

12-14-1993

Commission of Experts Meeting Minutes Session 9

M. Cherif Bassiouni 1937-2017

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APPROVED

COMMISSION OF EXPERTS

established pursuant to
Security Council resolution 780 (1992)

NINTH SESSION (Geneva, 14-15 December 1993)

First meeting

Tuesday, 14 December 1993, 10.05 a.m.

Members present:

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

Secretariat staff present:

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

Others:

Mr. Morten Bergsmo, Assistant to the Commission
Mr. Antonius Kempenaars, Assistant to the Commission

1. Agenda:

The agenda was adopted with minor amendments.

2. Adoption of the minutes of the Eight Session:

The minutes were adopted without amendments.

3. Status of the Commission beyond 31 December 1993 and
6. Report by the Chairman on his meeting with the Judges of the
International Tribunal:

The Chairman drew the attention of the commissioners to a letter from him to Mr. Fleischhauer with the Commission non-paper of early September 1993 to the Secretary-General attached. He informed the meeting that the Commission has been working without a budget since August 1993, and that the funding since then has

come from budgetary sources of the Office of Legal Affairs. The Chairman said that this, in his opinion, was both surprising and disturbing, because it meant that the Commission has no financial existence and has to depend on the Office of Legal Affairs to fund its activities. He stated that the Commission does not know if there is a budget for the Commission for 1994, even if the budget proposals submitted by the Secretariat of the Commission and the Chairman in his informal consultations with Mr. Zacklin and Mr. Fleischhauer indicated an existence until 31 July 1994. Mr. Zacklin had expressed a view to the Chairman that the Office of Legal Affairs would prefer to have the Commission's budget included as part of the budget of the International Tribunal, which the Chairman felt would be a surprising administrative decision which almost made the Commission an organ of the Tribunal. The Chairman said that he felt it would be appropriate for the Commission to communicate through the Secretary-General its thoughts on what the Commission can offer and how its financial and administrative independence can be secured until 31 July 1994. If the Commission is budgetarily placed under the Tribunal it would, the Chairman continued, be in constant ambiguity about its work.

The Chairman proceeded to describe the two hour briefing he, Commissioner Cleiren and Assistant Kempenaars gave to the International Tribunal, and the subsequent luncheon. He also informed the meeting that he had communicated with the Prosecutor, informing him of the Commission's desire to collaborate with him and that the Chairman is prepared to meet him at his convenience in the near future.

Mr. Fenrick suggested that the Prosecutor be invited to meet with the entire Commission, as it had accumulated expertise which it will be useful to pass on to and discuss with the Prosecutor at some appropriate time.

The Chairman agreed, but reminded the meeting that it may be difficult for the Prosecutor to find time before February or March 1994, but he agreed to pass this message to the Prosecutor.

Mr. Mbaye asked for a clarification on how the Commission had been funded so far.

The Chairman outlined the financial organization of the work so far and the alternatives for 1994.

Mr. Mbaye explained that for personal reasons he would prefer to know how long the Commission will exist, as he would have to leave the Commission at one stage.

Ms. Greve said that Mr. Fenrick, Ms. Cleiren and herself had agreed during informal discussions that they may have difficulties in serving in the Commission beyond 31 July 1994, but she saw no problem in some parts of the Commission's activities (i.e. the database) continuing after that date even if all commissioners could not participate.

Mr. Fenrick said he would have great difficulties continuing his work as Commissioner beyond 31 July 1994.

Ms. Cleiren said she was in the same position as Mr. Fenrick.

It was decided that the Commission write to the Secretary-General asking for a clarification of the period of the Commission's mandate and that resources be made available for the work during that period.

The Chairman asked Ms. Cleiren to report on the meeting the two of them had with Minister Koijmans.

Ms. Cleiren described the meetings which the Chairman attended in the Hague.

4. Status of the contributions to the Trust Fund:

The Secretary informed the meeting that the pledged contributions to the Trust Fund amounted to USD 1,269,000.-. The unpaid pledges amounted to USD 358,000.-. At the time of the Ninth Session there was around USD 500,000.- on the account of the Fund.

