. But that it would be difficult to separate the destruction of property from attacks on civilian population. This mission would be in completion of the facts that are contained in the database by verification and observation.

Mr. Opsahl enquired whether this was a fact-finding mission to complete the Sarajevo II investigation but not for the hearing of witnesses. If the latter were the case, then certain issues should be addressed such as military necessity, responsibility (collective or individual) or whether the nature of the acts violated the rights of civilians, etc. If the mission is not sufficiently focused, it would be helpful if it were.

Mr. Fenrick stated that the mission is to be focused in that the Rapporteur would meet with the local War Crimes Commissions and rely on the existing information collected concerning such issues as command and control as well as to visit a selected number of sites to obtain supporting data to reinforce the perspectives in the database. The mission is not likely to be

witness- or investigation-intensive.

It was decided that the mission to Sarajevo would be undertaken. The question of Mr. Kempenaars' and the Secretariat's participation would be settled at a later stage.

Mr. Bassiouni mentioned that thought should be given to a visit to Belgrade for the sake of balance during the mission to Sarajevo.

The Chairman said that if Belgrade is visited by the Rapporteurs, then, they should thank the authorities there for the information sent to the Commission thus far and encourage them to continue to do so. However, the Belgrade and Ahmici-Vitez parts of the trip would be subject to developments.

3. Programme of work of the Commission for August-September 1993

a) Investigation of the Ovcarica mass grave and other mass grave sites

Mr. Fenrick stated that he had spoken to the PHR representatives to ascertain whether a smaller number of bodies instead of all the bodies could be exhumed from any of the mass graves concerned. They informed him that it was essential for PHR to exhume all the bodies in any mass grave. However, a small number of bodies could be identified. He had also spoken to UNPROFOR Force Engineer Col. David Harries about UNPROFOR's position as regards assistance for the excavation of the Ovcarica mass grave. Col. Harries said that the engineering resources of UNPROFOR were committed elsewhere.

As regards the Zadar mass grave site mentioned to Mr. Fenrick by the Serbian-Krajina administration, Col. Harries stated that the area was outside UNPA and thus, UNPROFOR could not provide assistance and that the situation there was unusually

tense.

The Chairman mentioned that PHR and the Commission would get a bad image if only a few bodies were exhumated from the mass graves to be excavated. He mentioned that the Commission had approached Governments for the provision of military units in order to carry out the operation. But the Commission had received negative responses from the USA and the Russian Federation, and no responses had been received from France, the UK and China. The Norwegians have also decided to offer a military unit to the Commission. As soon as the military unit is offered, PHR will then have 6 weeks to start the excavation. However, if the Commission cannot obtain a Government military unit, the question arises as to whether the Commission should seek the services of individual volunteers having experience in the field and where would such people be found and how would the Commission pay them. He further stated that the Commission is not bound to excavate large mass graves. Therefore, if the Commission decided to excavate smaller mass graves the logistical support might be easier to find.

Mr. Fenrick said that in principle he would have no objections to engaging the services of a private entity instead of an engineering unit to carry out the excavation, with respect to mine clearance. However, as regards the provision of security for the operation, he would be reluctant to engage the services of a private entity.

The Chairman expressed his agreement with Mr. Fenrick's views.

Mr. Mbaye stated that he would be hesitant to engage the services of former military persons for the operation since the question of their control would be difficult to resolve.

Mr. Bassiouni said that if security could be provided by a Government, then, a private entity could do the actual

excavation. Otherwise, he would be reluctant to hire "private security guards" because the media would capitalize on this fact if an incident were to occur.

The Chairman concluded that a private entity should not be engaged by the Commission for the operation. It was so decided.

Mr. Fenrick said that a smaller mass grave excavation would be a good alternative, especially in areas controlled by Serbs where Serb victims exist, etc., although he did not have any precise locations in mind.

Mr. Bassiouni mentioned that there are a large number of mass graves as could be noticed from his printout "Mass Graves". Some of the mass graves allegedly contain from 1,000 to 4,000 victims, with a few of them containing about 200 victims. He thought that a team could be sent to the area where mass graves are supposedly situated to ascertain whether the mass graves in actual fact exist without resorting to digging.