5. Status of the Commission's Office in Zagreb:

The Secretary informed the meeting that two containers have been put at the disposal of the Commission and that these offices have telephone lines and other equipment. The offices are at the disposal of the Commission during the upcoming months.

Mr. Fenrick said that UNPROFOR Deputy Force Commander had advised Mr. Fenrick that UNPROFOR supported the establishment of a permanent office of the Commission with an investigative capacity.

The Chairman said that it may become necessary to expand the facilities as the planned projects start being implemented.

7. Status of the work on the database and data-gathering:

The Chairman gave a short description of the work with the database, mentioning, inter alia, that there was a backlog in the data processing as the volume of information that the database receives directly, as opposed to through the Commission Secretariat, is considerable. The funding for the database work runs through 31 January 1994. He said that he had removed himself from the position as Project Director, the new Director having the responsibility for running the project and raising the funds.

Ms. Greve commented that it would be sad if there was not enough money for the database work, but in this case only a

limited amount should be taken from the Trust Fund for this work. She said that all material that comes to the Commission whether in Geneva or Chicago should be considered as material that comes to the Commission and not to the database as such in order to avoid confusion outside the Commission, even if it is information from public sources.

The Chairman said that the DePaul University subscribes to the NEXUS and FIBUS services, which therefore belong to the University. He said he hoped to introduce a system through which one can distinguish between confidential and non-confidential documents in the database, in order to get a secure system of access to the confidential information.

The Chairman continued by describing the legal nature of the relationship between the United Nations and the DePaul University. He had suggested to the Commission when the work on the database started that a contract be established between the two parties, but the then Chairman had decided that there would not be a contract. The then Chairman wrote Mr. Bassiouni a letter to the effect that confidentiality requirements had to be satisfied by everybody working on the database. The Chairman stated that the United Nations had access to the database program and information, but that the program belonged to the University, however the University agrees to transferring everything to the Commission as the Commission might decide. As of recently, he said, Mr. Zacklin decided that there should be a contract, but the terms suggested in the draft contract are somewhat different from the terms worked out so far. The Chairman said he would communicate the draft contract to the Executive Director of IHRLI who will deal directly with Mr. Zacklin. He said that he foresaw that the Institute will stick to its original understanding of making everything available to the Commission and to keep confidentiality.

Ms. Greve stated that the Swedish Government was very concerned that the interviews they had provided were treated confidentially and that it receives a written confirmation to that effect. She suggested that written procedures be developed.

The Chairman suggested that all confidential documents be kept in Geneva, and that all such documents that are sent to the Commission, have names and other relevant information deleted before they are sent to the database in Chicago. He said that we need to improve the security of the Commission offices in Geneva, including the acquisition of a shredder.

Ms. Greve said that the Swedish files could not be deconfidentialised by removing names or through other methods, because of the detailed nature of the information provided during the interviews.

The Chairman agreed and said that in such cases one should use a summary information sheet and keep such documents in a safe at the Commission's offices.

Mr. Fenrick endorsed the establishment of confidentiality procedures expressed in a written document which can be shared with information contributors if necessary.

The Secretary said that he would try to obtain a safe for confidential files and a shredder.

The Chairman asked the Secretary to prepare a written procedure for receiving confidential documents.

Mr. Mbaye remarked briefly that it was clear from the statements of the Chairman that the general issue of confidentiality does not necessarily concern the commissioners directly.

Mr. Fenrick asked if there was now a usable computer linkage between DePaul University and the Commission Secretariat in Geneva.

The Assistant Secretary answered that by the end of the week the Internet connection would be established.

The Chairman informed the meeting that the Internet System is not secure. He said he was still not satisfied with the security of the system.

The Assistant Secretary said that there is no completely safe system, and that he would try to get further assurances from the United Nations and ITU people.

8. Status of the systematic sexual assault investigation:

Mr. Fenrick commented that the budget post for typing and interpretation for the sexual assault investigation appears to be excessively high.

The Assistant Secretary informed the meeting that the figures were in the process of being revised.

The Chairman explained that if the intention to hire local people for some functions in the project was successful, then the costs involved could be reduced.

Mr. Fenrick asked for an elaboration of who the interviewers will be.

The Chairman stressed the importance of criminal law experience and experience with interviewing witnesses and victims. On a personal level, the person should not be aggressive or obstrusive, but should have understanding and empathy. He said that the investigation has multiple goals to achieve, from the identification of cases for prosecution to cases of general information on systematic sexual abuse, and that to do such work one must be flexible and have maturity.

Ms. Greve stated that she wanted the Prijedor project not to be a part of the systematic sexual assault investigation, because several questions needed clarification first.

The Chairman said that it had advantages to keep a synergy between the different Commission projects. He stated, as an example, that when information on Prijedor or Ovcara is obtained during the systematic sexual assault investigation it would be made available to those who work on these studies, although the sexual assault investigators are not going to deal with the information. Each project will be separate.

Ms. Greve made it clear that she needed time to plan the Prijedor project properly. She has no objection to those doing the systematic sexual assault investigation keeping eyes and ears open concerning information about areas of specific interest to other commissioners.

9. Report on meeting with the Swedish authorities:

Ms. Greve reported on her visit to the Swedish Ministry of Foreign Affairs in Stockholm to study a compilation of Swedish police interviews of refugees from the former Yugoslavia in Sweden and on the model which the Swedes have developed to conduct such interviews. She said that the work is proper evidence gathering, all in Swedish, that most of the testifiers are from the Prijedor area, and that some of the interviews took up to five days. She added that it is an excellent model which can be applied elsewhere, possibly with smaller modifications because of the high costs involved. For further information she referred to her written note for the file on the mission.

The Chairman said the Commission should operate on a desentralised basis, and he asked Ms. Greve to contact the Swedish authorities and thank them on behalf of the Commission.

9 a. The Prijedor project:

Ms. Greve described the nature of the Prijedor project. She mentioned that many of the refugees in the Nordic countries are from the Prijedor region, and that the documentation that had been developed through interviews of these refugees so far was in the Scandinavian languages with which she is familiar. She explained how she intends to undertake the Prijedor study along prosecutorial lines, basing the factual description of alleged violations on first hand evidence. She said that she was prepared to start the work immediately, and that she expected to draw on support from Norwegian authorities for the first part of the project, the gathering of information available in Norway. She asked the Commission to approve the project.

The Chairman said that the Prijedor project should be approved. He suggested Ms. Greve develop further her project document and that it be made available to the other commissioners

for further consultation.

Ms. Greve stated that the plan of action does not need further elaboration, but that budgetary matters will have to be addressed later.

Mr. Fenrick supported Ms. Greve's suggestion. He was very much in favour of her going ahead with the project, and he suggested that she be made Rapporteur for the Prijedor Study. He expressed willingness to co-operate with her to the extent her project would involve on-site investigation.

Ms. Cleiren agreed with Mr. Fenrick's proposal.

The Chairman said he had no particular preference in using the term "rapporteur" in describing Ms. Greve's project responsibility.

Mr. Mbaye suggested that the Commission had reached a stage in its work when it is desirable to divide the work between the commissioners. He said that the Rules of Procedure indicate that the Commission should deal with specific subjects, and when these subjects are delegated to individual commissioners it is natural that the title of rapporteur is used. He also made a distinction between subject-matter and the method of work: neither the database nor the on-site investigation exclude any specific subject-matter, but the responsibility for these two methods of the Commission's work is vested in two different rapporteurs.

The Chairman added that studies submitted to the Commission by commissioners will become Commission studies, but even Commission studies should have an indication of the responsible commissioner and other contributors. He said that the rapporteurs will receive all available material on his/her area of responsibility, and based on that prepare the final area study. He said that the cornerstone of the final report could be a broad legal study, under which will be the specialised area studies, which will illustrate the overall report with its overview and conclusions, and that this approach had been discussed at the Commission's pre-scheduled informal meeting on 13 December 1993.

Mr. Mbaye stated that if there were changes in the outline of the final report based on inter-commissioner informal discussions then he should be informed.