Mr. Fenrick said that perhaps a visit to the alleged mass graves could be envisaged if the excavations were not possible owing to the lack of logistical support. A forensic expert would be useful to include as a team member in these visits. Such a visit could be done in Serbian-controlled Bosnia to inspect the mass graves that the Bosnian Serbs want the Commission to investigate without difficulty. However, difficulties would arise if the Commission were to embark on an inspection of the mass graves that the Bosnian Muslims or Bosnian Croats wanted the Commission to investigate since negotiations would have to be effected with the party having control of the areas concerned. In any event, the visit would address the mass grave issue.

The Chairman enquired whether the visit to alleged mass graves could not be tagged on to the need for additional information. He asked

Messrs. Fenrick and Bassiouni to work out as a contingency plan a proposal to excavate a few mass graves of a limited size that could be exhumated by PHR.

Mr. Opsahl said that before the Commission embarks upon the exhumation of bodies from graves it should be clear that the reason for doing so is the violations of humanitarian law, i.e. arbitrary killings of prisoners or civilians , otherwise there would be no reasons for disturbing a grave site.

Mr. Bassiouni said that it appeared from the information in the database that prison camps were invariably near the location of reported mass graves sites, although that was not exclusively so. He did not see the utility of excavating a few mass graves in the light of the Commission's limited resources. However, he did see the usefulness for the Commission's final report to state the (a) a number of mass graves sites were reported to the Commission, (b) a team was sent to visit 20 of the 200 mass graves reported, (c) the results of the inspection, eg. 10 were indeed mass graves, 2 sites were cemeteries and 8 sites did not show evidence of a mass grave. This would indicate that the Commission tried to do something as regards the investigation of reported mass graves sites.

The Chairman stated that he and Mr. Fenrick were both attracted by the visit of mass graves. He did not feel that the Commission should excavate mass graves at random because the bodies would have to be identified and the ante-mortem records would be necessary. Such excavations have to be linked to a particular incident to be of any value to the Commission's work.

Mr. Bassiouni said that the Commission's role is to verify the information it received. It is the Prosecutor who would have to do an in-depth investigation.

The Chairman said that if the Ovcara mass grave excavation could not be carried out, alternatively, the visit of mass grave

sites would be pursued.

Mr. Fenrick stated that the route of, and the composition of the team for the visit would have to be determined.

Mr. Bassiouni raised the question of either the Chairman or Mr. Fenrick speaking to Mr. Stover (PHR) to discuss the contingency plan of the visit of alleged mass graves if Ovcarra were not feasible to ascertain the interest and eventual participation of PHR.

The Chairman enquired if a member of the Commission was to be present at all times during the visit of mass graves.

Mr. Bassiouni said that a Commission member and a Secretariat staff member with the local authorities would be in a focal area and the team would be sent out to the mass grave sites from there and liaise with the focal area via walkie talkies.

The Chairman in conclusion stated that a decision had been adopted to the effect that as an alternative to the Ovcarra mass grave excavation, the Commission would undertake the "limousine tour" investigation of mass grave sites.

b) Selective in-depth investigations

Mr. Fenrick stated that much time has been devoted to the sexual assaults project by the Commission and Mrs. Molina-Abram could perhaps elaborate on it.

Mrs. Molina-Abram replied by saying that a meeting was held the day before with Messrs. Bassiouni and Fenrick on the question of systematic sexual assault. It was decided that Mr. Bassiouni would prepare a study on the basis of the information on systematic sexual assault. A list of potential investigators would be established by the Secretariat, together with the



assistance of the two Rapporteurs. Thereafter, the date(s) for the commencement of the investigation will be chosen and plans for the investigation will be prepared on the basis of the analysis of the data.

In this connexion, the Chairman informed the members that The Netherlands Government contributed to the Commission specifically about \$US 300,000 for the systematic sexual assault project.

Mr. Fenrick stated that the Dubrovnik Law of War Study would most likely be the most appropriate project on which the Norwegian team of lawyers would work.

The Chairman replied that since Mr. Fenrick was going to Oslo after the Sixth Session to discuss the question of the Norwegian team to be provided to the Commission with the Norwegian authorities he could at that time discuss the Dubrovnik project as well.

Mr. Kempenaars stated that he had been in touch with UNESCO in Paris and that an invitation had been extended to the Commission to go there to discuss and obtain information on the destruction of cultural property, in particular Dubrovnik. Therefore, perhaps before embarking on a mission to Dubrovnik the UNESCO information should be reviewed by the Commission.