The Chairman said that no formal decisions had been taken on the nature of the final report, and that the draft working outline remained what Mr. Mbaye had prepared.

It was decided that the Prijedor project be approved and that Ms. Greve is the Rapporteur for the Prijedor Project.

13. Report on the investigations on nuclear waste and Medak:

Mr. Fenrick said that the nuclear waste on-site investigation had been concluded and that the Commission was now waiting for the Dutch report. He gave an overview of the background to the investigation. He informed the meeting that no abnormal levels of nuclear radiation had been found during the investigation. He said that the Commission, in his opinion, had done what it could in connection with this allegation. He proceeded to describe the preliminary investigation of the Medak incident. He first outlined the background, and then described the very valuable investigation done by UNPROFOR, CIVPOL and Civil Affairs of the alleged violations in the Medak area which served as an excellent springboard for the Commission. The Commission's on-site investigation was able to achieve a lot in a short period of time. He said it had been possible to establish strong prima facie cases on the wanton destruction of property.

The Chairman thanked Mr. Fenrick and all those involved in these on-site investigations for the excellent work that had been done.

The meeting rose at 1.10 a.m.

APPROVED

COMMISSION OF EXPERTS

established pursuant to
Security Council resolution 780 (1992)

NINTH SESSION (Geneva, 14-15 December 1993)

Second meeting

Tuesday, 14 December 1993, 3.10 p.m.

Members present:

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

Secretariat staff present:

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

Others:

Mr. Morten Bergsmo, Assistant to the Commission
Mr. Antonius Kempenaars, Assistant to the Commission

Mr. Carnez, UNESCO
Mr. Ramallo, UNESCO

10. Destruction to cultural property: UNESCO presentation:

The Chairman introduced the subject and two representatives of UNESCO, Mr. Carnez and Mr. Ramallo.

Mr. Ramallo of UNESCO gave a lengthy presentation on the work of UNESCO in the field of destruction to cultural property in the former Yugoslavia in general, underlining the willingness of UNESCO to assist the Commission in whatever way may be useful to it.

The Chairman thanked the representative for his valuable presentation, and asked Mr. Ramallo to elaborate on the UNESCO involvement in work with sexual assault in the context of the conflicts of the former Yugoslavia.

Mr. Ramallo assured the meeting that UNESCO did not intend to gather evidence in this area, and that he fully understood the concern that there should not be overlapping of activities between the Commission and UNESCO. He said that he would convey the concerns expressed by the Chairman to UNESCO Headquarters.

Ms. Greve suggested that there be collaboration between the Commission and UNESCO on the subject of sexual assault, so that UNESCO's collection of information could take the Commission's methodology into consideration.

The Chairman supported this suggestion.

Mr. Carnez gave a detailed presentation on the work of UNESCO on destruction to cultural property in Dubrovnik.

Mr. Fenrick described briefly the on-site investigation that had taken place in Dubrovnik under his supervision, and said that the findings of this investigation concurred to a large extent with what Mr. Carnez had described in his presentation. He praised the documentation which UNESCO had prepared of the destruction to cultural property in Dubrovnik.

The Chairman suggested that there should be an informal consultation between Commissioners Fenrick and Mbaye and Mr. Carnez on how the material of UNESCO could be incorporated into the Commission's study on the subject.

Mr. Mbaye said that the contributions of Mr. Carnez and, if possible, Mr. Kaiser of the Council of Europe would be of considerable importance to the Commission's work on the development of conclusions on the reported violations in Dubrovnik.

The Chairman agreed and suggested that a videorecorded interview be made with Mr. Carnez, so that his information on the attack on Dubrovnik can be made available as support material to the overall study on destruction to cultural property.

Mr. Mbaye supported this proposition.

Mr. Fenrick said that he was willing to show the on-site investigation report on the attack on Dubrovnik to Mr. Carnez in order to see how Mr. Carnez could add information to it. He supported the idea of a videorecorded interview with Mr. Carnez, and he expressed an interest in seeing the video material which Mr. Carnez had in his possession.