Mr. Bassiouni suggested that the Chairman and Mr. Kempenaars could go to UNESCO to discuss the information they had gathered. As the assessment of the facts has been made by UNESCO, the Dubrovnik project will entail a law of war study and the team could be relegated to doing legal analysis of the Dubrovnik battle.

Mr. Mbaye stated that as he is often in Paris he would be free to join Mr. Kempenaars to visit UNESCO.

It was decided that Mr. Mbaye and Mr. Kempenaars would visit UNESCO (Paris).

(i) Identification of camps or detention centres in Bosnia and Herzegovina

Mr. Bassiouni said that he was making a study on every prison camp on the basis of the information in the database. ICRC, owing to their mandate, was unable to provide substantive information to the Commission on prison camps. The video tape library that he has started in Chicago provides additional information on prison camps. He has contacted Kodak in California to see if they would give the Commission CD-ROM disks to tie in the image with the word for the camps study.

Mr. Mbaye mentioned that the first interim report refers to the Commission's investigation of prisoner camps. Therefore, it would be important to have the investigation as well as the study proposed by Mr. Bassiouni done.

The Chairman said that as rightly pointed out by Mr. Mbaye, the first interim report states that the Commission would do on-site investigations of prisoner camps. He wondered how the Commission could justify not doing so.

Mr. Mbaye said that those that would judge the contents of our interim reports and final report will compare them. In our first interim report, the Commission mentioned that it would do the prisoner camps' investigations without any qualifications. Therefore, it is imperative that the Commission try to do what it promised to do. Otherwise, the Commission will be criticized. Perhaps, the Commission has promised to accomplish too much.

The Chairman agreed with Mr. Mbaye. He said that if the investigations of mass graves were not done it would be a case of force majeure. However, as for prisoner camps, that would be a different situation. He asked Mr. Bassiouni if camps existed

at the moment where violations were occurring and which were accessible to the Commission.

Mr. Bassiouni replied by saying that the Foca camp had only been visited once by ICRC because the latter had requested that certain conditions be met for further visits which were refused. There are 3 camps in Foca, i.e. a main prison camp, a temporary detention facility in the local athletic stadium and a number of houses where women are kept for trade purposes. The city is governed by 3 men, one of which is in the Assembly in Pale. This politician runs the city with the help of the local armed civilians. The setting would be ideal because all types of violations are concentrated in one area. He did not know if the Commission would have access to the camp, however.

Mr. Fenrick enquired if the Foca camp could not be linked to the rape study.

The Chairman stated that the Commission would have to wait until the camp were dissolved before interviewing the guards and the camp commander.

In reply, Mr. Fenrick said that he would be willing to pursue this matter albeit with caution.

Mr. Bassiouni added that he and Mr. Fenrick visited the Military Prison in Sarajevo and interviewed Herak and three other Serbian detainees as well as Muslim detainees and discussed prison conditions with the Head of the prison. The Commission could at least state this in its final report.

The Chairman said that this fact could be tied in with "ethnic cleansing" and the rape issue.

Mr. Opsahl mentioned that many camps have already been closed. Therefore, the question arose whether the Commission should look for oral evidence and witnesses or documentary

evidence or information as regards prison camps. He said that even if the Commission could not undertake on-site investigations of prison camps it possessed information available on prison camps and could therefore undertake an in-depth investigation on that basis. He also wondered if type of victims the Commission was interested in were both soldiers (POWs) and civilians.

The Chairman in reply stated that he was basically interested in both soldiers and civilians but preferred the latter because no legitimate competence had to be established as is the case for individuals involved in armed conflict.

Mr. Bassiouni stated that to his best recollection there were no prisoner camps that segregated prisoners of war from civilians. Also, in most cases, combatants found with their weapons were shot. They are only taken prisoners if they have a trade-off value. On the Bosnian-Muslim side there are very few former JNA military units. Thus the army on that side is basically composed of former civilians. On the Serbian side there is a more marked distinction between the former JNA units and the militias, which are in part the former territorial units. Thus, one of the reasons for the torture of prisoners is to ascertain the military status of the combatants: JNA, civilian or militia.