Ms. Cleiren supported the idea of a videorecording of an oral testimony by Mr. Carnez, but that this be done before Mr. Carnez is given access to Commission material.

Mr. Fenrick said that most of the material in the on-site investigation report on the attack of Dubrovnik dealt with other matters than the limited factual questions which Mr. Carnez would be testifying about, and that it was unlikely that Mr. Carnez

would be inclined to change his testimony after having read the report.

The Chairman informed the commissioners that a letter had just arrived on the 1994 budget of the Commission, but that he would proceed with the drafting of a letter to the Secretary-General as unanimously agreed by the Commission, a draft of which would be shared with the commissioners as early as possible.

The meeting rose at 5 p.m.

APPEND

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

NINTH SESSION (GENEVA, 14-15 DECEMBER 1993)

Third meeting

Wednesday 15 December 1993, 10.00 a.m.

Members present:

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

Secretariat staff present:

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

Others:

LT-Col Ton Kempenaars, Assistant to the Commission
Mr. Morten Bergsmo, Assistant to the Commission
Mr. Bruno Carnez, Chief of Emergency Operations, UNESCO

Item 10 of the agenda

The Chairman announced that the first order of business would be the presentation by Mr. Bruno Carnez, Chief of Emergency Operations, from UNESCO, of slides and a videotape taken during the attack on Dubrovnik in December 1992. He also announced that during his absence from the room, Mr. Kéba Mbaye would chair the meeting.

Following the presentation, the meeting continued with a general discussion, as follows:

Mr. Mbaye (Acting Chairman) informed the members of the Commission that in early afternoon, Mr. Carnez would record his statement, and he inquired whether the Experts had comments or questions on the subject.

Mr. Fenrick considered that in view of the quality of the material shown by Mr. Carnez, such recording would be superfluous. He believed that the Commission had enough materials for study and that no need for further questioning was necessary.

Mr. Mbaye (Acting Chairman) confirmed that the film shown by Mr. Carnez would be submitted to the Commission and that, at 14.00 hrs, Mr. Carnez would tape his statement.

Ms. Cleiren believed that in view of the remarks made by Mr. Fenrick, such a statement should not be required.

Mr. Fenrick added that the Commission had gathered sufficient materials for the purpose of his study. Nevertheless, he would not object to the recording, provided Mr. Mbaye considered it necessary for the subject related to cultural property.

Mr. Mbaye (Acting Chairman) strongly believed that the recording was necessary. Being a Judge for the last 40 years, a deposition from Mr. Carnez, who was on the site during the bombardment, would be essential. He would tell the Commission under oath what he did see with his own eyes as well as the conclusions he had reached. After all, he said, Mr. Carnez is a special witness, he was sent to Dubrovnik by an International Organization (UNESCO) to verify the facts. His statement will set a precedent for the future and it will assist the Commission to dispel doubts and questions on this issue. Since the Commission has, finally, a person who is willing to say "I was there..., I saw this, in my view this is what happened...", the Commission should not miss the opportunity.

It was agreed that the statement by Mr. Carnez would be recorded at 14.00 hrs.

After a short break, the Commission re-convened under the Chairmanship of Mr. Bassiouni.

The Chairman thanked Mr. Carnez for the presentation.

Mr. Carnez provided the Commission with the videotape projected that morning and stated that a copy of the slides with a detailed description would be sent to the Commission from Paris by pouch.

Item 10 of the agenda (continued)

The Chairman invited Mr. Fenrick to make a presentation of his mission to Dubrovnik.

Mr. Fenrick explained that as far as the mission is concerned, a team of four persons (one Canadian military lawyer, two Norwegian lawyers and one historian from the Council of Europe) spent three weeks in Dubrovnik to verify violations of law of war committed during the battle of Dubrovnik.

The submitted report, which, in his view, was excellent, is the end result of their work. It contains several annexes which are essentially lengthy and useful.