4. Report by the Chairman on his mission to United Nations Hqs and to the database site in Chicago

The Chairman stated that he met with the Legal Counsel and with UNPROFOR officials. The UNPROFOR officials promised their fullest support for the excavation at Ovcara. He also met with an Assistant to Ambassador Albright and a Legal Adviser from the State Department at the US Mission to the UN. These people were very well informed of the needs of the Commission for the Ovcara excavation. They transmitted the needs requirements of the Commission in great detail to other Governments by a circular letter. The Swedish Government has therefore asked the

Commission for further information. In this connexion, the Chairman has approached the Danes, the Swiss and the Dutch Governments.

The UN Legal Counsel was asked by the Chairman about the life-span of the Commission. The Legal Counsel stated that the judges would be selected in September by the Security Council. Concomitantly, the Security Council would also nominate a prosecutor. According to the Legal Counsel, the Commission would have until the 15th of December to finalize its work and its final report.

As regards Chicago, the Chairman expressed his gratitude to Mr. Bassiouni and his staff for their hospitality and for their explanations on the work on the database. The Chairman was impressed with the work on the database being done in Chicago. Mr. Bassiouni and the Chairman agreed that it would be impossible for the Chicago staff to analyze all the information contained in the database.

As regards the Commission's upcoming new budget, Mr. Fenrick enquired if the Commission could review it before it was finalized.

In reply, the Chairman stated that the budget question is a technical matter for the United Nations to prepare and approve.

Mr. Fenrick regretted that the Commission could not have an impact on its budget.

The Secretary added that the Commission's regular budget covers only a limited number of items, such as salaries of commissioners and staff and travel costs. The Trust Fund is now operational and the substantive activities of the Commission will be financed from it. Over half of the Canadian contribution was used for the Sarajevo II mission. However, more contributions will be made to the Trust Fund and approximately US\$ 650,00 in contributions are now being processed.

The meeting rose at 17.45.

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

SIXTH SESSION (GENEVA, 13-14 July 1993)

Third meeting

Wednesday, 14 July 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. Vladimir S. Kotliar, Secretary  
Mrs. Bruna Molina-Abram, Legal Officer/Deputy Secretary  
Mr. Julio A. Baez, Legal Officer/Assistant Secretary

Others present:

Mr. Antonius Kempnaars, Personal Assistant to the  
Chairman

Mr. Morten Bergsmo, Personal Assistant to Mr. Opsahl

5. Report by Mr. Bassiouni on the database and data-gathering

Mr. Bassiouni stated that he had a staff of 20 people, of whom 9 are lawyers and the others are senior law students. There are 5 computers for the daily in-put of data. He has two shifts of people working on the computers 10 hours/day, six days/week. The document before the members, "Summary of Documentarian Database" shows the source of the document, the submittor, the primary and secondary source, any official citations and a brief summary of the contents. The documents may be retrieved by a chronological number system.

He also said that the earlier numbering system of documents transmitted to Chicago by the Secretariat has now been correlated with the numbering system of the database. He went on to explain the salient points of the database and the information it contained. The database lacked detailed, specific information. In this regard, Mr. Bassiouni mentioned that he had contacted

Amnesty International in London, with the Chairman's permission, to obtain whatever pertinent documents they possessed. Initially, they had refused to give the Commission any documents. Now, however, they have invited the Commission to review their documents and the Chairman has authorized Mr. Bassiouni to do so. Mr. Bassiouni would go to London for that purpose with a member of his staff and enquired if a member of the Secretariat could go as well to review those documents. Helsinki Human Rights Watch has also provided documents to Mr. Bassiouni without the name of the victim but with the name of the perpetrator. The identity of the victim should be protected but not necessarily that of the perpetrator.

He also described the quality of the reports submitted to the Commission from different sources.

(It should be mentioned that it has been agreed between the Chairman and Mr. Bassiouni to send to Chicago the documents received by the Commission Secretariat in Geneva without the usual index to those documents, which has proven to be too time-consuming for the Secretariat's limited human resources.)

As regards "ethnic cleansing", he said that in the West the word has been given a different connotation than it has for some of the parties to the conflict. In 1986, the Serbian Academy of Art and Sciences circulated a memorandum on "ethnic cleansing", which was published for the first time in 1989 in a magazine entitled "Nasa Teme". From that document, it appears that what is meant by "ethnic cleansing" is a movement and exchange of populations to render an area homogenous without resorting to violence. The notion therefore may be defended as a means of avoiding conflict. However, "ethnic cleansing" by violent means like it was practiced by Nazi Germany takes on a different dimension.

Lastly, he said that his staff was working on the various studies, which would be available to the Commission as soon as



possible.

Mr. Fenrick said that he was extremely impressed with Mr. Bassiouni's work on the database. He enquired why the figure of 3000 cases being imputed was considered particularly significant for purposes of analysing. He also inquired about the possibility of consulting statisticians for assistance in determining report reliability.

Mr. Opsahl stated that interviews with victims or refugees outside the war zone could perhaps be pursued now as a means of complementing the information in the database and the on-site investigations.

Mr. Mbaye asked if the Commission had the means to continue the work on the database and to arrive at the conclusions as set out in the Commission's mandate, by 15 December 1993. He mentioned the importance of the Commission's analytical work and said that the Commission should closely follow the plan of work, as outlined in the first interim report.

The Chairman said that as regards the reliability of figures, a statement in the Commission's final report should address the issue. He enquired if Mr. Bassiouni would be able to report on the information in the database in a way that could support the Commission's conclusions on the evidence of violations. As regards secondary source materials, he said that caution should be used, especially with respect to the materials originating from the media. In addition, as regards order of battle and chain of command, he stated that he was advised that the USA authorities - in case they are requested - would be willing to check the information that the Commission possessed.

Further, he specified that material collected and processed by Mr. Bassiouni for the purposes of the database is Commission material and could not be divulged to third parties. He also stated that the conclusions that emerge out of the analysis of

events and incidents in the database which are reported to the Commission on a regular basis are those of lawyers working on Mr. Bassiouni's staff in Chicago. Those conclusions will have to become Commission conclusions and the members should read and comment on them as well as on the different footnote and quotation methods used.

It was decided that Mr. Bassiouni would go to London to visit Amnesty International.

Mr. Bassiouni mentioned that the analysis on the information in the database has not been started because only 2,000 incidents have been in-putted thus far and there are too many gaps. He hoped to input 3,000 incidents into the database by the end of August/beginning of September and continue with the analysis already begun. He mentioned that he has read all the draft reports he submits to the Commission and would appreciate the comments of the members. As regards the refugees question mentioned by Mr. Opsahl, he thought that it might be possible to interview refugees for the rape investigation. A system should be devised to contact refugee organizations so that they could submit certain relevant documents to the Commission.

He said that it is important for the Commission to assess the analytical work and to decide on what type of assessment it seeks to do, for example, for a policy assessment patterns of behaviour are crucial. In this case, the role of on-site investigations would be methodological and validational. Thus the Commission should give some thought to the different categories that it would deal with and how they are to be dealt with. Also, he thought that the Commission should not expand upon the law or be more specific or detailed thereon since the Security Council has made certain judgments on the substantive law applicable to the conflict.

Mr. Fenrick stated that, as regards the translation of the 105 documents he had obtained in Sarajevo, 69 of which have been

unofficially translated already, they should be reviewed by a translator in Geneva to delete the names, for confidentiality purposes, and the 36 remaining documents should be translated. Once translated, all the documents would be sent to Mr. Bassiouni in Chicago. The deleted names could be identified by a numerical coding system, which is in the possession of Mrs. Molina-Abram.

Mr. Bassiouni said that it might be easier to contact the Bosnia and Herzegovina Mission to UNOG in order to delete the names in a faster manner. Also, he said that during the previous mission to Sarajevo with Mr. Fenrick they had obtained 89 of the names of the victims of incidents that were related to the documents Mr. Fenrick had obtained during his recent mission to Sarajevo. He would double check the database to ensure that the names were not in-putted.

The Secretary said that he would enquire to see if the translation of the documents could be covered from the Trust Fund.

Mr. Fenrick said that the documents were obtained from the Bosnian State War Crimes Commission, an independant entity. Therefore, he did not wish the documents to be seen by the Bosnia and Herzegovina Mission to UNOG.

The Chairman said that, as regards the law aspect of the final report, he felt that the Commission would have to present its conclusions on the evidence of violations of the law, which implies an understanding of the law. In the first interim report, the Commission had made statements on the law which should not be changed. However, in the area of command responsibility more elaboration would be required.

Mr. Bassiouni said that the third generation of the database that is being established in Chicago would only be for statistical purposes. The present version of database will not be changed as regards the in-putting of the information.