The team's investigative task was facilitated by the prevailing peaceful environment, contrary to that of Sarajevo. In addition, the local authorities such as the judiciary, the police and the civil officials, were very co-operative and had a large amount of information. Indeed, he said, they had prepared their own war crime cases. In that regard, Mr. Fenrick made reference to annexes 8 and 9 of the report, which contains information against the Deputy Commander of one of the former Yugoslav National Army Battalions, Mr. Zelko Soldo, involved in the assault of Dubrovnik of the time and convicted on war crimes charges by the District Court in Dubrovnik. At present, the case is under appeal.

Finally, Mr. Fenrick said that much more information is available on Dubrovnik; the film material presented by Mr. Carnez corroborates the contents of the report.

The Chairman asked Mr. Fenrick whether it would be of benefit to request Lt. Col. Mc Alea (team leader on the mission to Dubrovnik) to look into Mr. Carnez' presentation and into the material submitted by him to the Commission. Perhaps, he said, such documents could be considered as a further attestation to the conclusions reached by the team on the study on Dubrovnik.

Mr. Fenrick expressed the view that although Mr. Carnez' presentation can not be included into the report of the mission post factum, it can certainly be used as a corroborative evidence.

Mr. Mbaye questioned the title of the report: "The battle of Dubrovnik and the law of armed conflict". In his view, and considering the absence of the Croat military defense on 6 December 1991, the word "battle" should be replaced by "bombardment".

Mr. Fenrick clarified that the team looked at the situation in Dubrovnik over a longer period of time and that the study dealt with more than one or two bombardments in the area of Dubrovnik. Perhaps, it could be more accurately described as "events which have occurred in and around Dubrovnik during a specific period of time and the law of armed conflict". At present, it should only be considered as an umbrella title.

The Chairman invited Mr. Kempenaars, Assistant to the Commission, to express his views on the wording of the title.

Mr. Kempenaars agreed with the wording chosen by Mr. Fenrick, since the study covers more than one bombardment and is not confined to the city itself; it also extends to the districts. He added that there were two parties to the conflict,

one strong (the Serbs) and the other weak (the Croats).

Mr. Fenrick compared this situation to Grenada.

The Chairman clarified that in case of opposition or resistance, no matter how weak (it could even be symbolic), the law of war would be applicable and the case of Dubrovnik should be construed as far as armed conflict regulations are concerned, in the military sense.

Mr. Mbaye stated that he was not challenging the legal aspect of the question but rather the military characterization or assessment. He gave the example of a country without army, perhaps only with a police force, being attacked by another.

The Chairman replied that when there is resistance to an attack, no matter how weak, the law of war is applicable.

Mr. Mbaye continued his reasoning and imagined a Judge of the recently established Tribunal studying a document produced by the Commission reading, in several parts, (see page 19 of the report), that the Croatian army was non-existent.

The Chairman suggested to re-consider the wording for the title during the discussions of final draft of the Commission's report to the Secretary-General. Subsequently, he invited Mr. Fenrick to proceed with the presentation of the mass grave excavation projects in Sector East (Ovcara) and Sector West (Pakracka Poljana).

Items 11-12 of the agenda

Mr. Fenrick expressed regret that the excavation in Sector East (Ovcara) had to be postponed after two days at the end of October; the local authorities, in particular Mr. Milanovic ("Deputy Minister of Defense of the RSK"), barred the team from continuing with the excavations.

continuing with the excavations.

The original plan for Ovčara envisaged an in-depth investigation including the excavation of all bodies and a detailed post-mortem analysis. However, under those circumstances, the team concentrated its efforts and shifted all the resources to Sector West (Pakracka Poljana).

According to information received from CIVPOL, and in particular that contained in Sergeant Nicholson's report who conducted investigations in that area, a large mass grave containing approximately 1700 bodies was thought to exist in Pakracka Poljana.

The basis for starting the investigation was a complaint filled by a Serb lady, whose husband had disappeared. After an exhaustive search by the team, only 19 bodies were found in that field. A large number of holes were dug and it was determined that the existence of a large mass grave was practically impossible in that particular area. Perhaps one or two bodies could still be found buried in that meadow, but not in the quantity stated above.

Out of the 19 bodies found, 15 could easily be identified. Personal belongings, such as a wallet and a brief case, were buried along with the victims. Without doubt, these people were murdered; most of the bodies had their hands tied behind their back.