Mr. Opsahl came back to the question of interviewing refugees for verification purposes. He enquired how these prospective sources could best present the information to the Commission. He also mentioned whether it would be possible to do in-depth studies on political leaders, not just on Arkan. He was particularly interested in "ethnic cleansing".

The Chairman stated that both Mr. Bassiouni and Mr. Opsahl should remain in contact on the question of "ethnic cleansing".

Mr. Opsahl also mentioned that the Commission should resort to informal methods to obtain information from sources within the United Nations system as well as from inter-governmental and non-governmental organizations in order to complete its work.

The Secretary stated that the UNPROFOR Liaison Officer in Geneva informed the Secretariat that he would be submitting information to the Commission on a regular basis.

Mr. Mbaye referred to the fact that Mr. Bassiouni expects to have 3,000 cases by the end of August/beginning of September for the purpose of continuing the analysis of the information in the database. He wondered what would happen if he does not have the 3,000 cases by that period.

Mr. Fenrick said that the Commission should elaborate on the legal issues, in particular the applicable law in its final report. He felt that it would be ironic for a Commission of lawyers not to go further into this aspect.

The Chairman stated that he was not sure if the Commission could establish with sufficient certainty the events that are going on in Bosnia and Herzegovina to determine that a particular event was an armed conflict and arrive at conclusions on the applicable law.

Mr. Bassiouni, in reply to Mr. Mbaye, said that he already possessed the information to in-put 3,000 cases into the database. It was just a question of doing the work, which he felt would be finalized by end of August/beginning of September. In addition, he stated that, since the Security Council has taken certain legal positions, it would not be appropriate for the Commission to take positions on issues of law which may be interpreted as being contradictory or conflicting with the position taken by the Security Council or which would be the subject of litigation before a Tribunal. On the other hand, the Commission cannot make conclusions in a vacuum. He said that the legal position outlined in the first interim report could be carried forward in the final report. It would be a question of how those legal positions are presented in the final report as regards style and form.

The Chairman said that he largely agreed with the views expressed by Mr. Bassiouni. However, the sequence of violent events in Bosnia and Herzegovina would have to be addressed in terms of it being doubtful whether it is all part of armed conflict or international armed conflict, without characterizing particular events.

As regards the applicable law, the Secretary said that since both the Commission and the Tribunal had been established by the Security Council it would be judicious not to create any impression of divergent views between the Commission and the Security Council's resolutions on the Tribunal.

Mr. Opsahl enquired if incidents involving the United Nations personnel come under the Commission's mandate.

The Chairman in reply said that such incidents indeed fall under the mandate of the Commission.

The meeting rose at 13.15 p.m.

SIXTH SESSION (GENEVA, 13-14 July 1993)

Fourth Meeting

Wednesday, 14 July 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. Vladimir S. Kotliar, Secretary  
Mrs. Bruna Molina-Abram, Legal Officer/Deputy Secretary  
Mr. Julio A. Baez, Legal Officer/Assistant Secretary

Others present:

Mr. Antonius Kempnaars, Personal Assistant to the  
Chairman

Mr. Morten Bergsmo, Personal Assistant to Mr. Opsahl

6. Discussion of the structure of a Second Interim Report of the  
Commission ~~Report~~ to the Secretary-General by the end of  
July

The Chairman said that it appeared that it would not be possible to finalize such a report by the end of July. He referred the members to the working paper, which they had in their files. He asked the Members and the Secretariat staff to comply with the limitation as to length in the drafting of their respective parts since the second interim report should not exceed 20 to 30 pages.

Mr. Fenrick enquired as to the deadline for the submission of the report to the Secretary-General. He stated that perhaps the sections on systematic rape and prisoner camps would be best suited to being drafted by Mr. Bassiouni.

The Chairman agreed, although those sections should be reviewed by both Mr. Bassiouni and Mr. Fenrick with the assistance of Mrs. Molina-Abram.

Mr. Opsahl mentioned that a section on the establishment of the Tribunal as well as on the Commission's budget should be included in the report. He also said that reference should be made in the report to the political situation in the former Yugoslavia and how it affects the work of the Commission.