So far, the team only conducted a gross external examination; a detailed post-mortem and identification are yet to be done when the Commission returns to the site.

The reports of these investigations should be ready for the next session of the Commission, scheduled for 11 and 12 January 1994.

In regard to Sector East, Mr. Fenrick made reference to his first trip with the Chairman to Krajina, and to the promises of assistance received from the authorities which never came to fruition, as well as to a second visit on 16 November 1993, when he met with Mr. Hadzic, "President of the RSK"; again, renewed promises of co-operation were expressed from the local authorities.

It should be noted that since the December elections, Mr. Hadzic is no longer the President and has been replaced by Mr. Babic. Therefore, a new round of talks would be indispensable before the Commission undertakes any further activity in Sector East.

Subsequently, Mr. Fenrick drew the attention of the Commission to a memorandum dated 8 December 1993 addressed to the Chairman and to Ms. Greve on future on-site investigations, including Ovcara. In regard to this site, explicit approval must be received from the authorities before going ahead. Not only a written approval, but a strong probability of success must exist before deploying the Dutch contingent and PHR to the site. The final decision is to be made by the Commission after the visit to the capitals which he plans for early February 1994. In addition to the Ovcara project, the Commission's efforts should also be concentrated on Pakracka Poljana/Marino Selo.

As far as schedule is concerned, the investigations could be performed in six weeks, beginning on 10 April 1994. Finally, Mr. Fenrick requested the approval, in principle, of this plan of action as outlined in the above mentioned memorandum of 8 December 1993.

Lastly, he reported that he was unable yet to do the work on the entirety of the studies of the battle of Vukovar and Ovcara prepared by the Chicago team.

The Chairman brought to the attention of the Commission the visit of Mr. Dabic from Belgrade, who could provide clarifications as well as additional information on Pakracka Poljana/Marino Selo. He agreed with Mr. Fenrick that an alternate plan should be formulated, with multiple objectives in order to make full use of the Dutch contingent and PHR.

Mr. Fenrick welcomed the possibility of receiving additional information on Pakracka Poljana from Mr. Dabic, as well as more precision on other mass graves in that area.

Ms. Greve supported Mr. Fenrick's proposal as contained in the memorandum and transmitted the wish of the Norwegian lawyers to work again with the Canadian team. Their experience was useful and productive. As for the Norwegian authorities, they appear somehow reluctant to continue their support to the Commission in view of the appointment of the new Prosecutor. In addition, disappointment was expressed due to the fact that the Norwegian forensic specialists were never called by the Commission to make use of their services, and police investigators were used in a limited way.

The Chairman referred to the schedule for on-site investigations and thought that early April could be too late; the end of March should be considered as an alternative date. To facilitate the task of the Prosecutor, the mission should be orientated towards obtaining evidence acceptable to the Prosecutor.

The Commission approved the preliminary Plan of Action submitted by Mr. Fenrick. The final plan shall be presented in March 1994.

The meeting rose at 13.00 p.m.

Approved

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

Ninth Session (Geneva, 14-15 December 1993)

Fourth meeting
Wednesday 15 December 1993, 15:15 p.m.

Members present:

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

Secretariat Staff present:

Mr. Vladimir S. Kotliar, Secretary
Ms. Bruna Molina-Abram, Deputy Secretary
Mr. Julio A. Baez, Assistant Secretary
Mr. Aldwin Harvey, Administrative Assistant

Others:

Lt. Col. Ton Kempenaars, Assistant to the Commission
Mr. Morten Bergsmo, Assistant to the Commission

Item 15 of the agenda (adoption of press-release).

The Chairman referred to the draft press-release that had been circulated among the members of the Commission. After a short discussion the press-release was approved with some amendments as reflected in the final version.

Item 16 of the agenda (future sessions)

The Chairman suggested that the January session would be held on the 11th and 12th, with the informal meeting on the 11th from 10:00 to 1:00 and from 3:00 to 6:00 with no simultaneous interpretation. The formal session would be held on the 12th, beginning with the morning meeting from 10:00 through 1:00 and the afternoon meeting from 3:00 through 6:00. In his view no session should be planned for February and the next session would be in March.