Mr. Bassiouni said that it would be logical in the introductory part of the report to mention that the Commission's first interim report was noted by the Secretary-General in his report to the Security Council and that the Security Council in turn took note of the Commission's report. He also stated that there should be a principal drafter, either a member of the Secretariat or Commission, to coordinate the different sections being drafted by the respective individuals. As regards appendices to the report, he felt that substantive mission reports as well as database studies should be appended to the report.

The Chairman said that he would be in favour of annexing the report on the Sarajevo II Mission. He said that Mr. Bassiouni should determine which of his studies and in which form should be annexed to the report or sent to the Secretary-General. He cautioned that annexed reports or studies might be sent by the Secretary-General to the Security Council. Therefore, only those documents that are considered as Commission documents should be annexed to the report or sent to the Secretary-General.

Mr. Bassiouni agreed on the point made by the Chairman on "Commission documents". He therefore urged the Chairman to devote an item in the agenda to the review of those studies submitted by Mr. Bassiouni to the Commission. He further stated that his objective is to show the Security Council and the Secretary-General that the Commission is not idle. He suggested that the second interim report could be sent with a letter to the Secretary-General stating that a number of studies for his information accompany the interim report, although they have not as yet been adopted and are not ready for publication. Any

member of the Security Council could consult those documents to see what progress the Commission had achieved in its work.

Mr. Mbaye said that the second interim report should show the progress in the work of the Commission from the first interim report. Otherwise, he did not see the utility of doing another report. He was of the view that draft studies should not be sent to the Secretary-General or appended to reports because they are not the work product of the Commission and are "interim" in nature. He also stated that any mission to the territory of the former Yugoslavia is a Commission mission, although it may be headed by one of its members. Any conclusions arrived at by the mission should be discussed and adopted by the Commission as a whole.

Mr. Fenrick agreed with Mr. Mbaye's comments. As regards the comments by Mr. Bassiouni, he suggested to send to the Secretary-General separately the studies and mission reports that have been done by the Commission.

Mr. Bassiouni said that alternatively the second interim report should include a list of all the work in progress, with a notation that such work is being sent separately to the Secretary-General for his information. The list will show the readers of the second interim report that the Commission is engaged in several studies and that it is advancing in its work.

It was so decided.

The Chairman stated that the end of August should be the deadline for the finalization of the report.

The Secretary said that he preferred to have a specific date for the finalization of the second interim report.

Mr. Fenrick suggested that the Sarajevo III Mission could take place after the end of the Seventh Session.



A discussion ensued concerning the date of the Seventh Session as well as on the deadline for the submission of the different sections of the draft second interim report and its finalization.

It was decided that 16 August would be the deadline for submission to the Commission Secretariat of the different sections to be drafted in preparation for the second interim report.

7. Adoption of a Press Release on the Commission's Sixth Session

It was decided that there would be two press releases: one, on the Sixth Session, the other, on the Sarajevo II Mission.

As regards the press release, Mr. Fenrick stated that there should be no linkage between the Ahmici-Vitez investigation and Sarajevo III Mission as they are separate and will not be conducted at the same time. He also suggested that any reference to the order of battle question should be deleted in the press release on the Sarajevo III Mission since the purpose of the latter is to gather additional information.

The Chairman stated that the two Rapporteurs should be aware that their movements will be subject to UNPROFOR rules and regulations in Sarajevo and elsewhere in the territory of the former Yugoslavia during the Sarajevo III Mission.

Mr. Bassiouni stated that in view of the nature of the Sarajevo III Mission and the limited number of participants (4), there should be a margin of flexibility as to movement. But of course he understood the need to abide by the UNPROFOR rules and regulations for security reasons.

The Secretary stated that security considerations are paramount as regards any mission. UNPROFOR, therefore, must guarantee the security of the participants.

Mr. Bassiouni stated that the draft press release should not mention UNPROFOR since they would not wish to be associated with the law of war study conducted by the Commission during the Sarajevo II Mission.

In this connexion, Mr. Fenrick said that he had given two press conferences on the Sarajevo II Mission in Zagreb and Sarajevo under UNPROFOR auspices.

Mr. Bassiouni said that the Commission should not give the impression that the Sarajevo II Mission accomplished substantive results when more facts are required and more UNPROFOR cooperation is needed.

Mr. Fenrick objected to Mr. Bassiouni's statement.

The Chairman interrupted the meeting for 10 minutes.

It was decided to hold the Seventh Session of the Commission on 30-31 August 1993 in Geneva.

The meeting rose at 17.00.

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