Ms. Greve suggested keeping the meeting on 15 - 16 February 1994 on the schedule as earlier planned.

Mr. Fenrick agreed adding that an important issue to be decided by the whole Commission would be whether to go ahead with the Ovcará investigation.

The Chairman responded that the Ovcará and other mass graves projects should be guided by the assessment of Mr. Fenrick. The February dates would also overlap with the sexual assault investigation that will be ongoing at that time. But if a session is necessary, he thought it could be arranged.

The session in March would be on the 15th, 16th and 17th with the informal meeting held on the 15th and the formal meetings on the 16th and 17th.

It was decided to hold sessions on 11 - 12 January and 15 - 17 March 1994 and to keep tentatively 15 - 16 February 1994 reserved for an additional session. The Commission will take a decision in January whether to hold a session in February or to cancel it.

Item 17 of the agenda (Other business)

Ms. Greve briefed the Commission about meetings she had with government representatives since the last session. She said that during a lunch arranged by the Permanent Representative of Norway to the United Nations in Geneva, she spoke with a representative from UNHCR who expressed a willingness to assist in investigations to take place in former Yugoslavia. She also met with the Second Secretary of the German Mission in Geneva, with a view to obtain assistance for Ms. Cleiren who was to go to Berlin, and also explained the Swedish model of information gathering on rape. Ms. Greve stated that the Second Secretary expressed concern that because of the large number of refugees Germany might have difficulties with the Swedish model but a smaller model could be utilized. Her final meeting was with the Norwegian authorities on the allocation of funds. She stated that there were discussions in Nordic countries on funding either the Commission or the Prosecutor. She emphasised during her talks that it was not an "either or" issue but one of the continuity of the operation and she would recommend the continuation of funding for the Commission. She stated that there would be a request for the present assistant, seconded by the Norwegian government, to be allocated to her project and there should be a discussion of this proposal.

The Chairman felt that this should not be discussed in formal session but that the allocation of human resources is the decision of the Chairman.

Mr. Fenrick wondered, if the Norwegian assistant was assigned to the Norwegian Commission member, would he have access to the entire range of Commission facilities and activities.

The Chairman stated that personal assistants' access to the Commission facilities would be limited and access to the areas of activities of the Commission would be those needed by the Commissioner in question with the Chairman's approval.

Ms. Cleiren expressed a desire to discuss a new project. She stressed that she would be interested in preparing a legal study on sexual assaults. Ms. Cleiren also wished to know, for the purposes of planning her work, if the Commission was looking at the end of April as a closing date.

The Chairman stated that he understood the difficulties and that time was a factor. If the Commission continues after April we shall finalize our work most likely in June - July. He did not see any problem with assigning Ms. Cleiren the task to prepare a legal study on sexual assault.

Ms. Greve, supported by Mr. Fenrick, proposed that Ms. Cleiren be given the status of rapporteur.

The Chairman explained that a rapporteur is someone who does fact finding in the field.

Mr. Mbaye stated that he felt all assignments should consist of the complete range of the issue, including both legal studies and field work.

The Chairman then asked Ms. Cleiren to inform the Commission in greater detail about the nature of her proposal.

Ms. Cleiren explained that her study would examine sexual assault as a war crime and as a crime against humanity. She also felt that since there was very little literature on the subject, it would take more time to study this point as opposed to the other items of the final legal report of the Commission. Her plan was to make the legal framework in relation to the facts creating a basis on which rape case studies could be based.

Ms. Greve wondered if, since it was felt that rapporteur might be too broad a term, Ms. Cleiren can be assigned the task of specifically working on the legal aspects of the sexual assault.

The Chairman agreed.

It was decided to assign Ms. Cleiren with the task of preparing a study on various legal implications and consequences of sexual assault.

Ms. Cleiren again expressed her concern that the time was very short and that she could not guarantee the completion of her part of the final report by the end of April.

The Chairman then closed the meeting with holiday greetings to everyone.